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CONVERSATIONS: National Mineral Policy 2019 — balancing stakeholder interests and concerns

Will Intergenerational Equity be Implemented?

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1. INTRODUCTION

As in the Karnataka (SPS & Ors vs State of Karnataka & Ors. [2013]) and Goa illegal mining cases (Goa Foundation vs UOI & Ors [2014]), the question of implementing the intergenerational equity principle arose in the Odisha illegal mining case (Common Cause vs UOI and Ors [2017]). In the judgment on the latter case, the Hon'ble Supreme Court of India (SC) discussed the intergenerational equity principle at some length, expressed its dismay that the existing mineral policy "seems to be only on paper and is not being enforced perhaps due to the involvement of very powerful vested interests or a failure of nerve" and directed the union government to announce "a fresh and more effective, meaningful and implementable policy".

This conversation on balancing stakeholder concerns in the National Mineral Policy 2019 stems from the concluding sentence of the Policy, which envisages implementation through a "national consensus among various key stakeholders". This is a change from the earlier National Mineral Policy 2008, which only mentioned a national consensus.

2. WHO ARE THE KEY MINING STAKEHOLDERS?

The obvious mining stakeholders include the extractors, the mining dependent (employees, suppliers and service providers), the mining affected

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(the losers of land, culture, community, environment and health), the users of mineral ore, and the government itself. Usually lost in this conversation are the true owners of natural resources, the people and our future generations. As the policy acknowledges, "Natural resources, including minerals, are a shared inheritance where the state is the trustee on behalf of the people to ensure that future generations receive the benefit of inheritance" (section 1).

3. ACCOUNTING FOR THE RESOURCE CURSE

Mining is simply the sale of inherited mineral wealth. Governments wrongly treat the proceeds of extraction (royalty, auction premia) as "income". Politicians and voters support more mining as it would result in more "income".

In reality, these are sale proceeds. We found that from 2004 to 2012, Goa received Rs. 2,387 crore for minerals worth Rs. 51,655 crore of economic rent, resulting in a loss of Rs. 49,268 crore (95 per cent) (Basu 2015). Chhattisgarh has estimated a loss of Rs. 6 lakh crore due to the recent coal auctions (Baghel 2019). Over the decade 2000-2010, government statistics imply an 82 per cent loss in Australia (The Future We Need 2018). If extraction were correctly accounted for as the sale of inherited wealth, this would be untenable (The Future We Need 2017a).

Extractors are receiving minerals for a pittance. Naturally, they try to extract as quickly as possible and leave. Conservation of trees and tigers and protecting the interests of tribal populations are perceived to be anti-development, if not against the national interests. As documented by the Karnataka Lok Ayuktha (GoK 2008; GoK 2011), governance is controlled through political contributions, lobbying and bribes. The losers are the people and especially future generations. Are they key stakeholders?

4. HOW TO IMPLEMENT INTERGENERATIONAL EQUITY?

As owner trustees of intergenerational wealth, we must ensure (a) zero loss at the point of sale (i.e. capture the entire economic rent), (b) invest the entire proceeds of extraction in a new intergenerational trust asset (ideally a future generations fund like in Norway[1]), (c) ensure the corpus is kept

[1] Since 1996, Norway has dedicated all inflows from North Sea Oil to build up a large endowment fund so that both current and future generations benefit from the oil wealth.

whole, and (d) only the real income be distributed to the present generation as a right of ownership, a Citizen's Dividend (The Future We Need 2017b).

Seeing natural resources as a public trust raises other concerns as well. Mining destroys other inherited assets. "Free, Prior and Informed Consent (FPIC)" of the mining affected is necessary. Certain areas and deposits should be declared no-go areas based on a variety of criteria – environmental, sacred spaces, strategic reserves, etc.

Caps on extraction are needed on at least three different grounds:

- First, under the precautionary principle to ensure the environmental damage is within limits. Mining damages can be minimized by using the mitigation hierarchy – avoid, mitigate, restore, offset, partially addressing concerns raised by Ranjan (this issue).
- Second, to ensure that the extraction work, itself an inheritance associated with the mineral deposit, is available to future generations.
- And finally, as Kumar (this issue) pointed out, to ensure that future generations have minerals for their use, not just money.

The miners make a profit commensurate with the capital they invest. The mining dependent are paid for what they do. The impact on the mining affected is controlled, and compensated for under the Polluter Pays Principle and through the District Mineral Foundations. And the government ensures the availability of minerals to sustain the economy.

5. IMPLEMENTATION?

As Jain (this issue) points out, the new policy includes vague references to most of these ideas, as well as to an inter-ministerial body to institutionalize them (The Future We Need 2019). However, the implementation provision proposed in the earlier policy for amendments to the Mines and Minerals (Development and Regulation) Act and other laws, rules and regulations has been deleted. Will intergenerational equity be implemented? Will our future generations venerate us?

The fund is now worth over USD 1 trillion, nearly USD200,000 per Norwegian. (Norges Bank n.d.)

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