Demand letter in response to the consultation on Mineral Resource Governance – UNEP

The principle of Intergenerational Equity (IE) is, at its heart, quite simple. It is our duty to ensure future generations inherit at least as much as we did. Only if we succeed do we have a right to consume the fruits of our inheritance. Any loss is a loss to the people and all future generations.

If we are successful, our children will be at least as well off as we are. If we leave a bequest as well, they will be better off than us. Without intergenerational equity (IE), humans are doomed. Everyone will want to consume their inheritance, leaving the next generation poorer. Any group/society that adopts this path will be ruined in no time, like an addict selling the family silver.

**How mining is unsustainable**

In most nations, the state holds natural resources, including minerals, as a trustee on behalf of the people and especially future generations. Legally, this is the Public Trust Doctrine (common law), Public Domain (civil law) or the Common Heritage of Humankind (international law for planetary commons). The primary objective of the trustee / manager is to maintain the corpus of the trust, the shared inheritance of natural resources.

The extraction of oil, gas and minerals is effectively the sale of this inheritance, with royalties and other proceeds being the consideration paid in exchange for the mineral wealth extracted. Unfortunately, governments all over the world treat the proceeds from selling their mineral wealth as revenue or income, a crucial error.

As this hides the real transaction — a sale of inherited wealth — it results in governments selling minerals at prices significantly lower than what they are worth. This is driven by lobbying, political contributions and corruption. For example, official statistics indicate that Australia lost 82% of the value of its minerals (after extraction costs and a reasonable profit for the extractor) extracted over the decade 2000–10[[1]](#footnote-1). This is a hidden per-head tax which is going to make a few extractors and their cronies super-rich. Inequality grows sharply. This is looting economics.

Worse still, the trifles received by the government is treated as a windfall and happily spent, leaving neither the minerals nor their value for future generations to inherit. This is not sustainable!



*Source:* [*Global Estimates of Loss Rates*](https://medium.com/%40thefutureweneed/global-estimates-of-loss-rates-21ae4b48b065)[[2]](#footnote-2)

There is growing empirical evidence of large losses in mining from around the world (see table above).There is also growing evidence from the IMF that many governments of resource rich nations, including the UK and Norway, face declining public sector net worth, i.e., their governments are becoming poorer.[[3]](#footnote-3) Both indicate unsustainable mining.

Losses in mineral value drive many of the other problems with mining. In effect, the people and future generations of Australia have sold mineral wealth worth $100 for $18, a loss of $82. Naturally the extractors are keen to extract as quickly as possible and move on. Trees, tigers and tribals (indigenous peoples) are labeled as anti-development or anti-national. When they resist, we see conflict which can escalate into a civil war.

At present, governments treat royalties and other mineral sale proceeds as “windfall revenue”. Metaphorically, “windfalls” are unpredictable, ownerless, cannot be planned for or managed, and therefore opportunities that should be seized, and consumed like a lottery. If $18 is received for allowing mining, doubling mining would result in $36. Politicians and voters perceive more mining = more government revenue = good. Further, since extraction isn’t recognized as the sale of inherited wealth, the true loss of $82 is hidden. More mining would make a bad situation significantly worse.

It is important to understand that as long as royalties and other mineral sale proceeds are called “revenue”, “income”, “earnings” or “tax”, politicians and voters will advocate for increasing extraction. This will lead to every bit of mineral being extracted. Civilization will collapse.

If on the other hand minerals were understood to be a shared inheritance with the primary duty to ensure future generations inherit either the minerals or their full value, proposals for extraction will raise different questions. Do we need to sell off our inherited wealth? Since we can only extract once, is this the right time to sell? Are we ensuring zero loss in value when we sell? Are we saving the entire sale proceeds for our children and future generations in a new intergenerational asset (“non-wasting asset”)?[[4]](#footnote-4)

**Improving mineral resource governance**

What is needed is (a) the intergenerational equity principle becoming foundational for civilization (survival is the ultimate objective, capital maintenance is primary, growth within the resource base increases likelihood of survival),[[5]](#footnote-5) (b) a global change in paradigm to understand minerals as a “shared inheritance”, not a source of “windfall revenue”,[[6]](#footnote-6) (c) changes to international standards for public sector accounting and reporting, principally IMF’s Government Finance Statistics Manual 2014 (GFSM), (d) changes to constitutions and international law instruments to explicitly require the implementation of the legal principles of intergenerational equity and public trust doctrine / public domain / common heritage of humankind, and (e) systematically applying wealth management principles to the extraction and sale of mineral wealth and other related inheritances.

**Principles of fair mining**

If we see the intergenerational equity principle as foundational, minerals as a shared inheritance and extraction as the sale of the mineral wealth, a number of recommendations follow. We begin with the principles of fair mining:

1. Natural resources, including minerals, are a shared inheritance, owned by the state as a trustee for the people and especially future generations (**Public Trust Doctrine / Public Domain /** **Common Heritage of Humankind**).
2. As we have inherited the minerals, we must ensure future generations inherit either the minerals or their full value (**Intergenerational Equity Principle**).
3. If we extract and sell our mineral wealth, **the explicit objective must be to achieve Zero Loss** in value, i.e., the state as trustee must capture the full economic rent (sale price minus cost of extraction, cost including reasonable profit for extractor). Any loss is a loss to all of us and our future generations, and makes some rich. Unfair.
4. Like Norway, **the entire mineral sale proceeds must be saved in a Future Generations Fund** (the “Fund”), also a part of the shared inheritance.  The Future Generations Fund could be passively invested in a global portfolio of low cost index tracking ESG funds.
5. **Only the real income of the Fund may be distributed, only as a** **Commons Dividend**, equally to all as owners. Future generations would benefit from the dividend in their turn.

The principles of fair mining are likely constitutional in most countries. They are widely seen as fair, ethical, moral, just, and right, and promote equality, liberty, and fraternity. The principles are easy to understand, communicate, enact, and monitor. The fair mining principles diversify risk while likely improving returns, positively impacting inequality and poverty. Reduction in losses are likely which in turn would limit corruption, crony capitalism and growing inequality. Even if limited in size, the dividend would reduce extreme poverty, particularly in poorer countries.

From a public finance management standpoint, (a) this is sustainable – capital has been maintained, (b) the savings rate would rise, (c) it is nearly impossible to outperform the global market rate of return, (d) the dividend is in effect a Universal Basic Income, (e) lower inequality leads to higher economic performance, and (f) more efficient public investment and tax administration as budgets no longer have easy mining money to rely upon. This is a six fold improvement over current practice.

**Other inheritances are impacted by extraction**

This is not enough. Extraction impacts other inheritances.

1. For the environment, under the **Precautionary Principle**, we must first create no-go areas. Then we must prohibit potentially high risk practices (e.g. fugitive methane emissions). We must cap extraction across multiple projects to keep cumulative damage within limits. Of course, we need strong environmental regulations and enforcement.

Under the **Polluter Pays Principle**, we must require the mitigation hierarchy – avoid, restore, offset, compensate. Like the UK’s 25 Year Environmental Plan, the objective should be to leave future generations with more forests, clear streams, etc than we have. Mining projects should have a goal to improve the environment, not avoid harm.

1. Similarly for the local community and their social capital, we first and foremost need **Free, Prior and Informed Consent (FPIC)**. Under the Precautionary Principle, we must first create no-go areas (e.g., sacred mountains like Niyamgiri). Then we must prohibit practices that are potentially high risk for local communities (e.g., leave uncontacted tribes alone). We must cap extraction across multiple projects to keep cumulative damage within limits (e.g., cultural dilution, prostitution). Under the Polluter Pays Principle, we must require the mitigation hierarchy – avoid, restore, offset, compensate. This drives the demand for local benefit sharing.
2. Just as the mineral is an inheritance, so are the jobs and income from extraction. These are inherited opportunities that deplete with extraction. This understanding drives the widespread demands for local content, local procurement and local employment. Therefore, extraction must be capped to ensure availability of the income from extraction over multiple generations. Further, the first right to these incomes / opportunities must be to the mineral owners.
3. Similarly, the opportunity to use the mineral for useful things (ploughshares or swords) is a valuable inheritance. This drives some countries to designate some of their minerals as strategic reserves while importing minerals for their own needs. After all, who is stronger, a nation selling the family gold for consumption by the present generation, or one that is buying the family gold of other nations?
4. Yet another inherited opportunity is to use extraction to develop other aspects of the society. For example, Norway has successfully created global core competencies in deep sea oil extraction and rig building. Others have deliberately used a new mine to create multi-use infrastructure at low incremental cost.

**Safeguarding the shared inheritance of natural resource wealth**

Minerals represent great wealth. Both world wars were ultimate about access to resources. Protecting great inherited wealth against theft, loss or waste requires a paranoid mindset to ensure we fulfill our duty to be good ancestors. Our recommendations are informed by best practices in global wealth asset management.[[7]](#footnote-7)

1. The goal of the state as trustee / manager must be to conserve the corpus of the inheritance. They must treat the minerals, the mineral sale proceeds and the Fund as part of the trust corpus, not proprietary assets – no commingling. Royalties and other sale proceeds must be treated as capital, not “revenue”. Losses must be explicitly disclosed, and the trustee responsible for compensating for the loss from proprietary assets. The trustee / manager must prepare comprehensive accounts for the shared inheritance held in trust, separate from its own proprietary financial statements.
2. In order to prevent theft during the extraction process, the trustee / manager must implement a **best-in-class control system**. This includes a high security mineral supply chain system, best practices from outsourcing contracts, system auditors, a whistleblower reward and protection scheme, etc.
3. Known thieves cannot handle the wealth of humankind. Further, minerals are a regular part of money laundering / terrorism finance. **Fit and Proper Person Tests** (and **Integrity due diligence** more generally) is essential for all involved in managing our wealth, both insiders and outsiders.[[8]](#footnote-8)
4. Each one of us has a duty to future generations to ensure that the shared inheritance is intact. Therefore, the people, as the real owners, should be empowered to verify that they have fulfilled their duty. This requires **Radical Transparency** including open access to the public to all data (including the data feeds) in real time at no cost. Extractors, as outsourced service providers converting mineral wealth to financial wealth, should be required by law to disclose all extraction information without exception. This goes far beyond the EITI standard.

We are recommending a paradigm shift. The points above have been elaborated in representations made on India’s National Mineral Policy[[9]](#footnote-9) as well as to the African Commission on Human and Peoples Rights.[[10]](#footnote-10)

It is important to understand that if the present generation is unable to capture the full value of the minerals and associated inheritances, we could simply leave the minerals in the ground, waiting for a more enlightened era. Nothing is lost, the minerals & associated inheritances are still where they were. This also meets intergenerational equity.

**Significant progress already**

India’s National Mineral Policy 2019 states: “*natural resources, including minerals, are a shared inheritance where the state is the trustee on behalf of the people to ensure that future generations receive the benefit of inheritance. State Governments will endeavour to ensure that the full value of the extracted minerals is received by the State.*” There are a number of other aspects from the points above that are also contemplated in the policy.[[11]](#footnote-11)

Further, on grounds of intergenerational equity, India’s Supreme Court has ordered the creation of a Goa Iron Ore Permanent Fund (current corpus ~$75 million) as well as a cap on iron ore extraction.[[12]](#footnote-12) This is a global judicial precedent.

We are also happy to report that the International Public Sector Accounting Standard Board (IPSASB) has started work on a new IPSAS on natural resources.[[13]](#footnote-13) This would help with amending IMF’s GFSM. A change to the GFSM enables the “shared inheritance” paradigm to replace the “windfall revenue” paradigm, and offers a pathway to explain the centrality of the intergenerational equity principle even those unconcerned about the environment.

**Planetary commons, especially deep sea minerals**

Minerals in the deep sea, Antarctica, the Arctic, the moon and outer space are all planetary commons with international treaties partially governing them. Deep Sea Mining is starting,[[14]](#footnote-14) and would likely set the precedent for all others.

The United Nations Convention on the Law of the Sea (UNCLOS) declares that the area beyond the limits of national jurisdiction (comprising the seabed, ocean floor and subsoil, excluding the water above) (the “Area”) and its resources, are the Common Heritage of Mankind (CHM). All rights in the resources of the Area are vested in humankind as a whole.  UNCLOS provides that activities in the Area shall be organized, carried out and controlled by the International Seabed Authority (the “Authority”) for the benefit of humankind as a whole, on whose behalf the Authority shall act.

The Authority is finalizing the terms of deep sea extraction, and how the mineral sale proceeds are to be utilized. Under the current UNCLOS, any commercial, legal or environmental terms now finalized would likely apply to all subsequent licenses forever. It is apparent that we have little idea either about the value of the minerals in the Area, or the environmental resources & the damage extraction will have. If the Authority contracts to sell our wealth without knowing its value, we will almost certainly suffer a loss. Further, UNCLOS was negotiated and signed over a generation back, when our understanding of aspects like transparency and governance, or biodiversity were far more primitive. Consequently, it is essential that UNCLOS be updated before any extraction in the deep sea is contemplated. In the interim, on behalf of humankind, the Authority must put a moratorium on extraction. It would be extremely irresponsible to extract under this woefully inadequate legal framework.

**Recommendations**

We strongly recommend that UNEP (a) adopt the intergenerational equity principle as the foundation principle for examining mineral resource governance, (b) adopt the “shared inheritance” paradigm for mineral resources and eschew “revenue”, “tax”, “earnings” or “income” when referring to royalty and other mineral sale proceeds, (c) recommend that IMF and related standards setters amend their standard to treat extraction as the sale of great inherited wealth, (d) recommend that states and other trustees / managers of mineral wealth treat it as wealth held in trust for the people and future generations separate from proprietary property, (e) recommend the implementation of the full framework suggested above, especially the five principles of fair mining, (f) recommend that UNCLOS be updated to reflect our improved understanding of issues of biodiversity, corruption, transparency, etc from extraction of minerals, (g) similar legal treaties be negotiated for the other global mineral commons.

**Conclusion**

Adopting and faithfully implementing the intergenerational equity principle would ensure that the shared inheritance of mineral wealth will be managed for the broader benefit of the people and especially future generations. It will build freer, just, and more equal and fraternal humankind. It will promote real equality among humans. It is moral, ethical, fair and right. It fulfils our duties to our future generations. It is in keeping with the SDGs. It is in keeping with the Universal Declaration of Human Rights. *Let us be the generation that changes the course of history for the better, not the one that consumed the planet.*

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Sign on behalf of an organisation: <https://forms.gle/xw2XSj4zxZVuCgyf9>

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2. [https://medium.com/@thefutureweneed/global-estimates-of-loss-rates-21ae4b48b065](https://medium.com/%40thefutureweneed/global-estimates-of-loss-rates-21ae4b48b065) [↑](#footnote-ref-2)
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9. <https://drive.google.com/file/d/0B7TzYPpy8SVcSFN1MTJnam11c0U/view> [↑](#footnote-ref-9)
10. <http://goenchimati.org/wp-content/uploads/2020/04/2019-12-30-TFWN-comments-on-Draft-study-on-extractives-env-and-human-rights-by-ACHPR-WGEI.pdf> [↑](#footnote-ref-10)
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14. <https://www.theatlantic.com/magazine/archive/2020/01/20000-feet-under-the-sea/603040> [↑](#footnote-ref-14)