POLICY BRIEF

DISTRICT MINERAL FOUNDATION

An opportunity to rewrite the contract between rich lands and its poor people

A. BACKGROUND

The Ministry of Mines in its Sustainable Development Framework (SDF) report of 2011 acknowledged the basic fact that 'in recent decades, mining activities have resulted in little local benefit'.[1] It's not just that mining activities have not translated into local benefits but that, ironically, the country's most mineral-rich states and districts have the poorest people.This is clear in the poverty statistics of some of the major mining states.

- According to poverty estimates by the Planning Commission for 2011-2012, in the three top mining states— Chhattisgarh, Jharkhand and Odisha—the percentage of population below the poverty line is nearly 40 per cent, much higher than the national average of 21.9 per cent.
- The Planning Commission further has identified 15 districts of Chhattisgarh as backward, while for Jharkhand and Odisha it is 19 and 27, respectively.
- The situation is worse for tribal populations in the country, particularly in rural mining districts. As per the latest estimates for 2014 put out by the Ministry of Tribal Affairs, a significant proportion of the tribal population, particularly in the rural areas of mining states, lives below poverty line. In Odisha, more than 75 per cent of the rural tribal population is below the poverty line, while in Chhattisgarh, Jharkhand, Madhya Pradesh and Maharashtra the figure is over 50 per cent.

B. SHARING BENEFITS WITH COMMUNITIES

After years of deliberations, the urgency of sharing the benefits of mining with the poor in the mining areas has been recognized. The Mine and Minerals Development and Regulation (Amendment) Act, 2015, has created provisions for sharing the mineral wealth with communities in the mining areas. The Act (Section 9B) now provides for the establishment of the District Mineral Foundation (DMF). As specified, the DMF is a trust that would function as a non-profit body to 'work for the interest and benefit of persons, and areas affected by mining related operations'.

The Act broadly outlines an amount that lease holders are required to pay to the DMF annually with regard to major minerals.

- Holders of a mining lease or prospecting licence-cum-mining lease (granted on or after the commencement of the Act) are required to pay the DMF an amount not exceeding one-third of the royalty of the respective mineral being mined.
- Existing mining lease holders are required to pay the DMF an amount not exceeding the royalty.

The percentage of royalty to be paid will be prescribed by the Central government.

Centre for Science and Environment
41, Tughlakabad Institutional Area, New Delhi 110 062, India, Ph: +91-11-40616000 Fax: +91-11-29955879
E-mail: srestha@cseindia.org Website: www.cseindia.org

The Act further states that the objective and functioning of the DMF should be guided by Constitutional provisions as it relates to Fifth and Sixth Schedules for governing tribal areas. It should also be guided by the provisions of the Panchayats (Extension to Scheduled Areas) Act (PESA), 1996, and the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006—in short the Forest Rights Act (FRA).

C. DISTRICT MINERAL FOUNDATION: AN OPPORTUNITY TO REWRITE THE CONTRACT BETWEEN RICH LANDS AND ITS POOR PEOPLE

The provision of DMF opens a window of opportunity to uplift the socio-economic status of mining-affected communities. Our estimates show that significant resources can go into the DMF. (The projections could be an underestimation as most states feel that the value of mineral production and sale price quoted by the Indian Bureau of Mines are underestimates.) For instance:

- In major mining states, such as Odisha, Jharkhand and Chhattisgarh, just from iron-ore mining, Rs 800 crore, Rs 105 crore, and Rs 440 crore, respectively, can go to the DMF annually. In Goa and Karnataka, the amount can be to the tune of Rs 350 crore and Rs 180 crore, respectively, just from iron-ore mining.[2]
- In major iron-ore-mining districts, such as Keonjhar, Sundergarh, Singhbhum (West), Dantewada and Bellary, DMF money could amount to Rs 600 crore, Rs 185 crore, Rs 105 crore, Rs 350 crore and Rs 170 crore, respectively.[3]
- For the major coal-mining states, the DMF share could be as high as Rs 820 crore for Jharkhand, Rs 420 crore for Chhattisgarh, Rs 440 crore Madhya Pradesh and Rs 430 crore for Andhra Pradesh from coal alone. In other states too the share from coal mining can be significant. For instance, it can be to the tune of Rs 290 crore for Maharashtra, Rs 220 crore for Odisha and about Rs 170 crore for both Meghalaya and Uttar Pradesh.[4]

However, the benefits can only reach the communities if the rules guiding the DMF are developed appropriately and are implemented with proper planning, oversight and accountability.

The states have a central role in this. The Act (Section 15) empowers state governments to make rules for regulating the functions of the DMF. In addition, the state is to frame rules for the amount of payment concession holders of minor minerals will make to the DMF. The states are also in the best position to identify the needs of the poor and the community at large.

D. DESIGNING DMF: PEOPLE-CENTRIC, EFFECTIVE AND ACCOUNTABLE

For DMF to be effective, states should make these considerations:
(i) Set clear guidelines for identifying beneficiaries
(ii) Specify how and where the money should be spent
(iii) Specify who should administer the funds
(iv) Ensure effectiveness, transparency and accountability of DMF

(i) Set clear guidelines for identifying beneficiaries

The DMF is to serve persons and areas affected by mining-related operations. However, identifying people affected directly or indirectly can be a major challenge. This has been the case with respect to the settlement of rights

The paradox of the poorest living in districts richest in minerals must be addressed by the DMF

A transparent and accountable procedure should be established to identify areas and persons affected by mining

under the provisions of the FRA, 2006. To avoid such controversies, the DMF Rules must have a system for open and transparent identification of affected areas and beneficiaries.

The following broad framework could be used to identify affected areas and beneficiaries:

a. Affected areas

Affected areas should be classified into directly affected and indirectly affected.

Directly affected areas

Directly affected areas are those where mining and direct mining-related operations, such as beneficiation and waste disposal (overburdened dumps, tailing ponds etc.), are actually taking place.

- Villages and gram panchayat in which the mining and direct mining-related operations are taking place should be considered directly affected areas.
- Villages in which the displaced families of the project are resettled should be considered directly affected areas.
- Villages that significantly depend on the project areas for meeting their economic needs and have usufruct and traditional rights over the project areas (for instance for grazing, collection of minor forest produce etc.) should also be considered directly affected areas.

Indirectly affected areas

Indirectly affected areas are those where communities suffer negative economic, social and environmental consequences due to mining-related operations. The major negative impacts of mining could be deterioration of water and air quality, congestion and pollution due to transportation of minerals, increased burden on existing infrastructure due to influx of people and transportation equipment etc. It is very difficult to identify indirectly affected areas. However, experience shows that significant impacts of mining do not extend beyond the block level. So, for simplicity of execution, block/blocks, excluding directly affected areas, in which the mining and direct mining-related operations are taking place,can be considered indirectly affected areas.

b. Affected persons/beneficiaries

Only directly affected persons should be identified. Persons affected by mining should include people who have legal rights and occupational rights over the land being mined, and also those with usufruct and traditional rights. The following should be identified as directly affected persons:

- 'Affected family' as defined under Section 3 (c) of the the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013
- 'Displaced family' as defined under Section 3 (k) of the the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013
- Any other as appropriately identified by the gram sabha.

CSE
Centre for Science and Environment
41, Tughlakabad Institutional Area, New Delhi 110 062, India, Ph: +91-11-40616000 Fax: +91-11-29955879
E-mail: srestha@cseindia.org Website: www.cseindia.org

c. Process of identifying affected persons: gram sabha to identify affected persons

A transparent and accountable procedure should be established to identify mining-affected people. The 2015 Act specifies that the objective and functioning of the DMF should be guided by Constitutional provisions as it relates to the Fifth and Sixth Schedules, the provisions of PESA, 1996, as well as the FRA, 2006. Given such provision, the beneficiaries must be identified by the gram sabhas as they are empowered to do so by the Acts.

- As per provisions of the PESA (Section 4e), the gram sabhas have roles and responsibilities in 'identification or selection of persons as beneficiaries' under the 'poverty alleviation' and 'other' programmes. Since the chief purpose of institutionalizing a DMF is to improve the economic and social status of the people in the mining areas, such provision of the PESA should be exercised to identify the beneficiaries.
- Further, the process of identifying beneficiaries can be based on the provisions of Rule 4 of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Amendment Rules 2012 (Forest Rights Amendment Rules, 2012).
  - The gram sabha should prepare a list of prospective beneficiaries and maintain a register containing such detail of them.
  - Upon verifying the prospective beneficiaries, the gram sabha shall pass a resolution and forward the same to the Governing Council of the DMF. The quorum of the gram sabha meeting where a resolution will be passed, shall not be less than one-half of all members of such gram sabha, and shall include members belonging to the Scheduled Castes, Scheduled Tribes, Other Backward Classes and women in proportion to their population. At least one-third of the members present must be women.
  - The quorum of the gram sabha to pass any resolution with respect to identifying the beneficiaries would also require the presence of at least 50 per cent of the claimants or their representatives. The resolution would be passed by a simple majority.
- The DMF must develop mechanisms to clearly communicate with the gram sabha the requirements that are to be fulfiled for identifying potential beneficiaries. A guideline can be developed for such purpose and communicated in a timely manner.
- For very old mines, where identifying beneficiaries is difficult because of out-migration of displaced people and influx of outsiders, a village fund for targeted expenditure should be devised.
- For very old mines, where displaced people have been settled in a different village, a village-level fund for the resettled village should be established to give some benefits to the descendants of the displaced people.

(ii) Specify where and how the money should be spent

DMF money is strictly for persons and areas affected by mining and for their social and economic upliftment.

a. Where should the money be spent?

- Of the total funds that DMF would receive in a year, no less than 20 per cent should be deposited in an account for future use (when mining operations are closed) as well as for emergency situations, such as natural calamities.
- Of the total funds that DMF would receive in a year, no more than 80 per

Beneficiaries must be identified by the gram sabha as per provisions of PESA, 1996, and FRA, 2006

No more than 80 per cent of total DMF money should be used in the year; the remainder should be for future use

cent should be spent in the year.

- Of the total money that DMF has to spend in a year:
  - No less than 65 per cent should be spent on directly affected areas.
  - No less than 50 per cent should be used for the upliftment of directly affected persons.
  - No more than 20 per cent should be spent on indirectly affected areas.
  - No more than 10 per cent should be spent for the development of the district, excluding directly and indirectly affected areas.
  - No more than 5 per cent should be used as administrative expenses of the DMF.

b. What should the money be spent on?

Benefit-sharing

- Every directly affected family should be entitled to equal monetary benefit, which could either be paid monthly or annually. The directly affected family could include widows, single mothers and old people without family support. A bank account should be opened in the name of the woman head of the family.
- The amount of monetary benefit should be decided by the Governing Council of the DMF at the beginning of each financial year. However, such amount of monetary benefit shall not be less than the amount a family may be entitled to under the provisions of the Mahatma Gandhi National Rural Employment Guarantee Act, 2005.
- In fact the need to provide at least the minimum wage has also been mentioned under the Mineral Concession Rules, 1960 (Rule 27p and q). It specifies that such monetary benefit must be given to tribals and persons displaced due to mining if they are employed by mining-lease holders.

Securing livelihoods

- It is important that a part of the DMF money be used to secure livelihoods of directly affected persons. The second priority, therefore, should be given for education scholarships, health insurance, livelihood trainings, loans to establish small businesses, etc. Priority should be given to support businesses of women.
- The DMF funds can be used as an 'add-on' (to supplement the funds that district/blocks/villages would receive normally) for developing local infrastructure, including healthcare facilities, schools, water supply, sanitation and sewerage, electricity, roads, etc. For such developmental purposes, there should be mechanisms in place to transfer DMF funds to other concerned government departments that can implement and maintain these assets. However, the DMF must have a system to verify and audit its contributions.
- A part of the DMF money used for administrative expenses must be used for capacity building of the affected communities to run the DMF, including fiscal training.

Investing in the future

- A part of the money should be invested for the future. This money should be kept to revive the economy of the area when mining finishes to avoid the issue of 'ghost towns' as is commonly observed in mining areas.

Centre for Science and Environment
41, Tughlakabad Institutional Area, New Delhi 110 062, India, Ph: +91-11-40616000 Fax: +91-11-29955879
E-mail: srestha@cseindia.org Website: www.cseindia.org

DMF funds to be used for the socio-economic upliftment of the community must not be compromised by its administrative expense requirements. Similarly, district entitlements from state coffers must not be affected.

(iii) Specify who should administer the funds

The DMF should function like a professional organization, with both the Members of the DMF and the Governing Council involved in managing its functioning.

a. Members of the DMF

Members to comprise:

- Two members (one female and one male) from each directly affected village, nominated by the respective gram sabha
- 10 per cent of mining companies who are contributing to the DMF (but not less than three members), nominated by the district mining association
- Head of district offices of departments of the concerned state government

b. Governing Council

- The DMF to have a Governing Council comprising:
    - District magistrate as the chairperson
    - Five community representatives from areas affected by mining, nominated by DMF Members
    - Two state government representatives, nominated by the state government
    - One representative from mining companies contributing to the DMF, nominated by the district mining association
    - District mining officer
    - Secretary, who will be the chief executive officer (CEO) of the DMF, and who will be appointed by the Governing Council
- Membership of the Governing Council will be for a maximum of three years. Members once elected can be re-elected only after a gap of 10 years. This provision does not apply to government representatives

c. Roles and responsibilities

Responsibilities of DMF Members

- Voting on the annual account and passing the annual plan
- The power to nominate community representatives to the Governing Council
- The power to remove all members of the Governing Council (excluding the chairperson) by simple vote
- Taking decisions on the salaries of appointed persons, including the CEO
- Ratifying the appointments of officers and auditors to run the DMF

Responsibilities of the Governing Council of the DMF

- Developing the annual plan
- Distributing monetary benefits to persons or families affected by mining-related operations in the district
- 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

DMF should be a democratically functioning people-centric institution

Good financial practices must be institutionalized in the DMF

- Appointing officers to run the DMF and auditors; however, these appointments would require ratification by the Members of the DMF
- Organizing annual general meetings (AGM)
- Presenting audit reports for ratification by AGM

(iv) Ensure effectiveness, transparency and accountability of DMF

The DMF should be established as a transparent and accountable organization. It should be open to the government as well as public audit. To ensure transparency and accountability of the DMF, the following needs to be done:

- The DMF should maintain a register giving details of:
  - The list of lease holders in the district and the annual payments made by them to the DMF
  - The disbursal of benefits to the affected persons
  - Annual audited accounts of the DMF
- The DMF must maintain proper accounts and other relevant records and prepare an annual statement of accounts, including profit and loss account and balance sheet in respect of the funds available with the DMF, in a manner as may be prescribed by the state government in consultation with the Comptroller and Auditor-General (CAG) of India.
- The accounts of the DMF must be periodically audited in a manner as may be prescribed by the state government in consultation with the CAG.
- The accounts of the DMF together with the audit report shall be forwarded annually to the state government by the DMF. The state government shall cause the audit report to be laid as soon as 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.
- The DMF must at the end of each year also prepare an annual report on the activities it has undertaken and share it with the state government.
- All information concerning the DMF, including accounts, fund disbursal and utilizations, audit reports and annual report, should be in accessible in the public domain.
- Any member of the DMF fund to steal, purloin or embezzle any money or other property whereby the funds of the DMF may be exposed to loss shall be subject to the same prosecution and, if convicted, shall be liable to be punished in like manner as any (civil) person not a member would be subject and liable to in respect of the like offence.

REFERENCES

1 Ministry of Mines 2011, Sustainable Development Framework for Indian Mining Sector, http://mines.nic.in/writereaddata/filelinks/2155afeb_FINAL%20REPORT%20SDF%2029Nov11.pdf, accessed on 31 May 2013.

2 The calculation is based on value of iron ore production each state as published by the Indian Bureau of Mines (IBM) for 2012-13 (for Goa 2011-12), and considering the royalty paid by the mining industry for iron ore is 15 per cent as per latest royalty revision rates. This calculation assumes that one-third of the royalty goes to DMF.

3 The calculation is based on using value of iron ore production in each district for 2012-13 as published by IBM.

4 The calculation is based on value of production of coal in each state as published by IBM for 2012-13, and considering the royalty paid by the mining industry for coal is 14 per cent. This calculation assumes that one-third of the royalty goes to DMF.

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