



No.1/3/13-Coord.
Government of India
National Commission for Scheduled Tribes

6th Floor, 'B' Wing,
Lok Nayak Bhawan,
Khan Market,
New Delhi 110003
Dated: 21/01/2013

To,

- 1) Dr. Rameshwar Oraon, Chairperson
- 2) Smt. K. Kamala Kumari, Member
- 3) Shri Bheru Lal Meena, Member

Sub: - Summary record of the 43rd Meeting of the Commission held at 12:30 hours on 21st January, 2013.

Sir,

I am directed to refer to the above subject and to say that 43rd Meeting of the National Commission for Scheduled Tribes was held at 12:30 Hrs. on 21st January, 2013 in the Conference Room of the Commission at Lok Nayak Bhawan, New Delhi. The meeting was presided over by Dr. Rameshwar Oraon, Chairperson, National Commission for Scheduled Tribes. A copy of the Summary Record of the meeting is enclosed for information and record.

Yours faithfully,


(K.D. Bhansor) Mrs.
Deputy Director

Copy with a copy of the Summary Record of the meeting forwarded to the following officers with the request that information about action taken on the decision taken in the meeting concerning each Unit / Office may be furnished to Coordination Unit by 15th February, 2013 positively.

- (i) Director(RU-I & RU-II)
- (ii) Dy. Director (RU-III, RU-IV & Admn.)
- (iii) AD/RO In-charge – RU-I/RU-II/RU-III/RU-IV/Coord./ AD/OL

Copy with a copy of the Summary Record of the meeting forwarded for information to:

1. PS to Chairperson,
2. PPS to Joint Secretary,
3. Assistant Director/ Research Officer in Regional offices of National Commission for Scheduled Tribes at Bhopal/ Bhubaneswar/ Jaipur/ Raipur/ Ranchi and Shillong.
4. Sr. System Analyst (NIC Cell, NCST) for uploading on the website.


(K.D. Bhansor) Mrs.
Deputy Director



भारत सरकार

राष्ट्रीय अनुसूचित जनजाति आयोग
GOVERNMENT OF INDIA

NATIONAL COMMISSION SCHEDULED TRIBES

(अनुसूचित जनजातियों को दिए गए अधिकारों और सुरक्षाओं के उल्लंघन से संबंधित सभी मामलों का अन्वेषण और अनुवीक्षण करने के लिए संविधान के अनुच्छेद 338क के अधीन स्थापित एक संवैधानिक आयोग)

संख्या/No.-1/3/13-समन्वय

दिनांक/Date:21/01/2013

प्रति

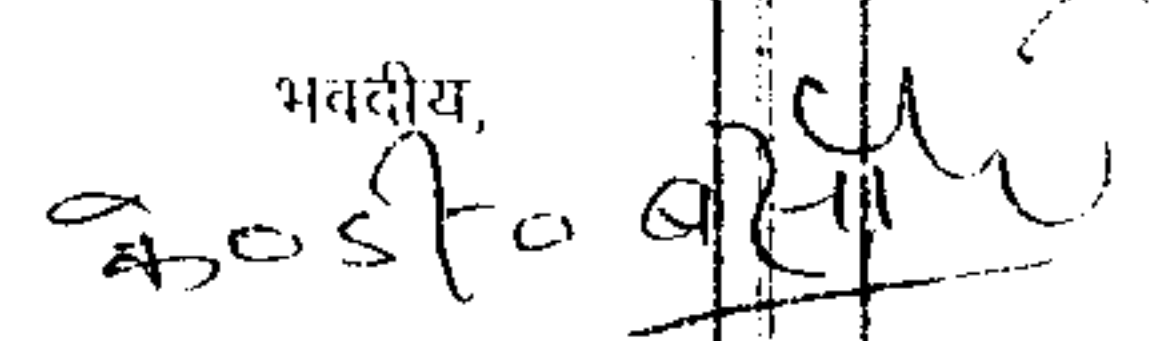
- 1) डा0 रामेश्वर उराँव, अध्यक्ष
- 2) श्रीमती के. कमला कुमारी, सदस्य
- 3) श्री भैरु लाल गीणा, सदस्य

विषय: राष्ट्रीय अनुसूचित जनजाति आयोग की दिनांक 21 जनवरी, 2013 को प्रातः 12.30 बजे सम्पन्न 43वीं बैठक का संक्षिप्त अभिलेख।

महोदय,

गुझे उपर्युक्त विषय का उल्लेख करते हुए यह कहना है कि आयोग की 43वीं बैठक राष्ट्रीय अनुसूचित जनजाति आयोग, लोकनायक भवन, नई दिल्ली के सम्मेलन कक्ष में दिनांक 21 जनवरी, 2013 को प्रातः 12.30 बजे हुई थी। बैठक की अध्यक्षता डा0 रामेश्वर उराँव, अध्यक्ष, अनुसूचित जनजाति आयोग द्वारा की गई। बैठक के संक्षिप्त अभिलेख की एक प्रति सूचना एवं अभिलेख हेतु संलग्न है।

भवदीय,

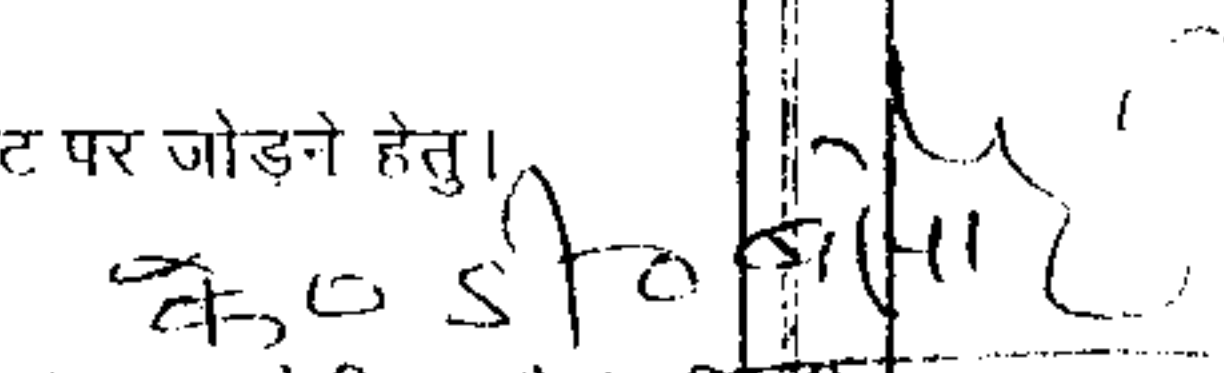

(कृष्णा देवी बन्सौर) श्रीमती
उप निदेशक

प्रतिलिपि : बैठक के संक्षिप्त अभिलेख की एक प्रति सहित, निम्नलिखित अधिकारियों को इस अनुरोध के साथ अग्रेषित है कि बैठक में लिए गए निर्णयों पर की गई कार्रवाई के संबंध में जानकारी प्रत्येक संबंधित एकक/ कार्यालय द्वारा 15 फरवरी, 2013 तक अवश्य ही समन्वय एकक को भेज दी जाए।

- (i) निदेशक (आर0यू0-I एवं आर0यू0-II)
- (ii) उप निदेशक (आर0यू0-III, आर0यू0-IV एवं प्रशासन)
- (iii) सहायक निदेशक/ अनुसंधान अधिकारी प्रभारी आर0यू0-I/ आर0यू0-II/ आर0यू0-III/ आर0यू0-IV/ समन्वय/ सहायक निदेशक (राजभाषा)।

प्रतिलिपि: बैठक के संक्षिप्त अभिलेख की एक प्रति सहित, सूचनार्थ अग्रेषित:

1. अध्यक्ष के निजी सचिव।
2. संयुक्त सचिव के प्रधान निजी सचिव।
3. निदेशक/ सहायक निदेशक/ अनुसंधान अधिकारी, राष्ट्रीय अनुसूचित जनजाति आयोग के भोपाल/ भुवनेश्वर/ जयपुर/ रायपुर/ रांची/ शिलांग स्थित क्षेत्रीय कार्यालय।
4. वरिष्ठ सिस्टम विश्लेषक (NIC Cell, NCST) - आयोग की वेबसाइट पर जोड़ने हेतु।


(कृष्णा देवी बन्सौर) श्रीमती
उप निदेशक

NATIONAL COMMISSION FOR SCHEDULED TRIBES

Subject: Summary record of the 43rd meeting of the National Commission for Scheduled Tribes held at 12:30 HRS on 21/01/2013.

The 43rd meeting of the Commission was held at 12:30 hrs on 21/01/2013 in the Conference Room of the Commission in Loknayak Bhawan, New Delhi. The meeting was presided over by Dr. Rameshwar Oraon, Hon'ble Chairperson, NCST. List of the participants is enclosed at **ANNEXURE**. There were three Agenda Items for discussion in the meeting. All the Agenda Items were discussed in the meeting.

2. The decisions taken and the action points that emerged out of the discussions held in the meeting are given below:

Agenda Item I | Draft Cabinet Note for Amendment of Coal Bearing Areas (Acquisition & Development) Act, 1957

3. Ministry of Tribal Affairs vide O.M. No. 17011/01/2013-P&M dated 7/01/2013 (received on 10/1/2013) have sought the comments of the Commission on the Draft Cabinet Note for Amendment to the Coal Bearing Areas (Acquisition & Development) Act, 1957, with reference to the Ministry of Coal letter dated 31/12/2012.

4. The Commission noted that the MTA O.M. dated 7/1/2013 seeking comments of the Commission was received in the Commission only on 10/1/2013 while Ministry of Coal vide their letter 31/12/2012 had sought the comments on the Draft Cabinet Note within a period of 15 days. The Commission has guidelines which include stipulated procedure to be followed for dealing with such cases, which require minimum 2 weeks. MTA may, therefore, be requested to forward such cases on an urgent basis.

5. Joint Secretary, NCST mentioned that the Draft Cabinet Note has been submitted for introducing the Coal Bearing Areas (Acquisition and Development) Amendment Bill, 2013 in the Lok Sabha to insert a provision to enable return of mined

out/unutilized land to the concerned State Governments on the basis of the proposed Amendment. The return of mined out/unutilized land to the concerned State Govts. has been justified based on the recommendations of a Committee constituted by the Ministry of Coal in Dec., 2009 under the Chairmanship of Additional Secretary, Ministry of Coal and with the justification that the concerned State Govts. hold the surface as well as the mining rights situated within their jurisdiction and also the custodian of all land situated within their jurisdiction. The proposed Amendment provides for counting of reclaimed afforested land in compensatory afforestation towards future acquisition of forest land for mining as well as use of returned land for commercial purposes, with payment of to the CIL at the prevailing market rate.

6. The Commission observed that most of coal mines are situated in Scheduled/Tribal Areas which had caused displacement of large magnitude of tribals. The land is the only asset tribals are having and is also the source of their livelihood. Therefore, acquisition of tribal land, leading to their landlessness, is both socially and economically depriving the tribals, who have limited capacity to earn their livelihood outside their habitat and pursue economic activity not involving agricultural land. Sensitivity to these tribal needs must be accounted into the proposed Amendment with reference to proviso (d) and (e), considering the following views/comments of the Commission:

- i) Tribal lands are not transferable to non-tribals – whether by sale, lease or mortgage, etc. In SLP (civil) 4601-02 of 1997, Samatha Vs. Government of Andhra Pradesh and Ors. the Supreme Court had observed that in the light of the provisions contained in Clause (a) of sub-para (2) of Para 5 of Scheduled V of the Constitution, there is implied prohibition on the State's power on allotment of its land to non-tribals, in the Scheduled Areas, which also limits the State's power to acquire tribal land for subsequent allotment to non-tribals whether for incidental public purposes or otherwise. Any law which seeks to expropriate tribal rights over land must recognize these differences; and provide appropriate and equitable circumstances as well as compensation of rights.
- ii) The acquired land remaining unutilized, it should be returned back to the original tribal owner wherever possible, without insisting on the re-payment of the compensation amount since the livelihood loss caused to the landowners may have eroded the compensation received (as is done on expiry of a lease).
- iii) All other rights of the tribals over the unutilised land should be restored.

Rameshwar Rao

डॉ. रामेश्वर राव/Dr. RAMESHWAR RAO
 अध्यक्ष/Chairperson
 राष्ट्रीय आयोग/राष्ट्रीय आयोग
 National Commission for Scheduled Tribes
 भारत सरकार/Govt. of India

iv) In case the land is subsequently utilized by the Govt. for a commercial purpose (e.g. for real estate development after mining, etc.), the earnings from such activity any alternate use should also be shared with the original land owners in similar fashion for appreciation in land values. Share of earnings from alternative users of land should also be provided, if future land use is of a commercial nature.

7. Based on the above deliberations, the Commission approved the comments, as placed at the Appendix, on the proposed Amendment to the Act.

8. Joint Secretary, NCST also highlighted that land is a precious resource and there is a need for proper closure to enable beneficial post-closure use to the proximate communities, especially STs. He further mentioned that there are many mines which have been closed prior to formulation of the new laws/guidelines. In respect of such abandoned mines, rehabilitation/separation of affected tribals due to closure needs to be commensurate with their post closure socio-economic activities and aspirations. The Commission desired that the Ministry of Coal should be requested to submit a brief Note to the Commission on the status of mine closure plan in respect of abandoned mines in Scheduled Areas within 3 weeks and thereafter, a meeting with the Secretary, Ministry of Coal should be organised for a presentation by the Ministry of Coal in the matter. The officials of the Ministry of Environment & Forests, Coal Mine Planning and Design Institute (CMPDI), Director General of Mine Safety (DGMS) may also be invited in the proposed meeting.

Agenda Item II	Amendment to the Prohibition of Unfair Practices in Technical Education Institutions, Medical Educational Institutions and Universities Bill, 2010
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9. Ministry of Tribal Affairs, vide O.M. No. 20025/12/2012-P&M(Vol.-I) dated 10/01/2013, have sought the comments of the Commission on the Amendment to the Prohibition of Unfair Practices in Technical Education Institutions, Medical Educational Institutions and Universities Bill, 2010 with reference to the MoHRD letter No. 4-27/2009-U1A/U.Policy dated 12/07/2012.

Rameshwar Oraon

डा. रामेश्वर उराँव/Dr. RAMESHWAR ORAON
अध्यक्ष/Chairperson
राष्ट्रीय अनुसूचित जनजाति आयोग
National Commission for Scheduled Tribes
भारत सरकार/Govt. of India
नई दिल्ली/New Delhi

10. The Commission noted that the MoHRD letter dated 12/07/2012 was received in the Ministry of Tribal Affairs on 13/07/2012, requesting the comments/ suggestions in the matter within one week. However, MTA sought the comments of the Commission vide letter dated 10/01/2013 after a lapse of about six months. The Commission observed that the cases, where the Sponsoring Ministry lays down time-frame for the comments/ suggestions, should be forwarded by the MTA to the Commission on an urgent basis, so that the views/comments of the Commission on policy related issues concerning STs are timely available to the Sponsoring Ministry/Deptt.

11. Joint Secretary, NCST mentioned that the Bill aims to provide an institutional mechanism for preventing, prohibiting and punishing unfair practices in higher educational institutions. The proposed amendment makes it mandatory to disclose adherence to reservation provisions (in public funded institutions) and policy framework in place (in private un-aided institution) to account for addressing equity concerns in the prospectus and also de-links from the Education Tribunal Bill,2010 (which has yet to be considered in the Parliament with official amendments) and restores adjudication of penalties to civil courts for punishments and penalties in case of non-adherence to the same. Thus, the proposed Bill provides for public accountability of such institutions and prevention of unfair practices being adopted vis-à-vis students.

12. After detailed discussion, the Commission decided to recommend the proposed amendment.

Agenda Item III	Draft Note for the Cabinet on "Policy on Transfer or Alienation of Land Held by Government and Government Controlled Statutory Authorities"
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13. Ministry of Tribal Affairs. Vide, O.M. No. 4/17/2012-CP&R dated 02/01/2013 (received in the Commission on 08/01/2013), have sought the comments of the Commission on the Draft Note for the Cabinet on "Policy on Transfer or Alienation of Land Held by Government and Government Controlled Statutory Authorities" with reference to the Ministry of Finance letter No. 10/17/2011-INF/EC dated 17/09/2012.

Rameshwar Oraon

डा. रामेश्वर उरांव/Dr. RAMESHWAR ORAON
अध्यक्ष/Chairperson
राष्ट्रीय अनुसूचित जनजाति आयोग
National Commission for Scheduled Tribes
भारत सरकार/Govt. of India
नई दिल्ली/New Delhi

14. The Commission noted that the Ministry of Finance letter dated 17/09/2012 was received in the Ministry of Tribal Affairs on 25/09/2012 requesting the comments/ suggestions in the matter within two weeks. However, the comments of the Commission were sought by the MTA vide letter dated 02/01/2013, after a lapse of about four months. The Commission observed that the cases, where the Sponsoring Ministry lays down specific time-frame for the comments/ suggestions, should be forwarded to the Commission on an urgent basis.

15. Joint Secretary, NCST mentioned that the proposed policy is aimed at strengthening the public sector land management, and also to enhance the transparency and efficiency in alienation or use of public land. The policy proposes a notification by the Cabinet Sectt. for the constitution of a Public Sector Management Committee as per paragraph 21 A of the Draft Note and issuance of the broad policy guidelines by the Cabinet Sectt. for exchange, transfer, sale, lease or licensing of lands held by all Central Government Ministries, Departments, Government controlled Statutory Authorities and CPSUs as per paras 21 B to 21 F read with para 20 of the Cabinet Note.

16. The Commission was informed that the proposed guidelines provides for exchange or transfer of land (Govt. to Govt.), sale of land, lease of land (either a Govt. to Govt. or a Govt. to Private transaction) and licensing of land (either Govt. to Govt. or Govt. to Private Transaction). The sale of land also includes commercial, industrial, residential or institutional purposes.

17. The Commission observed that the views/ comments of the Commission in respect of the Scheduled Areas, as mentioned above with reference to Agenda I, are also applicable with regard to the proposed use of land in Scheduled Areas. The Commission has already observed in the case of similar Legislative Proposals affecting Scheduled Areas that the robust "pre-facto" mechanism have to be grafted to Constitutional provisions which would ensure requisite attention to tribal concerns- foremost of which would be the mandatory inclusion of a separate chapter on Special Provisions for Scheduled Areas/ Scheduled Tribes in every Central or State Legislation

Rameshwar Oraon

affecting the habitat tribals' property rights and enjoyment of lands occupied, the religion, customs and culture of these people and traditional relationship with their environment (as obligated under UN Conventions). The Commission, accordingly recommended that the legislative proposal under consideration by the Government may include separate Chapter on Applicability to Scheduled Areas / Scheduled Tribes

18. The Commission further observed that, while communicating views of the Commission on policy related issues, the MTA should be impressed upon to ensure that according to the revised instructions issued by the Cabinet Sectt. vide OM dated 16/2/2012, the views of the Commission as received by them are placed before the Minister, MTA before their final views/comments on such issues are communicated to the sponsoring Ministry/ Department. Further, the sponsoring Ministry/ Department should be requested to include in/ enclose with the note for consideration of the Cabinet/ Cabinet Committees the unabridged/ unedited views of the Commission along with the views of the MTA along with responses their responses thereon.

19. The meeting ended with a vote of thanks to the Chair.

Rameshwar Oraon

डा. रामेश्वर जराँव/Dr. RAMESHWAR ORAON
अध्यक्ष/Chairperson
राष्ट्रीय अनुसूचित जनजाति आयोग
National Commission for Scheduled Tribes
भारत सरकार/Govt. of India
नई दिल्ली/New Delhi

APPENDIX

THE COAL BEARING AREAS (ACQUISITION AND DEVELOPMENT)-(AMENDMENT) BILL, 2013

A

BILL

Further to amend the coal Bearing Areas (Acquisition and Development) Act, 1957

20 of 1957

Be it enacted by Parliament in the Sixty- third Year of the Republic of India as follows:-

1. (1) This Act may be Called the Coal Bearing Areas (Acquisition and Development) (Amendment) Act, 2013

Short title, Application and Commencement.

(2)It extends to the whole of India, except the State of Jammu and Kashmir.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. In the Coal Bearing Areas (Acquisition and Development) Act, 1957 after Section 18A, following Section shall be inserted, namely:-

Insertion of new section (Return of mined out land /surplus land no longer required for mining land allied activities or de-notification of land acquired).

"18B The Central Government may, by order in writing, in respect of the land acquired under this Act, return to the State Government concerned land

(a) Which is yet to be taken into possession but is no longer required for mining and allied activities;

(b) Which has been taken into possession after payment of compensation, but is no longer required for mining and allied activities;

(c) Which has been taken into possession after providing Rehabilitation and Resettlement benefits to the project affected families and is worked out with or without leaving thinning reserves:

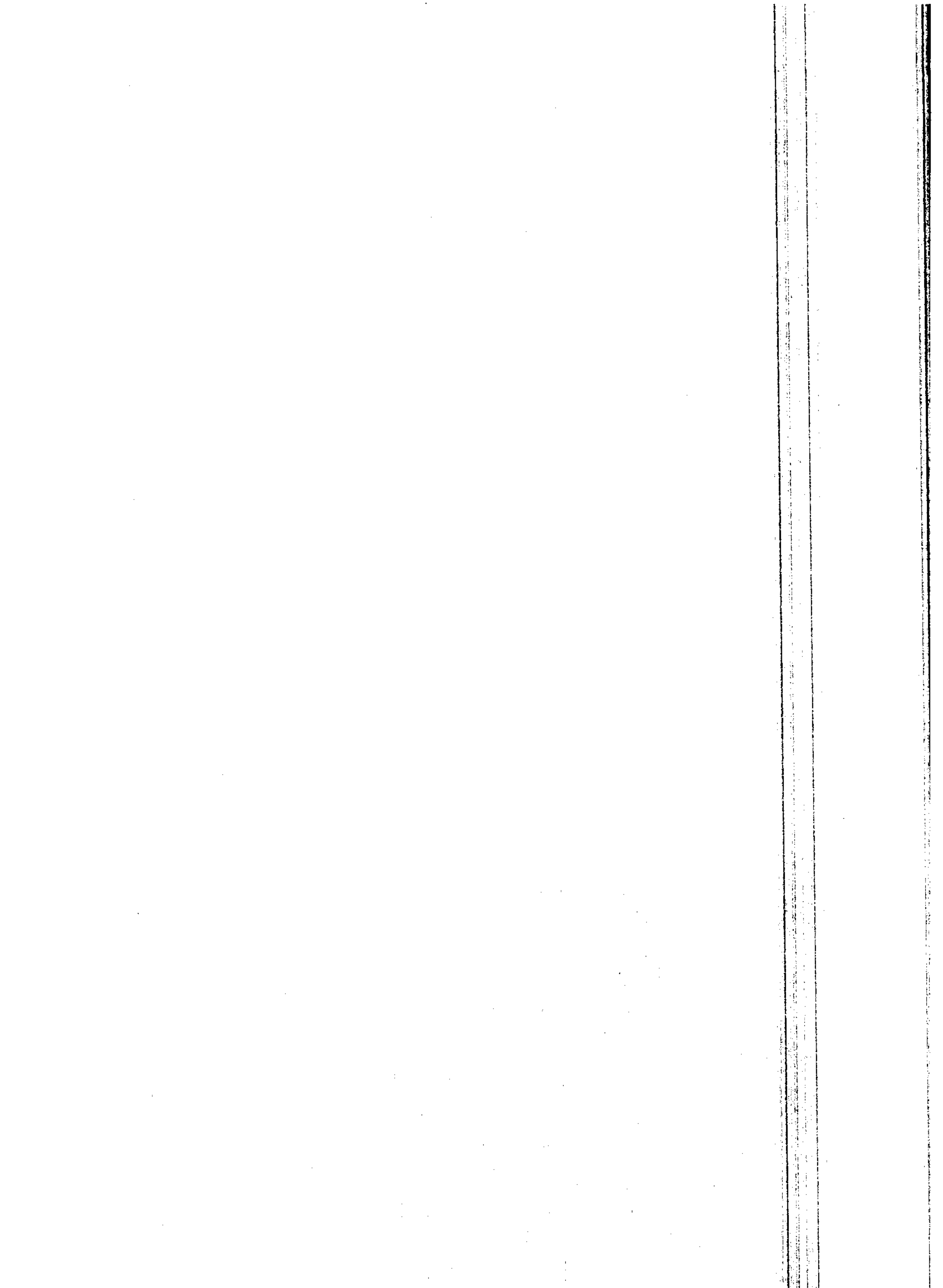
Provided that

Comments of the National Commission for Scheduled Tribes

(a) The land so returned shall be mapped out and coal

seams known to be available therein shall be clearly mentioned.	
(b) Before return of mined out land it shall be ensured by the coal company concerned that the land has been reclaimed as per the Mine Closure Plan guidelines.	
(c) The balance land shall be given to the State Governments free of cost and they may be advised to form a Land Bank of such	<p>i) The proviso is intended for use of land for commercial purposes etc. In this connection, it is emphasised that the Tribal lands are also not transferable to non-tribals – whether by sale, lease or mortgage, etc. In SLP (civil) 4601-02 of 1997, Samatha vs. Govt. Of Andhra Pradesh and Ors. the Supreme Court had observed that in the light of the provisions contained in Clause a of sub-para 2 of Para 5 of Scheduled V of the Constitution, there is implied prohibition on the State's power on allotment of its land to non-tribals, in the Scheduled areas, which also limits the State's power to acquire tribal land for subsequent allotment to non-tribals whether for incidental public purposes or otherwise. Any law which seeks to expropriate tribal rights over land must recognize these differences; and provide appropriate and equitable circumstances as well as compensation of rights.</p> <p>ii) In the event of the</p>

	<p>acquired land remaining unutilized, it should be returned back to the original tribal owner wherever possible, without insisting on the repayment of the compensation amount since the livelihood loss caused to the landowners may have eroded the compensation received (as is done on expiry of a lease</p> <p>iii) All other rights of the tribals over the unutilised land should be restored.</p> <p>iv) In case the land is subsequently utilized by the Government for a commercial purpose, the earnings from such activity or any alternate use should also be shared with the original land owners in similar fashion for appreciation in land values. Share of earnings from alternative users of land should also be provided, if future land use is of a commercial nature.</p>
<p>(d) Reclaimed afforested land that is returned to the State Governments shall be counted in compensatory afforestation towards future acquisition of forest land for mining and may be reserved by the State Government for the purpose</p>	
<p>(e) In case the returned land is used for commerce purpose, the State Governments would be bound to pay the prevailing market value of land to CIL. The market value of the land shall be calculated as per the provision of the prevailing Central of State LA Act or the prevailing system for the calculation of market value by the State Governments.</p>	<p>Please see comments against proviso (c) above.</p>



ATTENDENCE SHEET

NATIONAL COMMISSION FOR SCHEDULED TRIBES

43rd Meeting of the Commission held on 21/01/2013 in the Conference Room of the Commission – List of participants.

NATIONAL COMMISSION FOR SCHEDULED TRIBES

Sl. No.	Name and Designation	
1	Dr. Rameshwar Oraon, Chairperson	In Chair
2	Smt. K. Kamala Kumari, Member	
3	Shri. Bheru Lal Meena, Member	
4	Shri Aditya Mishra, Joint Secretary	
	In Attendance	
1	Shri M. S. Chopra, Director	
2	Smt. K. D. Bhansor, Deputy Director	
3	Shri S. P. Meena, Assistant Director	
4	Shri R. C. Durga, Consultant	

