



Governance of mining in India: responding to policy deficits

KEY FACTS

- Mining contributes 2%–3% to India's GDP; the country produces 89 minerals (4 fuel, 11 metallic, 52 non-metallic, and 22 minor)
- Fuel minerals (particularly coal) dominate production with a share of 82% in value terms, followed by 6% metallic, 8% non-metallic, and 3% minor minerals
- India is among the top 10 producers of mica, barites, chromite (metallurgical), coal (thermal), lignite, bauxite (metallurgical), manganese ore, and iron ore (Box 1)
- India is deficient and import dependent on fertilizer minerals, diamond, gold, nickel, copper, lead, zinc, platinum group of metals, and rare metals

KEY CONCERNS

- Environmental rules and regulations exist, but there is poor enforcement
- Lack of a Social Impact Assessment (SIA) for mining
- Many authorities; unclear jurisdictions; inaction or delays
- Lack of expertise and capacity in mining related domains
- Need for greater transparency and public participation
- Land is a key contested issue

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This policy brief¹ has three specific objectives. It seeks to:

- Discuss the policy and institutional innovations that have been initiated to address some of the key concerns around minerals development
- Highlight the still unresolved issues that need to be addressed in order to overcome the “trust deficit”
- Suggest a more distributed governance that will enable more responsible mining

The Energy and Resources Institute
Darbari Seth Block, IHC Complex,
Lodhi Road, New Delhi- 110 003

Tel. 2468 2100 or 4150 4900
Fax. 2468 2144 or 2468 2145
India +91 Delhi (0) 11

www.teriin.org

¹ The Brief is based on inputs and views that emerged at a TERI workshop on “Making Minerals Development Work for the People”, held on 2 December 2011. The brief is put together by Swati Ganeshan, Arpita Asha Khanna, Nidhi Srivastava, and Ligia Noronha.

ABBREVIATIONS

DMF	District Mineral Foundation
DPC	District Planning Committee
EIA	Environmental Impact Assessments
EMP	Environment Management Plan
FPIC	Free, Prior, and Informed Consent
IBM	Indian Bureau of Mines
MDA	Model Development Agreements
MMDR	Minerals and Metals Development Regulation
NEAMA	National Environment Appraisal and Monitoring Authority
NMP	National Mineral Policy
R & R	Relief and Rehabilitation
SDF	Sustainable Development Framework
SIA	Social Impact Assessment

Key policy initiatives in mining

The reform in the minerals sector has been in response to both global and national pressures. Internationally, there was a need for India to make credible commitments to the world that it would do things differently in terms of approval, transparency, greater efficiency, more incentives to attract investment in exploration, and

BOX 1 INDIA'S GLOBAL RANKING IN MINERAL RESOURCES

Chromite (2nd)
 Barites (2nd)
 Coal-lignite (3rd)
 Talc/Stealite/Pyrophyllite (3rd)
 Kyanite/Silimanite/Andalusite (4th)
 Iron ore (4th)
 Bauxite (6th)
 Manganese (8th)
 Mica blocks splittings (8th)
 Magnesite (9th)

Source *“Report of The Working Group on Mineral Exploration and Development for the Eleventh Five Year Plan, Overview”, Volume 1, Government of India, Planning Commission, January 2007*

development activity. Nationally, there was need for greater exploration information; improved allocation processes; increased resource revenues from mineral rich states; and greater compensation for externalities created by mining.

Over the last few years new initiatives have been put in place. The National Mineral Policy (NMP) and the Minerals and Metals Development and Regulation (MMDR) Bill have sought to address many of the industry and community concerns and also the issue of graft by making the process of allocation and clearances more transparent and less discretionary. The Policy and the Bill have many pro-people clauses that relate to benefit sharing, minimizing the ecological footprint, improved participation in decision-making and grievance redressal mechanisms. Some salient features of the MMDR bill are given in Box 2.

Sustainable Development Framework–strengthening the MMDR

The integration of the new MMDR bill with a Sustainable Development Framework (SDF) (which is a part of the proposed law and will thus have a legal basis) is a positive move to re-emphasize the significance of addressing social and environmental externalities as central to minerals development. The initiative is a part of the process of bringing in international standards into the mining sector. It aims to incorporate best practices related to environmental management into mining activities. It targets appropriate use of land within a planning framework through a decision-making process based upon integrated assessment of ecological, environmental, economical, and social impact. It mandates regional assessment and requires an independent regulator to be distant from the policy maker. While the utilization of the SDF framework can bring about positive changes, stress needs to be laid on creating more awareness about the framework among all stakeholders. The combination of a regulatory framework and a voluntary framework that balances the view of the industry and people should be the focus.

BOX 2 SOME SALIENT FEATURES OF THE MMDR BILL 2011

Transparency and accountability Certain disclosure requirements may be detailed in subordinate legislation or executive orders. For example, the Central government may prescribe a framework for disclosure of information related to mineral resources and their exploration and exploitation, and recycling [Sec 46 (7)]; reports on reconnaissance or prospecting operations have to be published [Section 4 (10)].

Reducing waste and high technology The new Bill lays emphasis on scientific methods for prospecting, extraction, and beneficiation.

Independence of regulators National and State Mining Regulatory Authorities are proposed to be established under the Bill (Chapter V).

Benefit sharing Every lessee shall pay 26% of net profits in case of coal and an amount equivalent to royalty in case of all other minerals to a District Mineral Foundation in addition to any other compensation paid under any other rehabilitation law or policy [Sec 46(2)].

Compensation and support for host population Every licence holder shall pay an annual compensation to every person or family holding occupation or usufruct or traditional rights of the surface of the land over which the licence has been granted [Sec 43(1)].

Corporate social responsibility Every mining plan shall contain a corporate social responsibility document, comprising details on socio-economic activities in and around the mine area for the benefit of the host population in the Panchayats adjoining the lease area [Section 26 (3)].

Closure plans Final closure plans shall include measures to reduce hazards, improve productivity and ensure that it supports the needs of the host population [Section 32 (8)].

Participation Gram Sabhas/ District Councils/ Panchayats have to be consulted before issuing of a notification for mineral concessions. [Sec 13(10)] IBM or the State directorates shall give their approval to a plan only after consulting concerned Panchayats [Sec 32(5)].

SDF The Bill proposes to give a legal basis to a Sustainable Development Framework (SDF) for mining. Every mining plan may take into account SDF and every progressive and final mine closure plan shall take into account the SDF, as finalized by the Government of India [Sections 26(1), 36(1) & 46].

Additional steps Application for a high technology reconnaissance-cum-exploration licence and prospecting licence must contain steps for minimizing the adverse effect on the environment, such as prevention and control of air and water pollution, progressive reclamation and rehabilitation of the land, a scheme for the plantation of trees, restoration of local flora and fauna [Sec 21 (1) (v)].

Forest clearance The state government will obtain all the necessary forest clearances required to enable the commencement of operation before notifying any area for inviting bids [Section 13(5)].

Sharing resource rents

An important feature of the MMDR bill is that it moves forward from the position of recognizing state as owners in the context of minerals development, to one where the people are as much owners of the resource as is the state. It emphasizes that local people have a moral right to benefit sharing, given that their lives and livelihoods are seriously affected by mining over long periods of time. In the Bill, there is a provision that 26% of the net profits in the coal sector and 100% additional royalty in other mineral sectors be contributed to a district minerals foundation. These additional payments have drawn some negative reactions from industry. Economic rent from natural resources arise due to the scarcity or a specific quality of the resource, and so it really belongs to the owner of the resource. The operator is entitled to the expected rate of return which includes the risk premium, need for investable surplus, etc. But returns in excess of the expected returns should go to the owners. Arrangements to extract economic rent should reflect this.

The proposed District Mineral Foundation (DMF) is seen as an essential component for community development (see Box 3). It is a way of “insulating operations from the local community” and also to avoid “too cozy a relationship between communities and

BOX 3 DISTRICT MINERAL FOUNDATION

The District Mineral Foundation (DMF), the major funding concept envisaged in the MMDR bill, provides for the contribution by all major mineral producers, except coal, an amount equivalent to the royalty; while coal producers are to provide 26% of profits. Minor mineral producers are to contribute to DMF as prescribed by the state government. The DMF is envisioned at the district level with the funds being utilized for the specific district or state, thus leading to the benefits directly being transferred to local communities. The DMF would have a Governing Council overseen by the state government for its effective implementation.

operators through direct stakes in mining, which could prove to be detriment to the environment”. However, there is need to focus on improved economic and social outcomes, rather than money in terms of distribution and to avoid creating a dependency, through these money flows, on mining. Questions on how the funds will be disbursed, how companies would contribute at district level and how every individual company’s share would be derived, needs to be carefully addressed. Additionally, the impact of these contributions on mineral prices and in turn on consumers should be taken into consideration. The utilization of funds from the DMF needs to also factor in the existing resettlement and rehabilitation policies as well as corporate social responsibilities.

Unresolved issues

Despite these initiatives, there is room for concern. The problem with mining in India is not due to the absence of regulations, but to their poor enforcement because of regulatory capture. Improved minerals governance will not follow merely from more rules and regulations, but through better rule enforcement, coordination, and monitoring.

In the context of governance deficits, the following issues are the key factors to be considered:

Environmental impact assessments (EIA)

Any mining project covering more than 5 hectares has to follow the EIA procedure comprising mandatory screening, scoping and public consultation prior to an approval. However, environmental clearances are fraught with certain inherent challenges (see Box 4).

Following the introduction of the 2006 guidelines, rapid impact assessments are conducted with a focus on mapping during a single season rather than different periods of time/season leading to the EIA being conducted during summer when the land is drier. Due to this water courses/bodies are often ignored in EIAs. The lack of cumulative impacts assessments is also leading to several small lease areas being put out of the purview of the EIA leading to unchecked mining and exploitation in many areas.

BOX 4 SOME MAJOR CHALLENGES IN THE EIA

- There is a conflict of interest as the project proponent gets the EIA conducted
- In the absence of cumulative impact assessments, many lease areas comprising smaller areas (less than 5 hectare) are excluded from the requirement of an EIA
- Fabrication, reproducing old information, or avoiding crucial facts from the EIA document are oft-cited problems
- The process of public hearings are almost farcical
- The issue of implementation and capacity of the appraising as well as monitoring authorities make the EIA process a mere administrative formality

In the context of EIAs, the role of the National Environment Appraisal and Monitoring Authority (NEAMA) is seen as a positive way forward. It is to be established as a professional, science-based and autonomous body to conduct environment appraisals of projects and monitor and enforce green standards. It is expected to mark a major improvement over the current assessment system.

Social impact assessment (SIA)

While the provisions of EIA are at least available, there is lack of a social impact assessment (SIA), causing significant lacunae in the development of mining projects. Along with the environment, communities also face long term implications on their social milieu. Social impacts of mining depend on various factors such as the proximity of the mine, mining method and nature of the mineral among others that need to be considered to appropriate mining regulations. Additionally, the intensity of impacts is felt in varying degrees by people depending upon the nature of the community, social status, gender, awareness level, and choice of livelihood. Displacement, loss of livelihood and change in social milieu, including cultural transformations are the major implications of mining. Hence, the need for SIA is pertinent for sustainable resource development.

Free, prior, and informed consent (FPIC)

Despite references to free, prior, and informed consent (FPIC) in the MMDR Bill and in the Land Acquisition and Resettlement and Rehabilitation Bill, it appears that people do not have any power to say “No”. The authority to give consent rests only with state governments. In this context, public hearings are inputs into the state decisions to give consent. However, as in the case of EIA, the public hearing process is really just to “get projects up to speed”. There is need to establish clear areas where mining cannot happen, based on the importance of the mineral to the economy and the ecological and social sensitivity of the area.

Expertise and capacity

A lack of expertise in mining related domains, including geology, displacement issues, and compensation related frameworks has been often stated to be lacking among the following groups: regulators, courts and communities. The first two, as part of the quasi-judicial and judicial structure, sometimes lack the requisite expertise required to assess mining related cases and at times are not equipped with appropriate experts who can review mining related cases, leading to delays or hampering of judicial procedures. For instance, cumulative environmental impact assessments are necessary in several mining regions; however the capacity to conduct cumulative EIAs is non-existent in India.

In this context, the National Green Tribunal or the National Minerals Tribunal would make the process more informed. However, the role of the tribunal needs to be balanced to ensure that environmental and social justice remains accessible to the common man.

Institutional coordination

The mining sector is marked by a multiplicity of actors and stakeholders across the value chain. Various government departments and institutions across the value chain govern different aspects of mineral

development and use. A key concern that stems from the regulation of the sector is the need for timely and regular coordination amongst centre, state and district level agencies that are directly involved in various stages of mining. The MMDR Bill makes a start in direction of this increased coordination, but more interaction is required.

Independence and transparency of regulators

For improved regulatory oversight of the minerals sector, it has been proposed to set up a National Mining Regulatory Authority and a Coal Regulatory Authority. It is important to ensure independence of the regulator from government as well as industry. This would be an important factor leading to more faith in governance and acceptance of mining. Transparency in review of leases or grievance redressal by providing information in the public domain, would ease the current distrust. Wider participation and representation from all stakeholders, especially the communities, is considered vital.

Diffusing regulatory control and governance

In an activity such as mining, that affects lives and contexts, we believe regulatory control and governance should be diffused through society. This would be possible through a focus on the following key issues:

Greater transparency, coordination, and capacity

- Transparency on issues and responsiveness is required from all branches of Central government that connect with minerals development – mines, land, environment and forests, coal, atomic minerals, and water. The same is required at the state level. All information should be available on the respective websites.
- To enhance transparency and knowledge at the mine level, every major and medium mine should have a kiosk where all the information about the mines, the lease, the EIA, the EMP, R & R and people working in the mine is available electronically. Small mines can have a board with the information displayed.

- The government should appoint a body (a Special Purpose Vehicle) to help build capacity across governments, especially local governments, Gram Sabhas and communities on issues of sustainability around minerals development (EIAs, SIAs, benefit sharing) to reduce the information deficit that leads to “issue of distrust” among communities. There is also a need to enhance the capacity of local institutions to participate in mining related decisions and monitoring of mining plans, environmental impacts, etc.
- There is a need to have measures of relative performance to avoid painting all companies with the same brush; Good corporate behaviour should be rewarded.
- To ensure compliance, enforcement as well as to ascertain that all companies are not affected, industry associations should play a bigger role in improving the culture of responsibility in the sector.

Dealing with externalities

- Make EIAs in a simple and understandable format and ensure they are available in the local language.
- Have EIAs audited by external agencies to increase transparency as well as to invoke faith in the regulatory system would be pertinent.
- Establish a cooling period of 3–4 months post the public hearing and reviews would be an effective solution to sensitize the locals about the impacts.
- Carry out EIA and Environment Management Plan (EMP) processes around mining, jointly by the IBM and the MoEF, and not sequentially as at present.
- Recognize mining in land and water use policies; a minimal impacts philosophy has to be ingrained in industry, and state governments need to insist on this.
- Avoid a situation where captive mining is distorting the market and there is a cherry picking of mines and ores.
- Develop capacity within government and institutions to do cumulative impacts and risk assessments.

- Involve local government and make them more accountable for monitoring.

The question of land for mining

- Movement from consultation to consent is essential when taking into account opinion of the communities.
- Consent issues need clarity: How do we decide whose consent is to be taken? How do we ensure that communities without ownership are involved in the consent process? What procedure will be followed for taking this consent? How can it be established so that it is given freely? What happens if consent is not given?
- Compensation is not about money but the livelihoods, culture, etc., of local people.
- There should be a mechanism for ensuring that the compensation is used for inter-generational equity, without depriving the existing rights holders of adequate compensation.
- Mining is not always done for a public purpose. Clauses 7 and 8 of the LA and RR Bill should recognize this.
- Land owners should have a stake in the minerals projects as land is actually a key factor of production for the project. So compensation should reflect stakes through the life of the project. Compensation should be pegged to the value of the resource.
- The role of the Gram Sabha needs to be clarified and strengthened to undertake or take part in consultations and discussions.
- For Schedule V and VI areas, use of Model Development Agreements (MDAs) should be considered when and if FPIC of the Gram Sabha for mining has been obtained. The MDA has:
 - to be negotiated with a specially constituted group in the district comprising (e.g., Head of the Zilla Parishad, DPC representative, representative of village community bodies, prominent citizen or NGO) to ensure better social and economic outcomes, clearer recognition of rights and improved local development.
 - to be embedded within a clear and transparent negotiation process; capacity to negotiate has to be built into the group. Special lawyers can be appointed to help build capacity.
 - to have special revenue sharing arrangements with local community (royalty share plus share in net profits as required under the Samatha Judgement).
- Land reclamation after the closure has not received adequate attention. Appropriate reclamation of land by the industry is vital for the restoration of ecology as well as rehabilitation.

This is part of a series of policy briefs by TERI based on its research work in specific areas. These briefs are made available to members of parliament, policy-makers, regulators, sectoral experts, civil society, and the media. The briefs are also accessible at <http://www.teriin.org/policybrief/>. The purpose is to focus on key issues and list our policy recommendations to encourage wider discussion and debate. We would very much value your comments and suggestions.

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For more information contact:

Arpita Asha Khanna

Associate Fellow, Resources, Regulation & Global Security Division

The Energy and Resources Institute (TERI)
Darbari Seth Block,
IHC Complex, Lodhi Road,
New Delhi- 110003

Tel: 24682100 or 41504900
Fax: 24682144 or 24682145
Web: www.teriin.org
E-mail: arpita.khanna@teri.res.in