Overview of Granting of Mineral Rights. Good Practices Worldwide and Case Study

Delhi, 30th October 2013
DEPENDING ON THEIR PARTICULAR LEGAL SYSTEM, GOVERNMENTS GRANT MINERALS EXPLORATION AND MINING RIGHTS IN PARTICULAR AREAS BY MEANS OF CONCESSIONS, LEASES, LICENSES OR AGREEMENTS.

EFFICIENT AND EFFECTIVE GRANTING PROCEDURES TEND TO BE BASED ON THE FOLLOWING PRINCIPLES:

1.- A CLEAR LEGAL AND REGULATORY FRAMEWORK.
2.- WELL-DEFINED INSTITUTIONAL RESPONSIBILITIES.
3.- TRANSPARENT AND NON-DISCRETIONAL PROCEDURES.
BASIC PRINCIPLE CONCEPT:
Conceptual differentiation between “right” and “activity”

BASIC INSTITUTIONAL CONCEPT:
Functional separation between “licensing” and “control”
null
DECISION FLOWCHART FOR DETERMINING WHICH MINING RIGHTS GRANTING METHOD TO USE

Extracted from "MINERAL RESOURCE TENDERS AND MINING INFRASTRUCTURE PROJECTS GUIDING PRINCIPLES" (Stanley & Mikhaylova, World Bank, 2012)
FONCTIONAL AND PRINCIPLE BASIS:

- **Clear, simple and direct procedures**
  - First came, first served or auctions

- **Transparency**
  - Public office, open for consultation of maps and registries

- **No discretion**
  - Application of the same rules and criteria for all

- **Objectivity**
  - Missing of subjective evaluation criteria
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<thead>
<tr>
<th>Date</th>
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Arresté le nombre de demande au 1er jour (01) fait demande

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Arresté le nombre de demande au 2er jour (02) fait demande

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Arresté le nombre de demande au 3er jour (03) fait demande

Nouakchott, Mauritania, July 2007
Best practice about surface management

SEPARATION BETWEEN SURFACE RIGHTS AND UNDERGROUND MINERAL PROPERTIES

1. Granting mineral rights do not need previous approval from land cadastre.
2. Granting of prospecting rights is exclusively based on coordinates, and not previous beaconing is required.
Guidelines for cadastre computerization

Computerized tools have greatly facilitated cadastral management by reinforcing institutional capacity and increasing the security of tenure and the transparency.

Computers on their own cannot provide solutions for all cadastral troubles. It is not possible to computerize a MRC if there is not already a well-organized and systematic “paper” cadastre.

The computerization will provide the expected advantages only if some preconditions are fulfilled. There are recent practical examples in several countries, where, despite the availability of powerful and suitable computing tools, the lack of:

- Adequate cadastral regulations
- Efficient cadastral procedures
- Well structured institutional framework

jeopardize any possible benefits which could derive from the computerization.
Specific recommendations issues for decentralized cadastres

• Unified procedures (homogeneous interpretation of legal framework)
• Clear definition of functions for central and decentralized offices
• Computerization of procedures and data.
• Linking between the Regional cadastre offices by internet
Evolution of exploration expenses
Source: Metal Economics, Mining Journal and World Bank
EXPLORATION EXPENSES (MILLION USD)

PERU

ARGENTINA
THE ZAMBIAN CASE

• 2004.- Cadastre computerization without pre-cadastre phase.

• 2005 - 2006.- Pre-cadastre simultaneously with computerization. Interferences.


• 4th April 2008.- Enactment of the new Minerals Act on.

• 30th April 2008.- Re-opening of the cadastre. Computerized cadastre starts to work (based on previous Act).

• September 2008.- Approval of new Regulations.

• January 2009.- Updating of computerized cadastre.

• November 2009.- New cumulated backlog with hundreds of pending applications. New pre-cadastral cleaning required.

• 2013.- Cadastral irregularities still continues.
What happens if the Cadastre is not working:

- Tenure insecurity
- Investments decreasing
- Speculation Increasing
- Revenues decreasing
- Long waiting periods for licensing
- Missing of free areas for exploration (blocked)

Lesson learned: there is not “magic” or universally valid solutions:

- Transparency is mandatory but not enough.
- Cadastral best practice should be carefully adapted to the needs and particularities of each country.
Required solutions

Where the problems are rooted?

Empirically, the sources of the troubles are in:

- 50% in the legal framework
- 40% Procedures, organization and data management
- 10% Computerization
## Current State of Licensing in India: Trends in Pilot States

### Diagnostic Component

<table>
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<th>Component</th>
<th>Odisha</th>
<th>Tamil Nadu</th>
<th>Rajasthan</th>
<th>Karnataka</th>
<th>Andhra Pradesh</th>
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### Significant Differences Between States

- Significant differences are highlighted in yellow.
### Current State of Licensing in India: Trends in Pilot States

#### STATUS

<table>
<thead>
<tr>
<th>CUMULATED BACKLOG</th>
<th>ODISHA</th>
<th>TAMIL NADU</th>
<th>RAJASTHAN</th>
<th>KARNATAKA</th>
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- IMPRESSIVE BACKLOG LEVEL
- ILLOGICAL DISTRIBUTION OF LICENSE TYPES
- BLOCKING OF ACTIVITY
- URGENT CLEANING-UP REQUIRED
SUGGESTED IMPROVEMENTS FOR PROCEDURES

• Adequate methodology for submissions of applications, registration and coding
• Checking overlaps before splitting the dossier among evaluating bodies
• Differentiation between prospecting and mining
• Use of adequate topographic tools.
• Geometric restrictions implementation.
Required Implementation Sequence

- Pre-Cadastre (cleaning)
- Mining Law
- Inst. Organization
- Cartography

Regulations

- Procedures

Manual Cadastre

Computerized Cadastre

Computerized On line Cadastre
In addition to the implementation of different types of tools (cartographies, computers, software, legal framework, administrative rules, etc.), institutional transformation is necessary to embrace the new approach.

THANKS FOR YOUR ATTENTION