Gilgit-Baltistan Mining Concession Rules, 2014

RIVIEW NOTE

Gilgit-Baltistan Policy Institute (GBPI)
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1. INTRODUCTION
In 2009, the government of Pakistan introduced Gilgit-Baltistan Empowerment and Self-Governance Order (GB-ESGRO) through a presidential order which was approved by the federal cabinet of Pakistan. A new setup was created and offices for Chief Minister and Governor were established. The Gilgit-Baltistan Council was formed headed by the Prime Minister of Pakistan as chairman and Governor Gilgit-Baltistan (GB) as vice chairman. The Council comprises of six elected members of National Assembly and six indirectly elected members by the GB Legislative Assembly. Chief Minister, GB and the minister for Kashmir Affairs is ex-officio members of the Council. Under article 47[(2a)], the GB Council is empowered to legislate on 55 subjects, enumerated in the Third Schedule of GB-ESGRO, 2009.

In January 2014, GB Council’s Standing Committee approached Gilgit-Baltistan Policy Institute (GBPI) to facilitate a multi-stakeholder’s consultation on GB Draft Mining Concession Rules 2014. Responding to the directives of the Council, the GBPI in coordination with the Chairman of Standing Committee organized a consultation session in Islamabad on April 2014, which was attended by the members of GB Council, GB Legislation Assembly, civil society representatives, political and social activists from GB. During the consultations experts deliberated on a number subjects and issues including regulations for exploring and extracting the minerals, community ownership and entitlement, ecological impacts, contribution of the mining industry towards economic and social transformation etc. Constitutional experts presented their reviews on the draft Mining Concession Rules highlighting the gaps and the challenges in the mining sector business. The review note was submitted to the Chair of the Standing Committee on GB Council in May 2014.

2. KEY RECOMMENDATIONS
1. Under the 18th constitutional amendment 2010, legislation on mining other than the matters discussed in article 70(4) is provincial subject. The GB-ESGRO which was introduced in 2009, before the 18th constitutional amendment refers the subject matter to GB Council’s legislative list. The subject matter requires further understanding and elaboration in the context of the 18th constitutional amendment before finalizing the GB Mining Concession Rules 2014.

2. The draft GB Mining Concession Rules 2014 is prepared by the concerned government department yet to be discussed in GB Council formal session for legislation purposes. Before discussions in the GB Council the draft rules should go through a multi-stakeholders consultation process to collect feedback and suggestions from the concerned stakeholders including the owner communities.

3. It revealed that the draft GB Mining Concession Rules 2014 is more influenced from the Mining Concession Rules of Khyber Pakhtunkhwa and FATA, and extraordinary accommodative for corporate sector investment but is less reflective of customary laws and ownership rights of the communities. The mining concession rules should need to be reviewed and redrafted in accordance with the prevailing customary laws and ownership rights of tribes and communities of Gilgit-Baltistan.

4. More than 40% of the total land area in GB has been notified under various categories of protected areas by the government which is not accredited, and no standards for environmental protections and biodiversity conservation are elaborated in the GB Mining Concession Rules. It is recommended to develop environmental and biodiversity conservation standards for mining activities, creating restricted, partially restricted and relaxed mining zones in and around the protected areas, adopting a land use planning system and enumerating references to existing laws e.g. Environmental Protection Acts of Pakistan, Wildlife Act of Pakistan, Forest and Parks Acts/Rules, or other related laws.
5. International treaties, conventions and obligations on environment, mining, human rights and indigenous people should be reviewed, discussed and refined at the policy level making them relevant and applicable in the context of GB.

3. SECTOR SPECIFIC RECOMMENDATIONS

A. Rights of Indigenous Peoples
   (1) The Mining Concession Rules should recognize, delineate and safeguard:
      (a) customary laws associated with ownership of private, clan and communal land and natural resources;
      (b) right of access of local communities to their indigenous lands, natural resources and minerals;
      (a) entitlements of indigenous people and local communities for compensation, rent, revenue and royalties generated from the mining business; and
      (b) employment share of land owners and indigenous people in the mining sector.

B. Environment and protected areas
   (1) It is important to devise a balanced approach for eco-system and human wellbeing in the mining sector, encouraging sustainable use of mineral resources along with efforts for conserving endemic, rare and threatened wild species but not at the cost of one or the other.
   (2) The mining Rules may define with mitigation measures of reducing negative impacts on climate change, fresh water resources, soil erosion, biodiversity lost and visual and nuisance pollution.
   (3) The GB Council shall look into the matters related to environment and biodiversity conservation by reviewing the existing status and mechanisms for identification, designation and notification of protected areas, and conservation regimes, either directly or through an expert working group on the subject matter.
   (4) The rules should address in detail the issues associated with safety and health of the people involved in the mining sector jobs, and protect cultural heritage in and around the mining areas.

C. Institutional mechanisms
   (1) The institutional arrangements in the mining business may require:
      (a) representative forums of stakeholders;
      (b) enforcement of regulations, monitoring and research mechanisms;
      (c) developing investment strategies;
      (d) conflict resolution at various levels; and
      (e) review and coordination of international conventions, treaties and obligations on environment and mining.

4. PRESENTATIONS DELIVERED BY THE EXPERTS

A. THE CONSTITUTION

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   (1) Constitutional provisions:
      (a) Federal Government has retained powers to make laws and authority over the mineral resources necessary for the generation of nuclear energy through article 70(4)), subject matter # 18(a) of the Constitutions of Pakistan;
(b) the subject of oil and gas will be governed under the petroleum policy notified by the Federal Government;
(c) Federal Legislative List part 2, subject matter # 2, states that mineral oil and natural gas, liquids and substances comes under Federal Law of “to be dangerously inflammable.”

(2) **Mutual Rights of Federation and Province:**
(a) under Article 72 of the Constitution, all lands, minerals and other things of value within the continental shelf or underlying the ocean beyond the territorial waters of Pakistan shall vest in the Federal Government;
(b) subject to the existing commitments and obligations, mineral oil and natural gas within the province or the territorial waters adjacent thereto shall vest jointly and equally in that province and the Federal Government.

(3) **Responsibilities of Federal and Provincial governments:**
(a) Federal government is responsible for the purpose of geological/ geophysical surveys and mappings, national and international coordination, and formulation of national policies and plans, the Federation would provide requisite support and advice to the provinces to take up the challenges of achieving sustainable benefits from the development of mineral resources;
(b) Provincial governments are responsible for regulation, detailed exploration, mineral development and safety concerns in these operations and activities, and policy decisions will be managed at the provincial level.

(4) **GB Empowerment and Self-governance Reforms Order 2009:**
(a) Third Schedule of Council Legislative List [Article 47(2) (a)], subject matter 8, nuclear energy, including mineral resources necessary for the generation of nuclear energy are considered a federations legislative regime;
(b) Fourth Schedule of GB Assembly Legislative List [Article 47 [(2) (b)] refers to, regulation of labor and safety in mines and factories.

The GB-ESGRO 2009, states “Subject to the provisions of this Order, all laws which immediately before the commencement of this Order, were in force in Gilgit-Baltistan shall continue to be in forced until altered, repealed or amended by an Act, of the appropriate authority.”

**Explanation.** - In this Article:
(c) the expression ‘laws includes ordinances, orders, rules, bye-laws, regulations and any notification and other legal instruments having the force of law; and
(d) the expression ‘in force’ in relation to any law, means having effect as law whether or not the law has been brought into operation.

**B. MINING REGIME IN PAKISTAN**

The Punjab Mining Concession Rules 2002, the NWFP (KP) Mining Concession Rules 2005, the Baluchistan Mining Concession Rules 2002, the Sindh Mining Concession Rule 2002, and the Northern Areas (GB) Mining Concession Rules 2003, are in practice in various parts of the country.

**5. REVIEW OF GB MINING CONCESSION RULES**

1. **Legal provisions**
Provisions are available on issuing license for the reconnaissance surveys, exploration surveys, mineral deposits retention and mining.

2. **Environmental protection (Rules – 103)**
   No specific standards are prescribed for the protection of environment and ecology but accepted general international environmental protection standards. No penal action provided for the fake and untrue submissions made in respect of environmental impact assessments and environment management plan.

3. **Non-conservational mining activity (Rules – 99)**
   Time frame given for removal of defects is six months and even more than six months for forfeiture of plant, machinery in case of non-conservational activity is carried out.

4. **Compensation (Rule – 35)**
   No specific compensation or percentage is mentioned or determined for land owners whose land is acquiring/extracting for the mining purpose.

5. **Penalties (Rule – 82)**
   No penalty is provided for contravention of Rule - 101 and Rule - 99.

6. **Arbitration (Rule – 102)**
   In case of dispute the matter should be resolved through Arbitration Act of Pakistan, 1940 and in accordance with other Laws but no reasonable time is prescribed for settling the dispute.