

The Goa Foundation

G-8, St Britto's Apartments
Feira Alta, Mapusa 403507 Goa
Email: goafoundation@gmail.com
www.goafoundation.org
29th January, 2016

To:

- 1) Mr A.N.S. Nadkarni, Advocate General – Goa
- 2) Secretary to the Government of Goa (Mines)
- 3) Member Secretary, Central Empowered Committee
- 4) Mr A.D.N Rao, Counsel for Central Empowered Committee

Re: SC order dated 21-Jan-2016 in IA 87, 88 & 90 in WP (C) 435 of 2012

Dear Sir,

We refer to the order of the Supreme Court relating to the draft Goa Mineral Ore Permanent Fund Trust Scheme (the “draft PF Scheme”) and the Goa District Mineral Foundations Rules 2016 (the “Goa DMF Rules”). Please find our comments and proposals regarding the same.

Background

The Supreme Court had directed an Expert Committee to examine a cap on extraction of ore in Goa on grounds of Intergenerational Equity (IE) and Sustainable Development (SD). It should be noted that the Supreme Court has ruled that both IE and SD form a part of Article 21 Right to Life, and that the “Precautionary Principle” and “Polluter Pay Principle” flow from the core value of Article 21¹.

In its submissions to the Expert Committee, the Goa Foundation had recommended the creation of a Permanent Fund and a cap of 5 mtpa on grounds of IE and SD.

¹ Glanrock Estate v. State of Tamil Nadu

In its second interim report, the Expert Committee had recommended the creation of a Permanent Fund as well as an interim extraction cap of 20 mtpa. Pursuant to this report, the Supreme Court on 21-Apr-2014 ordered the creation of a Goa Iron Ore Permanent Fund (PF) on grounds of Intergenerational Equity (IE) and Sustainable Development (SD).

Subsequently, the MMDR Ordinance was promulgated and the MMDR Amendment Act 2015 was notified with effect from 12-Jan-2015. The MMDR Amendment Act introduced the concept of a District Mineral Foundation (DMF) for the mining affected persons and areas. *“The object of the District Mineral Foundation shall be to work for the interest and benefit of persons, and areas affected by mining related operations in such manner as may be prescribed by the State Government.”* It should be noted that the DMF was earlier proposed under the MMDR Amendment Bill 2011, and was recommended in the Final Report on the Sustainable Development Framework.

The Expert Committee submitted its final report on 21-Apr-2015. It took full cognizance of the MMDR Amendment Act 2015 and the sections relating to the DMF. The Expert Committee recommended that the Permanent Fund would still be required on grounds of weak sustainability, and that a cap of 30 mtpa be imposed on two grounds – (1) ensuring adequate availability of minerals for extraction over a 100 year period, and (2) limiting the cumulative environmental and social damage caused by mining.

Subsequently on 17-Sep-2015, the Ministry of Mines, Government of India has notified the Pradhan Mantri Khanij Kshetra Kalyan Yojana (the “PMKKKY”)². All states are required to incorporate the PMKKKY into their DMF Rules.

Why PF and DMF in the context of IE and SD

The broad reasoning is that IE requires that we pass to future generations the assets (or the value of the assets) that we inherited from our ancestors. (See **Annexure 1** for a more detailed explanation).

² mines.nic.in/writereaddata/UploadFile/Order%20-%20PMKKKY.pdf

As far as mining is concerned, there are 3 assets being depleted: (a) the mineral itself, owned by the State in trust for the people and especially future generations; (b) the income associated with mining is an inherited opportunity which we deplete along with the minerals; and (c) the environment, health and other social aspects which can be severely damaged when mining takes place (usually considered under SD).

For the first asset, a Permanent Fund – as understood globally – is the appropriate instrument to achieve IE. To understand the concept, consider selling ancestral gold and purchasing agricultural land – this enables preservation of capital while retaining the potential to earn income. The basic requirements would include: (a) selling the gold for the full market value; (b) using all the proceeds to purchase agricultural land for not more than the market value; and (c) preserving the capabilities of the agricultural land so that the land retains its value. Only then can the crop be consumed.

By analogy, the Permanent Fund would be set up by the state as a trust on behalf of the people and especially future generations. This would flow from the original ownership of the minerals. It would be funded from the mineral receipts of the state. The Permanent Fund is an endowment fund, with the proviso that income upto inflation be reinvested (to ensure the true permanence or value of the principal for future generations). Ideally, income above inflation should be distributed directly to the people as a Citizens' Dividend, originating from the right of ownership over the minerals and subsequently the Permanent Fund.

It should be noted that many countries and sub-nationals have set up such funds, famously Norway and Alaska. There is also a rich body of literature on how these funds should be structured (see our letters dated 14-May-2015³ & 19-Jun-2015⁴ addressed to the Chief Minister, Goa). There are also well recognized international standards that can be used to benchmark Goa's Permanent Fund.

Our calculations from publicly available data show that for the eight year period 2004-05 till 2011-12, the State of Goa has received less than 5% of the

³ <http://goafoundation.s3.amazonaws.com/2.%20GF%20to%20CM%20on%20PF.pdf>

⁴ [http://goafoundation.s3.amazonaws.com/4.%20GF%20to%20CM%20on%20PF%20\(2\).pdf](http://goafoundation.s3.amazonaws.com/4.%20GF%20to%20CM%20on%20PF%20(2).pdf)

value of its iron ore (after considering all associated expenses). This works out to a meagre Rs.2,387 crores when it ought to have earned Rs.53,833 crores. Further, even this trifle was treated as income, not as a capital receipt, leading to a loss. The amounts are in excess of Rs. 3.5 lakhs per man, woman and child. This is clearly not acceptable practice. We cannot cheat our children in this manner. Hence the need for a Permanent Fund in future.

The second and third assets being depleted demand caps on different grounds.

For the depletion of the opportunity to earn income from mining, a cap on extraction is required in order to ensure that the minerals last for a longer period of time and future generations also benefit from its extraction. This is in keeping with the Goa Mineral Policy 2013: *“The minerals have to be conserved for the future generations.”*

For the environmental and social damage, a cap is required under the Precautionary Principle. This is to ensure that the cumulative damage from mining does not cause irreparable damage. However, this does not discharge obligations under the Polluter Pays principle. There are many mechanisms already in operation including the CAMPA Fund.

The District Mineral Foundation is a mechanism to implement the Polluters Pays principle for impacts that cannot be identified directly to a single mine and create benefits from mining in order to obtain a “social licence” to mine. This is clear when we examine the objects of the DMF stated in Section 9B(2) of the MMDR Act, as well as the objects under the PMKKKY: *“The overall objective of PMKKKY scheme will be (a) to implement various developmental and welfare projects/programs in mining affected areas, and these projects/ programs will be complementing the existing ongoing schemes/projects of State and Central Government; (b) to minimize / mitigate the adverse impacts, during and after mining, on the environment, health and socio-economics of people in mining districts; and (c) to ensure long-term sustainable livelihoods for the affected people in mining areas.”*

It should be noted that the Goa Mineral Policy 2013 envisages a DMF-like entity. It states *“The fair share of revenues collection from minerals will be utilized to improve the standard of living of those residing in mining areas.”* Further, it states *“The Government shall constitute the Goa Minerals*

Development Fund with a view/objective to develop the mineral laden areas, including welfare programmes for the people engaged in mineral activities.”

In this light, it is easy to see the difference between the PF and the DMF. This is summarized below:

Features	District Mineral Foundation	Goa Iron Ore Permanent Fund
Purpose	<i>“Safeguarding interest of affected persons”</i>	Save inherited wealth for future generations
Objective	<i>“To work for the interest and benefit of persons, and areas affected by mining related operations”</i>	Preservation of inherited wealth for all future generations
Geographic area	District where mining takes place	Entire State, UT or all India
Beneficiary – persons	Mining affected	All citizens of a state, and future generations
Beneficiary – area	Mining affected	Not applicable
Focus	Mitigating impacts of mining	Preservation of wealth
Use of inflows	To be spent	To be saved and accumulated
Use of income	To mitigate the impacts of mining	First priority: adjust fully for inflation Second priority: distribution
Investment of principal	Temporary liquidity and cash flow matching	Maximise long term returns
Investment instruments	Fixed deposits, CDs, money market mutual funds	Equity, debt.
Use of principal	Must be spent. Not intended to accumulate	Cannot be spent, must accumulate. Potentially, use for catastrophes.

The above has been explained in greater detail in **Annexure 1**.

Is a combined PF & DMF Scheme possible?

The DMF has been legislated under Section 9B(2) of the MMDR Act with a specific object – working for the interest of mining affected people and areas. On the other hand, the beneficiaries of the PF are the people of the entire state, whether mining-affected or not, as well as future generations, in light of their status as common owners of the minerals. In light of this essential conflict in their objects, the PF and DMF must be kept separate.

Goa's District Mineral Foundation Rules

The present Goa DMF Rules are clearly contrary to both Section 9B(2) of the MMDR Act as well as many aspects of the PMKKKY. And there are many other shortcomings. We have attached a short critique of the Goa DMF Rules (**Annexure 2**). A more elaborate critique is available as a press release by the well-known NGO, Center for Science and Environment, New Delhi (CSE)⁵. It is plain that the Goa DMF Rules fail the objectives of the DMF on many counts. These Rules needs wholesale revision.

The CSE has also published its Model District Mineral Foundation Rules (**Annexure 3**). We strongly recommend that Goa adopt CSE's Model District Mineral Foundation Rules⁶. Subsequently, the DMF Trust formation can follow the model DMF Trust Deed with appropriate modifications.

Issues with the draft Goa PF Scheme

The draft Goa PF Scheme fails the requirements of a true Future Generations Fund in many ways. Some of the more glaring include:

1. The Fund should be explicitly under the Finance Ministry of the Goa Government, not the Ministry of Mines.
2. The beneficiaries of the trust have not been identified.
3. The objects of the fund are inappropriate for the purpose of ensuring the future generations inherit the value of their minerals.
4. The Contribution to the Fund has incorrectly restated the SC order. The SC ordered "*the mining lessees of iron ore will have to pay 10% of the sale price of the iron ore sold by them to the Goan Iron Ore Permanent Fund.*" In

⁵ The entire CSE commentary can be accessed at <http://www.cseindia.org/content/goa%E2%80%99s-dmf-rules-do-not-follow-central-guidelines-will-not-meet-dmf-objectives-cse>

⁶ <http://greenclearancewatch.org/themes/phw/images/dmf-rule-2015.pdf>

contrast, the draft Goa PF Scheme states “10% of the pit mouth sale value of mineral as determined by Indian Bureau of Mines.” The two are not the same.

5. The focus of the Fund should be on the management of the principal to (a) ensure the protection of the capital; (b) reinvest income to fully compensate for inflation; and (c) generate income over and above this. These requirements are similar to those for Pension Funds. Elaborate investment management guidelines and controls are required. This is completely absent. In its absence, it would be simple for the fund to be plundered.
6. The utilization of the principal of the Fund for mining emergencies is clearly inappropriate. These must be recovered from the respective mining company under the Polluter Pays principle. The mining companies should be required to carry adequate third party liability insurance.
7. Under Indian conditions, utilisation of 90% of the income of the Fund will ensure that the real value of the principal of the fund will deplete. We will be cheating our children & future generations.
8. The functions of the fund are also inappropriate. It should simply distribute the real income to the owners as a Citizen’s Dividend. This is the only fair way to distribute income from the commons – equally to all. Government already has several schemes for direct payments to beneficiaries.

We have scored the draft Goa PF Scheme using Edwin Truman’s Sovereign Wealth Fund Scoreboard⁷. The draft PF Scheme receives only 14 points out of 100. The best ranked was Norway with 98 points, and the lowest rated fund is the UAE's Istithmar World with a score of 17. The average is 60.

How should Goa’s Permanent Fund be designed?

When we examine the design of the Permanent Fund, it is apparent that the National Pension Scheme under the PFRDA Act provides many of the needed building blocks in the area of investment management and controls related to investment management. Good investments schemes are available from a

⁷ <http://www.iie.com/publications/interstitial.cfm?ResearchID=2454>

variety of providers at a low cost. Multi-level controls are in place. Transparency is high. The technology platforms are designed for large scales.

If multiple States set up Permanent Funds on similar lines, it would be easier for all to use a common platform and a common account to avoid inevitable issues of individuals moving residence across states. Using the National Pension Scheme would also facilitate better savings behavior, such as default provisions for automatic investment of Citizen's Dividends into the personal account at the National Pension Scheme, or directly into other well-constructed, low cost mutual funds.

Indeed, if possible, the Fund should be administered by the National Pension Scheme. If this is not possible, then most of the PFRDA Act, rules and functions would need replication.

We would therefore suggest the following principles for the Goa Permanent Fund:

1. The Fund must cover all minerals, as the IE principles are the same.
2. We recommend the Fund be called Goenchi Mati Future Generations Fund to better reflect the intention of the Fund and to situate the fund in local sentiment and ownership.
3. The trust should explicitly mention the beneficiaries as the people and especially future generations.
4. The principal objective of the Fund should be the preservation of the real value of the capital. The secondary objective of the Fund should be earning income above inflation (the real income) at the rate of the GDP growth of the Indian economy.
5. Contribution to the Fund should include all receipts of the Goa government from minerals as they are essentially on account of the sale (or "alienation") of inherited mineral assets. This should explicitly include all mining receipts as well as amounts from stamp duty, registration fees, etc. As the present levels of mineral receipts are small, this can be implemented with immediate effect. It should also explicitly require that

all recoveries from illegal mining or fines, fees, penalties, etc., must be deposited in the Fund.

6. An Investment Group should be set up to oversee the investments. Initially, we recommend utilizing the funds available under the National Pension Scheme with a 40 : 60 mix of equity and long term debt investments.
7. In order to prevent leakages in value through indirect channels and to avoid the resource curse, the Fund should be invested outside Goa, preferably outside India. The only exception would be that all ownership stakes in mining PSUs / JVs would be owned by the Fund, not the state.
8. The long-term real income (income after reinvesting for inflation) from the Fund should be distributed at least annually to its beneficiaries, i.e., the people in Goa. It should be distributed as a Citizen's Dividend, equally to all, a right of ownership over the commons..
9. The Direct Benefit Transfer infrastructure, in use for LPG subsidy, or the JAM mechanism, should be utilized for the Citizen's Dividend.
10. In order to encourage savings, consideration be given to enable automatic investment of the Citizen's Dividend into low-cost mutual funds with reinvestment, or into the Tier-II personal account in the National Pension Scheme.
11. The National Pension Scheme under the PFRDA would provide investment avenues from a variety of providers at a low cost. Transparency is high. Multi-level controls are in place. The technology platforms are designed for large scales.
12. Tax exemptions on the lines provided to the National Pension Scheme in India should be sought. The Citizen's Dividend should be exempt from TDS.
13. It is recommended that this all be incorporated by legislation, and not through a simple notification.
14. Certain features of the Fund should be incorporated into the Constitution, perhaps in the Special Status clause (Article 371-I). For example, creation of liens on the Fund should be prohibited. Similarly, the use of the principal of the Fund for any emergency should require a referendum of the people with at least 50% of electors required to approve.

15. It is clear that the interests of the present generation are separate and distinct from those of future generations, and often in conflict. We recommend that future generations be treated as a separate artificial person with Perpetual Minor status, with the Supreme Court as Guardian. An annual report should be required on whether the interests of future generations have been adequately protected, and if more needs to be done.

We have attached a detailed **Goenchi Mati Future Generations Fund design document** in **Annexure 4**. This has been created keeping in mind best practices in endowment fund management, the framework of the Santiago Principles (24 Generally Agreed Principles and Practices⁸ (the “GAPP’s”, attached as **Annexure 5**) issued by the International Forum of Sovereign Wealth Funds⁹ (the “IFSWF”) and best practices at the Norway Government Pension Fund¹⁰ (the world’s largest and most highly rated of all sovereign wealth funds) and the Alaska Permanent Fund¹¹ (another highly rated future generations fund). In addition, it draws on frameworks and best practices from a number of sources including the Edwin Truman’s Sovereign Wealth Fund Scoreboard¹², The Natural Resource Governance Institute¹³ (attached as **Annexure 6**) and case studies of best practices at various sovereign wealth funds. However, in considering all these frameworks and global best practices, the unique needs and characteristics of Goa and India should remain at its core.

We would strongly recommend that the suggested design be implemented by the Goa Government in the interest of Intergenerational Equity, fairness to our children and future generations, in the public interest, in the interest of socialism and equity, and above all, to take a small step towards fairness in mining. We believe this is the right thing to do in this time and age.

Conclusion

⁸ www.iwg-swf.org/pubs/eng/santiagoprinciples.pdf

⁹ www.iwg-swf.org

¹⁰ <http://www.nbim.no/en/the-fund/>

¹¹ <http://www.apfc.org/home/Content/aboutFund/aboutPermFund.cfm>

¹² <http://www.petersoninstitute.org/publications/pb/pb08-3.pdf>

¹³ <http://www.resourcegovernance.org/natural-resource-funds>

Please give this matter serious consideration as it involves nothing less than the safe conservation for future generations of the enormous wealth that can accrue from the sale of natural resources which, as per our Constitution, belong to all. We are willing to make further depositions in this connection, if called upon to do so. We are also willing to actively assist in the creation of a proper Fund for our Future Generations, and also the District Mineral Foundation.



Dr Claude Alvares
Director

- Encl: Annexure 1: IE & SD, PF & DMF
Annexure 2: Observations on Goa District Mineral Foundation
Rules
Annexure 3: Model DMF Rules by CSE
Annexure 4: Recommended design of Goa's Permanent Fund
Annexure 5: The Santiago Principles¹⁴
Annexure 6: Good Governance Standards in the Natural Resource
Fund profiles¹⁵

**Intergenerational Equity & Sustainable Development
District Mineral Foundation and the Permanent Fund**

Background

- 1) Intergenerational Equity (“IE”) and Sustainable Development have been ruled to be covered by Article 21, Right to Life. IE can be simply stated as the principle that future generations must have as much access to resources as the present generation, since they are also entitled to the protection of Articles 14 and 21 of the Constitution of India.
- 2) We derive the Sustainable Development (“SD”) principle from intergenerational equity – after all, why are we trying to sustain these resources and for whom? The answer is that we are trying to use the resources available to us in a sustainable manner so that succeeding generations also have access to them in some meaningful manner. Sustainability in turn has two aspects, strong and weak.
- 3) Strong sustainability holds that different kinds of capital are not substitutable, and therefore any extraction of minerals is unsustainable. This view point is not very widespread.
- 4) Weak sustainability assumes that different types of capital (natural, produced, cultural, etc.) can be substituted for each other, and therefore, requires that the total stock of capital does not decline. Put simply, if we use any asset, such as a natural resource, we need to ensure that we create another asset of at least equivalent value so that our total assets do not decrease in value. Weak sustainability motivates, inter alia, the “Polluter Pays” principle.
- 5) Weak sustainability also considers as critical those types of capital that cannot be substituted for by other forms of capital. Critical capital is usually identified as natural capital such as the ozone layer and biodiversity (species). The notion of critical capital motivates the Precautionary Principle – don't risk a catastrophe – that environmentalists apply to climate change, the ozone layer, the water towers and biodiversity hotspots of the Western Ghats, etc. There is a continuum between substitutable and critical capital. Cutting a tree

would not impact the western ghats. Cutting large swathes of forests will impact the overall biodiversity, potentially irreversibly.

- 6) In the Fomento Resorts and Hotels Limited¹ appeal which also arose from a Goa Foundation petition, the Supreme Court held that natural resources are held by the State as a trustee on behalf of the people and especially the future generations. Therefore, the State is required to ensure that future generations inherit the natural resources from the present.

Intergenerational Equity related to minerals and mining

- 7) The activity of mining sub-soil minerals has three principal intergenerational equity impacts. These are on the inherited assets of (a) the economic activity of mining, (b) the environmental, social and governance costs of mining, and (c) the intrinsic value of the mineral.

a) **The economic activity of mining** is itself is a one-time affair. Our generation has the opportunity to extract the minerals as the previous generations did not. If we extract the minerals, the next generation will not have the opportunity. How would we compensate future generations for utilizing the one-time economic activity of extraction? There are two possible actions.

- i. First action is to increase the size of the opportunity. This could be by vertical integration (steel mills), creation of long lasting multi-use infrastructure (ports) and creation of competencies such as mining expertise so that Goans are sought world over. Restricting exports of minerals is one way to ensure that vertical integration takes place. It is disappointing that not much attention has been paid to this aspect of mining in Goa.
- ii. The second action is to spread out the extraction period to span multiple generations. The Justice M.B. Shah Commission of Enquiry into Illegal Mining in Goa had estimated that at the last known rate of extraction of 50 million tons per annum (2011-2012), the iron ore resources of the state of Goa would be exhausted in nine years – much less than even a single generation. An extraction rate of 20 million tons will ensure

¹ (2009) 3 SCC 571

extraction of the same resource over 23 years, still within one generation, before inevitable exhaustion. A cap on extraction related to proven reserves would be a way to ensure that future generations also benefit from income generated from the mining activity.

We recommend a cap of 1/200th of the proven reserves, ensuring depletion over at least 200 years, or nearly seven generations.

b) The Environmental, Social and Governance Costs of Mining.

There are severe environmental impacts and other externalities caused by mining. The Goa Foundation had enclosed with Writ Petition No.435/2012, a total of 23 scientific studies, mostly by official agencies, which established differing environmental impacts of mining – inter alia, on health and lives, agriculture, the dust and noise pollution, impacts on drinking water sources, rivers, benthic organisms, noise, dust, wildlife, flora and fauna. The impact was observed as far back as the early 1980s, when mining removed around 12 million tons per annum. The activity of mining in Goa also takes place in an environmentally highly diverse area near and in the Western Ghats. We are therefore putting at risk both the water tower of south India as well as a unique biodiversity hotspot.

There are already a number of mechanisms that in theory permit the maintenance of the stock of environmental capital. In general, the Polluter Pays principle applies. CAMPA is another mechanism. For area-wide impacts arising from cumulative impacts, the recent MMDR Act introduces another, the District Mineral Foundation (“DMF”). The object of the District Mineral Foundation shall be “*to work for the interest and benefit of persons, and areas affected by mining related operations.*”

However, large scale mining will at some point severely degrade aspects of the environment irretrievably. Complex environmental systems are also prone to tipping point effects. In other words, the degradation may seem linear upto a point, beyond with it can suddenly collapse. The Precautionary Principle then demands a conservative cap on the environmental damage caused by mining. This can be through a cap on mining, through a cap on the extent of

mined area (since many mines are never rehabilitated as required), and other forms of risk control.

We recommend a separate cap of 12 mtpa under the Precautionary Principle as that was the level of extraction at which significant damage to the environment was first observed. Following the same principles, the cap should be cautiously increased and rapidly reduced.

- c) **The Intrinsic Value of the mineral** - the transmission of the inherited wealth, represented by the value of the sub-soil minerals, to future generations. Under the Constitution of India, the State of Goa – as with all the other States in the Indian Union – owns all the sub-soil minerals within its boundaries. The minerals are therefore a part of the commons, with every citizen in the State owning an inalienable equal share in principle.

Minerals are finite, occurring within a geographic area. They are also non-renewable. They are therefore inherited assets, our *virasat*, the value of which must pass on to future generations. This in fact is customary practice in India and ensures that the family jewels or gold or permanent assets are passed on to the next generation and beyond.

Minerals are a part of the commons, with every citizen in Goa having an equal and inalienable right to the minerals or their value. The obligation is to pass on the asset or its value, not just consume it. The generations before ours have opted to pass on the mineral itself to the present generation.

A good example to consider is the inheritance of ancestral gold. We need to protect it from theft, but it does not generate any income. An alternative may be to sell the gold and purchase agricultural land. As long as we protect the land from loss or degradation, it will maintain value. However, the current income, the crop, can be consumed, as that is a now a renewable resource. Our children will also consume the crop, provided the land is protected from theft or degradation.

The general principle is that if we choose to extract the mineral, we need to create alternative assets of equal value that we can pass on to future generations. The responsibility devolves on the State of Goa to ensure that new permanent assets are created of equal value that our

future generations can benefit from. And these assets need to be owned in common.

This requires two steps to be taken, each equally important.

- i. First, **the full value of the mineral must be realized**. In the ancestral gold example, we would ensure we checked that we had received the full market price or very close to it. For minerals, we need to extract them before sale. So the true value of the mineral would be the sale value minus all costs of extraction (in which we must include a reasonable return on profit for the miner).

The Goa Foundation's estimates show that for the last eight full years of mining (2004-2012), the State of Goa captured less than 5% of the value of its iron ore minerals. In other words, we lost more than 95% of the value of our minerals extracted during those years. We believe that as a matter of public interest, the loss should have been 0% or very close. In support, we refer in the Supreme Courts' judgment in the Meerut Development Authority² case:

"Whenever the Government or the authorities get less than the full value of the asset, the country is being cheated; there is a simple transfer of wealth from the citizens as a whole to whoever gets the assets 'at a discount'."

- ii. The second step to satisfy Intergeneration Equity is that **the entire amount realized from the sale of these inherited assets should be invested in new assets that retain value over time**, ie, non-wasting assets or non-depleting assets. Traditionally, precious metal, precious stones and land were considered the chief non-wasting assets in which to invest inherited wealth. In modern times, permanent or endowment funds – where the income is mandatorily reinvested by experienced and professional fund managers to keep pace with inflation – are a preferred route.

Many nations and sub-sovereign entities have created Intergenerational Equity Funds or Permanent Funds financed from natural resources. The oldest was created by Texas, USA, in

² (2009) 6 SCC 171

1876. Other nations include Botswana, Chile and Mongolia. The most famous one today is the Norway Government Pension Fund, which was set up in 1990. Set up to deposit the revenues from the sale of petrochemical resources, it currently has a fund value of around US\$890 billion for a population of a mere 5 million. Set up to deposit the revenues from the sale of petrochemical resources, it currently has a fund value of around US\$890 billion (3 times India's foreign currency reserves) for a population of a mere 5 million (quarter of greater Delhi).

Till the Goa Iron Ore Permanent Fund was set up, following the Expert Committee's Interim Report II, and pursuant to the Supreme Court's directions, neither India nor any of its States had any sovereign or permanent fund and hence no provision was being made in the interests of intergenerational equity.

Countries such as Norway & Botswana have determined that ALL receipts from mining (including income taxes) shall be saved in order to ensure that future generations are not cheated of their inheritance.

Finally, if we are unable to meet the various requirements above, the ethical choice is not to mine. If we adopt that course, then we are guaranteeing that the future generations will inherit exactly what we did. Perhaps they will have better institutions.

Did mining in Goa in the past meet Intergenerational Equity? And why the Supreme Court intervened

- 8) Did the State of Goa keep "intergenerational equity" in view in the past when sanctioning mining activity in Goa? The clear answer is a definite NO. As far as the economic activity of mining is concerned, the Shah Commission pointed out that the mineral reserves would be exhausted in 9 years. As far as the environmental, social and governance costs of mining, numerous studies and a variety of reports (including by the Shah Commission and the CEC) show significant damage on these counts.
- 9) What about the intrinsic in-situ value of the mineral? Estimates based on the annual reports of Sesa Goa (now Vedanta) and statistics of the Goa Mineral Ore Exporters Association (GMOEA) show that over the last eight full years of mining (2004-2012), minerals with an intrinsic value of Rs. 53,833 crores were exported:

a. Sale value	Rs. 87,748 crores
b. Expenses	Rs. 30,776 crores
c. 20% post-tax return on assets	Rs. 3,138 crores
d. Total extraction cost (b + c)	Rs. 33,914 crores
e. Value of minerals extracted (a – d)	Rs. 53,833 crores

- 10) The total mining receipts of the state over the same period were only Rs. 2,387 crores. This is less than 5% of Rs. 53,833, the value of the minerals alienated. In other words, Goa lost more than 95% (Rs. 51,446 crores) of the value of its minerals extracted during those years. This loss is nearly twice the entire revenue receipts of the state of Goa (from all sources) for those eight years (Rs. 27,402 crores).
- 11) We submit that such large losses are contrary to multiple Constitutional provisions. Since the minerals are owned equally by all, the loss is suffered equally by all. Every man, woman and child in Goa lost Rs. 3.6 lakhs over eight years, without their knowledge, let alone consent. This is effectively a well hidden per head tax or a poll tax. The wealth of the poor is going to make some very rich. This is a mockery of “socialist” India, the directive principles of state policy, Articles 14, 21 and 39(b) of the Constitution and Article 17 of the UN Declaration of Human Rights. This is not trickle-down economics, it is gush up. The wealth of the poor is making some people including the applicants, very rich.
- 12) This was not immediately noticed as the general public (including government) discourse treats mining income as essentially windfall income, and not activity that results from the sale of an asset. The origins of this error in perception lie in two factors. First, the States are not required to value their mineral/natural assets and disclose these to the public even though the public is the owner. Second, in the government accounts, royalty is treated incorrectly as income (technically a revenue receipt), and not as originating from the sale of an asset. Hence, royalty is income that magically appears from nowhere – a classic windfall. And a steep increase in royalty is treated much like winning the first prize in the lottery – as excess or free money to be spent without any obligation to anyone, much less to future generations.
- 13) In fact, a common step adopted by many nations today is to treat all receipts from mining as capital receipts, not revenue receipts. Many

countries have also started disclosing and valuing their minerals. In India, the Ministry of Statistics and Programme Implementation (MoSPI) has already a detailed methodology document in place. Given the scale of these assets, public inventory, valuation and disclosure are essential for democracy.

- 14) The chief beneficiaries of this enormous loss were the miners, who benefited to a total of Rs. 35,519 crores of profit after tax. Of this, Rs.3,138 is the reasonable profit (a generous 20% return on assets), and the balance Rs. 32,381 crores of unearned profit represents value of the minerals that belongs to the people of Goa which the miners have unfairly captured.
- 15) Note that this unearned profit is in excess of the total revenue receipts of the state government for that period! The balance portion of the loss was captured by the Center through export duty and income tax on the miners' profit (Rs. 19,605 crores). Also, total expense on the mining dependent (employees, trucking and barges) including fuel, EMIs, etc was only Rs. 11,962 crores. And while independent estimates of expense on CSR are not available, even using the estimates in the Expert Committee Final report, we arrive at less than Rs. 1,000 crores.
- 16) This can be summarized as follows (total for eight years)
 - CSR Rs. 1,000 crores
 - State receipts Rs. 2,387 crores
 - Mining dependent Rs. 11,962 crores
 - Center capture of Goa loss Rs. 35,519 crores
 - Profit by miners Rs. 32,381 crores
 - Loss to people & future generations Rs. 51,446 crores
- 17) There has thus been an enormous depletion of the common wealth of the people of the State of Goa as well. It is clear that the future generations will inherit considerably less by way of common assets than they should have. Intergenerational Equity is being violated.

Intergenerational Equity, District Mineral Foundation & Permanent Fund

- 18) The Vedanta application sets out a willful confusion between the nature of a Permanent Fund and the nature of the District Mineral Fund (DMF) set up under Section 9A of the amended MMDR Act, 1957. The two are different agencies, addressing different aspects of sustainability and Intergenerational Equity.
- 19) The law on the District Mineral Fund (DMF), which has come into force on 12.1.2015 via the agency of the MMDR Act, Amendment Act, 2015, is set out below:

*“9B. (1) In any district affected by mining related operations, the State Government shall, by notification, **establish a trust, as a non-profit body, to be called the District Mineral Foundation.***

(2) The object of the District Mineral Foundation shall be to work for the interest and benefit of persons, and areas affected by mining related operations in such manner as may be prescribed by the State Government.

(3) The composition and functions of the District Mineral Foundation shall be such as may be prescribed by the State Government.

(4) The State Government while making rules under sub-sections (2) and (3) shall be guided by the provisions contained in article 244 read with Fifth and Sixth Schedules to the Constitution relating to administration of the Scheduled Areas and Tribal Areas and the Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996 and the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006.

(5) The holder of a mining lease or a prospecting licence-cum-mining lease granted on or after the date of commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015, shall, in addition to the royalty, pay to the District Mineral Foundation of the district in which the mining operations are carried on, an amount which is equivalent to such percentage of the royalty paid in terms of the Second Schedule, not exceeding one-third of such royalty, as may be prescribed by the Central Government.

(6) The holder of a mining lease granted before the date of commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015, shall, in addition to the royalty, pay to the District Mineral

Foundation of the district in which the mining operations are carried on, an amount not exceeding the royalty paid in terms of the Second Schedule in such manner and subject to the categorisation of the mining leases and the amounts payable by the various categories of lease holders, as may be prescribed by the Central Government.”

- 20) On the other hand, the judgement dated 21.4.2015 and directions given in it by the Supreme Court in relation to the Permanent Fund, observe as follows:

“Para 62. Regulatory and monitoring measures enforced by the Departments of Mines and Geology, the Goa State Pollution Control Board and the Regulator appointed by the Central Government under sub-section (3) of Section 3 of the Environment (Protection) Act, 1986 cannot, however, restore entirely the environment that is damaged in course of mining operations. The Expert Committee has, therefore, recommended that a permanent fund for inter-generational equity and sustainability of mining for all times to come named as “Goan Iron Ore Permanent Fund” be created and an expert group may be constituted by the State for working out the details of this fund. Mr. Harish Salve, learned Amicus Curiae, submitted that as the lessees of mining leases earn out of the sale proceeds of the iron ore excavated by them, they should be directed to contribute 10% of the sale proceeds of all iron ore excavated in the State of Goa and sold by them towards the Goan Iron Ore Permanent Fund. He cited the judgment of this Court in Samaj Parivartana Samudaya and Ors. v. State of Karnataka and Ors. (supra) in which this Court has similarly directed for creation of a Special Purpose Vehicle out of 10% of the sale proceeds of the ore sold by e-auction. There is a lot of force in the aforesaid submission of Mr. Salve.”

“Para 63. We find from the report of the Expert Committee that the State of Goa heavily depends on iron ore mining for revenue as well as employment. The legislative policy behind the MMDR Act made by Parliament is mineral development through mining. The State Government of Goa has also adopted the executive policy to encourage mining of minerals in Goa. Moreover, as Mr. Ravi Shankar Prasad, learned senior counsel appearing for 33 Panchayats, has submitted about 1.5 lakh people are directly employed in mining in Goa and large number of persons have taken bank loans and purchased trucks for transportation of iron ore. Hence, people who earn their livelihood through work in connection with

mining will be seriously affected if mining is totally banned to protect the environment. We cannot, therefore, prohibit mining altogether, but if mining has to continue, the lessees who benefit the most from mining, must contribute from their sale proceeds to the Goan Iron Ore Permanent Fund for sustainable mining. Accordingly, in exercise of our powers under Article 32 read with Article 21 of the Constitution, we direct that henceforth 10% of the sale proceeds of iron ore excavated in the State of Goa and sold by the lessees must be appropriated towards the Goan Iron Ore Permanent Fund for the purpose of sustainable development and inter-generational equity and the State of Goa in consultation with the CEC will frame a comprehensive scheme in this regard and submit the same to this Court within six months.”

Directions in relation to the PF:

“Para 71 (ix) henceforth, the mining lessees of iron ore will have to pay 10% of the sale price of the iron ore sold by them to the Goan Iron Ore Permanent Fund.”

“Para 71 (x) the State Government will within six months from today frame a comprehensive scheme with regard to the Goan Iron Ore Permanent Fund in consultation with the CEC for sustainable development and intergenerational equity and submit the same to this Court within six months from today;”

- 21) The nature of the DMF can be described succinctly in the following terms:
- a) DMF would provide for the expenditures related to rehabilitation of environment caused by mining activity. This would also include harm to affected village communities in which the activity is being carried out. Scope of DMF operations is the district.
 - b) The DMF is therefore a spending fund: money deposited in the Fund is to be spent on activities covered under the amendment. Therefore, the DMF would be in the form of a non-profit trust.
- 22) The nature of the Permanent Fund is the very opposite, and can be described succinctly in the following terms:
- a) The PF would deal with the requirement of meeting the demands of intergenerational equity, that is, the interests of future generations,

not only the present. Therefore, by definition, it would be a fund that would save, not spend.

- b) Principal activity of the fund would be protection against inflation, investment in activities that would create durable assets in the long term, etc. PF area would be the entire state. In contrast with the DMF, the Fund would be a profit making activity. Fund managers must ensure intelligent investments to ensure economic yields, in order to maintain the original value of the fund. The public exchequer would benefit only when there is a surplus after adjusting for inflation.

Need for a mechanism to ensure IE over the value of the mineral

- 23) This is a matter of significant public interest as there is presently no mechanism existing as a result of policy to ensure Intergenerational Equity for what is probably the most important component – the value of the minerals owned in common by the people of the State, inherited from past generations, and whose value must be transmitted to future generations. The Permanent Fund is a small but incredibly important step to rectify that gap.
- 24) Had the Court's direction to set up a Permanent Fund been in place over the last 8 full years of mining (2004-2012), the state of Goa would have received optimistically an additional Rs. 8,775 crores (10% of the final sale value of Rs. 87,748 crores). In comparison, the value of the minerals actually extracted and sold was Rs. 53,833 crores (Sale price minus full cost of extraction). The total mining receipts of the state for the 8-year period were a mere Rs. 2,387 crores. The loss of inheritance would still have been Rs. 42,671 crores (53,833 – 2,387 – 8,775).
- 25) It is worth observing that the Government has notified the final rates of contributions to the DMF. For mining leases prior to 12.01-2015, it would be 30% of the royalty, and for leases on or after 12.01.2015, it would be 10% of the royalty. The current royalty rate on iron ore is 15% ad valorem, increased from 10% only in August 2014. The present DMF contribution is well below that set out for the Permanent Fund, and a fraction of the unearned profit. The comparison is set out below (as a % of sale value):

- Loss suffered (Rs.51,446 cr / Rs.87,748 cr) 58.6%
- Unearned profit of miners (Rs.32,381 cr / Rs.87,748 cr) 36.9%
- Permanent Fund order by Hon'ble Court (10% of sale value) 10.0%
- DMF contribution by applicants (30% of royalty (15%)) 4.5%
- DMF contribution at 10% royalty rate at judgment time 3.0%

The Goa District Mineral Foundation Rules

The Goa DMF Rules were notified following provisions of the Mines and Minerals (Development and Regulation) Act, 1957, as amended in 2015. It was brought out without scope of public consultation. The draft Rules were uploaded unannounced on the website of the Goa Department of Mines & Geology on 11-Jan-2016. There were no requests for comments. The final Rules were notified four days later on 15-Jan-2016.

Rules are unlawful

The Rules are clearly contrary to numerous provisions of the Pradhan Mantri Khanij Kshetra Kalyan Yojana ("PMKKKY"). It should be noted that the PMKKKY has been issued in the form of a direction under Section 20A of the MMDR Act in the national interest. These directions are mandatory. The Goa Government is not at liberty to blithely ignore the PMKKKY.

Another startling feature is the omission of the object of the DMF. Section 9B(2) of the MMDR Act clearly states:

"The object of the District Mineral Foundation shall be to work for the interest and benefit of persons, and areas affected by mining related operations in such manner as may be prescribed by the State Government."

The object of the PMKKKY is:

"The overall objective of PMKKKY scheme will be (a) to implement various developmental and welfare projects/programs in mining affected areas, and these projects/ programs will be complementing the existing ongoing schemes/projects of State and Central Government; (b) to minimize/mitigate the adverse impacts, during and after mining, on the environment, health and socio-economics of people in mining districts; and (c) to ensure long-term sustainable livelihoods for the affected people in mining areas."

Other issues

There are numerous other issues with the Goa DMF Rules. For instance, the Model District Mineral Foundation Trust Deed issued by the Ministry of

Mines logically has the office of the District Mineral Foundation at the District Panchayat. Logically, it should operate from the District Collectors' office. However, the Goa DMF Rules provides for the office to be in the Department of Mines & Geology. This is silly.

The Center for Science and Environment, New Delhi (CSE) reviewed the Goa District Mineral Foundation Rules¹. They found *“the Rules remain problematic in various key aspects that are critical for effective functioning of DMF. The Rules will not only fall short of realizing the objectives with which DMF has been instituted, but can also be counterproductive.”*

They identified six key problems:

- *“Fails to make DMF relevant to ‘people’ with ‘misplaced focus’ on fund utilization”*
- *“Functions are very poorly conceptualized and outlined, at many instances diverging from the core intent with which DMF has been institutionalized under the law”*
- *“Ill-defined institutional structure with no representation of communities in decision-making”*
- *“Areas and people who are entitled to benefit from DMF money (being affected by mining) are poorly defined”*
- *“Provisions for fund utilization lack clarity, huge scope for misuse”*
- *“Deals weakly with the issue of transparency and accountability”*

Recommendation

It is clear there are serious shortcomings in the current Goa DMF Rules. They need wholesale revision. The Center for Science and Environment, New Delhi (CSE) has released its Model District Mineral Foundation Rules². We recommend the state adopt the CSE model rules.

¹The entire CSE commentary can be accessed at <http://www.cseindia.org/content/goa%E2%80%99s-dmf-rules-do-not-follow-central-guidelines-will-not-meet-dmf-objectives-cse>

²<http://greenclearancewatch.org/themes/phw/images/dmf-rule-2015.pdf>

MODEL
DISTRICT MINERAL FOUNDATION
(TRUST) RULES, 2015



Centre for Science and Environment, New Delhi



© 2015 Centre for Science and Environment

Centre for Science and Environment

41, Tughlakabad Institutional Area, New Delhi-110062

Phones: 91-11-29955124, 29955125, 29953394 **Fax:** 91-11-29955879

Email: cse@cseindia.org **Website:** www.cseindia.org

Foreword

In 2008, the Centre for Science and Environment (CSE) published a detailed report on the mining sector titled: *Rich Lands, Poor People: Is sustainable mining possible?* We pointed out that minerals are found where there are forests, from where water comes and where adivasis and the poorest of India live. These are also the places where Naxalism is spreading. We intervened to ask for a new social and environmental contract in the mining sector, keeping in mind the need to utilize mineral resources, but also the interests of the people and the environment.

Such considerations fructified in the form of the Mines and Minerals (Development and Regulation) Bill (MMDR), 2011. But due to disagreements within the United Progressive Alliance (UPA) government and pressure from the industry, the Bill was allowed to lapse in February 2014. We believe that the MMDR Bill, 2011, made an attempt to balance all concerns. There were lacunae in it, but it recognised the need to incorporate community interests and environmental protection. In this way, there was a movement forward in the 2011 Bill from the MMDR Act of 1957.

Now we have the MMDR Amendment Act, 2015, which was passed by the Parliament in March 2015. Though the amendments introduced to the 1957 Act leave much to be done with respect to ensuring a sustainable mining future, it does create an opportunity to address the injustice that has been inflicted upon communities in the mining areas. It provides for the establishment of the District Mineral Foundation (DMF), a Trust that would function as a non-profit body to “work for the interest and benefit of persons, and areas affected by mining related operations”. The Act further states that the objective and functioning of the DMF should be guided by Constitutional provisions as it relates to Fifth and Sixth Schedules for governing tribal areas. It should also be guided by the provisions of the Panchayats (Extension to Scheduled Areas) Act (PESA), 1996, and the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 – in short the Forest Rights Act (FRA).

The Act also broadly outlines an amount that lease holders are required to pay to the DMF annually with regard to major minerals. It requires the holders of a mining lease or prospecting licence-cum-mining lease (granted on or after the commencement of the Act) to pay the DMF an amount not exceeding one-third of the royalty of the respective mineral being mined. Existing mining lease holders are required to pay the DMF an amount not exceeding the royalty.

If applied to its best intent, the DMFs have huge potential for improving the lives and livelihoods of some of the poorest communities of India. However, this can only happen if the Rules guiding the DMF are developed appropriately and implemented with proper planning, oversight and accountability. The states have a central role in this.

The Act empowers the State Governments to make rules for regulating the functions of the DMF. In addition, the states are to determine the amount of payment concession holders of minor minerals will make to the DMF. The states are also in the best position to identify the needs of the poor and the community at large.

We at CSE, have been engaged with the government on a number of occasions regarding the reform of our mining laws, the latest being with respect to the MMDR Amendment Act, 2015. Given our long-term engagement and experience, we have developed Model Rules for DMF. We believe that the Model Rules we are proposing will serve the best interest of the law and realise the objective for which it has been instituted. The Model Rules include the following:

- Rules to define the process of identification of affected persons and areas;
- Rules for the setting up and functioning of the Trust, to ensure effective utilisation of funds for the benefit of persons and areas affected by mining or mining related operations;
- Rules to define how and on what the funds will be spent so that it is for the interest and benefit of persons and areas affected by mining or mining related operations;
- Rules to ensure that affected persons have a role in deciding how the funds are spent so that it ensures their interests and benefits them;
- Rules to ensure that certain funds are kept aside for the future, to prevent communities from becoming impoverished once mining operations cease in the district;
- Rules to ensure that the Trust operates with best principles of transparency and accountability;
- Rules to ensure that there are safeguards and penalties for non-compliance with the payments to the Trust;
- Rules to set up an Ombudsman as an overseer of the functions of the Trust.

After years of deliberation, the establishment of DMF provides an opportunity to rewrite the contract between people and the mining industry. The blueprint of the contract has been drafted, now it is time to adopt the means to set it right.

Chandra Bhushan

MODEL RULES

DISTRICT MINERAL FOUNDATION (TRUST) RULES, 2015

In exercise of the powers conferred by Section 9B, Section 15(4) and Section 15A of the Mines and Minerals (Development and Regulation) Act, 1957 (as amended in 2015) and guided by the provisions contained in article 244 read with Fifth and Sixth Schedules to the Constitution relating to administration of the Scheduled Areas and Tribal Areas and the provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996, and the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, the Government of _____ (*name of the state*) hereby makes the following rules, namely:-

1. Short title and commencement

- (1) These rules may be called the _____ (*name of the state*) District Mineral Foundation (Trust) Rules, 2015.
- (2) They shall come into force from the date of their publication in the official Gazette.

2. Application

- (1) These rules shall extend to the whole state of _____ (*name of the state*), and
- (2) They shall apply to all minerals, including minor minerals, as specified under the Mines and Minerals (Development and Regulation) Act, 1957 (including as amended in 2015), and any other minerals which the Central Government may by notification declare in the Official Gazette.

3. Definitions

- (1) “Act” means the Mines and Minerals (Development and Regulation) Act, 1957 (as amended in 2015);
- (2) “affected areas” means areas affected by mining or mining related operations as identified by the district government. These will include directly affected areas and indirectly affected areas, as follows –
 - (a) “directly affected areas” means those areas where mining or mining related operations, such as beneficiation and waste disposal (such as overburdened dumps and tailing ponds, etc.), are actually taking place. These include –
 - (i) villages in which mining or mining related operations are taking place, including those within three kilometer radius from the boundary of the mine lease area. For small-scale mines with leases less than five hectares, the three kilometer radius is not applicable, except for cluster mining;
Explanation – A cluster mining is one where the periphery of one lease area from the periphery of another lease area is less than one kilometer. The total lease area of all mines shall be equal to or more than 50 hectares.
 - (ii) villages (resettlement areas) in which at least 25 per cent of the affected families are resettled;
 - (iii) villages that significantly depend on the affected areas for meeting their economic needs and have usufruct and traditional rights over such areas e.g. for grazing, collection of minor forest produce etc;

-
-
- (b) “indirectly affected areas” are block/blocks, excluding directly affected areas, in which mining or mining related operations are taking place within the district;
- (3) “affected persons” means only those persons directly affected by mining or mining related operations. These include people who have legal and occupational rights over the mined land, and also those with usufruct and traditional rights over such land. The following shall be identified as affected persons –
- (a) “affected family” that includes –
- (i) a family whose land or other immovable property has been acquired for mining or mining related operations;
 - (ii) a family which does not own any land but a member or members of such family may be agricultural labourers, tenants including any form of tenancy or holding of usufruct rights, share croppers or artisans or who may be working in the affected area for three years prior to the acquisition of the land for mining or mining related operations, whose primary source of livelihood stand affected by such acquisition of land;
 - (iii) Scheduled Tribes and other traditional forest dwellers who have lost any of their forest rights recognised under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights Act), 2006 due to such acquisition of land;
 - (iv) families displaced by very old mines and resettled in a different village, as identified under Rule 12(3)(c)(ii);
- (b) “displaced family” means any family, who on account of acquisition of land for mining or mining related operations has been relocated and resettled from the affected area to the resettlement area;
Explanation – Resettlement areas are where the affected families who have been displaced as a result of land acquisition are resettled by the appropriate Government.
- (c) Any other as appropriately identified by the Gram Sabha;
- (4) “beneficiaries” mean the affected persons as identified by the Gram Sabha;
- (5) “District Mineral Foundation” means a statutory trust established as a non-profit body by the Government in all districts affected by mining or mining related operations, in accordance with Section 9B of Act;
- (6) “Government” means Government of _____ (*name of the state*);
- (7) “Gram Panchayat” means an institution of self-government for the rural areas as defined under Article 243(d) and 243B of the Constitution (Seventy-third Amendment) Act, 1992;
- (8) “Gram Sabha” means a body consisting of persons registered in the electoral rolls relating to a village comprised within the area of Panchayat at the village level as defined under Article 243(b) of the Constitution (Seventy-third Amendment) Act, 1992;
- (9) “Rules” means the District Mineral Foundation (Trust) Rules, 2015;

- (10) “Trust” means the District Mineral Foundation, which is a statutory trust as notified by the Government of _____ (*name of the state*) to be governed by its own rules and regulations so notified under these Rules.

4. Objective of the Trust

The Trust shall work for the interests, benefits and sustainable development of persons and areas affected by mining or mining related operations in the district in such ways as may be prescribed by these Rules, in an effective, transparent and accountable manner.

5. Composition and management of the Trust

- (1) The Trust shall consist of a Governing Council and a Managing Committee.
- (2) The authority to manage the Trust shall vest in the Governing Council.
- (3) The Governing Council shall consist of –
 - (a) One adult female and one adult male from each village in the directly affected area, nominated by the respective Gram Sabha - Members;
 - (b) Mining company representatives of the mines operating in the district, no more than three, nominated by the mining companies or association thereof - Members;
 - (c) Head of district offices of Government departments as nominated by the Government, including the Departments related to Social Welfare, Rural Development, Women and Child Development, Mines and Geology, Labour, Agriculture, Land Reforms, Forests and Environment - Members.
- (4) At least 51 per cent of the members of the Governing Council shall be from villages of directly affected areas.
- (5) The tenure of members of the Governing Council shall be for a maximum of three years. Members and their immediate family members once elected can be re-elected only after a gap of 10 years.
- (6) The tenure of the government representatives in the Governing Council shall be three years or terminate when she/he ceases to hold that office or appointment, whichever is earlier.
- (7) The day to day functioning of the Trust shall vest with the Managing Committee.
 - (a) The Managing Committee shall consist of –
 - (i) District Magistrate - Chairperson;
 - (ii) One person from directly affected areas, nominated by the Governing Council - Co-Chairperson;
 - (iii) Five representatives from directly affected areas, with at least two women, nominated by the Governing Council - Members;
 - (iv) District Mining Officer and District Welfare Officer, nominated by the Government - Members;
 - (v) One representative from mining companies contributing to the Trust, nominated by the mining companies operating in such district or association thereof - Member;
 - (vi) Lead bank officer of district, nominated by the Governing Council – Member;

- (vii) Serving officer of the Government no lower than the rank of Class I officer or Additional District Magistrate with experience in disciplines of rural development or social welfare, to be appointed by the Government - Secretary.
- (b) The tenure of members of the Managing Committee shall be for a maximum of three years. Members and their immediate family members once elected can be re-elected only after a gap of 10 years.
- (c) The tenure of the government representatives in the Managing Committee shall be three years or terminate when she/he ceases to hold that office or appointment, whichever is earlier.
- (d) The tenure of the Secretary shall be for a maximum of three years, and may be renewed for an additional two years based on the decision of the Governing Council. It shall be non-renewable after tenure of three plus two years.

6. Power and functions of the Trust

- (1) The Governing Council shall be responsible for or vested with –
 - (a) Voting on the annual account;
 - (b) Coordinating with the Managing Committee on development of the annual plan (through the involvement of the Planning Committee of the Governing Council) and passing of the annual plan of the Trust;
 - (c) Nominating representatives from directly affected areas including the Co-chairperson, Coordinators (three in numbers, to be nominated from among the members of the Governing Council, for calling Requisition Meetings of the Governing Council, as and when required) and Treasurer to the Managing Committee.
Explanation – A Treasurer for the Managing Committee shall be appointed by Governing Council from among the members of Managing Committee. Tenure of Treasurer shall be co-terminus with his/her membership in Managing Committee.
 - (d) Ratifying the appointments of officers and auditors to run the Trust;
 - (e) Ratifying the audit reports presented by the Managing Committee;
 - (f) Deciding the salaries of appointed persons, excluding the Secretary of Managing Committee;
 - (g) The power to remove any/all members of the Managing Committee (excluding the Chairperson) by simple majority, where the quorum for such meeting shall be at least 50 per cent of the members of the Governing Council, with at least 51 per cent representation from directly affected areas;
 - (h) Power to file complaint and get offence registered against any member(s) of Managing Committee including the Chairperson by simple majority, where the quorum for such meeting shall be at least 50 per cent of the members of the Governing Council, with at least 51 per cent representation from directly affected areas.
 - (i) Conducting social-audits of the developmental schemes/works of the Gram Sabhas, with at least 10 per cent of all the Gram Sabhas social-audited in a year. The committee responsible for conducting the social-audit for each selected Gram Sabha shall comprise of five selected members of the Governing Council, excluding members from the Gram Sabhas which are to be social-audited in that year.
 - (j) Constituting sub-committees such as Planning Committee for assisting in preparation of annual plans of the Trust, as found expedient from time to time, for smooth functioning of the Trust.

- (k) Allocating funds for the efficient working of the Ombudsman's office and conducting annual performance appraisal of Ombudsman. All such decisions relating to the office of the Ombudsman shall be determined by simple majority, where the quorum for such meeting shall be at least 50 per cent of the members of the Governing Council, with at least 51 per cent representation from directly affected areas. Provided that, the removal of the Ombudsman on the basis of unsatisfactory performance shall be determined by two-third majority of the quorum voting against the Ombudsman. For such purposes, the quorum for such meetings shall be at least 50 per cent of the members of the Governing Council, with at least 51 per cent representation from directly affected areas.
- (2) The Managing Committee shall be responsible for –
- (a) Coordinating, consolidating and developing the annual plan of the Trust as described under Rule 9;
 - (b) Approving the lists of beneficiaries as identified by the Gram Sabha;
 - (c) Distributing monetary benefits through bank transfer to the beneficiaries.
Explanation – Families displaced by very old mines and resettled in a different village, as identified under Rule 12(3)(c)(ii), shall not be considered as beneficiary. For the purpose of this sub-rule, for distributing monetary benefits priorities shall be given to those living below poverty line, orphans, widows, single mothers, physically challenged persons, senior citizens, etc.
 - (d) Undertaking such other activities as are in furtherance of the objective of the Trust, including supporting livelihoods, essential services and maintenance of local infrastructure for socio-economic purposes in the affected areas;
 - (e) Appointing officers to run the Trust and auditors; however, these appointments shall require ratification by the Governing Council;
 - (f) Organising meetings of the Trust;
 - (g) Presenting audit reports for ratification to the Governing Council.

7. Meetings of the Trust

- (1) The Governing Council shall meet at least once every six months.
- (2) Requisition meeting(s) of the Governing Council may be called by the Coordinators of the Governing Council. The agenda of such meeting(s) must be shared with the Governing Council at least one month prior to the date of the meeting(s), and must be ratified by 51 per cent members of the Governing Council. The meeting(s) shall take place, giving 15 days notice to the Governing Council, at a place as found appropriate and convenient to the members.
- (3) The Meeting of the Managing Committee shall be held monthly and shall convene as decided by the Chairperson of the Managing Committee.
- (4) The quorum for such meetings, both for Governing Council and for Managing Committee, shall be 50 per cent of the total members, with minimum 51 per cent representation from directly affected areas.

8. Power and functions of the Gram Sabha of affected areas

- (1) The Gram Sabha shall identify beneficiaries according to the following process –
 - (a) Prepare a list of prospective beneficiaries and maintain a register containing relevant details of them.

- (b) Upon verifying the prospective beneficiaries, the Gram Sabha shall pass a resolution and forward the same to the Managing Committee. The Managing Committee can verify but not override the beneficiaries list. If the Managing Committee has any objection to the list as submitted, it shall send it back to the Gram Sabha with appropriate reasons and specific comments in writing. However, once a revised list is forwarded to the Managing Committee by the Gram Sabha addressing the concerns, it shall be approved and passed by the Managing Committee.
 - (c) The quorum of the Gram Sabha meeting where a resolution will be passed, shall not be less than 50 percent of all members of such Gram Sabha, and shall include members belonging to the Scheduled Castes, Scheduled Tribes, Other Backward Classes and women in general proportion to their population. At least one-third of the members present must be women.
 - (d) The quorum of the Gram Sabha to pass any resolution with respect to identifying the beneficiaries would require the presence of at least 50 per cent of the claimants or their representatives. The resolution shall be passed by a simple majority.
- (2) The Gram Sabha shall be responsible for identification of developmental schemes/works for the village that may be supported by the Trust Fund formulation of criteria for fixing their priorities, and developing an annual plan as described under Rule 9.
 - (3) The Gram Sabha shall be responsible for the monitoring of the developmental schemes/works supported by the Trust Fund.

9. Development of annual plan

- (1) The Trust shall develop an annual plan which shall be operational for a financial year.
- (2) The annual plan shall include the type and quantum of developmental schemes/works for which the Trust Fund shall be used. Such developmental schemes/works shall be implemented within a defined timeframe for the benefits of affected areas and affected persons therein.
- (3) The fund allocation for various developmental schemes/works shall be as provided under Rule 12(2), and such allocations shall be guided by provisions of Rule 12(3) of these Rules.
- (4) The process of developing the annual plan shall strictly adhere to the principles of bottom-up approach, involving the Gram Sabhas of affected areas. The Governing Council and the Managing Committee shall be involved in respective capacities as provided under these Rules.
- (5) The Trust shall commence the annual planning process at the beginning of the fourth financial quarter every year, for the developmental schemes/works to be executed in the following financial year.
- (6) The Managing Committee at the beginning of the fourth financial quarter, shall inform respective Gram Sabhas of affected areas about the funds available

(provisional) for the year as provided under Rule 12(2)(c)[i,ii,iii]. Funds will be allocated to each Gram Sabha in such manner that it is proportionate to its population.

- (7) In accordance with the funds provisionally earmarked, each Gram Sabha shall prepare an annual plan for the deployment of such funds for various developmental schemes/works including distributing monetary benefits.
- (8) The Trust shall take initiatives for training and capacity building of Gram Sabhas of affected areas for preparation of such plans at the beginning of planning process.
- (9) The developmental schemes/works for which the funds shall be used shall be identified in a manner such that local needs and priorities of the affected areas are reflected. Every identified developmental scheme/work shall also have a verifiable and time bound outcome component.
- (10) The Gram Sabhas shall submit their respective annual plans to the Managing Committee by the middle of the fourth financial quarter. The Managing Committee shall consolidate all the annual plans received from Gram Sabhas of affected areas and prepare a consolidated annual plan for the Trust by the end of fourth financial quarter of the year.
- (11) The annual plan of the Trust shall include a compendium of such plans submitted by Gram Sabhas of affected areas besides other planned activities of the Trust for the financial year. The consolidated annual plan of the Trust shall also be guided by the principles contained in Rule 12(3) of these Rules for allocating the Trust Fund to various affected persons and affected areas.
- (12) The annual plan shall be finalized by the Managing Committee in consultation with the Planning Committee of the Governing Council by the end of the fourth financial quarter and submitted to the Governing Council. The Governing Council shall review and pass the annual plan unanimously as provided under Rule 6(1)(b).

10. Trust Fund

- (1) The Trust Fund shall include –
 - a) Contributions from the holders of a mining lease, or a prospecting license-cum-mining lease, under the provisions of sub-section (5) of section 9B of the Act.
 - b) Contributions from the holders of a mining lease under the provisions of sub-section (6) of section 9B of the Act.
 - c) Contributions from the holders of minor mineral concession under the provisions of section 15A of the Act. The Government shall prescribe the contributions to the Trust Fund for all concession holders of minor minerals, in a manner, which shall not be less than one-third of the amount that the concession holders pay as royalty to the Government.
 - d) Any interests accrued to the bank accounts of the Trust Fund.
- (2) The Government may give financial assistance to any such Trust by way of loan, capital grants or other payments.

11. Operation of the Trust Fund

- (1) The Trust Fund shall be kept in one or more scheduled commercial Nationalized Banks through bank account(s) in the name of the Trust and all such account(s) shall be operated under the joint signatures of at least two of the three signatories; the three signatories being the Chairperson, the Co-Chairperson and the Treasurer of the Managing Committee.
- (2) The Trust shall maintain the books of accounts of this Fund.

12. Expenditure from the Trust Fund

- (1) The Trust Fund shall be strictly used for the benefit of persons and areas affected by mining or mining related operations and for their social and economic upliftment.
- (2) The total amount that the Trust Fund will receive in a year shall be earmarked specifically for various purposes as –
 - (a) Ten per cent to be deposited in an account of a Nationalized Bank for future use once mining activities cease in the affected areas. The fund must be strictly used for the purposes as described in Rule 12(1), as well as for emergency situations, such as natural calamities as considered necessary by the Trust;
 - (b) Five per cent shall be used for training and capacity building of the Gram Sabhas in the affected areas for planning, monitoring of developmental schemes/works, financial management, providing legal support etc.;
 - (c) Eighty-five per cent shall be spent in the following manner –
 - (i) No less than 65 per cent shall be spent on directly affected areas;
 - (ii) No less than 50 per cent shall be used for the upliftment of directly affected persons;
 - (iii) No more than 15 per cent shall be spent on indirectly affected areas;
 - (iv) No more than 10 per cent shall be spent for the development of the district, excluding directly and indirectly affected areas;
 - (v) No more than five per cent shall be given to the Chief Minister's Fund to be used only for remediation of pollution or other mining related calamities, in such other areas within the state, but not falling within the district under the Trust;
 - (vi) No more than five per cent shall be used as administrative expenses of the Trust, including the expenses for Ombudsman office.
- (3) The funds available with the Trust shall be used for –
 - (a) Benefit-sharing, by providing direct monetary benefit to the affected persons in following manner–
 - (i) Every person or family entitled to equal monetary benefit shall be paid either on a monthly or annual basis;
 - (ii) A bank account shall be opened in the name of the woman head of the family for such monetary transaction. In absence of a woman head, the account shall be opened in the name of any other suitable member of the affected family;
 - (iii) The amount of monetary benefit payable shall be decided by the Managing Committee of the Trust at the beginning of each financial year. However, such amount 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.

- (b) Securing livelihoods of directly affected persons, including those receiving direct monetary benefit under the provisions of Rule 12(3)(a) –
 - (i) Providing education scholarships, health services, livelihood trainings and loans to establish small businesses;
 - (ii) Providing inalienable land to the absolute landless affected families (including those displaced by very old mines) with priority to shelter, and then for other land uses such as agriculture, fisheries etc. In all such cases land shall be given to the landless affected families or direct descendants of such families living in the same district;
 - (iii) Priority shall be given to support businesses of women;
 - (iv) A part of the Trust Fund used for administrative expenses shall also be used for capacity building of the affected persons to run the Trust, including fiscal training.
 - (c) Developing a village level fund for very old mines in cases where –
 - (i) Identifying beneficiaries is difficult because of out-migration of displaced people and influx of outsiders. Such fund shall be used for targeted expenditure;
 - (ii) Displaced people/families have settled in a different village. The fund shall be developed for the development of such villages where people/ families have been resettled to give benefits to the descendants of the displaced people/families. Such beneficiaries shall be identified by related Gram Sabhas (by the Managing Committee in absence of such Gram Sabhas) within three years of the commencement of these Rules.
 - (d) Investing in the future to help revive and sustain the economy of the affected areas in accordance with Rule 12(2)(a);
 - (e) Bearing the costs for legal support and awareness for the benefit of affected families and directly affected areas;
 - (f) Support to essential services and infrastructure such as drinking water and electricity;
 - (g) Maintenance of infrastructure, health services and education;
 - (h) Training and capacity building of Gram Sabhas for purposes as provided under Rule 12(2)(b);
 - (i) Urgent projects such as small bridges, small stretch of road, etc. that the Gram Sabha may propose to the Trust, subject to approval by the Governing Council.
- (4) The entitlement of districts from state coffers shall not be affected by the Trust coming into effect. The Trust Funds may be used as an ‘add-on’ (to supplement and not supplant the funds that district/blocks/villages would receive normally). For such purposes, there shall be mechanisms put in place to transfer the Trust Funds to other concerned Government departments that can implement and maintain these assets. There shall be a system developed by the Trust, as specified by the Managing Committee, within a year of commencement of these Rules, to verify and audit such contributions periodically.

13. Accounts and audits

- (1) For the purposes of the Right to Information Act, 2005, the Trust is deemed to be a public authority, open to the government as well as public audit and scrutiny.

- (2) The Trust shall maintain a register giving details of –
 - (a) The list of holders of a mining lease in the district and the annual payments made by them to the Trust;
 - (b) The list of beneficiaries in the district;
 - (c) The disbursal of benefits to the affected persons;
 - (d) Annual audited accounts of the Trust.
- (3) The Trust shall maintain proper accounts and other relevant records and prepare an annual statement of accounts, income and expenditure and balance sheet in respect of the funds available with the Trust, in a manner as may be prescribed by the Government in consultation with the Accountant General of the state.
- (4) The accounts of the Trust shall be annually audited in a manner as may be prescribed by the Government in consultation with the Accountant General of the state.
- (5) In addition to the financial audit, there shall be an independent social-audit by the Governing Council under the provisions of Rule 6(1)(i). The parameters of such social audit could include coverage of mining affected people and families with respect to benefit sharing, timeliness of benefit payments, timeliness of developmental schemes/works undertaken, work completion rates, and any such related issues.
- (6) The Trust at the end of each year shall prepare an annual report on the activities it has undertaken and share it with the Government.
- (7) The accounts of the Trust together with the financial audit report, the social-audit report and the Annual Report shall be forwarded annually to the Government by the Trust. The Government shall cause the reports to be laid, as soon as it is received, before the State Legislature.
- (8) All information concerning the Trust, including accounts, fund disbursal and use, audit reports, annual report and meeting minutes, must be put in the public domain, which shall involve developing a website of the Trust for such purpose. The annual report shall be distributed to each Gram Panchayat in the local language.
- (9) The proceedings of the Gram Sabha meetings related to the Trust activities shall be certified by all Gram Sabha members and the original copy shall be kept with the two affected families' representatives of the Governing Council from each Gram Sabha. For other purposes, certified copies with the signature of these two representatives of Gram Sabha shall be made available as and when required by the Managing Committee.

14. Ombudsman

The Government shall appoint Ombudsman for addressing the grievances related to the Trust. Any person, who has a grievance against any member, or the functioning of the Trust, or is aggrieved by any decision of the Trust; may, in person or through a representative, may file a complaint to the Ombudsman, in accordance with the procedure as given in the First Schedule of these Rules.

15. Penalty and recovery of contribution to Trust Fund

- (1) The licensee shall make the required payment to the Trust in the same frequency as the licensee is required to pay royalty to the Government.
- (2) In case the licensee fails to make the required payment to the Trust on time, then following shall apply –
 - (a) in addition to the principal amount so payable, a 12 per cent interest shall incur to the licensee from first date of the default, which the licensee will be required to pay for the following three months to the Trust as applicable;
 - (b) In case the licensee continues to default after the expiry of the stipulated three month period, then in addition to the principal amount so payable, a 20 per cent interest shall incur to the licensee for the next three months;
 - (c) In case of failure to make the required payment after six months from the date the licensee first started to default on the payment, the Government shall initiate appropriate legal proceedings against the licensee;
 - (d) In case the licensee does not make the required payment for one year, the mining license shall be suspended, and the lease shall be re-auctioned.
- (3) In case any member of the Trust found to steal, purloin or embezzle any money or other property whereby the Trust Fund may be exposed to loss, shall be subject to the same persecution 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.

16. Review clause

The Government shall review and revise the provisions declared under such Rules every ten years, to remain effective to uphold the "objective" of the Trust.

FIRST SCHEDULE

Ombudsman

1. Appointment, tenure and removal

- (1) The Government shall appoint Ombudsman for the Trust. Depending on the scale of mining or mining related operations, the Government shall appoint one person as Ombudsman for one or more districts-
 - (a) There shall be a separate Ombudsman for each district where royalty collected on an average is equal or more than Rs. 20 crore per year for the past three consecutive years.
 - (b) The Government may appoint, as it deems appropriate, one Ombudsman for more than one district in cases where the royalty for each such district is less than Rs.20 crore per year for the past three consecutive years, provided that the Government shall review such appointments every five years.
- (2) Appointment shall be based on the recommendations of the Selection Committee consisting of the following three persons:-
 - (a) Chief Minister of the State- Member;
 - (b) Leader of Opposition of the State – Member;
 - (c) Chair person of the State Public Service Commission- Member;The appointment of the Ombudsman should be based on consensus of the Committee members.
- (3) The Ombudsman so appointed will be from among persons of eminent standing and impeccable integrity.
- (4) The Ombudsman shall be appointed for tenure of three years extendable by two years based on performance appraisal or till the incumbent attains the age of 65 years, whichever is earlier. There shall be no reappointment. Annual performance appraisal shall be made by the Governing Council.
- (5) On unsatisfactory performance, the Ombudsman may be removed by the Government on the recommendation of the Governing Council.

2. Salary and Allowance

- (1) The salary and allowances allocated to the Ombudsman shall be determined by the Governing Council but not less than that paid to an officer of the rank of first class Judicial Magistrate.
- (2) In case where one Ombudsman is appointed for a number of districts, the salary shall be as determined by the Government in consultation with concerned Governing Councils and contributions of various Trusts shall be proportionate to their annual royalties.

3. Jurisdiction

The jurisdiction of the Ombudsman shall include all issues concerning the Trust.

4. Location of Office

The office of the Ombudsman shall be located in the District Headquarters. In case where there is one Ombudsman for more than one district, in one of the districts.

5. Office support

Ombudsman may employ or may keep on retainerhip the following, subject to approval by the Governing Council-

- (a) Legal officers with at least 5 years experience as an advocate;
- (b) Administrative staff to support the office;
- (c) Technical staff.

6. Powers and duties

- (1) Receive complaints against the functionaries of the Trust on any matters specified in Section 7 of this Schedule.
- (2) Determine if such complaints are frivolous.
- (3) In cases of non-frivolous complaints, initiate and pursue the matter in the courts and follow it to the logical conclusion. The Ombudsman shall represent the case of the complainant before the Court, and shall present herself/ himself before the court as required.
- (4) Present the facts, witnesses and evidence before the Court to enable the Court to make a fair decision.
- (5) Prepare affidavits, and other documents as required in pursuance of the complaint.
- (6) Requisition of any public record or document or copies thereof from any Court or office.
- (7) To maintain confidentiality of any information or document coming into his knowledge or possession in the course of discharging his duties and not disclose such information or document to any person except with the consent of the person furnishing such information or document; provided that nothing in this clause shall prevent the Ombudsman from disclosing information or documents furnished by a party in a complaint to the other party or parties, to the extent considered by him/her to be reasonably required to comply with the principles of natural justice and fair play in the proceedings.
- (8) To furnish a report every year containing a general review of activities of the office of the Ombudsman during the preceding financial year to the Governing Council along with such other information that may be considered necessary. In the annual report, the Ombudsman, on the basis of grievances handled by him/her, will review the quality of the working of the Trust members/authorities/committees and make recommendations to improve functioning of the Trust and Trust Fund. The report shall be put on the website of the Government.

7. Grounds on which complaint can be filed

A complaint pertaining to any one or more of the following subjects alleging deficiency in the implementation of the Trust can be filed with the Ombudsman—

- (1) Gram Sabha functioning related to the Trust
- (2) Discrimination on the basis of caste, religion, gender in relation to utilisation of Trust Fund
- (3) Quality of work of the Trust, its members or Committees
- (4) Engagement of contractors
- (5) Operation of accounts in the bank or post offices
- (6) Registration and disposal of complaints
- (7) Inspection of documents
- (8) Use of funds
- (9) Release of funds
- (10) Annual audits of the Trust
- (11) Social audit
- (12) Maintenance of records

8. Procedure for filing complaint and disposal thereof

- (1) Any person, who has a grievance against the Trust Authorities or member(s), may, in person or through an authorised representative, make a complaint in writing to the Ombudsman.
- (2) The complaint shall be duly signed by the complainant and his authorised representative, if any, and shall state clearly the name and address of the complainant, the name of the office and official of the Trust against whom the complaint is made, the facts giving rise to the complaint supported by documents, if any, relied on by the complainant and the relief sought.
- (3) A complaint made through electronic means shall also be accepted by the Ombudsman and a print out of such complaint shall be taken on the record of the Ombudsman. A printout of the complaint made through electronic means shall be signed by the complainant at the earliest possible opportunity before the Ombudsman takes steps for disposal. The signed printout shall be deemed to be the complaint and it shall relate back to the date on which the complaint was made through electronic means.
- (4) Disposal of such complaint by Ombudsman shall be made at the earliest after considering all facts and evidences.
- (5) No complaint to the Ombudsman shall lie unless—
 - (a) It pertains to subjects or persons outside the purview of the Trust defined in these Rules.
 - (b) The complaint is not in respect of the same subject matter which was disposed by the Office of the Ombudsman in any previous proceedings whether or not received from the same complainant or along with any one or more complainants or any one or more of the parties concerned with the subject matter.
 - (c) No complaint shall be made to the Ombudsman on an issue which has been or is the subject matter of any proceeding in an appeal, revision, reference or writ before any Tribunal or Court.

9. Register of complaints and annual report

- (1) The Ombudsman shall maintain a register of complaints with details of related facts and evidences.
- (2) The Ombudsman shall prepare an Annual Report of its activities including number of complaints, relevant details thereof and the actions taken in a financial year. The report shall also include the amount received from the Trust Fund and details of expenditure incurred during the financial year.
- (3) The Ombudsman shall submit the Annual Report to the Governing Council.
- (4) The Register and Annual Report so prepared shall be put in public domain by the Ombudsman.



Centre for Science and Environment

41, Tughlakabad Institutional Area, New Delhi-110062

Phones: 91-11-29955124, 29955125, 29953394 **Fax:** 91-11-29955879

Email: cse@cseindia.org **Website:** www.cseindia.org

A DESIGN OF THE GOENCHI MATI FUTURE GENERATIONS FUND BASED ON GLOBAL BEST PRACTICES

SECTION I of this note proposes a design guide for an effective permanent fund for Goa. It is primarily based on the framework of the Santiago Principles (24 Generally Agreed Principles and Practices or GAPP's issued by the International Forum of Sovereign Wealth Funds or IFSWF) and best practices at the Norwegian Fund (the world's largest and most highly rated of all sovereign wealth or national natural resource funds).

In addition, it draws on frameworks and best practices from a number of sources including the Edwin Truman's Sovereign Wealth Fund Scoreboard, The Natural Resource Governance Institute and case studies of best practices at various sovereign wealth funds. However, in considering all these frameworks and global best practices, it is adapted for and puts the unique needs and characteristics of Goa and India at its core.

SECTION II critiques the scheme proposed by the Goa government. The fundamental problem with the two attempts at designing the permanent fund schemes by the Goa government is that they have not been designed as permanent funds to protect intergenerational equity but as expenditure or temporary funds that will diminish in real value over time. Consequently, most of the elements in the scheme are irrelevant. The Scheme needs a complete re-think, not just a revision.

In addition to this fundamental critique, we have attempted to critique, quantify and rate the Fund designed by the Goa Government using the Truman Scoreboard/ Index for this purpose. We have used the Truman Scoreboard because it is easy to calculate and significantly overlaps with the Santiago Principles with a correlation of 0.96 amongst its elements. Using the Truman Index, the Scheme designed by the Goa government has a score of 14/100. By way of comparison, the top rated fund is Norway with a score of 98/100 and the lowest rated fund is the UAE's Istithmar World with a score of 17/100. An average is 60/100.

In contrast, we have suggested in Section III an ideal permanent fund for Goa and India that could score up to 90/100, if not 100/100.

In **SECTION III** we imagine a model permanent fund that the Goa government might create and notify using the design guide described in Section I. This Fund, in using the design guide described in Section I, could score a maximum possible score of 100/100.

The difference between Section I and III is that where Section I is a guide with options for the Supervisory Council, Section III imagines a draft made by the Goa Government after they have access to the global expertise available. Importantly, it is fit to deliver the SC's mandate of protecting intergenerational equity.

SECTION I: DESIGN GUIDE FOR A PERMANENT FUND FOR GOA

PART A: OBJECTIVES, LEGAL FRAMEWORK, GOVERNANCE, MACROECONOMIC POLICIES, SOURCE AND USAGE OF FUNDS

1. Objective and purpose

1.1. Intergenerational equity via savings for future generations:

Intergenerational equity (as mandated by the Supreme Court) should be the stated primary objective of the Fund. Intergenerational equity in the matter of natural resources is economically achieved via savings for future generations as opposed to spending of natural resource revenues by the current generation.

A secondary objective (and perhaps more of an indirect benefit) is the prevention of resource curse - the phenomenon wherein States that suddenly discover or realise valuable resource treasure find that this results in a collapse or deterioration of their economies and governance systems.

1.2. The policy purpose should be to generate a reasonable real return post tax:

Given that the Supreme Court has mandated the Goa Fund to be a permanent fund to protect intergenerational equity, the policy purpose should be real savings for future generations. In the language of finance, this means a reasonable risk-adjusted rate of return above inflation. As a reference point, the Norwegian Fund has a long-run real return target of 4% i.e. 4% in excess of the inflation rate.

The Fund should also seek tax exemptions on the lines provided to the National Pension Scheme in India. Dividends to citizens may be taxed and in fact encouraged.

It might be worthwhile to note here that the objective of a permanent fund is the opposite to that of a District Mineral Fund. The former focuses on long-term savings and protection of intergenerational equity via savings whilst the latter on short-term expenditure and measures to rehabilitate local communities and the environment. Do not confuse a Permanent Fund with a District Mineral Fund. The two cannot be compared.

2. Legal framework

2.1. Constitutional protection and a separate legal entity status for future generations:

Given the past precedence of governance breakdown, a legal framework that guarantees ring fencing of the Fund and consequent legitimacy with citizens, is the crucial first step in the design of the Fund. Hence, the Fund needs Constitutional protection so that it cannot be dipped into and squandered.

Fortunately, intergenerational equity is a Constitutional matter in India and the permanent fund is the instrument to protect intergenerational equity in the matter of natural resources.

Worldwide, there is precedent that permanent funds are often underpinned by specific legislation and by the Constitution. Half of the respondents in an IMF working paper indicate that such similar funds are established as legal entities separate from the state or the central bank. Some countries even have a commissioner for future generations.

In India, we have the precedence of temple deities as separate legal entities where the sitting deity is recognised as an individual and a 'perpetual minor' with a trustee having guardianship rights. In the Sree Krishna Temple of Guruvayur case, the Supreme Court ruled that the judiciary would become the legal guardian via a government representative. The Court appointed a commissioner, auditor and supervisor for all activities relating to the wealth and welfare of the temple.

We recommend a separate legal entity status for future generations (as a person and perpetual minor) where the government and Supervisory Council act on behalf of the Legal Guardian of future generations (the Supreme Court). The permanent fund shall constitute the wealth of future generations.

If the permanent fund cannot be ring-fenced by a Constitutional provision, then the only known solution may well be to leave the natural resource in the ground failing which the state is doomed to suffer from resource curse and an inability to maintain intergenerational equity.

2.2. A Permanent Fund Act:

The regulatory framework should be laid out in a Permanent Fund Act for the benefit of future generations and drafted under the supervision of the Supervisory Council. The Act should include the objective, scope, policy purpose, legal framework, the rules for funding and withdrawal (including dividend policy and exceptional circumstances), investment policy, investment management, governance, reporting, supervision and oversight. The rules and provisions of the Act should be consistent with the macroeconomic objective and purpose of the Fund i.e. to protect intergenerational equity via real savings for future generations.

3. Governance structure

This section is particularly important because of the breakdown in governance that led to the Supreme Court intervention. It provides a supervisory and implementation model following the recommendations in Section 2.

3.1. A Supervisory Council or Board of Governors:

Given the failure of the government of Goa to create an effective Fund and to even consult citizens or the Court-appointed expert committee, the Supreme Court should constitute a Supervisory Council that should include retired civil servants, retired

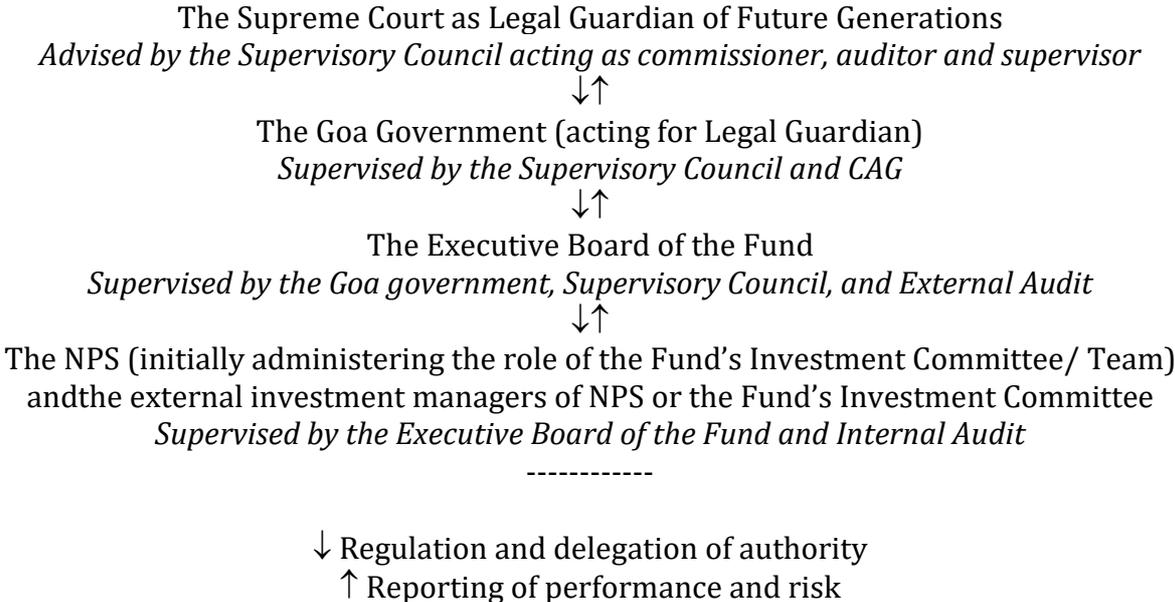
judges and Government, RBI, PFRDA/NPS and CAG nominees. The Council should oversee the design of and supervise the administration of an effective permanent fund for Goa. The Council will serve as Commissioner, Auditor and Supervisor on behalf of the Legal Guardian of future generations (See Section 3.2).

- 1) EAS Sarma (Former Secretary to Ministry of Finance and Ministry of Power, Adviser (Energy) and Principal Adviser to Planning Commission
- 2) Vijay Kumar, former Mines Secretary. GOI.
- 3) TK Viswanathan, former Law Secretary, GOI
- 4) Surya Sethi, former Principal Adviser (Energy), Planning Commission.
- 5) Arvind Subramaniam, Chief Economic Adviser, GOI or their nominee.
- 6) R. Raghuram, Governor, Reserve Bank of India, or their nominee.
- 7) Renana Jhabvala, President, Self Employed Workers Association
- 8) Yogesh Aggarwal, Chairman, Pension Fund Regulatory and Development Authority, or their nominee.
- 9) Surendra Dave, Founder, Securities and Exchange Board of India

One government nominee that we strongly recommend to the Supervisory Council is Arvind Subramaniam (Chief Economic Adviser to the Government of India) given his extensive work in the area of resource curse including his research titled Saving Iraq from its Oil (Escaping the Resource Curse).

3.2. Governance model:

We recommend the following overall governance and supervisory model. The judiciary is the Legal Guardian. The Supreme Court appoints the Supervisory Council as commissioner, auditor and supervisor and tasks the government (supervised by the Supervisory Council) to act on its behalf in its capacity as Legal Guardian. The Executive Board of the Fund shall be responsible for the operational and asset management of the Fund (possibly with the PFRDA/NPS) and the Act should provide for its independence from the Government. See flow of authority and reporting responsibility below.



4. Coordination and integration with fiscal and monetary policies

Investment in Goa should be explicitly prohibited. A simple starting principle is that to avoid negative macro-economic implication, the Fund should invest its money outside Goa.

A second consideration is that resource revenues should not be used to back government debt. If future generations are accorded separate legal status and the Fund is consequently ring-fenced, the Fund can be protected from being dipped into or being used as collateral for government debt.

5. Scope and source of funding

5.1. Currently, 10% of export value; could be more:

The Supreme Court has already directed the creation of Goa Permanent Fund for protection of intergenerational equity by reserving just 10% of the sale proceeds out of the e-auction (of seized inventories) and 10% of future sale or export price of iron ore from the state of Goa. The Court has not yet considered that the state should capture at least 50% of the value of the ore it is selling (good practice would require 80-90% of capture value by the owner). All of this revenue should flow into the Fund if it is to maintain intergenerational equity and prevent resource curse. To the extent that only 10% of export value shall flow into the Fund, intergenerational equity shall be maintained to the extent of only about 12%. The Supervisory Council should consider this aspect closely before incorporating the rule in the Permanent Fund Act pertaining to which revenues must be deposited and when.

For example, the Norwegian Government transfers all of the country's oil resource revenues into the Norwegian Fund in the first instance.

5.2. Past losses to be deposited into the Fund:

While the Supreme Court has ordered that mining from November 22, 2007 to July 2012 was illegal, it has not specified that the monies that have to be recovered need to be deposited in the Fund – these approximate Rs65,058 crores. This amount represents ancestral wealth and should be the legal right of future generations. In the interest of intergenerational equity, the Supervisory Council should incorporate (if the Court does not specifically direct) that 100% of this amount should be recovered and deposited into the permanent fund – this will ensure that intergenerational equity in the context of iron ore exports in Goa, for at least the period 2007-12, is protected.

This action will increase the initial corpus with a meaningful sum of money, large enough to create an immediate social contract between citizens and the state. This social contract can be strengthened with a meaningful (notional or actual) dividend from the real return of the Fund that could be as high as Rs 50,000 per family of four (See Section 8.3).

5.3. Include all natural resources beyond iron ore:

The Supreme Court mandate was limited to iron ore given that the Court case was related to export of iron ore. The rationale for the permanent fund and the scope of the Supervisory Council's mandate should be naturally expanded and apply to bauxite, manganese ore and other natural resources including deep ground water. All capital inflows received from the sale of natural resources, at a capture rate of at least 50% of the sale value, should be deposited into the Fund.

6. Usage of funds

Especially given that only 10% of value of the natural resources being sold is currently mandated for deposit into the Goa Fund, we do not recommend any disbursement to the State (even from real return) for fiscal expenditure of present generations. At the current level of 10% value capture by the Fund, the Supervisory Council may nevertheless carefully consider incorporating a Citizen's Dividend to citizens (not to the State) from the long-term real return accruing to the Fund (see Section 8.3 for more details).

The disbursement or dividends should only be paid out of the average real (beyond inflation) return of the Fund. In no case should the average disbursement exceed the lower of 4% or the long-term average real return of the Fund. In keeping with the NPS, the Citizen's Dividend be taxed rather than the Fund's gains (EET basis).

The Alaska Permanent Fund Dividend has been paid since 1982 to all residents of Alaska out of the long term real income of their Fund.

The rules for how much can be paid or disbursed as dividends must be written into the Permanent Fund Act. Any exceptions to the usage rules should be clearly specified in the Act along with the method for determining the same in alignment with the Constitution and consistent with the macroeconomic objective and purpose of the Fund i.e. to protect intergenerational equity via real savings for future generations.

PART B: INVESTMENT POLICY AND INVESTMENT MANAGEMENT

7. Investment policy to maximize long-term risk adjusted return

The Supervisory Council should approve an investment policy that is rooted in sound portfolio management principles, distinctive characteristics of the Goa Fund and developed based on comprehensive and continuous professional assessments.

The investment policy should aim to maximize long-term return (net of costs and taxes if any) for the Fund within acceptable risk limits. The ultimate responsibility is that the policy should safeguard the purchasing power of the Fund (generating a real rate of return i.e. exceeding the inflation rate) for future generations through cost effective asset management at a moderate level of risk. As a reference point, the Norwegian Fund has a long-term real return target of 4%.

We recommend an investment policy for the Fund that is easily managed, measured, benchmarked, and transparent, easily understood and acceptable to citizens. To this extent, we recommend the following medium-term options:

- 1) A very low cost 40:60 mix of government debt and the NIFTY,
OR
- 2) A40:60 mix of government debt and Indian public equities managed by National Pension System (NPS') external fund managers,
OR
- 3) A very low cost 40:60 mix of global debt and global equity indices,

The first two investment strategies could be administered independently or by the NPS (and its external fund managers) without much ado although option 3 is most prudent.

Till such time as the Supervisory Council gathers professional assessments and approves an investment strategy, the Fund may, in the short-term, be invested 100% in non-Goan, liquid government securities.

Investing outside Goa but within India will prevent resource curse for Goa but will ensure that a capital hungry India benefits from investment and this may be worth evaluation very carefully because it prevents diversification of risk.

In due course, based on continuous professional assessments, the Supervisory Council may approve more active management and diversification into global equities and alternative asset classes.

The investment policy mandate should also cover provisions on risk exposures, leverage, benchmark and outsourcing. The Goa Fund should use sound asset management principles including investment governance, risk management, risk-adjusted maximisation of returns, asset allocation and diversification.

We recommend that the Goa Fund could initially be administered by the Pension Fund Regulatory and Development Authority (PFRDA) that manages the National Pension System (NPS) or at the very least be advised by the PFRDA/NPS.

PART C: TRANSARENCY AND OVERSIGHT

8. Design an open and transparent Fund

8.1. Transparency:

A large part of the success of the Norway fund in acquiring legitimacy from its citizens is the open and transparent design of the Fund. The daily net asset value of the Fund and list of investment holdings is freely available on its website and this is supplemented with quarterly reports. Whilst at one level, it is a reflection of Norwegian society where income tax returns of individuals are publicly disclosed, openness and transparency can be incorporated in the design of the Fund even if a state is not as naturally transparent as Norway. Openness and transparency can go beyond communication and can also

influence the investment policy of the Fund – for example, the investment policy can mandate that investments be made only in assets whose prices are transparent and liquid such as publicly listed equities.

Following are our specific recommendations for a transparent Goa Permanent Fund:

At the outset, suggestions regarding the initial design of the Fund should be accepted from the public.

The legal and governance framework, investment policy and risk management framework should be publicly disclosed including on the Fund's website and in its annual report.

An annual report including audited financial statements should be prepared, publicly disclosed and uploaded to the Fund's website within a stipulated timeframe. There should be a public disclosure of external audits and internal audits including an upload to the Fund's website.

Fund performance should be measured, analysed and reported on a quarterly basis. These should be compared to pre-determined benchmark indices as described in an investment management mandate to the investment managing committee (or NPS). Quarterly reports should be provided to the Goa Government and Governing Council by the Executive Board of the Fund and uploaded to the website for the public. The reports should list the financial transactions as well as the holdings and bank balances. The reports should also provide detailed performance and risk analytics as well as the distribution of the portfolio.

Live estimates of net asset value (NAV) should be displayed on the Fund's website on a real-time basis. In addition, rolling net asset values of the Fund (including per family and per capita) should be displayed at a few prominent public locations including airports, bus and train stations, and markets such as Panaji, Margao and Mapusa.

Investments made by the Fund should have easily determinable and transparent net asset values such as sovereign bonds and public equities.

The Fund must perform an annual review of the implementation of Santiago Principles GAPP as part of its internal audit and this should be included in its annual report.

Once a year, the management of the Fund must have an open meeting with members of the public to discuss the Fund's activities and results.

8.2. Oversight:

The accountability framework should be laid out in the Fund's separate legal charter (The Permanent Fund Act). Overall supervisory control is to be provided by the Supervisory Council (appointed by the Supreme Court), the internal and external auditors including the Comptroller and Auditor General of India (CAG) and an internal Compliance Unit. See Section 3.2 for the flow of authority and reporting.

The overall framework and objectives as approved by the Supervisory Council should be laid out in legislation. These will include specific elements of division of responsibility between the owner and the asset manager of the Fund. The Permanent Fund Act should also clearly define the responsibility of the Fund's Executive Board. The Executive Board of the Fund should be responsible for monitoring the effectiveness of the risk management framework. The Fund's Internal Audit shall on behalf of the Executive Board ensure risk management and internal control.

The Board should be able to execute its investment decisions independent of the government.

The Executive Board of the Fund should report to the Goa Government and the Court-appointed Supervisory Council. The annual report issued by the Executive Board of the Fund should provide an account of the governance and supervision of the Fund (in addition to financial results, investment beliefs and investment strategy).

Clear ethical and professional standards as well as conduct of business principles need to be established and published for the Fund's employees. These are to be supervised by the Internal Compliance Unit.

If the Fund decides to outsource its asset management to NPS (including NPS's external managers), it still bears the responsibility of risk management and internal control and this responsibility should be established in written agreement. The agreement should ensure that the Fund could inspect and monitor outsourced operations. The Fund needs to ensure that there is enough expertise within the organisation to manage the outsourcing agreements.

8.3. Social contract via dividends:

Permanent funds are an alien concept in India. In order to create a social contract between citizens and the state, some states and countries have successfully issued Citizen's Dividends to their citizens from the real return of the permanent fund. This has helped an additional level of supervision in the form of citizen oversight as citizens see the tangible connection between common wealth and self and take more interest in the effectiveness of the Fund. There is significant research available on this subject and the Supervisory Council may consider if this is a wise proposal to adopt in India especially in the context of intrinsic and extrinsic motivations of citizens and externalities involving the relationship between local Indian states and the Indian republic.

The Citizen's Dividend should only be paid out of the average real (beyond inflation) return of the Fund. In no case should the average dividend exceed the lower of 4% or the long-term average real return of the Fund. This is important because if not practiced, dividends may be paid in good years, skipped in bad years and the Fund may not grow in real value.

The Supervisory Council may consider various models such as an annual dividend or perhaps a dividend at the end of Year 1 and then every 3-5 years. Another idea might

be to set a minimum threshold of say Rs. 1,000 (adjusted for inflation) for distribution of dividends. This may start off occasionally, but could accelerate with time.

The Fund could additionally or alternatively distribute non-cashable dividend warrants or e-warrants to citizens each year that highlight individual and family holdings and collective savings being accrued to future generations.

SECTION II: A CRITIQUE OF THE SCHEME PROPOSED BY THE GOA GOVERNMENT

This is the second attempt of the Goa Government to design a permanent fund as mandated by the SC. This design is not too much better from the previous Scheme that was notified in the state Gazette. The fundamental problem with both schemes is that they have not been designed as permanent funds to protect intergenerational equity but as expenditure or temporary funds that will diminish in real value over time. And as highlighted in Section I of this Annexure, intergenerational equity in the matter of natural resources is economically achieved via savings for future generations (in real not notional terms) as opposed to spending of natural resource revenues by the current generation.

Consequently, most of the elements in the Goa government's scheme are irrelevant and the elements of a world-class permanent fund have not even been considered. A simplified summary of some of the critique is:

- The objective of the proposed scheme is not intergenerational equity as mandated by the SC
- It is a Temporary Fund rather than a Permanent Fund (because investing in Fixed Deposits and spending 90% of the income will erode its real value)
- The legal structure is unclear and inadequate to ring fence the Fund, thus placing it in serious risk of plunder
- There is no integration with fiscal policies thereby once again exposing the state to resource curse
- The scope and source of funding is inadequate
- The planned usage of funds goes against the mandate of the SC
- There is no clear investment strategy, risk management or investment governance structure
- There is no adequate transparency or oversight mechanism .

To highlight the same, and in addition to the fundamental critique stated above, we have attempted to quantify and rate the Fund designed by the Goa Government using the Truman Scoreboard/ Index[^] for this purpose. The Truman Index significantly overlaps with the Santiago Principles with a correlation of 0.96 amongst its elements.

[^] For more details related to the Truman Scoreboard, see *A Blueprint for Sovereign Wealth Fund Best Practices*; Edwin M. Truman; Peterson Institute for International Economics; <http://www.petersoninstitute.org/publications/pb/pb08-3.pdf>. Also see *Progress on Sovereign Wealth Fund Transparency and Accountability: An Updated Fund Scoreboard* Allie E. Bagnall and Edwin M. Truman at the Peterson Institute for International Economics.

Using the Truman Scoreboard, the Fund has a score of 14/100 – see Table 1. By way of comparison, the top rated fund is Norway with a score of 98/100 and the lowest rated fund is the UAE's Istithmar World with a score of 17/100. An average is 60/100.

For each of the 33 elements, posed as questions, if the answer is an unqualified yes, we score it as 1. The overall score has been described on a scale of 1-100. If the answer is no, we score it as 0. However, partial scores of 0.25, 0.50, and 0.75 are recorded for many elements. If an element was only marginally relevant or not relevant, we are required to add a score of 0.5 to prevent bias.

We have been generous in our allocation of scores for the Goa government's scheme in that we have assumed that the Notification is draft and will be followed by more details. For example, we assumed that the state government may have the Fund audited by CAG and so we have awarded points to the Scheme. If we strictly followed the scoring rules that the Truman Index uses (for example: if the information is not in public domain, it awards a score of zero), the Goa government notified scheme would probably have been closer to a round zero especially since the fundamental defect of the design makes the Fund a Temporary Fund rather than a Permanent Fund.

Note: It is not inconceivable to game the design of a Fund to score high on the Truman or other indices but fare poorly in reality. To this extent, we think ring fencing the Fund by providing it Constitutional protection and judicial oversight is crucial.

Table 1: Rating the scheme of the Goa Government using Truman Scoreboard

SCORING CRITERIA	COMMENTS	POINTS
STRUCTURE		
1. Is the objective clearly stated?	Strangely, even though the preamble acknowledges the Supreme Court's direction to create a permanent fund for protection of intergenerational equity, the Scheme states that its objects are all manner of expenses including restoring ecology, building roads, paying compensation, etc. It resembles more of a District Mineral Fund and is definitely not a permanent fund.	0
2. Is there a clear legal framework for the Fund?	The Scheme suggests the creation of a Trust but the legal framework including beneficiaries and laws governing the same are not clear.	0.25
3. Is the procedure for changing the structure clear?	No.	0
4. Is the overall investment strategy clearly stated?	No. There is no clear investment strategy. Just a statement that the Trust will invest in fixed deposits and debt. The investment strategy of the Fund should be on the risk management of the principal to (a) ensure the protection of the capital, (b) reinvesting income to fully compensate for inflation, and (c) generate income over and above this. The ultimate responsibility is that the policy should safeguard the purchasing power of the Fund (generating a real rate of return i.e. exceeding the inflation rate) for future generations through cost effective asset management at a moderate level of risk.	0
Fiscal Treatment		
5. Is the source of the funding clearly specified?	The Contribution to the Funds has inappropriately restated the SC order. The SC ordered "the mining lessees of iron ore will have to pay 10% of the sale price of the iron ore sold by them to the Goan Iron Ore Permanent Fund." In contrast, the draft Goa PF Scheme states "10% of the pit mouth sale value of mineral as determined by Indian Bureau of Mines". The two are not the same. Also, while the Supreme Court has ordered that mining from November 22, 2007 to July 2012 was illegal, it has not specified that the monies that have to be recovered need to be	0.25

SCORING CRITERIA	COMMENTS	POINTS
	deposited in the Fund – these approximate Rs 65.058 crores. This amount represents ancestral wealth and should be the legal right of future generations. This amount should also be deposited into the Fund and will ensure that intergenerational equity in the context of iron ore exports in Goa, for at least the period 2007-12, is protected.	
6. Is the nature of the subsequent use of the principal and earnings of the fund clearly specified?	The use is stated but contravenes the SC mandate i.e. to protect intergenerational equity. Under Indian conditions, utilisation of 90% of the income of the fund will ensure that the real value of the principle of the fund will deplete. We will be cheating our children & future generations. The utilization of the principal of the Fund for mining emergencies is inappropriate. This should be recovered from the respective mining company under the Polluter Pays principle.	0.5
7. Are the operations appropriately integrated with fiscal and monetary policies?	There is no mention of the same. This is an important point to prevent resource curse. There should be no lien on the funds (allowing the state to borrow on the basis of the Fund) and the Fund's monies should not be invested in the state.	0
8. Is the Fund separate from the country's international reserves?	Not applicable since this a sub-national Fund	0.5
GOVERNANCE		
9. Is the role of the government in setting the investment strategy of the Fund clearly established?	No. There is no investment strategy. Just a statement that the Trust will invest in fixed deposits and debt.	0
10. Is the role of the governing body of the Fund clearly established?	Yes to the extent of the erroneous objectives of the Fund	0.5
11. Is the role of the managers in executing the investment strategy clearly established?	No provision.	0
12. Are decisions on specific investments made by the managers?	No. These requirements are similar to those for Pension Funds. Elaborate investment management guidelines and controls are required. This is completely absent. In its absence, it would be simple for the fund to be plundered.	0
13. Does the Fund have internal ethical standards for its management and staff?	No provision.	0
14. Does the Fund have in place, and make publicly available, guidelines for corporate responsibility that it follows?	No provision.	0
15. Does the Fund have ethical investment guidelines that it follows?	No provision.	0

SCORING CRITERIA	COMMENTS	POINTS
TRANSPARENCY AND ACCOUNTABILITY		
Investment Strategy Implementation		
16. Do regular reports on investments by the Fund include information on the categories of investments?	No. These requirements are similar to those for Pension Funds. Elaborate investment management guidelines and controls are required. This is completely absent. In its absence, it would be simple for the fund to be plundered.	0
17. Does the strategy use benchmarks?	No provision.	0
18. Does the strategy use credit ratings?	No provision.	0
19. Are the holders of investment mandates identified?	No provision.	0
Investment Activities		
20. Do regular reports on the investments by the Fund include the size of the fund?	No. These requirements are similar to those for Pension Funds. Elaborate investment management guidelines and controls are required. This is completely absent. In its absence, it would be simple for the fund to be plundered.	0
21. Do regular reports on the investments by the Fund include information on its returns?	No provision.	0
22. Do regular reports on the investments by the Fund include information on the geographic location of investments?	No provision.	0
23. Do regular reports on the investments by the Fund include information on the specific investments?	No provision.	0
24. Do regular reports on the investments by the Fund include information on the currency composition of investments?	No provision.	0
Reports		
25. Does the Fund provide at least an annual report on its activities and results?	Yes. There is a provision for an annual report	1
26. Does the Fund provide quarterly reports?	No provision.	0
Audits		
27. Is the Fund subject to a regular annual audit?	It has left it to the State Government to decide.	0.5
28. Does the Fund publish promptly the audits of its operations and accounts?	It has left it to the State Government to decide.	0.5
29. Are the audits independent?	Not yet decided.	0.5

SCORING CRITERIA		COMMENTS	POINTS
BEHAVIOUR			
30. Does the Fund have an operational risk management policy?	No provision.		0
31. Does the Fund have a policy on the use of leverage?	No provision.		0
32. Does the Fund have a policy on the use of derivatives?	No provision.		0
33. Does the Fund have a guideline on the nature and speed of adjustment in its portfolio?	No provision.		0
TOTAL POINTS (a)			4.5
CONVERTED SCORE (a/33*100)			13.6

SECTION III: The Goenchi Mati Future Generations Fund

Preamble:

Whereas, the Government of Goa has declared its intention of having a permanent fund, in its Goa Mineral Policy, 2013.

And whereas, in the Judgement and Order of the Honourable Supreme Court of India in Writ Petition (Civil) No. 435 of 2012 dated 21st April, 2014; the Apex Court has directed creation of a permanent fund for protection of intergenerational equity by reserving 10 percent of the sale proceeds out of the e-auction and 10% of future sale / export price of iron ore from State of Goa.

Now, therefore, the Government of Goa in consultation with the Central Empowered Committee of Honourable Supreme Court of India hereby formulates the following scheme for creation and operation of The Goenchi Mati Future Generations Fund:

PART A: OBJECTIVES, LEGAL FRAMEWORK, GOVERNANCE, MACRO ECONOMIC POLICIES, SOURCE AND USAGE OF FUNDS

1. Name

This scheme shall be called as 'Goenchi Mati Future Generations Fund' (hereinafter referred to as 'GMFGF' or 'the Fund').

2. Objective and purpose

2.1. Intergenerational equity via savings for future generations:

Intergenerational equity in the matter of natural resources (economically achieved via savings for future generations) is the primary objective of the Fund.

2.2. The policy purpose is to generate a reasonable real return post tax:

The policy purpose of the Fund is real savings for future generations or a reasonable risk-adjusted rate of return above inflation. The Fund shall seek tax exemptions on the lines provided to the National Pension Scheme in India except on dividends to citizens.

3. Legal framework

3.1. Constitutional protection under Article 21:

Intergenerational equity forms a part of Article 21, Right to Life, and the Fund is the instrument to protect intergenerational equity in the matter of natural resources.

3.2 Separate legal entity status for future generations:

Future generations have a separate legal entity status being treated as a separate artificial person with Perpetual Minor status and the Supreme Court is the Legal

Guardian. The government and Supervisory Council shall act in trust on behalf of the Legal Guardian. The permanent fund constitutes the wealth of future generations.

3.3. A Permanent Fund Act:

The regulatory framework for the Fund is to be laid out in a Permanent Fund Act ('the Act') for the benefit of future generations and drafted under the supervision of the Supervisory Council. The Act will include the objective, scope, policy purpose, legal framework, the rules for funding and withdrawal (including dividend policy and exceptional circumstances), investment policy, investment management, governance, reporting, supervision and oversight. The rules and provisions of the Act shall be consistent with the macroeconomic objective and purpose of the Fund i.e. to protect intergenerational equity via real savings for future generations.

4. Governance structure

4.1. Composition of the Supervisory Council and Executive Committee:

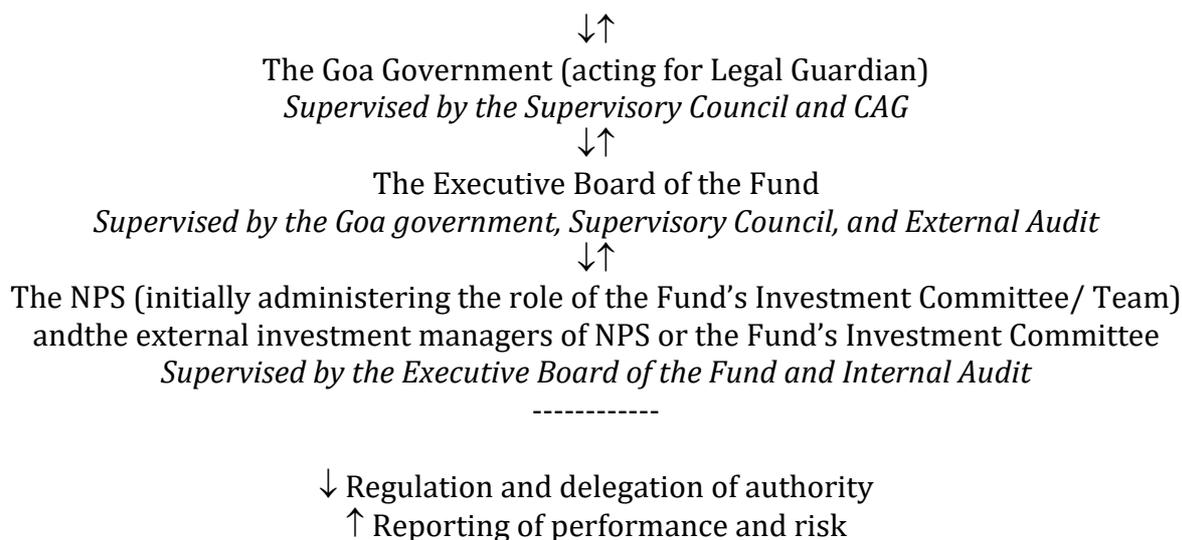
The Supervisory Council will comprise retired civil servants, retired judges and Government, RBI, PFRDA/NPS and CAG nominees and will serve as Commissioner, Auditor and Supervisor on behalf of the Legal Guardian of future generations (See Section 4.2).

1. EAS Sarma (Former Secretary to Ministry of Finance and Ministry of Power, Adviser (Energy) and Principal Adviser to Planning Commission)
2. Vijay Kumar, former Mines Secretary. GOI.
3. TK Viswanathan, former Law Secretary, GOI
4. Surya Sethi, former Principal Adviser (Energy), Planning Commission.
5. Arvind Subramaniam, Chief Economic Adviser, GOI or their nominee.
6. R. Raghuram, Governor, Reserve Bank of India, or their nominee.
7. Renana Jhabvala, President, Self Employed Workers Association
8. Yogesh Aggarwal, Chairman, Pension Fund Regulatory and Development Authority, or their nominee.
9. Surendra Dave, Founder, Securities and Exchange Board of India
10. Nominee from the State Government
11. Nominee from the State Government

4.2. Governance:

The Fund will have the following overall governance and supervisory model. The Supreme Court is the Legal Guardian. The Supervisory Council is the commissioner, auditor and supervisor and the government (supervised by the Supervisory Council) shall act on behalf of the SC (Legal Guardian of Future Generations). The Executive Board of the Fund shall be responsible for the operational and asset management of the Fund (with the PFRDA/NPS) and the Act will provide for its independence from the Government. See flow of authority and reporting responsibility below.

The Supreme Court as Legal Guardian of Future Generations
Advised by the Supervisory Council acting as commissioner, auditor and supervisor



5. Coordination and integration with fiscal and monetary policies

Investment in Goa is explicitly prohibited and the Fund will only invest its money outside Goa. The only exception is ownership stakes in mining PSU's or joint ventures.

The Fund's assets cannot be used as collateral to back government debt.

5. Scope and source of funding

5.1. At least 10% of export value of iron ore:

10% of the sale proceeds out of the e-auction (of seized inventories) and 10% of future sale or export price of iron ore from the state of Goa shall be deposited into the Fund.

Rules for capture of at least 50% of the sale value of the ore shall also be written into the Act. All of this capital should flow into the Fund if it is to maintain intergenerational equity and prevent resource curse. The Supervisory Council shall consider this aspect before incorporating the rule in the Permanent Fund Act pertaining to which revenues must be deposited and when.

5.2. Past losses to be deposited into the Fund:

The Supreme Court has ordered that mining from November 22, 2007 to July 2012 was illegal. Monies that have to be recovered (approximately Rs.65,058 crores) including associated fines and penalties shall be deposited in the Fund.

5.3. All natural resources:

The scope of the Fund shall cover capital inflows from iron ore, bauxite, manganese ore and other natural resources including deep ground water. All capital inflows received from the sale of natural resources, at a capture rate of at least 50% of the sale value, shall be deposited into the Fund.

6. Usage of funds

The Fund shall not be used for any fiscal expenditure.

The Fund on the recommendation of the Supervisory Council will distribute a Citizen's Dividend to citizens from the long-term real return accruing to the Fund. The Citizen's Dividend will only be paid out of the average real (beyond inflation) return of the Fund. In no case will the average disbursement exceed the lower of 4% or the long-term average real return of the Fund.

The Citizen's Dividend as the only permitted use will be written into the Permanent Fund Act. Any other income must be reinvested in to the Permanent Fund. These usage rules will be clearly specified in the Act along with the method for determining the same in alignment with the Constitution and consistent with the macroeconomic objective and purpose of the Fund i.e. to protect intergenerational equity via real savings for future generations.

The Fund will additionally distribute non-cashable e-certificates to citizens each quarter that highlight individual and family holdings and collective savings being accrued to future generations.

PART B: INVESTMENT POLICY AND INVESTMENT MANAGEMENT

7. Investment policy to maximize long-term risk adjusted return

The Supervisory Council will periodically approve an investment policy that is rooted in sound portfolio management principles, distinctive characteristics of the Goa Fund and developed based on comprehensive and continuous professional assessments.

The investment policy's aim is to maximize long-term return (net of costs and taxes if any) for the Fund within acceptable risk limits. The policy aims to safeguard the purchasing power of the Fund (generating a real rate of return i.e. exceeding the inflation rate) for future generations through cost effective asset management at a moderate level of risk.

The investment policy for the Fund will be easily managed, measured, benchmarked, and transparent, easily understood and acceptable to citizens. The Fund has developed the following initial options:

- 4) A 40:60 mix of government debt and Indian public equities managed by National Pension System (NPS') external fund managers,
OR
- 5) A very low cost 40:60 mix of government debt and the NIFTY,
OR
- 6) A very low cost 40:60 mix of global debt and global equity indices (most preferred, if technically feasible).

The Fund will initially be administered by the Pension Fund Regulatory and Development Authority (PFRDA) that manages the National Pension System (NPS) or at the very least be advised by the PFRDA/NPS.

The first two investment strategies are to be administered by NPS (and its external fund managers) failing which, independently.

Till such time as the Supervisory Council gathers professional assessments and approves an investment strategy, the Fund may, in the short-term, be invested 100% in non-Goan, liquid government-backed securities.

Based on continuous professional assessments, the Supervisory Council may approve more active management and diversification into global equities and alternative asset classes.

The investment policy mandate is to cover provisions on risk exposures, leverage, benchmark and outsourcing. The Fund will use sound asset management principles including investment governance, risk management, risk-adjusted maximisation of returns, asset allocation and diversification.

The Fund will have an ethical investing policy based on UN PRI and consistent with the objectives of the Fund and these shall also be published on its website.

PART C: TRANSARENCY AND OVERSIGHT

8. Design an open and transparent Fund

8.1. Transparency:

The legal and governance framework, investment policy and risk management framework shall be publicly disclosed including on the Fund's website and in its annual report.

An annual report including audited financial statements shall be prepared, publicly disclosed and uploaded to the Fund's website within a stipulated timeframe. There will be a public disclosure of external audits and internal audits including an upload to the Fund's website.

Fund performance will be measured, analysed and reported on a quarterly basis. These will be compared to pre-determined benchmark indices as described in an investment management mandate to the investment managing committee (or NPS). Quarterly reports will be provided to the Goa Government and Governing Council by the Executive Board of the Fund and uploaded to the website for the public. The reports will list the financial transactions as well as the holdings and bank balances. The reports will also provide detailed performance and risk analytics as well as the distribution of the portfolio.

Live estimates of net asset value (NAV) will be displayed on the Fund's website on a real-time basis. In addition, rolling net asset values of the Fund (including per family and per capita) will be displayed at a few prominent public locations including airports, bus and train stations, and markets such as Panaji, Margao and Mapusa.

Investments made by the Fund will have easily determinable and transparent net asset values such as sovereign bonds and public equities.

The Fund will perform an annual review of the implementation of Santiago Principles GAPP as part of its internal audit and this will be included in its annual report. The Fund will also examine whether intergenerational equity has been protected or not, and what additional steps may be needed.

Once a year, the management of the Fund will have an open meeting with members of the public to discuss the Fund's activities and results.

8.2. Oversight:

The accountability framework will be laid out in the Fund's separate legal charter (The Permanent Fund Act). Overall supervisory control is to be provided by the Supervisory Council (appointed by the Supreme Court), the internal and external auditors including the Comptroller and Auditor General of India (CAG) and an internal Compliance Unit as illustrated in Section 4.2 for the flow of authority and reporting.

The overall framework and objectives as approved by the Supervisory Council will be laid out in The Permanent Fund Act. These will include specific elements of division of responsibility between the owner and the asset manager of the Fund. The Permanent Fund Act will also clearly define the responsibility of the Fund's Executive Board. The Executive Board of the Fund will be responsible for monitoring the effectiveness of the risk management framework. The Fund's Internal Audit will on behalf of the Executive Board ensure risk management and internal control.

The Board will be able to execute its investment decisions independent of the government.

The Executive Board of the Fund will report to the Goa Government and the Court-appointed Supervisory Council. The annual report issued by the Executive Board of the Fund will provide an account of the governance and supervision of the Fund (in addition to financial results, investment beliefs and investment strategy).

Clear ethical and professional standards as well as conduct of business principles will be established and published for the Fund's employees. These are to be supervised by the Internal Compliance Unit.

If the Fund is able to outsource its asset management to NPS (including NPS's external managers), it will still bear the responsibility of risk management and internal control and this responsibility will be established in written agreement. The agreement will ensure that the Fund can inspect and monitor outsourced operations.

APPENDIX I: THE SANTIAGO PRINCIPLES

In furtherance of the "Objective and Purpose", the IFSWF members either have implemented - or intend to implement - the following principles and practices, on a voluntary basis, *each of which is subject to* home country laws, regulations, requirements and obligations. This paragraph is an integral part of the GAPP.

GAPP 1. Principle

The legal framework for the SWF should be sound and support its effective operation and the achievement of its stated objective(s).

GAPP 1.1 Sub principle The legal framework for the SWF should ensure the legal soundness of the SWF and its transactions.

GAPP 1.2 Sub principle The key features of the SWF's legal basis and structure, as well as the legal relationship between the SWF and the other state bodies, should be publicly disclosed.

GAPP 2. Principle

The policy purpose of the SWF should be clearly defined and publicly disclosed.

GAPP 3. Principle

Where the SWF's activities have significant direct domestic macroeconomic implications, those activities should be closely coordinated with the domestic fiscal and monetary authorities, so as to ensure consistency with the overall macroeconomic policies.

GAPP 4. Principle There should be clear and publicly disclosed policies, rules, procedures, or arrangements in relation to the SWF's general approach to funding, withdrawal, and spending operations.

GAPP 4.1 Sub-principle The source of SWF funding should be publicly disclosed.

GAPP 4.2 Sub-principle The general approach to withdrawals from the SWF and spending on behalf of the government should be publicly disclosed.

GAPP 5. Principle

The relevant statistical data pertaining to the SWF should be reported on a timely basis to the owner, or as otherwise required, for inclusion where appropriate in macroeconomic data sets.

GAPP 6. Principle

The governance framework for the SWF should be sound and establish a clear and effective division of roles and responsibilities in order to facilitate accountability and operational independence in the management of the SWF to pursue its objectives.

GAPP 7. Principle

The owner should set the objectives of the SWF, appoint the members of its governing body(ies) in accordance with clearly defined procedures, and exercise oversight over the SWF's operations.

GAPP 8. Principle

The governing body(ies) should act in the best interests of the SWF, and have a clear mandate and adequate authority and competency to carry out its functions.

GAPP 9. Principle

The operational management of the SWF should implement the SWF's strategies in an independent manner and in accordance with clearly defined responsibilities.

GAPP 10. Principle

The accountability framework for the SWF's operations should be clearly defined in the relevant legislation, charter, other constitutive documents, or management agreement.

GAPP 11. Principle

An annual report and accompanying financial statements on the SWF's operations and performance should be prepared in a timely fashion and in accordance with recognized international or national accounting standards in a consistent manner.

GAPP 12. Principle

The SWF's operations and financial statements should be audited annually in accordance with recognized international or national auditing standards in a consistent manner.

GAPP 13. Principle

Professional and ethical standards should be clearly defined and made known to the members of the SWF's governing body(ies), management, and staff.

GAPP 14. Principle

Dealing with third parties for the purpose of the SWF's operational management should be based on economic and financial grounds, and follow clear rules and procedures.

GAPP 15. Principle

SWF operations and activities in host countries should be conducted in compliance with all applicable regulatory and disclosure requirements of the countries in which they operate.

GAPP 16. Principle

The governance framework and objectives, as well as the manner in which

the SWF's management is operationally independent from the owner, should be publicly disclosed.

GAPP 17. Principle

Relevant financial information regarding the SWF should be publicly disclosed to demonstrate its economic and financial orientation, so as to contribute to stability in international financial markets and enhance trust in recipient countries.

GAPP 18. Principle

The SWF's investment policy should be clear and consistent with its defined objectives, risk tolerance, and investment strategy, as set by the owner or the governing body(ies), and be based on sound portfolio management principles.

GAPP 18.1 Sub-principle The investment policy should guide the SWF's financial risk exposures and the possible use of leverage.

GAPP 18.2 Sub-principle The investment policy should address the extent to which internal and/or external investment managers are used, the range of their activities and authority, and the process by which they are selected and their performance monitored.

GAPP 18.3 Sub-principle A description of the investment policy of the SWF should be publicly disclosed.

GAPP 19. Principle

The SWF's investment decisions should aim to maximize risk-adjusted financial returns in a manner consistent with its investment policy, and based on economic and financial grounds.

GAPP 19.1 Sub-principle If investment decisions are subject to other than

economic and financial considerations, these should be clearly set out in the investment policy and be publicly disclosed.

GAPP 19.2 Sub-principle The management of an SWF's assets should be consistent with what is generally accepted as sound asset management principles.

GAPP 20. Principle

The SWF should not seek or take advantage of privileged information or inappropriate influence by the broader government in competing with private entities.

GAPP 21. Principle

SWFs view shareholder ownership rights as a fundamental element of their equity investments' value. If an SWF chooses to exercise its ownership rights, it should do so in a manner that is consistent with its investment policy and protects the financial value of its investments. The SWF should publicly disclose its general approach to voting securities of listed entities, including the key factors guiding its exercise of ownership rights.

GAPP 22. Principle

The SWF should have a framework that identifies, assesses, and manages the risks of its operations.

GAPP 22.1 Sub-principle The risk management framework should include reliable information and timely reporting systems, which should enable the adequate monitoring and management of relevant risks within acceptable parameters and levels, control and incentive mechanisms, codes of conduct, business continuity planning, and an independent audit function.

GAPP 22.2 Sub-principle The general approach to the SWF's risk management framework should be publicly disclosed.

GAPP 23. Principle

The assets and investment performance (absolute and relative to benchmarks, if any) of the SWF should be measured and reported to the owner according to clearly defined principles or standards.

GAPP 24. Principle

A process of regular review of the implementation of the GAPP should be engaged in by or on behalf of the SWF.

Annex 1: Explanation of the good governance standards in the natural resource fund profiles (page 4)

These good governance standards for natural resource funds draw on a number of sources including the 2013 Resource Governance Index questionnaire, Edwin Truman's Sovereign Wealth Fund Scoreboard and the Santiago Principles.

Operations

Are objectives clear: The objectives of natural resource funds should be clearly stated in government policy, regulation, legislation or even in the constitution.

Rule for how much can be withdrawn in any given year: Fiscal rules (withdrawal and deposit) are the most important rules governing fund behavior. Whether a natural resource fund meets its objective(s) depends almost wholly on the suitability, clarity and enforcement of its fiscal rules. These rules should be clarified in legislation, regulation or a binding policy document.

Rule for which revenues must be deposited and when: Same as above.

Are exceptions to rules clarified: Exceptions to fiscal rules—for example, in cases of environmental, financial or social crisis—should also be clarified.

Investment

Use of resource revenues as collateral: Using resource revenues to back government debt puts natural resource revenues at risk, especially if the government has a tendency to default, and encourages over-borrowing. One solution has been to restrict either part of all of a natural resource fund from being used as collateral. It is important to make these rules explicit.

Domestic investment is explicitly prohibited: Financing domestic investment directly by the fund is not recommended, because it can undermine transparency and accountability systems by bypassing the normal budget process, with its controls and safeguards, such as parliamentary approval, project appraisal, public tendering and project monitoring. All spending out of the fund should pass through the budget process and be subject to normal budgetary oversight processes.

Investment risk limitations: No matter what risk profile is chosen, it should be well defined and enforced through explicit rules that limit risk.

Publication of specific investments: In order to determine whether the risk limitations are being met, a public list of specific assets held by the fund should be published.

Management

Penalties for misconduct: Ethical and conflict-of-interest standards must be enforced by the fund's governing structure, preferably through concrete penalties such as dismissal, fines or even imprisonment.

Ethical and conflict of interest standards: Ethical and conflict-of-interest standards must be made clear in order for employees to understand the constraints they must abide by.

Detailed responsibilities of fund managers and staff: The roles and responsibilities of the operational manager, whether a unit within the central bank, a unit in the ministry of finance or a separate entity, should be detailed in law, regulation or a government policy document.

Policy Overview

Role of government agencies in fund management: The roles and responsibilities of the governing bodies—such as the legislature, executive, central bank, advisory bodies, fund governing board and fund executive—should be detailed in law, regulation or a government policy document.

Transparency and Oversight

Public disclosure of external audits: This is a prerequisite for accountability and compliance with governance rules, because oversight bodies cannot monitor fund operations and scrutinize fund performance without adequate information.

Public disclosure of internal audits: This is a prerequisite for accountability and compliance with governance rules, because internal managers cannot monitor fund operations and scrutinize fund performance without adequate information.

Formalized oversight mechanisms: Effective internal control mechanisms are often not enough to ensure compliance with governance rules or management of natural resource funds in the public interest. Funds should also be monitored by independent oversight bodies that exert external pressure on policymakers and fund managers.

Public disclosure of regularly compiled fund reports: This is a prerequisite for accountability and compliance with governance rules, because oversight bodies cannot monitor fund operations and scrutinize fund performance without adequate information.