

# The Goa Foundation

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**Subj: Additional comments/suggestions on the MMDR (Amendment) Bill, 2014**

Dear Dr. Pujari,

Kindly refer to our letter dated 4 December 2014 setting out our comments on the draft MMDR (Amendment) Bill, 2014 (the “draft Bill”). Pursuant to the oral hearing before the Minister of Steel and your good self, we would like to set out some additional comments & suggestions on the draft Bill.

We are in agreement that the present situation with multiple mining bans – and threat of more – is detrimental to the nation. Something does need to be done. There are twin objectives to mining. On the one hand, it provides the raw materials for a variety of industries, and mining bans create significant disruptions to segments of the economy. The bans often result in the imports of minerals.

On the other hand, minerals are publicly owned, and the Government is constitutionally required to act as a Public Trustee, and in the absence of overriding criteria, must maximize the Capture Rate. Constitutionally, it must also implement Intergenerational Equity, which would require setting up Permanent Funds.

However, we observe with disappointment that the Ministry seems rather un-concerned about the abysmal Capture Rate. That the Capture Rate is low is no secret to the Ministry – how else does the NMDC have a PBT margin of 70% of its revenues? And Intergenerational Equity is being ignored despite the precedents all over the world, including Goa. It would seem that the Ministry needs to be reminded of its duty to uphold and implement the Constitution.

Not mining isn't a loss, the mineral is still there. It would be preferable to temporarily import minerals while a constitutional system is being put in place. Yes, some foreign exchange is used. Yet, when the ban is lifted, we can export equivalent amounts of minerals (which we did not extract as a result of the bans.) This is not a permanent loss (except to the extent of transportation). In fact, countries like the US prefer to maintain a strategic oil reserve while simultaneously importing oil. On the other hand, a low or abysmal Capture Rate is a permanent loss to the people of this country. Hence, careful design of the system for mining is necessary in order to desist from the present unacceptable situation.

### **Root cause analysis**

We would recommend that serious thought be given to the root cause of the mining illegalities and the consequent mining bans. Subsequently, the tools of continuous improvement (kaizen, six sigma, etc) can be used to minimize or eliminate these issues. If this is not done, we will continue to see nearly 1 lakh illegal mining cases detected each year, widespread litigation and more mining bans.

If we examine the notable recent judgments (2G, Karnataka iron ore, Goa iron ore, Coal and Odisha iron ore), we will find that there are two principal reasons for the judgments. First, in both the 2G as well as the coal scams, the failure of the Government to act transparently and in a non-arbitrary fashion at the point of granting a lease seems to be the root cause. However, in the iron ore cases, there are wide spread illegalities committed by our mining companies, which the administration seems to be complicit with. The illegalities are of many kinds, starting from false information in EIAs, all the way through under-invoicing of exports. This results in the failure of the Government to act as a Public Trustee during the life of the lease and subsequent renewals.

### **Maximising Capture Rate through auctions**

The draft bill reeks of a band-aid approach – let's do auctions and pretend that it will maximize the Capture Rate over the life of the lease. We have already provided significant comments on the use of auctions to maximize the Capture Rate. There is a large body of economic research on how to design auctions to maximize the value earned. We would like to point out the following:

1. Auctions will capture more when there are fewer restrictions. Permitting exports would increase the capture rate. Restricting bidders to end-users would reduce the capture rate. Requiring large sums of money upfront would reduce the capture rate.
2. The greater the available information, the better the auction (simply by lowering the risk). Yet we find that the National Geophysical Database has been dropped. This should be revived and placed in the public domain.

### **Maximising Capture Rate over the life of the lease**

A proper well-designed auction only ensures that the capture rate is maximized at that point in time. In order to ensure the continual maximization of the capture rate, it is important to have a thorough monitoring system. We find it incredible that while in Delhi an ordinary person can find all autorickshaws near them<sup>1</sup> as they are fitted with GPS trackers, this is not yet a requirement of mining transportation! We find it incredible that we can send Mangalyaan to Mars and have 11 remote sensing satellites orbiting earth<sup>2</sup>, and yet we cannot detect thousands of illegal mining cases all over the country! We find it incredible that we are an IT superpower and yet mining forms F1 and H1 do not even have standardized definitions for the fields, let alone xml schemas, and are submitted in paper form, preventing any easy reconciliation!

A second issue relates to the entities permitted to mine. We have outrage when background check papers of a taxi driver are not double checked for forgery and unfortunately, yet predictably, a woman is raped. An entire segment of the taxi industry is closed down. However, when multiple blatant illegalities in mining takes place, that is not a cause for disqualifying the actors from further mining. Miners must be made to go through a “fit and proper person” test before allowed renewal of their leases.

### **Ownership of minerals**

These issues become even more stark when the owners of the minerals are not the same entities as the beneficiaries of the mined minerals. For example, if a coal-based power plant is set up on a competitive bidding basis with a coal block allocated, it would seem that all is fine. The low Capture Rate on coal translates into a lower price of power. However, there are two different issues with this simplistic picture. First, if the owner of the coal is different from those entitled to the power, then the coal owner is being cheated. For example, if West Bengal owns the coal, but the power project will supply Uttar Pradesh, then the people of West Bengal are being cheated. Second, there are distribution issues. The coal is common property, owned equally by all. The power price discount is skewed by the uneven consumption pattern of power. Returning to our

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<sup>1</sup> <http://timesofindia.indiatimes.com/tech/apps/Pooch-O-an-app-to-find-auto-rickshaws-in-New-Delhi/articleshow/38429711.cms>

<sup>2</sup> <http://www.isro.org/scripts/currentprogrammein.aspx>

example, even if all the power is consumed in West Bengal, it will still discriminate against the poor (and the many who do not even get grid power), and will favour the rich, and industry. This is clearly regressive, albeit well hidden.

### **Limits on the size of mines**

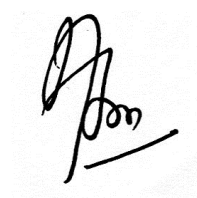
From the discussions, it seems that the Ministry isn't clear why there is a limit in the first place. We also understand that there have been only a few applications to exempt entities from the existing limit. However, this too seems a massive administrative burden. We would therefore like to make a couple of suggestions as regards the limits on the size of mines.

1. An exception can be carved out from the present limit only for the PSUs. It is our understanding that this would take care of most, if not all cases, for variation of the limits. It may be appropriate to then remove the ability of the Center to waive or vary this limit in other cases.
2. Following the example from around the world, there should be a limit placed on the percentage of land covered by mining leases. This could be stipulated at various levels. For instance, at the village level, the limit may be 50%. At the taluka level, 25%. At the district level, the limit could be 10%. This would reduce the overall human rights issues from large expanses being given over to mining.

### **Conclusion**

We would like to reiterate that these comments are in addition to our previous letter, not in substitute. We would also like to point out that there are many signs that there is a systemic failure of the Government in the arena of natural resources. A quick fix band-aid approach is sure to unravel quickly. Finally, the minerals are our collective uttaradhikari. The ministry has a golden opportunity to implement Intergenerational Equity through permanent funds. Our future generations would be eternally grateful to you if these measures are implemented.

Yours faithfully,



(Dr Claude Alvares)  
Director