

# The Goa Foundation

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## **Subj: Comments/suggestions on MMDR (Amendment) Bill, 2014**

Dear Dr. Pujari,

We thank you for the opportunity to make an oral presentation explaining our views on the draft MMDR (Amendment) Bill, 2014 (the “draft Bill”).

We have already written to the Hon'ble Minister of Mines on 11-Aug-2014 drawing his attention to various changes required to be made to the governance framework concerning mining. These are necessary to fully implement Constitutional provisions, Supreme Court judgements, as well as to bring good governance in the minerals sector. We observe with disappointment that most of our suggestions in that communication have not been considered. We therefore request you to treat the aforesaid letter (copy enclosed) as part of our comments to the draft Bill.

We observe that the draft Bill requires “auction by a method of competitive bidding” and that the Central Government would specify the bidding parameters, which could vary by mineral and by State. This is a progressive step, and should result in an increase in the overall rate of capture of the value of the mineral (Capture Rate). However, we would like to point out that auctions do not necessarily result in maximization of the Capture Rate. This is especially true when commodity prices increase after the auction. The design of the auction itself is important, along with the

overall contractual, governance and taxation framework. We would therefore make the following suggestions for consideration and incorporation in the MMDR Act:

1. Re-word the preamble of the MMDR Act to include capture of the value of the minerals. “An Act to provide for the development and regulation of mines and minerals under the control of the Union and for maximising the capture of the value of sub-soil minerals by their owner.”
2. Define “Capture Rate” in the MMDR Act.
3. The “auction process through competitive bidding” should target maximisation of the Capture Rate over the life of the lease. This can be a part of the definition of the term.
4. Require ex-ante calculation of Capture Rate prior to any grant of lease, and a minimum bid threshold of [90%] Capture Rate – this rate can potentially be notified.
5. Require annual calculations and public reporting of the Capture Rate achieved.

#### **Additional comments on the draft Bill**

1. **Maximum area limits:** The current Section 6 (1) (b) of the Act restricts any person from acquiring, in respect of any mineral, in a State, one or more mining leases covering a total area of more than 10 square kilometres (1,000 hectares). There is also a proviso that the Central Government can raise this limit for specific cases.

Section 6(ii) of the draft Bill proposes to raise this limit to 100 square kilometres (10,000 hectares). For comparison, the largest mine in the world – the Bingham Canyon Open Pit Copper Mine<sup>1</sup> – covers only 8 sq km (801 hectares)!

The purpose of the limits is (a) to minimise concentration of economic power, and (b) to prevent lease-holders from grabbing large amounts of land. The existing provision is already doubly restricted by States and minerals. Further, the Center can also raise the limit in exceptional cases. The only possible reason for raising this limit is to allow land grabbing and land squatting by crony capitalists. This will lead to further large-scale displacement of people. Monitoring of mining operations will become impossible. In small States like Goa, widespread havoc has been caused by mines admeasuring 100 ha. A total of 100 mines (operating in 100 leases) led to a deadly assault on the State’s fragile environment. In any case, such an expansion of lease area cannot be proposed for small States like Goa.

The proposed amendment must be dropped.

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<sup>1</sup> [https://en.wikipedia.org/wiki/Bingham\\_Canyon\\_Mine](https://en.wikipedia.org/wiki/Bingham_Canyon_Mine)

2. **Notified Minerals:** The draft Bill creates a new category of “notified minerals” where states are required to complete the geological surveys prior to auction of leases. This is a positive step. Mineralization can be easily established for many minerals. We believe that this concept should be extended in a couple of ways :
  - a. There should be a proviso that States can also notify other minerals (non-notified minerals) as notified minerals for their territory.
  - b. The concept of “notified minerals” should also cover any area where mineralization has been established, including where mining operations have been carried out previously.
3. **Prospecting licence-cum-mining lease:** The draft Bill provides for a new process of a “prospecting licence–cum–mining lease” for non-notified minerals. This raises a number of questions. For example, at what point does it become a mining lease, and for what areas? Are surface rights needed for the entire area at the execution of the “prospecting licence-cum-mining lease”? At what stage are the Environmental Clearances required?

This proposal is similar to the structure followed in the NELP, and would suffer from the same infirmities. In order to avoid the issues raised by the CAG in the NELP, we should retain the earlier structure of separate prospecting and mining licences. This is necessary so that mining leases can be granted only for mineralised areas. Otherwise, we will see more instances of land grab as found by the CAG in the NELP. This would raise serious human rights issues.

4. **District Mineral Foundation:** Section 7 of the draft Bill provides for the creation of a District Mineral Foundation (the “DMF”). The purpose of the DMF is to work for the interest and benefit of persons and areas that are mining affected – ameliorate the impact of mining. This is essentially a recovery of a cost, which is separate from royalty. The wording in the draft Bill should make it clear that royalty and the payment to the DMF are separate levies.

The new sub-clause 9B (4) (a) links payments to the DMF to the royalty paid during any financial year. This is not appropriate as royalty is usually ad valorem, in order to capture the fluctuation in prices of minerals. However, the impact of mining has no direct linkage to prices of minerals – it is related more to the impact on the people and area, and therefore more volumetric. Further, royalty is payable only when minerals are taken out of the mine boundaries. Impact on people and areas can start long before royalties are received. Lastly, the social impact that the DMF will ameliorate will vary by mineral (for example, copper and gold are environmentally more damaging). The amounts to the DMF should be matched with

the social cost. It should also be payable throughout the year, which will permit the DMF to plan its work better.

5. **Who can mine:** Two standards must be required of those in the mining chain.
  - a. Transferee needs to have and to maintain adequate financial capabilities to run its operations and meet its liabilities. This would avoid transfer of liability heavy mines to shell entities, and its reverse – demerger of the profitable businesses
  - b. Passing a “Fit and proper test” should be required of the mining chain entities, and their owners, directors and key officers. This kind of test is routinely applied in the financial sector. This would help control illegalities.
6. **Transfer of mining leases:** Section 10 of the draft Bill proposes a new chapter 12A be introduced dealing with the transfer of mining leases of prospecting licences. A few safeguards need to be introduced into this section. Safeguards needed:
  - a. Transferee must meet the original bid criteria set out for auctions, if the transfer occurs in the initial years.
  - b. Transferee needs to assume all liabilities, including environmental and tort
7. **Penalty for illegal mining:** Section 13 of the draft Bill provides for new penalties for illegal mining. The proposal is 5 years imprisonment or a fine upto Rs. 5 lakhs. The fine is ridiculously low. In the case of Goa, the value of illegal mining is at least Rs. 25,000 crores. A fine of Rs. 5 lakhs is wholly unacceptable. It is lower than the bribes paid to clear a single shipment at Belekeri, as reported by the Karnataka LokAyukta!

Please do not hesitate to contact us for any clarifications or supporting materials.

Yours faithfully,



(Dr Claude Alvares)  
Director

Encl : 1. Our letter dated 11-Aug-2014 addressed to Hon'ble Union Minister of Mines