



## **Draft District Mineral Foundation Trust Rules, 2015**

The Government of Rajasthan has developed the draft District Mineral Foundation Trust Rules (DMFTR), 2015 in accordance to the requirements of the Mines and Minerals (Development and Regulation) Amendment (MMDR) Act, 2015. However, the draft Rules as released by the Department of Mines and Geology, Rajasthan, is problematic on many fronts:

- The Rules fails to make the District Mineral Foundation (DMF) an institution “of the people, for the people”- a central vision with which DMF has been discussed over years and finally instituted. This is evident particularly as people of mining affected communities are left out from every aspect of decision-making.
- The institutional design also remains deficient by not having a multi stakeholder representation.
- It completely leaves out how the beneficiaries will be identified, which has been a matter of controversy for other initiatives concerning community upliftment.
- There is little clarity and justification on how and where the money will be spent.
- It largely renders DMF as another source of revenue to be used as ‘general development fund’.

Failing to take account of such issues appropriately, the Rules if followed in its present form, will fall short in realizing the objectives for which DMF was envisioned, rather will prove to be counterproductive.

### **Comments and Recommendations**

#### **1. OBJECTIVE OF THE DMF**

According to Rule 3, the objectives of the DMF are:

- (i) To work for the interest and benefit of persons and areas affected by mining related operations
- (ii) To utilize the funds accumulated in the District Mineral Foundation
- (iii) The trust fund may be used for any other purposes that the trustee may decide to be desirable or expedient in the interest of mineral development of the concerned district.

#### **CSE Comments**

- The major problem with the “objective” as outlined, is that the focus is primarily on the ‘utilization’ of funds, and not on making DMF ‘relevant to people’- the chief objective with which DMF has been envisioned.
- Though Rule 3(i) notes that the DMF will “work for the interest and benefit of persons and areas affected by mining related operations”, Rule 3(ii) and (iii), can effectively put people’s interest in the back seat.
- Utilization of funds, as loosely prescribed in Rule 3(ii), without elaborating on “what, where and how” the funds will be utilized, creates a scope and excuse for using the DMF money for activities that can have little or nothing to do with uplifting the socio-economic status of the people and areas affected by mining.
- In fact, Rule 3(iii) is even more problematic in this regard as it justifies that DMF money can be used for “any other purposes” in the name of mineral development of the concerned district. Moreover, such “purpose” is left to be solely identified by the trustee, with no scope of discussion with the people.



### **CSE Recommendations**

- The MMDR Amendment Act, 2015 clearly specifies the sole objective of the DMF is to “work for the interest and benefit of persons, and areas affected by mining related operations”. The objective of the DMFTR cannot deviate from this.
- Rule 3(ii) and (iii) thus should be removed from the outlined objective of the DMF.

### **2. COMPOSITION OF THE DMF TRUST**

Rule 4, outlines the composition of the DMF which comprises of eight members, including the chairperson. As prescribed, the Trust will be dominated by bureaucrats, primarily mining officials:

- At least three of the eight members are mining officials; additionally any other officer/person may be nominated by the government as a member. This suggests up to 50 per cent of the members of the trust could be mining officials.
- Two representatives of lessees/licensees nominated by District Collector would be members.
- One NGO working in the mining field to be nominated by the government would be a member.

### **CSE Comments**

- There is no representation of people from mining affected areas. This can create a huge disconnect between the ground realities of what the mining affected communities consider is essential for improving their economic and social condition, and the perception of government officials and mining companies.
- Essentially this can make the DMF just another ‘charitable’ foundation, where the needs of the community/people, and mechanisms of fulfilling them, will be determined by other agents. The DMF cannot effectively work for the interest of mining affected people if they themselves are not represented. Mining affected communities must have a voice in the DMF both directly and through representatives of the local government.
- There is no representation of various local government institutions that are also instrumental in various development initiatives particularly concerning the poor and the minority including tribal people. For instance, these include the Department of Minority Affairs, the Social Justice and Empowerment Department, and the Tribal Area Development Department.
- The provision for only one NGO working in the mining field is also limiting. Further the NGO representation must not be confused with the representation of ‘people’ of the mining areas.

### **CSE Recommendations**

- The DMF must be professionally organized and democratically functioning ‘people-centric’ institution. It should have an inclusive institutional structure with adequate community representation.



- The DMF should be broadly a two tier institution comprising of a Member body and a Governing Council to ensure checks and balances, and accountability in the functioning of the DMF.
- The composition of the two bodies can be respectively as follows

#### **Members of the DMF**

- 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 more than three members), nominated by the district mining association
- Head of district offices of departments of the concerned state government

#### **Governing Council**

- District magistrate as the chairperson
- Five community representatives from areas affected by mining, nominated by DMF as 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.

- The roles and responsibilities of the two bodies shall be as follows

#### **Members of the DMF**

- 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

#### **Governing Council**

- 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
- 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



### **3. FUNCTIONS OF THE DMF TRUST**

Rule 5 outlines the functions of the DMF including convening meetings, developing proposals for use of DMF funds, and also mentions prospective purposes for which the funds should be used.

#### **3.1 DECISION MAKING BY THE TRUST**

Rule 5(i) says that there will be a monthly meeting of the Trust members, where more than 50 per cent of the members must be present. The proposal of using the DMF money will also be discussed in these meetings and a final decision will be taken about the proposal according to Rule 5(iii).

#### **CSE Comments**

- Given the skewed representation of stakeholders in the composition of the DMF, presence of 50 per cent of the members will mean that the meeting will be dominated by government representatives. This means that decisions on how and where the DMF money will be used will largely be a bureaucratic decision.
- There is hardly any scope of hearing what the 'people' need or consider is important. The NGO member, which is the sole representation of civil society, can be easily overruled. Further it must be understood that even the NGO representation does not mean that the 'people' of the mining areas are being consulted.
- A lack of different stakeholder representation will also mean that in most cases, there will be little difference in opinion about the use of DMF money. This will be a defeat of the purpose of a democratic decision making, as there will be practically no checks and balances.
- The biggest problem is that there is no provision for consulting the community for preparing proposals to utilize the DMF funds.
- Even the only time that community consultation is mentioned under Rule 5(iv), is before implementation of the proposal in Schedule and Tribal Areas, once it is approved by the Trust. Recommendation of the Panchayati Raj institutions as per provisions of the Panchayati Raj Act (1999) of Rajasthan will be applicable in such case.
- However, requiring a consultation to happen once a proposal is already 'approved' is merely customary, as what kind of development activity should be implemented is already decided upon. This actually makes the consultation process infructuous, because the very purpose of doing a public consultation is to seek the opinion of people before deciding on an activity.

#### **3.2 ROLE AND POWER OF DMF MEMBERS REGARDING UTILIZATION OF FUNDS**

Rule 5(ii) notes that proposals for fund utilization are to be prepared by the concerned Mining Engineer/ Assistant Mining Engineer in consultation with the "appropriate department", and submitted to the Trust. It also specifies how the DMF funds may be used.



### **CSE Comments**

- Preparing a proposal for the use of DMF funds is not a just a technical exercise that the mining engineer (or equivalent) can be entrusted with. It requires a comprehensive understanding of the social and economic challenges of the community, the integration of strengths and engagement of the various institutions, and using the appropriate policy mechanisms to ensure that that the money is utilized effectively. Therefore the preparation of such proposal necessitates a multi stakeholder engagement, and ensuring that their views are actually incorporated.
- The Mining Engineer/Assistant Mining Engineer will not only prepare the proposal, but according to Rule 6(iii) and (iv), is also responsible for collection of the DMF funds, and will operate the bank account of the DMF by joint signature of the account personnel of the Trust. This only increases the skewed distribution of power with respect to the functioning of DMF, nearly making it a 'monolithic' institution.

### **CSE Recommendations**

The main problem with decision-making by members of the DMF and the concentration of power in hands of few (as discussed in *Section 3.1 and 3.2*), stems from the fact that the decision-making body does not have a multi stakeholder representation. Particularly problematic is the absence of community members.

This issue can only be addressed by setting the institutional structure of the DMF right. The structure can be developed as proposed above under Section 2, "*Composition of the DMF Trust*".

### **3.3 UTILIZATION OF DMF FUNDS**

Rule 5(ii) outlines the "nature" of the proposal for the utilization of funds. The list includes construction of infrastructure, mobile ambulances and occupation health surveillance programs, animal vaccination programs, cultural programmes, melas, inter-school game activities, etc. as well as any other activities approved by the Trust.

### **CSE Comments**

- The list as provided actually appears to be a randomly selected set of activities, some of which have no relevance in relieving the poor people from their ordeals. For instance, there is no justification for using DMF money for organizing "cultural programs" and "melas", or for organizing "inter school games".
- Some of the activities listed should actually be taken care of by contribution from the State Coffer that a district/ block/village should normally receive. These include providing infrastructure, sanitation, electricity, etc. If the DMF fund is to be utilized for such needs, it should be used as "add on". 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.



- Further, the list also includes the provision for spending funds on ‘any other activities approved by the Trust’. This creates the scope for pilferage.
- Besides the proposed activities listed in Rule 5(ii), Rule 8 further specifies that the DMF funds can also be used for administrative expenditure of the Trust and any other project/proposal approved by the state/Central government. However, if DMF money is to be used for administrative expenditure, it must be clearly specified what percentage of the fund should be earmarked for such purpose, and how it should be used.

### **CSE Recommendations**

The funds accrued to the DMF must be used judiciously keeping in mind the needs of the present, as well as the future. There should be a clear guideline of where to spend the money and on what. The use of DMF funds should be prioritized to reduce impoverishment risks and build human capital.

#### **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.
  - No more than 80 per 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.

#### **What should the money be spent on:**

The money that comes to the DMF should be spent on the following, broadly categorized into three areas:

##### **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.



### **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.
- 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.
- 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.

## **4. EFFECTIVENESS, TRANSPARENCY AND ACCOUNTABILITY OF DMF**

The Rules (Rule 9) specify two mechanisms for making the DMF transparent and accountable:

- The accounts of the Trust shall be audited by the Auditor General of India.
- The Trust will submit an annual report and the audited report to the state government that will in turn be placed before the state Assembly.

### **CSE Comments**

- The given measures are not sufficient to ensure transparency and accountability of fund utilization. For instance there are no provisions that require all information regarding the functioning of the DMF to be put in the public domain, such as flow of funds into the DMF and its disbursement and use. The audit mechanism therefore also lacks any provision of public scrutiny.
- There is also no provision to prosecute members of the Trust who may be found to mis-use the DMF funds or engage in similar offence.

### **CSE Recommendations**

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 this, the following needs to be done additionally:

- 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 disbursement of benefits to the affected people, and annual audited accounts of the DMF.
- Maintain proper accounts and other relevant records and prepare an annual statement of accounts, including statements of profit and loss, 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 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 disbursement and utilizations, audit reports and annual report, should be accessible in the public domain.
- Any member of the DMF found 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.

#### **5. OTHER MAJOR ISSUE WHICH THE RULES HAVE IGNORED: IDENTIFYING AFFECTED AREAS AND BENEFICIARIES**

To make the DMF people-centric and effective, one of the primary tasks is to identify the beneficiaries in the right manner. For this, clear guideline need to be developed under the Rules, which has been left out.

#### **CSE Comments**

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 under the provisions of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 – in short the Forest Rights Act (FRA). To avoid such controversies, the DMF Rules must have a system for open and transparent identification of affected areas and beneficiaries.

#### **CSE Recommendations**

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

#### **Identifying 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.

### **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.

### **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 the Panchayats (Extension to Scheduled Areas) Act (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 fulfilled 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.