

Fwd: Urgent appeal to safeguard our shared mineral wealth

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CM Rajasthan <cmrajasthan@nic.in>

Sat 11/27/2021 3:33 PM

To: SSAD.CMO@RAJASTHAN.GOV.IN <SSAD.CMO@RAJASTHAN.GOV.IN>;

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Accs, Mines

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1 attachments (375 KB)

Letter to Hon'ble CM-Rajasthan.pdf;

विशेष सचिव, मुख्यमंत्री
राजस्थान, जयपुर

ADG (HA)

AD m. Vig.

31/12/21

From: miracoalition2020@gmail.com
To: "CM Rajasthan" <cmrajasthan@nic.in>
Cc: "Kuldeep Ranka" <pscm-rj@gov.in>
Sent: Saturday, November 27, 2021 2:01:31 PM
Subject: Urgent appeal to safeguard our shared mineral wealth

निदेशक,
खान एवं भू-विज्ञान विभाग,
राजस्थान, जयपुर।
निर्देशानुसार मूल ही भेजकर निवेदन है कि
प्रकरण में निम्नानुसार आवश्यक कार्यवाही
कर संबंधित को भी सूचित करावे।

निजी सचिव
अतिरिक्त मुख्य सचिव
खान एवं पेट्रोलियम विभाग

Shri Ashok Gehlot
Hon'ble Chief Minister of Rajasthan
Chief Minister Office, Secretariat,
Jaipur-302005

कार्यालय अतिरिक्त मुख्य सचिव
खान एवं पेट्रोलियम विभाग

Sub: Safeguarding our mineral wealth, our shared inheritance

क्रमांक: 12920

Dear Shri Gehlot ji,

दिनांक: 1-12-2021

If a bridge collapses soon after construction, the contractor would be blacklisted. If a teacher rapes a child, they would not be allowed to teach children. If someone cheats a bank, they will not be allowed to manage public moneys, whether in a bank, mutual fund, insurer or even as a KYC processor. But if someone illegally mines our shared inheritance of mineral wealth, there is no such prohibition.

India's National Mineral Policy says "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. State Governments will endeavor to ensure that the full value of the extracted minerals is received by the State."

What does it mean? Put simply, oil, gas & minerals are inherited wealth, our family gold. States are merely trustees over the mineral wealth for the people and especially future generations. As custodians of this inheritance, it is our duty to ensure that our children inherit either the mineral wealth or its value. Mining / extraction is effectively the sale of this wealth. Royalties, auction premia, and the like are mineral sale proceeds, financial wealth in exchange for the family gold. And the miner is merely an outsourced service provider, converting our mineral wealth into financial wealth.

What then is illegal mining? As constitutional courts have held, illegal mining constitutes theft of public wealth, theft from the people and future generations of the mineral bearing state. The MMDR Act requires recovery of the illegally extracted ore or its full value from the offender (S.21(5), plus fines up to Rs. 5 lakhs a hectare and/or jail terms up to 5 years (S.21(1)). It is the essence of managing wealth that the people involved must be upright persons.

From the illegal mining episodes documented in iron ore in Karnataka, Goa, Odisha, and Jharkhand, and the variety of other cases of illegal mining across minerals and the country, it is clear that there are countless ways to misappropriate the family gold of the people and future generations. And there are numerous illegal miners. Yet they are allowed to continue to manage our jeydaad. How is this?

Urgent
Geologists
Boudry
OIC
Boudry
20/11/22

In this letter, we make **two sets of demands**. **First**, illegal mining must be considered a grave offence on par with offences under other economic laws such as FERA. **Second**, we must follow best practices from other sectors that manage wealth, e.g., the financial sector. People of low integrity cannot be allowed to manage our shared *jeydaad*.

Bring illegal mining under PMLA, IBC, etc

As misappropriation of the shared inheritance of mineral wealth, anyone convicted for illegal mining should be disqualified under a variety of laws, including: -

1. Prevention of Money Laundering Act, 2002. The PMLA has a Schedule which sets out offences which can give rise to proceeds of crime and becomes money laundering. Part A of the Schedule contains a long list of such "predicate" offenses under a variety of Acts, which include the major economic & environmental laws. Illegal mining has been associated with terrorism finance within India. **Illegal mining under the MMDR Act must be included in Part A of the Schedule of the PMLA.**
2. Insolvency and Bankruptcy Code, 2016. "Persons not eligible to be resolution applicant" under Section 29A(d) of the IBC includes those convicted of any offence punishable by imprisonment for two or more years under any Act specified in the Twelfth Schedule. This schedule includes most of the economic laws, but not the mining laws. **The MMDR Act must be included in the Twelfth Schedule of the IBC.**
3. The Economic Offences (Inapplicability of Limitation) Act, 1974. Chapter XXXVI "Limitation for taking cognizance of certain offences", especially Section 468 "Bar to taking cognizance after lapse of the period of limitation" of the Code of Criminal Procedure, 1973, removes the period of limitation for "economic offences". Economic offences are defined in a Schedule to The Economic Offences (Inapplicability of Limitation) Act, 1974. Again, the Schedule contains a list of Acts, including the major economic laws, but the MMDR Act is not included. The MMDR Act must be included in the Schedule to the Economic Offences (Inapplicability of Limitation) Act, 1974.

Please note there may be other laws that need similar changes.

Blacklist illegal miners

As discussed, the miner is merely an outsourced service provider, converting our mineral wealth into financial wealth. It is the essence of managing wealth that the people involved must be upright persons. This requires a process of due diligence into the entities who are involved in managing our wealth. The principal entity is the mining leaseholder, and those that control the leaseholder – related parties, directors, officers, etc.

The eligibility conditions for leaseholders is under Sections 5 of the MMDR Act. This section restricts grants of leases to Indian nationals or companies as defined in sub-section (1) of Section 3 of the Companies Act, 1956. There is an enabling provision to specify further conditions. Rule 6 of the Mineral (Auction) Rules, 2015 provides a few conditions, principally a net worth criteria for bidders for mineral leases.

We examined the model bid documents for four states which have conducted many mining lease auctions. Odisha and Maharashtra require the bidder to assert in the bid letter that they have not been convicted of illegal mining. However, Karnataka and Rajasthan have omitted even this minimal requirement.

Rule 12(9) of the MCR 2016 does permit state governments to terminate leases where the mining leaseholder has been found committing illegal mining. Transfers of mineral leases are dealt with in Section 12A, and it refers back to the earlier eligibility conditions.

This is woefully inadequate. Under the laws, rules and regulations governing the financial sector, the various regulators – RBI, SEBI, IRDAI, PFRDA – have uniformly required checks on participants in the financial sector, with conviction for economic offences or moral turpitude as typical disqualifiers. This has extended to even point of purchase providers and retirement advisors. We annex a partial list of regulations with these requirements. Equivalent standards in the mining sector would require even truck drivers and weighbridge operators to meet fit and proper criteria.

The World Bank has recently published a practical manual for Integrity Due Diligence based on its experience with the Financial Action Task Force. The manual, Licence to Drill: How to Reduce Corruption in Extractives Sectors, recommends beneficial ownership verification, criminal and legal background checks and conflict of interest checks. **We recommend the full implementation of Integrity Due Diligence while maintaining complete transparency and accountability and in accordance with the global norms against corruption and conflict of interest.**

More specifically, in keeping with the practices in the financial sector, and as present in the PMLA and IBC, **violators of significant laws, including economic and environmental laws, should be prevented from managing our shared inheritance of mineral wealth. This must apply at grant of a prospecting licence or mineral lease, on an ongoing basis as well as prior to any change in control.**

We request you to take action to fix these crucial issues with mining. Our *jeysaad* cannot be handled by known offenders. This is irresponsible.

Yours faithfully,

Mineral Inheritors Rights Association (MIRA)
Goa Foundation
EnviroNics Trust
Common Cause
Himalaya Niti Abhiyan
The Future We Need



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Azadi Ka
Amrit Mahotsav