

MEMORANDUM OF ACTION TAKEN

ON

**FIRST REPORT ON ILLEGAL MINING OF IRON AND MANGANESE
ORES IN THE STATE OF ODISHA**

OF

JUSTICE M.B. SHAH COMMISSION OF INQUIRY

MINISTRY OF MINES

‘MEMORANDUM OF ACTION TAKEN’ ON THE ‘FIRST REPORT ON ILLEGAL MINING OF IRON AND MANGANESE ORES IN THE STATE OF ODISHA’ OF JUSTICE M.B. SHAH COMMISSION OF INQUIRY

1. The Government of India set up Shri Justice M. B. Shah Commission of Inquiry for Illegal Mining of Iron Ore and Manganese (**Commission**) vide Notification No. S.O. 2817(E) dated 22nd November, 2010, with the following terms of reference:

- (i) to inquire into and determine the nature and extent of mining and trade and transportation, done illegally or without lawful authority, of iron ore and manganese ore, and the losses therefrom; and to identify, as far as possible, the persons, firms, companies and others that are engaged in such mining, trade and transportation of iron ore and manganese ore, done illegally or without lawful authority;
- (ii) to inquire into and determine the extent to which the management, regulatory and monitoring systems have failed to deter, prevent, detect and punish offences relating to mining, storage, transportation, trade and export of such ore, done illegally or without lawful authority, and the persons responsible for the same;
- (iii) to inquire into the tampering of official records, including records relating to land and boundaries, to facilitate illegal mining and to identify, as far as possible, the persons responsible for such tampering; and
- (iv) to inquire into the overall impact of such mining, trade, transportation and export, done illegally or without lawful authority, in terms of destruction of forest wealth, damage to the environment, prejudice to livelihood and other rights of tribal people, forest dwellers and other persons in the mined areas, and the financial losses caused to the Central Government and State Governments.

The Commission was also required to:

- (i) recommend remedial measures to prevent such mining, trade, transportation and export done illegally or without lawful authority,
- (ii) submit its report to the Central Government as soon as possible but not later than eighteen months from the date of its first sitting, and
- (iii) submit interim reports to the Central Government before the expiry of the said period on any of the matters specified in the notification and recommend specific steps that may be required to be taken urgently to curb the menace of such illegal mining, trade and transportation.

2. The Commission submitted its ‘First Report on illegal mining of iron and manganese ores in the State of Odisha’ on 02nd July, 2013.

3. A ‘Memorandum of Action Taken’ on the ‘First Report on illegal mining of iron and manganese ores in the State of Odisha’ of the Commission has been prepared taking into account the comments received from concerned Central Ministries / Departments and Government of Odisha.

4. The Action Taken Report in respect of the recommendations of the Commission is given below:

Chapter No.1: Illegal mining in the State of Odisha

S. No.	Gist of Commission’s Observations/ Findings / Recommendations	Action Taken Report
1	<p>DGPS survey of the lease areas</p> <p>The Government of Odisha had measured area of the mining leases by DGPS method and forwarded the report to the Commission. The Report was compared with Google Images and in 82 cases of mining leases, encroachment was found by the Commission.</p> <p>Personal hearings of lessees were held from 27.02.2013 to 04.03.2013 at Bhubaneswar, Odisha. Some Ld. Counsel for lessees disputed the said measurement and requested for re-measurement at the cost of lessees. As suggested by the Commission, the State Government appointed Committees to re-survey the exact area. Accordingly, the Commission passed the order for re-survey for 37 leases which is under progress. The total provisional encroachment by these 37 lessees is about 552.35 ha. However, this is subject to completion of re-survey.</p> <p>With regard to 05 leases, no encroachment was found.</p> <p>For 48 leases out of 82 leases, no order for re-survey was passed, since there was no request/dispute from the representative and/or Ld. Counsel for the respective lessee. In these 48 cases, the encroachment is 836.31ha.</p> <p>The total encroachment for both the categories is 1388.66 ha.</p>	<p>Government of Odisha</p> <p>The State Government has stated that conclusive findings can be arrived at only after ground truthing for which steps will be taken.</p> <p>Regarding lease wise resurvey, the State Government has informed that resurvey was taken up in 39 leases. The total area of the 39 leases is 7244 ha. and on resurvey by a multi-disciplinary committee, it was found out that the area enjoyed is 6855 ha. The State Government has mentioned that due to the difference between traditional technology and the DGPS, there is a mismatch between the lease area as per land schedule and the area enjoyed by the lessees. However, the extent of the area is more or less matching thereby indicating that there is no large scale violation leading to illegal mining as alleged.</p> <p>The State Government has invoked section 21(5) of Mines and Minerals (Development and Regulation) Act, 1957 (MMDR Act, 1957) against the lessees to recover the price of ore raised in excess of the quantities specified in various statutory clearances. Some of the lessees have obtained stay orders from the Revision Authority against the recovery. The State Government</p>

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	<p>The area of encroachment have been calculated by in-built auto device of the programme (Google Earth Pro).</p> <p>For encroachment and unauthorized extraction of minerals from the pits, action is to be taken under Section 21(5) of the MMDR Act, 1957.</p>	<p>has taken decision to move the Hon'ble High Court of Orissa for vacation of such stay orders by filing writ petition. Thus, the action of State Government in these cases for recovery of the assessed amount is at present sub judice. In the remaining cases, efforts are made to recover the amounts by finalizing the proceeding on the basis of the reply furnished by the lessees.</p>
2	<p>Illegal Mining in Joda Mining Circle</p> <p>The Commission received a copy of a report prepared by the State Level Enforcement Squad (SLES) regarding conduct of enquiry in Joda Mining Circle on 20.3.2013 on the basis of the petition sent by Government in GA (Vigilance) Department dated 04.03.2013. The said report points out that, in all, from the years 2003-04 (Jan., 2004 to March, 2004) to 2009-10 (April-July), production was 47,48,826MT (Forty Seven Lac Forty Eight Thousand Eight Hundred Twenty Six) and total dispatch for these years was 45,22,639 MT (Forty Five Lac Twenty Two Thousand Six Hundred Thirty Nine).</p> <p>Its valuation, as per the said report, is approximately more than Rs.2,000crore (Two Thousand crore).</p> <p>Admittedly, no mining lease has been granted for this area and, therefore, obviously and apparently, it is illegal mining which can be visualized from the pit, dumps and other materials. For this purpose, appropriate proceedings were required to be initiated under Section 21(5) of the MMDR Act, 1957.</p> <p>Further, apart from Section 21(5) of the MM(DR) Act, this would be a criminal offence punishable for theft, trespass and other provisions of Indian Penal Code, 1973 (I.P.C.) as iron and manganese ores have been extracted and sold from Government forest land without any authority or permission. The offenders should be prosecuted under Section 379 and other Sections of I.P.C., by holding necessary investigation by the Central Bureau of Investigation (C.B.I.).</p> <p>Mere recovery u/s. 21(5) of MMDR Act, 1957 would not be sufficient to deter other persons from committing such offences. Investigating Agency should be requested to investigate whether it was done in connivance of the concerned officers of the Forest, Mining and Revenue Departments and others because the illegal mining of such a large magnitude cannot be done without the connivance of the district level and above officials of Mines, Revenue and Forest Departments. There may be also some political shelter.</p> <p>It is to be stated that Forest Department has also filed acaseNo.228/BL of 11-12 dated 02.12.2011 before the J.M.F.C, Barbil.</p> <p>The cases filed before the J.M.F.C. and others are mainly to cover up such a big scandal and for finding a way out to escape. Such a large magnitude of illegal mining cannot take place without a conspiracy. The said complaint was filed just before the visit of Commission to Odisha State.</p> <p>Since this is one of the biggest illegal mining ever observed by the Commission, it is strongly felt that this is a fit case to handover to Central Bureau of Investigation, for further investigation and follow up action.</p>	<p>Government of Odisha</p> <p>The following action has been taken by the State Government against the lessee and power of attorney holder for encroaching upon adjoining Reserve and Revenue Forest land and illegally extracting and removing iron ore:</p> <ol style="list-style-type: none"> (i) Prevention of corruption cases has been registered against lessee and power of attorney holders; (ii) Through GPS survey involvement of the accused in illegal mining was established; (iii) Disciplinary action has been initiated against the concerned officers of the Mining, Revenue and Forest Departments of the State Government. 11 officers of Forest and Mining Departments have been placed under suspension; (iv) Bank Accounts of accused individuals and Companies having a total balance of Rs. 481 lakhs have been frozen, and requisitions sent for restraining sale/ transfer of their immovable properties; (v) Attachment proceedings have been commenced for attaching movable and immovable properties; and (vi) The State Vigilance has already charge sheeted 25 persons including officers from Forest and Mining Department, the lessee B K Mohanty, the Power of Attorney Holder, Shri Deepak Gupta and the Directors of Deepak Steel and Power Ltd, Barbil for illegal mining activities beyond lease area and removal of 65,25,741.438 MT of ore amounting to Rs.1520,39,64,049. The case is now sub judice in the court of Special Judge, Vigilance, Keonjhar vide VGR No. 5/2013. Disciplinary action has also been initiated against Government servants including Senior Officers. <p>The Vigilance Department of State Government has taken prompt steps and conducted investigation effectively in this case. Therefore, there is no need of investigation by Central Bureau of Investigation.</p>

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3	<p>Information about leases on Website</p> <p>(i) To ensure transparency, the State Governments should make all the information about mining leases public and display the same on a website.</p> <p>(ii) This would also help to comply provisions of Section 4 of Right to Information Act, 2005.</p> <p>(iii) All the conditions imposed for grant of FC and EC permissions, should also be displayed on website. This would facilitate number of persons to verify various illegalities including encroachment, excess production, violation of EC conditions, violation of Mining Laws, Forest Laws, etc.</p> <p>In any set of circumstances as recommended previously where mining lease is granted with conditions namely, Conditions in case of F.C. clearance (wherever require) or E.C. clearance, the said conditions should be published on website. If this is done, public at large would be in position to note and draw the attention of the concerned officers for taking actions.</p> <p>Information with regard to lease and conditions which are required to be complied with should be published on website.</p>	<p>Ministry of Mines The Ministry of Mines is in the process of developing 'Mining Tenement System' (MTS) to e-enable processes associated with Mineral Concession Regime which, inter alia, will identify lease areas precisely on a web based system. Once MTS is commissioned, details about a lease will be available online in the public domain. The roll out of the MTS is expected to take about 18 months, commencing from mid-2014.</p> <p>Government of Odisha The State Government has adopted state - of - the - art technology by introducing a computerized system known as Integrated Mines and Minerals Management System (i3MS) since 2010-11 which while establishing effective control over illegal mining and mineral transportation discloses name and address of lease/licence holders, details of the lease, lease area, tenure of the lease, status of various statutory clearances along with the conditions imposed by the competent authority under different statutory clearances like Forest (Conservation) Act, 1980, Environment (Protection) Act and all other information relating to the lease/licence. This information is already displayed in the website of the Department of Steel and Mines, Government of Odisha at www.orissaminerals.gov.in</p>
4	<p>Reward for whistle-blowers A policy or a rule may be framed by the Central Government to introduce reward for informants who have found illegalities in mining operation. The name of such person should be kept secret. This would greatly benefit the Mining Department which is having inadequate staff to monitor the mining operations.</p>	<p>Ministry of Mines The Government of India has introduced 'The Public Interest Disclosure and Protection to Persons making the Disclosures Bill, 2010' in the Lok Sabha on 26.8.2010 and passed by the Lok Sabha on 27.12.2011. The Bill is presently under consideration of the Rajya Sabha. The Bill provides to establish a mechanism to receive complaints relating to disclosure on any allegation of corruption or wilful misuse of power or wilful misuse of discretion against any public servant and to inquire or cause an inquiry into such disclosure and to provide adequate safeguards against victimization of the person making such complaint and for matters connected therewith and incidental thereto.</p> <p>The Government has also introduced the Mines and Minerals (Development and Regulation) Bill 2011 (MMDR Bill, 2011). Clause 53(4)(g) of the Bill has a provision for utilisation of the amount standing to the credit of the State Mineral Fund inter alia for rewarding whistle blowers on illegal mining.</p> <p>Government of Odisha Rule 19 of the Orissa Minerals (Prevention of Theft, Smuggling & Illegal Mining and Regulation of Possession, Storage, Trading and Transportation) Rules, 2007 made under section 23C of MMDR Act, 1957 already provides for appropriate reward to the informer(s).</p>

Chapter No. 2: Observations on illegal mining in the State of Odisha

S. No.	Gist of Commission's Observations/ Findings / Recommendations	Action Taken Report
1	<p>(i) Mining operations are carried out in the areas belonging to tribals and they are displaced or stay in pathetic and miserable conditions in the same area.</p> <p>Persons looting limited national mineral wealth are not prepared to share their income for development of mining areas for medical facility, shelter / residence, education facility, roads etc.</p> <p>(ii) In terms of Rule 27(p) & (q) of Mineral Concession Rules 1960, preference is to be given to tribals and persons displaced in matter of employment and wages not less than prescribed minimum wage should be paid to those employed. The Commission states that this rule has not been observed and has not been implemented. It is contended that the Mining Industry takes services from local labourers for mining operations and gives them opportunities of employment. However, this claim is totally hollow because, now-a-days, mining operation is mainly mechanized. The mine-owners do not pay more than minimum wages to the labourers even though their income is more than Billion of rupees. They have no idea or intention to pay fair wages.</p> <p>(iii) Mining is generally in the tribal areas and welfare of local inhabitants should be considered seriously before granting / renewing the mining lease.</p> <p>Considering the fact that in the State of Odisha, there is large scale poverty and approximately 77% mines are situated within forest areas and within tribal belt, therefore, the mining operations had and are continuously adversely affecting the tribals. For protecting them and for the development of those areas, the State Government, if permitted, to levy some fees or cess, then the said amount can be utilized for the development of those areas.</p> <p>(iv) It is to be remembered all throughout that natural resources are meant for public use and cannot be converted into private ownership or should not be only for the benefit of few. Public at large is a beneficiary and should get its benefits.</p>	<p>Ministry of Mines Through the implementation of Rules 27(1)(p) and 27(1)(q) of Mineral Concession Rules, 1960 (MCR 1960) the welfare of tribals is ensured.</p> <p>These are also provided as part of covenant of lessee in model lease deed under MCR, 1960 which is monitored by the State Governments.</p> <p>The Government has introduced the MMDR Bill, 2011 in the Lok Sabha which, inter-alia, has specific provisions to ensure the welfare of local inhabitants and the development of the area affected by mining operations.</p> <p>Government of Odisha With a view to reducing the impact of large scale mining on the environment and infrastructure of the area, the State Government has decided to put a provisional cap in Joda and Koira Mining circles at 40 MTPA and 12 MTPA during 2012-13, and at 44 MTPA and 13 MTPA during 2013-14 for production and despatch of mineral.</p> <p>The State Government has been instructing the Director of Mines and the field functionaries from time to time to strictly implement the provisions of Rule 27(p) of MCR, 1960 and ensure that the lessees give preference to tribals and displaced persons in the matter of employment.</p> <p>The Labour Department will ensure payment of minimum wages and other benefits as per the various statutes.</p> <p>State Government has no authority under the extant law to levy any cess on mining lessees or provide for equity in the shareholding of the mining leases even though it is generally accepted that substantial profit is accrued to the iron ore mining lessees.</p> <p>The State Government is in the process of promulgating a Regulation under paragraph 5 of Fifth Schedule to the Constitution to provide for additional resources for social, economic, health and educational improvement of people belonging to Scheduled Tribes in the mineral bearing Scheduled Areas of the State. Consultation has already been made with the Tribes Advisory Council of the State as required under the aforesaid para of the Fifth Schedule. The matter will be now placed before His Excellency, the Governor of Odisha to obtain Presidential assent.</p> <p>The State Government is in agreement with the view of the Commission that natural resources are meant for public use and should therefore benefit the public at large.</p>
2	<p>Most of the lessees are having their main office outside the State of Odisha and keep a middle man after taking the lease. They hand</p>	<p>Government of Odisha Action is being taken in such cases as per the</p>

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	<p>over mining operations to so-called raising contractors. The concept of "Raising Contractor" is evolved by them so as to frustrate the operation of Rule 37 of MCDR, 1988.</p> <p>Almost all persons to whom mining lease is granted or are in possession on the basis of deemed extension themselves do not carry out mining operations. Mining operations are being carried out by third persons may be through Power of Attorney-holders or Contractors. The list of such lessees, carrying out mining operations through third persons, is enclosed herewith at Annexure: A (Page 199)</p>	<p>provisions of Mineral Concession Rules, 1960, wherever, prima facie evidence has revealed that the lessee is operating or substantially controlled by such Contractors / Power of Attorney Holders. To ascertain the factual position and to take necessary action, a Committee comprising Officers and Chartered Accountant has been constituted vide Notification dated 08.07.2011. The said Committee has already investigated eight cases finding evidence for prima facie violation of rule 37 of MCR, 1960.</p>
3	<p>There should be some mechanism so that production and exact sale price received by the lessee or the contractor is made known to the Government and the information should be displayed so that manipulation and corruption can be controlled.</p> <p>Further, the suggestion for correction of under estimation of sale value of iron ore by IBM requires discussion. In any case, before estimating the sale value of iron ore by the IBM, the views of the State Government should be obtained and, thereafter, final estimation of sale value of iron ore by IBM be made.</p>	<p>Ministry of Mines The Government has amended Rule 45 of Mineral Conservation and Development Rules, 1988 (MCDR 1988) making it mandatory for all miners, traders, stockists, exporters and end-users to register with IBM and report their transactions in minerals on a monthly/annual basis for a proper end-to-end accounting of minerals.</p> <p>An online system for implementing the amended Rule 45 provisions is being developed. This system will enable assessment of information online on a real-time basis by the State Government to take action. Once the system is established, filing returns online would be made mandatory by amending Rule 45 of MCDR 1988.</p> <p>Government of Odisha The State Government is in the process of establishing e-auction procedure for sale of the iron ore which is in line with the Supreme Court judgment in iron ore mining in Karnataka.</p>
4	<p>(i) For winning iron ore mineral, the maximum expenditure by the lessees is not more than 45% of the net value of the production. This finding is based on the fact that contractors are getting 36% to 42% share in the minerals extracted. Hence, equity for the tribals' development should be fixed by considering that criteria and that amount should be collected at initial stage by the State for the development of the tribal areas including the Districts from where iron ore is extracted. The said amount should be kept in a separate account for the development of those areas.</p> <p>Alternatively, half of the share in the profit should be collected and utilized for the development of the Districts from which the minerals are extracted from the company's profit to whom the mining lease is granted.</p> <p>(ii) Hence, the procedure of granting lease only on fixed rate or dead rent/royalty requires to be modified. Lease should be granted on the basis of sharing the product, may be 50:50 or thereabout. This would give a large profit to the State Government.</p> <p>(iii) As discussed, for winning the iron ore mineral, the maximum expenditure by the lessees is not more than 45% of the net value of the production. Hence, equity for the tribals' development should be fixed on that criteria and that amount should be collected at initial stage by the State for the development of the tribal areas including the Districts from where iron ore is extracted.</p>	<p>Ministry of Mines For inclusive development, the Government has introduced the MMDR Bill, 2011 in the Lok Sabha which, inter alia, has specific provisions to ensure the welfare of local inhabitants and the development of the area affected by mining operations.</p> <p>The MMDR Bill 2011, inter-alia, also has provisions to introduce allocation of prospecting licence and mining lease by competitive bidding in areas where mineralization is known.</p>

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	<p>(iv) It appears from the record collected by this Commission that expert raising contractors are getting their shares from 36% to 42% of the actual value of the actual production of iron ore.</p> <p>The lessee who might have engaged some employees for management or for accounts would be getting approximately 64% to 58% value of the annual production of iron ore.</p> <p>Hence, the aforesaid suggestion is made on the facts found by the Commission that numbers of lessees are giving mining operations to Contractors and the share which is given to the Contractor is 36% to 42%. Adding other costs also for engaging some persons for other work, if 50% share is given to the lessee, it would be just and reasonable. Sharing should be after deducting royalty and applicable taxes, as followed in Petroleum and Natural Gas by the Central Government.</p> <p>x x x</p> <p>Therefore, it is apparent that the procedure of granting lease only on the fixed rate or dead rent/royalty requires to be modified. Lease should be granted on the basis of sharing the product may be 50:50 or thereabout. This would give large revenue to the State Government. 50% product can be sold to the State either by e-auctioning or by charging the market price from the lessees</p>	
5	<p>(i) Whatever iron ore is extracted can be sold by e-auction. For e-auctioning, the Supreme Court has given directions in the case of Samaj Parivartana Samudaya & Ors. V/s. State of Karnataka, in Writ Petition (Civil) No.562/2009, decided on 18.04.2013. The same procedure should be followed for the State of Odisha and finally, for the country as a whole.</p> <p>(ii) Mining of the national asset should not be meant only to fill the pockets of a few fortunate who are in position to get mining lease and continue thereof rightly or wrongly by one or other method.</p> <p>(iii) It is necessary to grant mining lease by public auction; and it should be on the basis of sharing of the product and not on a fixed rent</p> <p>(iv) Granting of the lease by public auction by open tender/e-auction would be in conformity with the law laid down by the Apex Court and in conformity with the report of Planning Commission.</p> <p>Granting of mining lease by public auction by open tender/e-auction would be in conformity with the law laid down by the Apex Court in various judgments as discussed hereinafter.</p> <p>(v) In view of the Apex Court Judgments in the W.P. (C) No. 423 of 2010 dated 02.2.2012 and the opinion of the Apex Court in Special Reference No.1 of 2012 under Article 143(1) of the Constitution of India, for grant of mining lease for iron ore, some new concept is required to be evolved. It is true that in the aforesaid Judgment, Hon'ble Court has opined that auction is not the only method for disposal of natural resources. However, it is clarified that public property owned by the State or by any instrumentality of the State should be generally/ordinarily sold by public auction or by</p>	<p>Ministry of Mines The recommendation of the Commission for e-auction of iron and manganese ores will be examined in consultation with State Governments and the concerned Ministries of the Government of India.</p> <p>The Government has introduced the MMDR Bill, 2011 in the Lok Sabha on 12th December 2011 which, inter-alia, proposes to grant prospecting licences and mining leases by competitive bidding in areas where mineralization is known.</p> <p>Government of Odisha The State Government has decided in Principle for sale of iron ore in the State by e-auction. This matter has been referred to the Central Empowered Committee constituted by the Supreme Court for their concurrence.</p>

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	<p>inviting tenders. The Court clarified that for alienation of natural resources, to lay down policy decision is executive prerogative but immediately clarified that such a policy decision should be backed by social or welfare purpose and precious and scarce natural resources if alienated for commercial pursues of profit maximizing, private entrepreneurs should be granted by competitive method by maximizing the revenue otherwise it would be arbitrary and violative of Article 14 of the Constitution of India. Therefore, proper method of granting lease for extracting iron ore is required to be framed which is in conformity of Article 14 and which maximizes State revenue too, after taking into consideration, the interest of the society i.e. "common good". At present, iron ore is in demand all throughout in the national and international markets. Production of steel is a necessity of the Century. It has direct link with the Gross Domestic Product (GDP)</p>	
	<p>(vi) It is to be highlighted that for Petroleum and Natural Gas, the Central Government is following the procedure of granting exploration operation by auction by inviting offers from private and public participants and awarding contracts on a competitive basis as opposed to nomination basis. There are Production Sharing Contracts with the Government of India with the successful bidder. The Production Sharing Contract also stipulates the manner in which the oil/gas produced from the discovered reservoir is to be shared in accordance with a predetermined percentage and allows the Consortium ('Contractor') to recover costs towards exploration, development and production and make royalty payments from oil/natural gas commercially produced from the reservoirs.</p>	
	<p>(vii) At present, number of industrialists and others are interested in having the right to extract minerals which are scarce, finite and limited in this country. Until now, such leases were granted in discretionary, non transparent manner and therefore only few persons who were near to power, wealthy, mighty and muscles power in the society got the leases. In many States, all the members of a family got leases directly or indirectly. They pay meager royalty and earn windfall of enormous profit since last decade. This has resulted lopsided development and intergeneration inequity.</p>	
	<p>(viii) As per the law laid down by the Apex Court, where revenue maximization is the object of a policy, being considered qua that resource at that point of time to be the best way to subserve the common good, auction would be one of the preferable methods, though not the only method. However, when such a policy decision is not backed by a social or welfare purpose, and precious and scarce natural resources are alienated for commercial pursuits of profit maximizing private entrepreneurs, adoption of means other than those that are competitive and maximize revenue may be arbitrary and face the wrath of Article 14 of the Constitution.</p> <p>In view of the aforesaid law, it would be just and reasonable to grant lease by public auction.</p>	
	<p>(ix) Auction should be on the basis of bid for sharing production or in any case, bid for royalty could be a better approach of giving right/privilege to extract scarce minerals, particularly, iron ore. This would be a better option than granting leasehold right only by way of auction on the basis of fixed</p>	

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	<p>amount for entire lease period. It is known fact that every year, there is rise in the market price of such minerals. This would be for the benefit of the Society, State and country.</p> <p>This option should be made applicable since the date of submission of this report to –</p> <p>(a) all fresh leases, (b) where mining leases are not renewed and persons are operating under deemed extension clause [Rule 24A(6) of MCR, 1960]; and (c) the leases which are coming for Ist, IInd or IIIrd renewal of lease.</p> <p>x x x</p> <p>Therefore, the present system adopted under Section 11 of MM(DR) Act, 1957 and the rules thereunder requires to be changed so as to make it in conformity with the aforesaid decision of the Apex Court.</p> <p>Secondly, while granting the lease by auction, auction should be on the basis of sharing of annual production (extraction of iron ore).</p> <p>(x) In any case for reducing corruption and for controlling illegal mining and evasion of taxes as well as royalty, it would be necessary to adopt and follow rigidly the procedure/directions issued by the Apex Court in the case of Samaj Parivartana Samudaya & Ors. v/s. State of Karnataka, in Writ Petition (Civil) No.562/2009, decided on 18.04.2013 for e-auctioning the iron ore extracted from the mines. This procedure has given very good result of controlling illegal mining as well as evasion of taxes and royalty.</p> <p>It is the suggestion of the Commission that in all the States, the e-auctioning procedure be followed for disposal of non-renewable of national asset.</p>	
6	<p>Officers including Director of Mines & Geology, Divisional Forest Officer, Director of Odisha State Pollution Control Board, etc. should be directed to visit the site, as provided u/s. 24 of the MM(DR) Act, 1957 and under other relevant provisions. If they fail to discharge their duty, they should be charged for the lapses.</p>	<p>Government of Odisha The State Government agrees with the recommendation of the Commission and taking suitable action in this regard.</p>
7	<p>(i) The total approximate production of Iron Ore from the year 2005–06 to 2011–12 was 524.142 million tonne [i.e. 52,41,42,000 metric tonne.]</p> <p>(ii) If the value of the public natural resources i.e. iron ore for only one year is given to the tribal families of the aforesaid two Districts for their upliftment, the tribals would become rich approx. by Rs.9,42,922/- (i.e. Rs.9,43,000/-). The aforesaid amount would be their lifetime achievement for their future development.</p> <p>(iii) In any case, if 10% of the average income from the year 2004–05 to 2011–12 is utilized for providing basic facilities (drinking water, roads, hospitals, schools, etc.), then also, the Districts would be having well-knit basic facilities.</p> <p>(iv) Until now, nobody has bothered for Corporate Social Responsibility (“CSR”), even though lessees and/or their raising contractors have pocketed the entire income from the</p>	<p>Ministry of Mines For inclusive growth, the Government has introduced the MMDR Bill, 2011 in the Lok Sabha which, inter-alia, has specific provisions to ensure the welfare of local inhabitants and the development of the area affected by mining operations.</p> <p>Section 135 of the Companies Act, 2013 provides that the Companies shall ensure that they spend at least two percent of the average net profits of the Company in pursuance of the Corporate Social Responsibility (CSR) Policy.</p> <p>The MMDR Bill, 2011 inter alia provides for mandatory reporting and disclosure of CSR activities through Mining Plan [Clause 26(3)].</p>

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	<p>national non-renewable assets, without any hindrance. Undoubtedly, they have earned super-normal profit.</p> <p>(v) It is to be highlighted that Section 3(2) of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 requires the Central Government to provide various facilities. The said Section reads as under:-</p> <p>“Notwithstanding anything contained in the Forest (Conservation) Act, 1980, the Central Government shall provide for diversion of forest land for the following facilities managed by the Government which involve felling of trees not exceeding seventy-five trees per hectare, namely:-</p> <ul style="list-style-type: none"> (a) schools; (b) dispensary or hospital; (c) anganwadis; (d) fair prices shops; (e) electric and telecommunication lines; (f) tanks and other minor water bodies; (g) drinking water supply and water pipelines; (h) water or rain water harvesting structures; (i) minor irrigation canals; (j) non-conventional sources of energy; (k) skill upgradation or vocational training centres; (l) roads; and (m) community centres: <p>Provided that such diversion of forest land shall be allowed only if:-</p> <ul style="list-style-type: none"> (i) the forest land to be diverted for the purposes mentioned in this sub-section is less than one hectare in each case; and (ii) the clearance of such developmental projects shall be subject to the condition that the same is recommended by the Gram Sabha.” <p>For providing some of the aforesaid facilities, companies having mining lease should voluntarily carry out some of the aforesaid functions for the benefit of the tribals who are affected due to mining.</p> 	
8	<p>It is noted that because of super normal profit due to export of iron ore, large scale illegal mining activities take place. Such illegal mining activities cannot take place without support of the officers or collusion between the officers and mine owners. Not only officers, number of politicians are involved in such illegal mining activities. For establishing such illegal mining activities, connection or collusion between mine-owners and the politicians and bureaucrats, the State Government has handed over inquiry to the Vigilance Commission.</p>	<p>Government of Odisha</p> <p>Six Public Interest Litigation (PIL) petitions were filed in the Hon'ble High Court of Orissa including petition for transfer of mines cases to CBI. The matter is being heard by the Hon'ble Court and is not yet disposed.</p> <p>Nine (9) criminal cases have been registered various government officers and others who have been</p>

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	<p>An FIR is also lodged in Balasore Vigilance Station against Champua MLA, Deputy Director of Mines Madan Mohan Biswal, Deputy Director P.C. Patro, Deputy Director Manas Ranjan Mohanty, Ex-Deputy Director of Mines, Sasadhar Sahu, Deputy Director of Mines B.K. Nandi, Ex-Director of Mines Santanu Kumar Mohapatra, retired Additional Secretary A. K. Das, Mines Officer Gangadhar Lenka, Retired Deputy Secretary Nityanand Mohanty, Retired Additional Secretary A.K. Sahu,</p> <p>Retired Senior Clerk P.N. Das, Retired Law Officer of Mines R.K. Sarangi, Senior Clerk of Mines Controller Gouranga Sethi and Deputy Mines Collector of IBM Anupam Nandi. However, it is alleged by number of persons that the Vigilance Commission would not be in a position to conduct impartial and independent inquiry to arrive at just and proper finding because of pressure from the politicians. Hence, they have suggested that CBI should make inquiry about corruption at all levels, in detail.</p>	<p>accused of being involved in illegal mining activities. The State Government has submitted charge sheet in appropriate Courts and Departmental proceedings initiated against erring Government officials.</p> <p>The State Government has, by a notification dtd. 14.01.2010, empowered the Vigilance Directorate to investigate into the violation of various laws including offences under MMDR Act apart from Prevention of Corruption Act.</p> <p>It is not a fact that Central Bureau of Investigation has alone the expertise to investigate the cases relating to mining scam and/or violation of Forest, Environment Pollution Control Law and Arms Act. There is no constraint for the Vigilance Department owing to shortage of logistics or expertise.</p> <p>The State Vigilance Department has filed Charge Sheets in criminal cases against various government officers and others who have been accused of being involved in illegal mining activities. Vigilance action started during 2009-10, i.e. in between August, 2009 to March, 2010. All these cases are under various stages of hearing.</p> <p>Further, when the matter for transfer of mining cases to CBI has been heard by Hon'ble High Court, Orissa and is under consideration of the Hon'ble Court, there is no justification for transfer of the mining cases to CBI.</p>
9	<p>Due to increase in rates of iron ore in the international market and back home in the country, there was a steep increase in the illegal mining and trade in the country and Odisha State in particular. This has caused extensive damage to the Government Exchequer, Environment and Social fabric of the State. Because of concern shown in various walks of life, media and at administration level in Government, there had been searches and seizure of iron ore at railway yards, stock yards, crushers site and others of illegal iron ore indicates that there was a large scale illegal mining went during 2008, 2009, 2010 and a part of 2011 in the State. During this period, there was a collapse of Government machinery and looked to be ineffective and helpless in front of mining mafia, persons in political life, mighty lessees and some corrupt officials.</p> <p>The Commission has received information with regard to three FIRs lodged by Umesh C. H. Jena, Dy. Director of Mines, Joda pertaining to number of rake loads (27 rakes + 62 rakes and 67,811 MT) iron ore dispatched at different places by different persons. It was found that neither they were lessees nor licensees of Joda Sector. The details thereof are enclosed herewith at Annexure: C.</p> <p>There were many more cases of this kind have gone untraced as seen in the complaints received from the various organisations, NGO's, people of high integrity and others. The extent of illegal mining during that period has also been gauged during the public hearing, the Commission held in Bhubaneswar and Keonjhar during its first visit. As seen from the present progress in the investigation and further exploration in tracing illegalities, there is hardly any substantial progress. Since there is involvement of</p>	<p>Government of Odisha</p> <p>The observation that there was collapse of Government machinery is not agreed to.</p> <p>Three cases were registered during March, 2010 on the information of Dy. Director of Mines, Joda who found suspicious rake loads of iron ore being despatched to various destinations. The complainant suspected that the entire quantity which has been despatched during the period were obtained through theft and transported through connivance of Railway Authorities.</p> <p>Though the cases were registered against unknown persons, the Police acted promptly and arrested the accused. Huge quantities of iron ore were seized. Investigation is proceeding.</p> <p>The cases have been under investigation for over 3 years because of the following reasons.</p> <ol style="list-style-type: none"> Involvement of large number of accused, their Identification, and details of consignees. Considerable time taken to get these cases filed in the High Court cleared, and then start investigation in these cases. Need for assistance of other Department, like the Department of Mines, Revenue and Forest. <p>The investigations are now more or less complete.</p>

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	<p>mighty lessees, big traders of State and outside State, political entities, officers at higher rank, it will not be possible by State Police to find the facts and realities and there would be no justice done for quantum of illegalities took place.</p> <p>Hence, it is recommended to institute a CBI inquiry in all cases where the FIRs were registered by Police, Vigilance Department and other cases in Mines Department, Police Department, Revenue Department, Forest Department and others during the period from 2008 to 2011. The CBI inquiry should be held against all the companies included in three FIRs i.e. (i) Barbil P.S. Case No.60, dated 10.03.2010 u/s. 379/120 (B) of IPC, (ii) Bamebari P.S. Case No.37, dated 04.03.2010 u/s. 379/34 of IPC turned on to u/s. 379/420/468/471/120(B) o IPC and (iii) Joda P.S. Case No.31, dated 04.03.2010 u/s. 379/34 of IPC turned on to u/s. 379/420/468/471/120 (B) of IPC in addition to Thriveni Earth Movers Pvt. Ltd. and all other consigners listed in the FIRs.</p>	<p>Charge sheet will be filed within the next month. Some accused are absconding. Supplementary charge sheet will be filed as and when more accused are identified and apprehended. There appears to be no need to hand over investigation of these cases to any other agency.</p> <p>In addition to the three cases mentioned above the State Police has registered many cases, arrested persons, issued Charge Sheets during 2010-11 and 2012 and many cases have been disposed off and few are pending investigation.</p> <p>No specific complaints against any political leaders were received and linkages established during investigation and hence cases have not been registered against them.</p>
10	<p>In August, 2011, the Railway authorities of South Eastern Railway Zone came to know about it and served a Demand-cum-Show Cause Notice to the Company for an amount of Rs.660 Crores towards alleged freight evasion and manipulation of excise certificates during the period 2008-09, 2009-10 and partially 2010-11.</p> <p>One case is presently under the investigation of Anti-Corruption Bureau, CBI, Kolkata who have registered FIR against the Company, its Directors and unknown Officials of Railways and Central Excise. Railway's notice has been challenged by the company in Court and the case is currently sub-judice.</p> <p>Subsequently to the discovery of Rashmi Metaliks case, S.E. Railway detected more such cases of freight evasion and so far issued Demand Notices to 14 companies for recoverable amount of Rs.1,874 Crores. The aforesaid investigation by C.B.I. is at present confined to Freight Evasion.</p> <p>The freight evasion aspect in Railway transportation is also inextricably linked with the manufacturing of Iron and Steel in which the Central Excise Department is an important stake holder. If an iron ore transporter takes iron ore on rail by promising manufacturing end-use of the same and enjoying concessional benefits from Railways, it ought to be checked up whether he is actually manufacturing commensurate amount of iron and steel in his designated factory. If commensurate manufacturing is not being made from the transported iron ore input, then it is in the interest of Central Excise Department to verify the same as it might entail clandestine removal of finished goods from factory without payment of excise duty in the garb of "as-such-clearance of inputs". It may be that there is lack of coordination between Central Excise Department and Railway Department.</p> <p>It is observed that almost all of these Demand Notices served on various companies by railways for alleged acts of freight evasion pertain to just one Railway Zone i.e. the South Eastern Railway which transports an overwhelming portion of the iron ore, originating from Odisha. However, it is a known fact that there are other Zones of Indian Railways who also transport significant amount of Iron Ore. Recently the Comptroller and Auditor General of India (CAG), in Report No.32 of 2011-12 (Railway) of their annual audit have already reported a loss of nearly Rs.1795.51</p>	<p>Ministry of Railways</p> <p>The critical objective of the differential tariff regime, viz. garnering higher freight revenues in the event of increases in the export (FOB) price of iron ore was, in fact, realised.</p> <p>The onus of conforming to the affirmed end-use is on the consignor / consignee as Railways does not have any obvious in-built mechanism for ascertaining the end- use to which the iron ore was / is ultimately put after its delivery had been taken by the consignee. In case it is post-facto established that any domestic manufacturing unit has ultimately chosen to divert the quantities of iron that were sourced (and delivered) to it for the explicitly stated purpose of use as raw material indigenously, the unit should be perceived in the eyes of law as having perpetrated a fraud on the national economy.</p> <p>The first ever inquiry into likely diversion of iron ore for other than domestic use was conducted by Railways itself in 2010 - 11. As the findings of this inquiry inter alia impinged also upon agencies besides Railways, the matter was referred to the Central Vigilance Commission (CVC) which, in turn, handed it over to the Central Bureau of Investigation (CBI). While this issue is reportedly still under investigation, a part of the matter is also sub-judice before a Court of law.</p> <p>Railways administration has progressively strengthened its control, monitoring and verification mechanisms as also its liaison with other agencies like Central Excise. Subsequent to the first inquiry into likely diversion of iron ore away from the stated purpose of its consumption as raw material indigenously, similar checks have been conducted by Railways as part of a continuing exercise; based on these checks, South-Eastern Railway has additionally served 17 demand - cum- show cause notices for recovery of punitive charges.</p>

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	<p>Crores for that Zone caused by fraudulent use of concessional freight.</p> <p>Therefore, it is suggested that Railways should through C.B.I., make an all-out effort to detect cases of such evasion in all the Zones that might be transporting Iron Ore. Similarly, it is also seen that almost all the Demand Notices, worth Rs.1,874Crores, so far issued by the S.E. Railway Zone, pertain to the evasion period from 2008 to 2011 although the differential freight tariff scheme continues to be in effect even now. The average difference between "Domestic Freight Rate" and "Other than Domestic Freight Rate" was, in fact, at its maximum during 2011-12. Therefore, Railways are advised to quantify this amount of freight evasion and institute recovery mechanism for the entire time period, starting from May, 2008 till now. This is of paramount importance since the process for recovering the exact amount of escaped freight revenue has to be undertaken by Railways themselves and would not, automatically, accrue to them, even in the event of a successful conclusion of any criminal investigation, undertaken by CBI.</p> <p>As the matter is under investigation by Central Bureau of Investigation (C.B.I.), the Central Government may direct the C.B.I. to investigate all such other cases which are noticed by the Railways, in a time-bound programme with a specific direction to verify the source of production of iron ore transported and exported.</p>	
11	<p>It is to be stated that most of the leases were working in violation of the abovementioned Acts and Rules framed thereunder by the Government of India for the regulation and administration of mineral development.</p> <p>Director of Mines & Geology, Odisha State, vide its letter No. MXXXIII(a)-48/12, dated 15.03.2013, sent the information regarding lease wise excess production of iron and manganese ores with respect to EC/Mining Plan/Consent to operate under Air & Water Acts (yearly) along with copies of show cause notices issued by Deputy Director (Mines) of the respective jurisdiction. In total 146 cases, notices are issued to the various leaseholders for recovery of mineral value as per Section 21(5) of MM(DR) Act, 1957.</p> <p>x x x</p> <p>From the aforesaid 146 notices, it is apparent that there must be unlawful mining which came to the notice of the State Government for which notices were issued.</p> <p>Value of the unlawful extraction of iron and manganese ores comes to Rs.59203,33,13,342/- (i.e. about Fifty Nine Thousand Two Hundred and Three Crores).</p> <p>Let the State Government recover the said amount, by finalizing the proceedings on the basis of the notices, as early as possible and use the said amount for the development of the two Districts, namely, Keonjhar and Sundargarh which are badly affected by illegal excess mining. This at least can remove the poverty of the tribals who are affected or whose lands are used for mining purpose.</p> <p>The list of names of lessee, area under its occupation and the amount sought to be recovered is annexed herewith at Annexure: D.</p>	<p>Government of Odisha</p> <p>Wherever production has been made in excess of the quantity permitted under various statutory clearances, demand has been raised against the lessee under section 21(5) of MMDR Act, 1957 to pay the price for the excess ore so raised. These cases will be finalized as early as possible. These cases cover the period between 2001-10 for the mines where extraction was observed to be in excess of the limit approved in the mining plan, environment clearances and consent to operate. Some of the lessees have obtained stay orders from the Revision Authority against the recovery. The State Government has taken decision to move the Hon'ble High Court of Orissa for vacation of such stay orders by filing writ petition. Thus, the action of State Government in these cases for recovery of the assessed amount is at present sub judice. In the remaining cases, efforts are made to recover the amounts by finalizing the proceeding on the basis of the reply furnished by the lessees.</p>
12	<p>(i) Even if ban on export may not be possible at this stage, capping of production of iron ore is absolutely must so that future</p>	<p>Ministry of Mines</p> <p>The Central Government is not in favour of blanket</p>

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	<p>generation is not required to import iron ore. In any set of circumstances, visualize the situation for at least 50 to 60 years. On that basis, production may be streamline so that iron ore minerals may last at least for 50 to 60 years.</p> <p>At present, we are exporting iron ore but importing steel products. Considering the present situation, it is possible by industrialists in the country to produce similar steel products. Hence, proper planning on the subject is the necessity of the day.</p> <p>(ii) It would be worthwhile to refer to the Resolution No.7264-IV (AB)-SM-10/2011-SM, dated 03.10.2012 passed by Department of Steel & Mines, Government of Odisha.</p> <p>In the Commission's view, for the purpose of capping of the production of iron ore and manganese, the State Government can always issue necessary directions. The State Government has inherent powers, as held in the case of Amritlal Nathubhai Shah and others V/s. Union Government of India and another, [AIR 1976 SC 2591].</p> <p>(iii) For this purpose, the State Government has passed Resolution dated 16.09.2011 by constituting a Committee under chairmanship of the Chief Secretary to Government.</p> <p>It has been pointed out that "With a view to regulating production and dispatch of minerals from the mines in Joda and Koira areas (two major iron ore mining circles) to reduce the impact of large scale mining on the environment and infrastructure of the area, the State Government has decided to put a provisional cap of 40 million tonnes for Joda and 12 million tonnes for Koira per annum."</p> <p>In view of the aforesaid judgments of the Apex Court, it would be in the interest of the State of Odisha to permit extraction of iron ore as per the aforesaid decision of the State Government so that needs for development of present and future generations are fulfilled.</p> <p>(iv) In view of the Commission, the aforesaid suggestion of the Hon'ble Chief Minister to ban the export of iron ore requires serious consideration</p> <p>(v) The main object behind the aforesaid Principle is to ensure that the present generation should not abuse the non-renewable resources so as to deprive the future generation of its benefits.</p>	<p>ban on export of iron and manganese ores. The Government, from time to time, reviews the position regarding export of minerals keeping in view the overall national interest.</p> <p>Proven reserves and resources of iron ore have not been static and have been increasing over the years. With the advent of new technologies including satellite imagery, aero-magnetic data techniques, and modern core-drilling methodology, and the beneficiation potential of low grade ores, resources are likely to get augmented further. Fixing a cap on the production of iron ore, solely on the basis of the reserves and resources identified at this point in time, will not be in the interests of the country. However, the protection of the environment and compliance with environmental laws and rules & regulations made thereunder are taken into account. The recommendation has, therefore, not been agreed to by the Government of India.</p> <p>Ministry of Environment and Forests Ministry of Environment and Forests (MoEF) proposes to conduct a study of the carrying capacity of the area through an institute of repute which would, inter-alia, go into the issues of depletion of ground water level, pollution of Baitarni river and maximum permissible annual production taking into consideration environmental aspects, inter-generational equity, etc.</p> <p>Government of Odisha The State Government has decided to cap production and despatch of ore in Joda and Koira Mining circles at 40 MTPA and 12 MTPA during 2012-13 and at 44 MTPA and 13 MTPA during 2013-14 to reduce impact of large scale mining on the environment and infrastructure of the area.</p>
13	<p>Following suggestions made by the State Government, Odisha, are considered in this report and the said suggestions are required to be considered favourably:-</p> <p>(i) Competitive bidding of mineral resources;</p> <p>(ii) Reservation of mineralized areas for Odisha Mining Corporation;</p> <p>(iii) captive use and equitable distribution; and</p> <p>(iv) Capping on production of iron ore.</p>	<p>Ministry of Mines</p> <p>(i) The Government introduced the MMDR Bill, 2011 in the Lok Sabha on 12th December, 2011. The Bill, inter-alia, proposes to introduce allocation of prospecting licence and mining lease by competitive bidding in areas where mineralization is known.</p> <p>(ii) The Ministry of Mines disapproved the reservation of all freehold areas bearing iron ore, manganese ore, bauxite and chrome ore in favour of OMC barring few exceptions as proposed by the Government of Odisha and advised the State Government to decide all pending applications as per provisions of MMDR Act, 1957 and Rules made thereunder.</p>

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		<p>(iii) The Ministry of Mines advised the Government of Odisha to withdraw its resolution for restricting the area bearing iron ore, manganese ore, bauxite and chromite ore while renewing mining leases and decision of reserving the area so identified in favour of Odisha Mining Corporation.</p> <p>(iv) Proven reserves and resources of iron ore have not been static and have been increasing over the years. With the advent of new technologies including satellite imagery, aero-magnetic data techniques, and modern core-drilling methodology, and the beneficiation potential of low grade ores, resources are likely to get augmented further. Fixing a cap on the production of iron ore, solely on the basis of the reserves and resources identified at this point in time, will not be in the interests of the country. However, the protection of the environment and compliance with environmental laws and rules & regulations made thereunder are taken into account. The recommendation has, therefore, not been agreed to by the Government of India.</p>
14	<p>From the inquiry conducted by this Commission, it is apparent that all modes of illegal mining, as stated in the Notification dated 22nd November, 2010 of the Central Government, are being committed in the State of Odisha.</p> <p>Based on the facts gathered and analysis to them highlight a complete disregard and contempt for law and lawful authorities on the part of many among the emerging breed of entrepreneurs, taking undue advantage of country's natural non-renewable assets/resources for export earnings. Pursuit of super profit has absolutely drained them of any feeling for fellow human beings/for nation and the moral values.</p> <p>Secondly, it appears that law has been made helpless because of its systematic non implementation. Instances of non implementation of law have led many people in this country to believe that disregard of law pays and that the consequences of such disregard will never be visited upon them – particularly, if they are men with means and deceitful skill to pollute and spoil the administration.</p>	<p>Government of Odisha</p> <p>There are instances of illegal mining noticed, but the State Government has taken following steps to control the menace of illegal mining:</p> <p>(i) Framed Orissa Minerals (Prevention of Theft, smuggling and illegal Mining and Regulation of Transport Storage and Trading) Rules, 2007 in pursuance to the provisions of Section 23C of MMDR Act, 1957.</p> <p>(ii) Constituted State Level Task Force / Flying Squad on 28.09.2005 for checking illegal mining. The State Level Task Force has been re-constituted under the Chairmanship of Chief Secretary for more effective departmental co-ordination and monitoring to curb illegal mining activities. The Committee is meeting regularly every quarter since then to review the situation.</p> <p>(iii) The District Level Task Force under the Chairmanship of the concerned Collectors and District Magistrates has also been constituted at the District Levels to monitor illegal mining activities.</p> <p>(iv) A State Level Enforcement Squad has been constituted in the Directorate of Mines to carry out raids and surprise visits to theft prone areas, enroute checking of mineral carrying vehicles, verify the mineral storage depots, end-use plants, crushers and other susceptible locations.</p> <p>(v) The State Govt. has authorized police officers of mineral rich Districts of Sundargarh, Jajpur, Keonjhar and Mayurbhanj to seize any mineral, tool, equipment, vehicle & such other things which are liable to be seized under sub-section(4) of section 21 & search for such mineral, document or thing under section 23B of M&M (D&R) Act, 1957 besides filing</p>

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		<p>complaints in the courts.</p> <p>(vi) The State Government has adopted state-of-the-art technology by introducing a computerized system to regulate issue of transit permit and transit passes for transportation of mineral. The system has become fully operational and effective control over illegal mining and mineral transportation has been established through the system. Steps have been taken to integrate the system with the computerized systems adopted by railways and port authorities for effective control and regulation of mineral transport and export. The system also displays the details of the lease and conditions of various statutory clearances for public viewing.</p> <p>(vii) An Inter-State Committee has been set up by the Home Department, Government of Orissa consisting of officers from Jharkhand and Orissa to control illegal transportation of ores across the border.</p> <p>(viii) A system of regulation of transport of ores by the railways both at the public and private sidings has been put into place. All indents place by the lessees and licenses are verified by the Deputy Director of Mines / Mining Officer before they are accepted.</p> <p>(ix) In order to ensure mining operations of the lessees to be confined strictly to the executed mining lease areas, the State Government has undertaken DGPS survey of the mining lease areas of Keonjhar, Sundargarh, Mayurbhanj and Jajpur District by the Odisha Remote Sensing Application Center (ORSAC).</p>

Chapter No. 3: CONTRAVENTION OF ENVIRONMENTAL LAWS

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1	<p>Ld. Counsel appearing for the lessees referred to various judgments of the Apex Court for contending that:–</p> <p>(i) provisions under the E.P. Act, 1986 and EIA Notification dated 27.01.1994 should be interpreted as regulatory and not prohibitory otherwise it would be in violation of right to practice, trade or business.</p> <p>(ii) obtaining EC is only regulatory measure and not–obtaining EC or increasing the production without fresh EC cannot be said to be illegal.</p> <p>(iii) he further emphasized that from time to time, MoEF has issued Circulars permitting the mine owners to apply for EC, if not applied and this amounts to condonation of such lapses.</p> <p>The aforesaid submissions are without considering the mandate of the EIA Notification dated 27.01.1994. The relevant part thereof reads as under:–</p> <p><i>“Now, therefore, in exercise of the powers conferred by sub-section (1) and clause (v) of sub-section (2) of Section 3 of the Environment (Protection) Act, 1986, (29 of 1986) read with clause (d) of sub-rule (3) of rule 5 of the Environment (Protection) Rules, 1986, the Central Government hereby directs that on and from the date of publication of this notification in the Official Gazette, expansion or modernization of any activity if pollution load is to exceed the existing one, or new project listed in Schedule I to this notification, shall not be undertaken in any part of India unless it has been accorded environmental clearance by the Central Government in accordance with the procedure hereinafter specified in this notification;”</i></p> <p>Reading the aforesaid notification as it is, leaves no doubt that the directions are mandatory and for undertaking any mining activity, environment clearance from the Central Government is must.</p> <p>The Commission is of the view that the submission made by Ld. Counsel appearing on behalf of lessees, that there would not be any illegality in case where EC is not obtained for expansion of existing / new projects for mining operations as the Central Government has issued circulars and accorded (delayed) EC and permitted such lessees to operate mines, cannot be supported by the various notifications issued by the Central Government for obtaining EC. First EIA Notification dated 27.01.1994 makes it abundantly clear.</p> <p>In the said notification, nowhere is it stated that those who have not obtained EC, their commission or omissions would be condoned. On the contrary, the Apex Court had made it clear time and again that such mining operation would be illegal and is required to be immediately stopped.</p>	<p>Ministry of Environment and Forests Vide notification dated 27.1.1994, issued under the Environment (Protection) Act, 1986 [E(P) Act], it was made mandatory that the projects/activities stated in the Schedule to the Notification could be undertaken only after obtaining the environment clearance (EC) as per the procedure prescribed in the Notification. Any violation of the provisions of this Notification would result in initiation of appropriate legal action under the provisions of E(P) Act.</p> <p>Government of Odisha There was ambiguity in the matter of applicability of the EIA Notification, 1994 to the existing mines.</p> <p>Ministry of Environment and Forests (MoEF), Government of India (GoI) had initially allowed the defaulting units to apply for ex-post-facto approval of Environmental Clearance. However, subsequently it was decided by the MoEF to grant environment Clearances prospectively and to take legal action against defaulting units for the period of violation. Accordingly, prosecution has been initiated in respect of cases of violation under the relevant provisions of the EP Act.</p>
2	<p>Mining lease is granted on the basis of statutory provisions which prescribe various regulatory measures and required to be complied before carrying out mining operations. Further, in the environmental matters, post facto or much delayed approvals do not have any meaning in real sense because what had happened or damaged in past cannot be brought back. In the absence of statutory approvals, conditions cannot be imposed upon and no remedial measures can be taken to mitigate the</p>	<p>Ministry of Environment and Forests The extant instructions for consideration of proposals for environment clearance involving violation of Environment Protection Act, 1986 are as contained in MoEF's OM No.J-11013/41/2006-IA.II (I) dated 12.12.2012 and 27.6.2013. As per these instructions, for cases involving violation of provisions of the E(P) Act, the granting of EC could be considered subject to certain</p>

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	<p>destructive situations arose. If the conditions as prescribed by the regulation are not complied with, under the statutory provisions,</p> <p>(a) lessee can be prosecuted;</p> <p>(b) loss can be recovered; and</p> <p>(c) lease can be terminated</p> <p>No ex-post facto approval can be granted in favour of lessee who have violated the provisions of the Forest (Conservation) Act, 1980</p>	<p>stipulations stated therein.</p> <p>It may be noted that in case any EC is granted to such a project, it would be with prospective effect and not with retrospective effect.</p> <p>In case of forest clearance, the MoEF in the past dealt cases involving violations of the Forest (Conservation) Act, 1980 (FC Act) or the Indian Forest Act, 1927 in accordance with the provisions of the para 4.3 of the guidelines issued under the FC Act. The said para provides for grant of ex-post facto approval under the FC Act after imposing penal compensatory afforestation over the area worked/ used in violation. However, the MoEF proposes to formulate, in consultation with the Ministry of Law and Justice, appropriate guidelines to deal with cases involving violations of the FC Act, the Indian Forest Act, 1927 and the local Forest Acts. Such guidelines may inter-alia provide that approval under the FC Act for diversion of forest land to cases involving violations shall be subject to:</p> <p>(i) Initiation of proceedings under section 3 A and 3 B of the FC Act, and/or relevant sections of the Indian Forest Act, 1927 and/or local forest Act, as the facts of each case may demand; and</p> <p>(ii) Realization of penal net present value (NPV) of the forest land used for non-forest purpose and/or cost of creation of penal compensatory afforestation; commensurate with the extent and duration of the violation.</p> <p>Ministry of Mines Approvals under the MMDR Act, 1957 does not absolve leaseholders from compliance of prescribed statutory provisions in force.</p> <p>Government of Odisha GoI has allowed the defaulting units to obtain ex-post facto EC by its instructions issued from time to time which extended the deadline upto 31st March, 2003 so that defaulting units could avail of this opportunity to obtain ex-post facto environmental clearance. Subsequently, MoEF decided to allow EC prospectively only and to prosecute the project proponent which is now being followed.</p> <p>Forest (Conservation) Act guidelines of MoEF, GoI provides for imposing penal compensatory afforestation by MoEF in cases of condonation of violation; and provides for imposing penal compensatory afforestation over the area worked/used in violation. The State government has placed cases of violations in a very transparent manner at the time of submission of forest diversion proposal wherein post facto approval has been granted by Central government.</p>
3	<p>Development strategy should be such that it caters the needs of the present without negotiating the ability of upcoming generations to satisfy their needs. The strict observance of sustainable development will put us on a path that ensures development while protecting the environment, a path that works for all peoples and for all generations</p> <p>Development strategy should not be only for the growth of</p>	<p>Ministry of Mines For sustainable mining, the Government of India has incorporated provisions for sustainable development framework in the MMDR Bill, 2011 which was introduced in the Parliament on 12.12.2011.</p> <p>Government of Odisha The State Pollution Control Board (SPCB) is taking all</p>

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	<p>GNP, that too by finishing the natural resources like minerals, forest and others.</p> <p>The mining activity can be permitted only on the basis of sustainable development and on compliance of stringent conditions.</p> <p>The natural resources like air, water and soil minerals, forest and others should be utilized judiciously with utmost care, if the utilization results in irreversible damage to environment. There has been accelerated degradation of environment primarily on account of lack of effective enforcement of environmental laws and non-compliance of the statutory norms.</p>	<p>possible measures to ensure that mining operation is carried out without causing any irreversible damage to the environment.</p> <p>In order to ensure adoption of best environmental management practices by the mines so that degradation of environment is prevented/ minimized, the mining activity has been brought under consent administration. Mining activities under consent administration are being regulated as per the provisions of the Water (PCP) Act, 1974 and the Air(PCP)Act,1981.</p> <p>Specific conditions are stipulated at the stage of accord of CTE and CTO, prescribing a host of measures to be taken by the concerned project proponent. The MoEF has identified many environmental parameters and notified corresponding standards under the Environmental Protection Rule, 1986. These parameters and standards are taken into consideration and accordingly conditions at the stage of grant of Consent to the mines/industries etc. are stipulated. Subsequently, compliance to consented conditions is verified by Board officials, from time to time. Any further CTO of the project depends on the status of compliance, as verified by the SPCB officials. Besides, directions are also issued to the defaulting units including direction for closure under Water / Air Acts and filing of the prosecution wherever necessary.</p> <p>Environmental compliance status of the mines has been generally observed to be fairly good. The Board has been constantly putting its all efforts by pursuing the matter with all mine operators for adoption of best environmental management practices so that there would not be any accelerated degradation of environment in the area.</p> <p>The SPCB has instituted studies to assess the Carrying Capacity of the regions with potential for more mining/ industrialization. Based on such studies Regional Environmental Management Plans have been prepared. Opening of a new Industry/ mine in such areas is permitted only if there is space to accommodate the pollution load. At the same time, standards prescribed for various environmental parameters to the mines/industries in operation are reviewed and revised from time to time, to ensure safeguard to the environment.</p> <p>In fact, effective enforcement of Environmental laws and compliance of all statutory clearances is being ensured</p> <p>Presently, Public Hearing (PH) is an integral part of EIA process. Through these PH the environmental impact of mining is communicated to the local people. The EC is granted by evaluating the EIA report and PH outcome.</p> <p>Only after approval of the mining plan and availability of all other statutory clearances, mining is permitted. Compliance of all the statutory clearances is being ensured</p>
4	In addition to damages, the person guilty of causing pollution can also be held liable to pay exemplary damages so that it may	Ministry of Environment and Forests The State Government of Odisha may consider filing an

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	<p>be deterrent for others not to cause pollution in any manner [M. C. Mehta V. Kamla Nath, AIR 2000 SC 1997]</p> <p>For this purpose, it would be worthwhile to refer to the observations made in the Judgment of the Constitution Bench in the case of M.C. Mehta and Another v. Union of India and Others, [(1987) 1 SCC 395] popularly known as Oleum Gas Leak Case, wherein it was held thus:-</p> <p>... We would also like to point out that the measure of compensation in the kind of cases referred to in the preceding paragraph must be correlated to the magnitude and capacity of the enterprise because such compensation must have a deterrent effect. The larger and more prosperous the enterprise, the greater must be the amount of compensation payable by it for the harm caused on account of an accident in the carrying on of the hazardous or inherently dangerous activity by the enterprise.”</p> <p>The aforesaid principle is required to be adopted in the cases where without obtaining Forest Clearance and /or Environmental Clearance, persons who were in possession of the mines have extracted iron ore and manganese for the purpose of export and domestic consumption with greed of super profits by evading applicable taxes.</p>	<p>application before National Green Tribunal under section 15 of the National Green Tribunal Act, 2010 seeking relief and compensation to the victims of pollution and restitution of property damaged and environment of the concerned area.</p> <p>Government of Odisha No cases of violation of consent conditions have been established in the iron and manganese mines of Odisha; and, therefore, nobody could be held liable for causing the air or water pollution. Besides, both the Water and the Air Acts, do not have any provision for payment of compensations to the persons affected by pollution. If any such compensation is to be paid it can be determined only by the courts of law after a fair trial.</p> <p>Regarding imposition of damages in the cases of non-forest activities without forest clearance, the State government reports the cases of violation to the MoEF and the MoEF takes decision on imposition of penal Net Present Value and or penal compensatory afforestation.</p>
5	<p>In the State of Odisha, out of 192 mining leases, 94 mining leases of Iron Ore and/or Manganese are not having Environmental Clearance. The list of the said 94 mining leases is enclosed as Annexure: II at Page 179-183 Vol. II.</p> <p>It is to be stated that out of 94 leases, from 55 leases, extraction of ore (iron / manganese) have been taken place after 27.01.1994, without having obtained EC under EIA Notification. The 5,22,55,998 MT of iron ore and 6,42,081 MT of manganese have been extracted illegally without having lawful authority (since no EC was obtained).The list of such 55 mining leases is enclosed herewith as Annexure: V at Page 251-271, Vol. II</p> <p>All such production is to be considered as illegal and without lawful authority. The market value for iron and manganese ores is required to be recovered under the provisions of Section 21(5) of the MM(DR) Act, 1957.</p>	<p>Ministry of Environment and Forests With a view to have clarity about the exact violation by these lessees, under the EIA notification 1994/EIA notification 2006, it is proposed to seek detailed information about these mining leases from the State Government of Odisha.</p> <p>Government of Odisha The EIA Notification, 1994 prescribed obtaining EC for new projects and projects involving expansion and modernisation which lead to increase in the pollution load. However, there was ambiguity in the notification regarding definition of the term ‘expansion’ and the authority competent to determine the net pollution load and measurement of net pollution load. The MoEF, GoI clarified that the EC is not required in respect of mines where there is no increase in the originally sanctioned lease area.</p> <p>Further, from time to time, MoEF allowed the defaulting units time to obtain ex-post-facto approval for the Environmental Clearance.</p> <p>By notification dated 04.7.2005, MoEF, GoI decided that in cases of certain categories of projects (including mining) taken up expansion after 27.01.1994 without prior EC, the MoEF may on case to case basis relax the requirement of prior EC and may grant Temporary Working Permission for a period of 2 years during which period the proponent may obtain the EC.</p> <p>All the working mines in the State have required statutory clearances and if any of the mines is found working without such clearances, the operation of the said mine will be immediately stopped and necessary action as per law will be initiated.</p> <p>Provisions of sec 21(5) of MMDR Act’1957 have been</p>

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		<p>applied wherein production has been done without EC demand raised in such cases. No mining is allowed in absence of any statutory clearance. Further, out of the total 135 Iron and Manganese ore mines detected by State Government which have functioned without valid EC including the cases of delayed EC or quantities extracted beyond the EC, prosecution cases have been filed in 114 cases and action has been initiated for filing cases against remaining mines.</p> <p>All the regulatory authorities of the State are acting with utmost care in ensuring compliances of all the related provisions of the Acts/ Rules. And, wherever, negligence/ connivance has been found, action has been initiated against such authorities.</p>
6	<p>There are 96 leases which have obtained much delayed environmental clearance under EIA Notification. The list of the said 96 mining leases is enclosed as Annexure: VI at Page 272-289, Vol II</p> <p>It is to state that out of 96 leases, in 75 leases, extraction of ore (iron / manganese) has been taken place after 27.01.1994. The lessees have obtained delayed EC under EIA Notification which is taken into consideration. The 22,56,74,380 MT of iron ore and 30,71,973 MT of manganese have been extracted illegally without having lawful authority (either there was no EC obtained for the period or when obtained, the excess quantity of ore was extracted above the limit fixed by MoEF during EC approvals). The list of such 75 mining leases is enclosed as Annexure: IX at Page 377-439, Vol IIA.</p> <p>All such production is to be considered as illegal and without lawful authority. The market value for iron and manganese ores is required to be recovered under the provisions of Section 21(5) of the MM(DR) Act, 1957.</p>	<p>Ministry of Environment and Forests It is proposed to issue directions to these 75 mining leases for restricting the production of ore to the level specified in the Environmental Clearance letters and issue Show Cause Notices for violations. It is also proposed to write to Odisha State Government to take credible action against these mine projects under the Environment (Protection) Act, 1986 as per the facts of the case.</p> <p>Government of Odisha As explained in para 5 above, the State Government has taken steps for initiating legal action against defaulting mines which have undertaken mining operations without valid EC, under the provisions of the EP Act. Besides, action has already been initiated for recovery of cost price of the mineral so extracted under section 21(5) of MMDR Act.</p>
7	<p>49 mining leases of Iron Ore and/or Manganese have been running under deemed extension and carrying out production in violation of EIA Notifications, 1994 and 2006, without having EC under EIA Notifications</p> <p>Further, 60 mining leases of Iron Ore and/or Manganese have been running under deemed extension and carrying out production in violation of EIA Notifications, 1994 and 2006, with having obtained delayed E.C.</p> <p>There is flagrant misuse of Rule 24A(6) of MCR, 1960 (as amended on 27.09.1994) during the deemed extension of lease period without obtaining the Environmental Clearance under EIA Notification dated 27.01.1994 and Amendments therein and prior approvals under FC Act, 1980 for diversion of forest land for non forestry purpose which have resulted into serious illegal mining by extracting millions of tonnes of iron and manganese ores. The lessee can't do mining, if obligatory approvals under relevant Acts, Rules and Notifications are not obtained by him, though whatever reasons it could have been there. From the files examined by the Commission, it is noted that both the lessees and State machinery were well aware about the law/circular issued/guidelines framed, etc. There is hardly any scope of ignorance</p> <p>The Commission has observed that during the period (mainly after 2000 to 2009) the rate of royalty per MT iron ore was</p>	<p>Ministry of Environment and Forests The MoEF will examine each of these mining leases and will issue appropriate directions to its Regional Office and State Government to take action as per the provisions of the FC Act, EP Act, the Indian Forest Act, 1927 or local Forest Act, as applicable, based on the facts of each case.</p> <p>Government of Odisha The State Government has taken steps for initiating legal action against defaulting mines which have undertaken mining operations without valid EC, under the provisions of the EP Act. Further, demand has also been issued for excess ore raised as stated earlier. Required corrective and preventive measures have since been taken by the State to ensure that mining is carried out only on receipt of all statutory clearances. As stated under para 6, action has been initiated for recovery of cost price of the excess ores as per section 21(5) of MMDR Act, 1957.</p>

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	<p>very meagre, hence, the lessees had gained windfall profits. During the deemed extension when unlawful mining was carried out, the loss to the State is required to be compensated by recovery of value equivalent to market rate or export rate whichever is applicable in individual cases with exemplary penalty after following due course of law.</p> <p>So, overall 109 leases are/were working under deemed extension and doing production in violation of EIA Notifications, 1994 and 2006. The list of the said 109 mining leases is enclosed as Annexure: X at Page No. 440-456, Vol. IIA.</p> <p>As per submission dated 18.05.2011 [Para: 7(m)] made by the Ministry of Mines, Government of India to this Commission, the leases operated under deemed extension without statutory clearance under EIA notification dated 27.01.1994 and amendments therein for environmental clearance is considered as illegal. Action should be initiated to recover the value equivalent to market value as per Section 21(5) of MM(DR) Act, 1957.</p> <p>Totally, 130 lessees are/were noted doing production without lawful authority of iron and manganese ores, as reported in Annexures: V and IX (which includes 109 leases running under deemed extension also) in violation of EIA Notifications, 1994 and 2006. An approximate quantity of 27,79,30,378 MT iron ore for an approximate value of Rs.45453,54,89,629/- (i.e. approx. Forty Five Thousand Four Hundred Fifty Three Crores) and an approximate quantity of 37,14,054 MT of manganese ore for an approximate value of Rs.3089,75,90,867/- (i.e. approx. Three Thousand Eighty Nine Crores) is extracted illegally and without lawful authority. It is stated here that the illegal production estimated herein is exclusively based on violations of Environmental Clearance under EIA Notifications. Further, other factors such as consent to operate, production without mining plan/scheme, etc. are not taken into consideration. Value of illegal production would increase, if the said factors are taken into consideration.</p>	
8	<p>24 mining leases of Iron Ore and/or Manganese are such where diversion permission u/s. 2 of Forest Conservation Act, 1980 was granted subject to E.C. but without EC, even though lessee of the respective mine has been allowed to operate the mining in violation of the conditions stated therein.</p> <p>The list of the said 24 mining leases is enclosed as Annexure: XI at Page 457-470, Vol. IIA.</p>	<p>Ministry of Environment and Forests Requirement of obtaining environment clearance for a mining project is governed by provisions of the EIA Notification, 1994 or the EIA Notification, 2006, as the case may be.</p> <p>Government of Odisha The State Government has taken steps for initiating legal action against defaulting mines which have undertaken mining operations without valid EC, under the provisions of the EP Act. Further, demand has also been issued for excess ore raised as stated earlier. The operation of mines is being done at present subject to all statutory clearances.</p> <p>All the working mines in the State have required statutory clearances and if any of the mines is found working without such clearances, the operation of the said mine will be immediately stopped and necessary action as per law will be initiated.</p>
9	<p>There are 13 mining leases of iron and/or manganese ores wherein E.C. was granted without having obtained Forest Clearance which is in violation of Circular No. J-11015/</p>	<p>Ministry of Environment and Forests The matter is being further examined for taking an appropriate view.</p>

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	12/94-IA. II(M), dated 17.06.1996 issued by MoEF, GoI. The list of the said 13 mining leases is enclosed as Annexure: XII at Page 471, Vol. IIA.	<p>Government of Odisha</p> <p>There is no bar in the EP Act or EIA Notification to grant of EC without Forest Clearance and at present, both the clearances are being processed independent of each other. However, no mining is permitted without all statutory clearances.</p>
10	<p>During approval for EC by MoEF, certain conditions for protection of wildlife and conservation of habitat, etc. were stipulated in 74 mining leases of iron and/or manganese ores.</p> <p>To what extent, such conditions have been complied with require verification by a team of experts and follow up actions should be taken.</p> <p>The list of 74 mining leases, wherein such conditions are imposed, is enclosed as Annexure: XIII at Page 472 -495, Vol. IIA.</p>	<p>Ministry of Environment and Forests</p> <p>It is proposed to ask the Regional Office of MoEF at Bhubaneswar to verify the compliance in respect to each of these 74 mining leases, about the conditions for protection and conservation of wildlife stipulated in their environment clearance letters.</p>
11	130 mining leases [Annexure: XV at Page 502 - 595, Vol. IIA)] of Iron Ore and/or Manganese were/are running in violation of EP Act, 1986 and Rules framed thereunder because such leases have either not obtained EC or made excess production (production beyond the limit fixed by MoEF) in violation of Notifications dated 27.01.1994, 14.02.2006 and Circular dated 12.02.2002 issued by MoEF. Therefore, action is required to be taken under Section 21(5) of MM(DR) Act, 1957 and also under Section 19 of E.P. Act, 1986 in all such cases which is given in this Chapter, as Annexures: V and IX	<p>Ministry of Environment and Forests</p> <p>As explained in para 5 to 10 above.</p> <p>Government of Odisha</p> <p>As explained in Para 5 to 10 above.</p>
12	<p>In exercise of the powers conferred by Section 23 of the E.P. Act, 1986, the Central Government has delegated the powers vested in it under Sections 5 and 19 of the Act to the State Government and other Authorities. The list of the officers who are authorized for taking the cognizance of the offences under Section 19 of the E.P. Act, 1986 is enclosed as Annexure: XVI at Page 596 - 597, Vol. IIA</p> <p>Ministry of Environment and Forests (MoEF), Government of India has issued directions to the Secretary, Forest and Environment Department, Government of Odisha to initiate action against the defaulting units as per Section 19 of the Environment (Protection) Act, 1986, in all, 30 cases</p> <p>In addition to this, in 07 cases, the State Government had initiated actions under Section 19 of the E.P. Act, 1986.</p> <p>Out of above-mentioned 30 cases, in 16 cases, delayed actions have been taken by the concerned authorities, as per the instructions given by the MoEF, GoI against the defaulting units. The list of said 16 cases is enclosed as Annexure: XVII at Page 598 - 606, Vol. IIA.</p> <p>It is surprising to note that in 14 cases (Sr. 1 to 14 of Annexure: XVII), though order was issued by MoEF, as mentioned in above clauses: (a) to (e), actions have not been taken by the Environment and Forest Department, State of Odisha after years together. In the said cases, only after receipt of letter of this Commission, directions were issued to the concerned District Collector to initiate the proceedings under Section 19 of the E.P. Act.</p> <p>Secondly, in case of leases at Sr. Nos.15 and 16 of Annexure:</p>	<p>Ministry of Environment and Forests</p> <p>In this regard it is proposed to seek a report from the State Government.</p> <p>Government of Odisha</p> <p>Apart from officers authorized by the Government of India, the State government has directed Collectors of districts concerned to prosecute the defaulting units.</p> <p>Action has been initiated against 30 defaulting units as per Section 19 of the Environment (Protection) Act, 1986 on the basis of communications received from MoEF. There was initial delay in initiating prosecution as the MoEF, instead of initiating prosecution through officers under its own administrative control, advised the State Department of Environment. As the State Department of Environment did not have complete information for launching prosecution, it requested the MoEF to launch prosecution through its own officers and was awaiting their response. The State Department of Environment has been regularly monitoring and pursuing the matter.</p>

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	<p>XVII, action is taken by the concerned Department after lapse of many months from the date of the order passed MoEF, New Delhi.</p> <p>However, even after directions were issued by the Department of Environment and Forest, State of Odisha, no action is taken by the Collector till date, in remaining 14 cases. The list of the said 14 cases is enclosed as Annexure: XVIII at Page 607-614, Vol. IIA</p> <p>Further, in 07 cases, for violation of E.C. action is taken after three to seven years. The list of the said 07 cases is enclosed as Annexure: XIX at Page 615-618, Vol. IIA.</p>	
13	<p>In 56 cases, Environment clearance accorded without stipulating any condition for Wildlife Protection and Conservation. Annexure XIV at page 496 -501, Vol IIA.</p>	<p>Ministry of Environment and Forests</p> <p>It is proposed to seek a report from the State Government as to whether they have prepared any regional conservation plan for the area. Also, the State Government may give their views whether any conditions should have been stipulated in the ECs issued to these mines for protection and conservation of wildlife in the area. MoEF would take further action in the matter after obtaining the report from the State Government.</p>
14	<p>Polluted Air</p> <p>Members of the Commission have seen the roads passing from and to the villages and observed that on both sides of roads about 200 mtrs., there are widespread setting of dust on natural vegetation in general and trees in specific camouflaged with the colour of minerals. From this situation, imagine the fate of the villagers in habitat in these areas who do not have any option but to breath polluted air and chunked their lungs with dust. This results to many airborne diseases.</p> <p>Polluted Water</p> <p>Large scale mining operations have resulted to deplete and pollute the ground and surface water in the neighbourhood. It is villager's unfortunate fate of life. Prior to mining operations, the tribes were breathing a fresh and no polluted air, drinking clean and non polluted water from the streams/rivers. But conditions are otherwise today.</p> <p>In the State of Odisha, about 100 Sq. Kms. (1,00,000 ha.) is the "mining impact zone" area in Sundargarh, Koenjhar and Mayurbhanj Districts wherein about 192 mining leases of Iron Ore and Manganese are located in forest and non-forest areas. The total mining lease area is about 45,187 ha, out of which, mining operations are carried out in 33,987 ha. of forest area. Approximately, it covers 45% of the total mining impact zone which is considered as a very high density "leased" area. Hence, the cumulative adverse effect is very high and made this area incomparable to other similar areas or leases. Actually, this area looks like a single mine and that makes the difference.</p> <p>The result of unscientific, non sustainable and explosive mining of iron and manganese ores is lasting very high impact on the very existence and life of the Baitrani River. It is noticed that the river in rainy season get highly polluted, muddy and turbid with unchecked flowing of salt generated from waste dump out of the 176 leases. There are about 55 mining leases of iron and manganese ore which are having the direct impact on the rivulets, nallas and tributaries which are joining to Baitrani River. There are some mines which are located just by</p>	<p>Ministry of Environment and Forests</p> <p>It is proposed to write to the State Pollution Control Board to take necessary action with respect to the issues raised relating to air and water pollution.</p> <p>It is proposed to write to the Regional Office of MoEF at Bhubaneswar to compare in each of 55 mining leases, the realities as occurring on the ground and cross-check the same with the position stated in the environment clearance letters, and suggest appropriate action to be taken by the Ministry.</p> <p>MoEF to get the carrying capacity study done of the area through an institute of repute which would also, inter-alia, go into the issues of depletion of ground water level, pollution of Baitarni river and maximum permissible annual production taking into consideration environmental aspects, inter-generational equity, etc.</p> <p>Government of Odisha</p> <p>Pollution is due to various activities, such as, heavy transportation, road conditions, weather etc. The SPCB has conducted a Carrying Capacity study in this regard and has suggested the following measures-</p> <ul style="list-style-type: none"> (i) Restriction on production and despatch of minerals in Joda and Koira mining circles. A capping of 44 MTPA and 13 MTPA for the year 2013-14 of mining has been recommended. (ii) The number trucks plying have been recommended to be 700 and 400 respectively in Joda and Koira mining circles. <p>The above recommendations are in force.</p> <p>The only probable impact of iron ore mineral on the surface water is the increase in the quantity of Total Suspended Solids (TSS) particularly during the monsoon. The SPCB while issuing consent is stipulating conditions like constructions of catch dams, garland drains, toe wall and settling tanks etc. to minimize the</p>

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	<p>the side of the Baitrani River bed. M/s. Orissa Mining Company Ltd. is one of the leases amongst others. The list of the 56 mining leases is enclosed as Annexure: I at Page 161-178, Vol. II. The high contents of iron, manganese and other heavy metals generated from dumps of mines flowing through rivers are highly detrimental to aquatic fauna back in Estuaries and Bay of Bengal.</p> <p>If illegal activity is allowed to go ahead, there may be irreparable damage to the environment and if it is stopped, there may be irreparable damage to economic interest. In case of doubt, however, protection of environment would have precedence over the economic interest.</p> <p>On perusal of approved environmental clearances given by MoEF, it is observed that the information inputs of rivulets, watercourses and rivers in and around mines are either incomplete or suppressed or false. All the environmental clearance specially listed in the Annexure: I (55 mines) should be revisited and modified by an expert panel. Till then, mines may be kept closed.</p> <p>It would be prudent that an in depth study is undertaken by a reputed organization regarding the impact of mining on the Baitrani River. A define decision whether to allow large scale mining leases to operate in the catchment area which are having serious impact on the existence and life of the said river should also be taken.</p> <p>Actions, which are required to be taken under the Water Pollution Act and Air Pollution Act, are not taken by the competent authority. The relevant Acts provide for prosecution and/or closure of mines. Nobody has thought over it.</p> <p>In such a situation and circumstances, the lessees, who have polluted the air and the river-water as well as drawn the water from the rivers/rivulets without authority, should be penalized as per the law. In addition, they should be directed to pay adequate compensation to restore the ecosystem and environment. It is noted that MoEF(FC) has imposed certain conditions to implement Site Specific Conservation Plan, Regional Wildlife Management Plan, etc. which are neither implemented in field nor found quite adequate. All such plans are mismatched with the excesses being committed in the area. The conditions imposed in the approvals of EC are not monitored and no action is initiated for non implementation and violations by the Regional Office and State Government. The conditions imposed in EC are found most neglected.</p> <p>The fear of the people seems to be genuine because the overall impact area is about 1,00,000ha. wherein maximum of the leases are located. The total area grant for 192 mining leases is of an area of 45,187 ha. including 33,987 ha. forest land. This would have adverse effect because of high-density of these mines. Therefore, it requires immediate relook into the permissions already granted under EIA Notification by MoEF. Depletion of water table and drying of natural streams would result to change of type of forest and ecosystem. There should be balancing act and necessary action should be taken to restore them.</p> <p>MoEF has given EC by looking into individual cases. It has never got studied the overall impact of such large number of</p>	<p>impact on the neighbouring water bodies.</p> <p>The major river passing through the iron and manganese ore belt in Odisha is the Baitarini river, which is being monitored under National Water Monitoring Program (NWMP) sponsored by CPCB since 1986. Monitoring of Baitarini river was carried out on quarterly basis from 1986 to 2010 and on a month basis from 2011. Monitoring results of water sample of Baitarini river has established to be equal to Class – C river (drinking water source with conventional treatment followed by disinfection). Only in few instances, the samples did not meet the prescribed standard of class – C river in respect of Total Colliform parameter, which is not related to the mining activity, but to the in-stream use of the river.</p> <p>While granting the requisite clearances under the environmental laws, mitigative / preventive measures are prescribed to minimize the adverse impact of mining activity on the ecosystem.</p> <p>All possible measures have been taken to prevent air and water pollution in the mining area. In no case, the mining units have been permitted to violate the conditions prescribed under Water (PCP) Act 1974 and Air (PCP) Act 1981.</p> <p>The Environmental Clearance applications pass through a rigorous system of screening (category 'B' projects), scoping, public consultation and Appraisal along with detailed terms of reference and conduct of Environment Impact Assessment. Thus, there is hardly any scope of suppression of information or submission of incorrect information by the project proponent remaining undetected. The discrepancies pointed out in the report are based on distances and existence of rivers/streams as per Google image. The observations in Google image are not accurate enough to draw final inferences. Besides, small/seasonal nallahs/ streams may change their course over a period of time due to natural processes. In many cases, no discrepancy exists between the inference from Google image and the EC.</p> <p>Due to these reasons, there is no case for re-visiting or modifying the EC's on the basis of Google image unless the discrepancies are established by field verification.</p> <p>The SPCB has already instituted a study on Regional Environmental Management Plan by engaging Center for Environmental Planning and Technology (CEPT), Ahmedabad. Study of environmental impact of mining on Baitarini river is also one component of the study. The final report of the CEPT is awaited. However in the meantime, the SPCB has conducted a carrying capacity study of Joda and Koirra areas. The study conducted by SPCB reveals that no stretch of river Baitarini is affected by pollution caused due to mining activities.</p> <p>It is not a fact that water is allocated to Industries without making any proper arrangement for supplying drinking water.</p> <p>SPCB has taken necessary action to bring all the mines</p>

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	<p>leases in a limited area. It would not be out of context to state here that MoEF has given EC in 96 leases for a quantity of extraction of 153.24 million MT per year which is about as high as 15 times to the extraction carried out in the year 1999–2000. Still the approvals for about 66 mines have to be given. These approvals are simply unrealistic and mechanical without proper application of mind. It requires revisit to reduce upper limit of production in each mine, proper water management, dumps handlings and others. Based on the requirements of the State other dependants, the upper limits in each lease should be fixed in such a manner that it should not exceed the production to 55.00 million tons per year. The criteria adopted in Karnataka under the direction of Hon'ble Supreme Court should be taken into consideration, while fixing the upper cap for each lease.</p>	<p>under Consent Administration under Water (PCP) Act, 1974 and Air (PCP) Act, 1981</p> <p>While submitting the Forest Diversion proposal, all relevant facts relating to the project are submitted in Part-I as well as Part-II of the application format. The Environmental safeguards to be ensured are carefully examined by the Environmental Appraisal Committee of MoEF and stipulated in the Environmental clearance accorded by Ministry of Environment and Forests, Government of India. However, as regards the forest land in the mining lease is concerned, the following safeguards have been taken in most of the mining leases:</p> <ul style="list-style-type: none"> • Afforestation measures have been taken up inside the ML area at project cost to arrest soil erosion. • A strip of 20 Mtr. along the bank of the streams passing through the ML area have been taken as safety zone and steps have been taken for fencing, protection and regeneration of the area. • Dump stabilization has been taken up by grass turfing and plantation of suitable species on dump slopes. • Peripheral stone-wall fencing around the dumps and garland drains has been provided to prevent the runoff from polluting the natural streams.
15	<p>The Odisha State Pollution Control Board is an Authority constituted in terms of the Water (Prevention and Control of Pollution) Act, 1974, and the Air (Prevention and Control of Pollution) Act, 1981. Essentially, the two Acts have been enacted by the Legislature in order to provide for protection, control and prevention of Air and Water pollution.</p> <p>This has not been exercised by Odisha State Pollution Control Board and has allowed the situations to deteriorate at its lowest ebb by permitting the mining units to violate the conditions prescribed under the EC and the condition to operate under the Water Act, 1974 and Air Act, 1981. Accountability in this regard shall be fixed and action should be initiated against the concerned.</p> <p>The Mines Department which is competent authority to allow mining is required to be satisfied that all the clearances/approvals are obtained by the lessee before operation of mining commences. The burden to ensure that the party has obtained all the necessary permissions for the purpose of carrying on or undertaking an activity is essentially the duty of the State Government through the Department of Mines which has permitted or granted lease for winning of iron ore. Mines Department is required to ensure that no mining is carried out until all other permissions required under all other laws are obtained.</p> <p>In addition, all other Authorities which are required to give individual permissions/clearances having regard to the provisions of their respective Acts and Rules under which they are set up and the kind and nature of the permissions/clearances required under those Acts and Rules shall monitor matters arising within their own jurisdictions and are required to take action in case of failure to comply with the conditions.</p> <p>Facts found from the record reveal that this has not been done by the concerned authorities.</p>	<p>Government of Odisha</p> <p>The SPCB Odisha, has exercised the powers vested on it under the Water (PCP) Act 1974 and the Air (PCP) Act 1981 to the best of its capabilities in relevant cases.</p> <p>The observation of the commission that, powers have not been exercised and that the SPCB has permitted the mining units to violate consent conditions are not based on facts.</p> <p>The SPCB Odisha is taking all possible measures to ensure that the natural resources like air, water, soil etc. are utilized judiciously with utmost care and without causing any irreversible damage to the environment.</p> <p>It is evident from the air quality data of iron-manganese mines operating in Odisha (collected during monitoring and inspections by SPCB Officials) that at no stage the fugitive emissions of mine origin had exceeded the prescribed standard of 1200µg/m3.</p> <p>Statutory permission under Water (PCP) Act, 1974 and Air (PCP) Act, 1981 is accorded to the mines by the SPC Board, subject to various conditions stipulated in the CTE/CTO orders. The consented conditions are verified by the Board officials from time to time and renewal of CTO is done only after verifying the compliance status of the consent conditions. Moreover, other concerned regulatory authorities of the State have also monitored the compliance of the stipulations of their respective clearances; and, wherever violations have been observed, appropriate actions have also been initiated.</p> <p>The SPCB is also exercising the revocation of consent in the event of violation of consent conditions. In cases, where violation of consent conditions continues, direction of closure is issued and prosecution cases are also booked against non-complying project authorities.</p>

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16	<p>The environmental officers at district who initiate public hearing for District Forest Officers of the concern forest area are also responsible to allow mining in non approved leases. During the examination of files of all departments at Bhubaneswar, it is observed that some letters were written by the Divisional Forest Officers (DFOs) or equivalent have not been taken seriously by the other implementing officers / jurisdictional officers. This is also one of the reasons of illegal mining in forest land.</p> <p>In some leases, cases were filed by District Forest Officers/Regional Forest Officers against the supervisory staff (like Asst. Manager/Manager, etc.) instead of lessee or owner of the company. All such cases are required to be seriously examined and re- look to take action against the lessees/proprietors/ directors/partners of firms and companies, etc.</p>	<p>Government of Odisha The concerned regulatory authorities have taken steps to prevent illegal mining in forest land. In fact, the field officials have been directed to review these cases and take action against lessees/ proprietor/ Directors/ Partners wherever found responsible for violation. Moreover, for serious violations, the leases have also been determined under MMDR Act and Rules made thereunder</p>
17	<p>Streamline the System</p> <p>It appears that there is systemic failure in implementing and ignoring the law. Such instances which have led many people in this country to believe that disregard of law pays and that the consequences of such disregard will never be visited upon them—particularly, if they are personalities with means. It appears that such strong words are also not sufficient to streamline systematic failure. For this, strict actions are required to be taken against the persons who have failed to discharge their duties and noncompliance of law.</p>	<p>Government of Odisha There was no systemic failure in implementing and ignoring the law. Wherever violations have occurred, steps have been taken for prosecution of the offenders under the relevant law.</p>

Chapter No.4: Mining of iron and manganese ores in forest area and eco-fragile zone in State of Odisha

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1	<p>Vide D.O. letter No.19-19/87-FP(R), dated 05.05.1988, Shri T. N. Seshan, the then Secretary, MoEF GoI, New Delhi (received in the office of Chief Secretary on 10.05.1988) requested Shri N. K. Panda, Chief Secretary, Government of Odisha to get the cases of violation of the FCA (mentioned in the said letter) investigated, so as to fix the responsibility on the persons responsible and that such violations are not continuing any further.</p> <p>There is no follow up action of the said letter as observed during the enquiry wherein the State Government continued to commit violations one after the other. Some actions were taken after the order dated 12.12.1996 of the Hon'ble Supreme Court in W.P. (C) No.202/1995. But within a gap of 4-5 years, the same situation reappeared what was prevailing before 12.12.1996.</p> <p>The MoEF, New Delhi, vide its letter dated 25.11.1994 (just after EIA Notification dated 27.01.1994), had further issued certain guidelines to the Chief Secretary of All States/UTs, for diversion of forest land for non-forest purpose under the FCA. Para II (iii) of the said letter reads as under:-</p> <p>“For projects requiring clearance from forest as well as environment angles, separate communications of sanction will be issued, and the project would be deemed to be cleared only after clearance from both angles.”</p> <p>In the above letter to the States (including Odisha State), it is made pretty clear that the mining projects are deemed to be cleared only after having clearance under FCA and E.P. Act, 1986 in forest areas. If any one of them is not obtained, the mining leases should not be permitted to operate. However, in the State of Odisha, no such directions were followed for years together in almost all the leases and hence, large scale illegalities have been committed by non-compliance of the provisions of existing statutes.</p>	<p>Ministry of Environment and Forests The MoEF will examine each case of mining leases and will issue appropriate directions to its Regional Office and State Government to take action as per Section 3 A and 3 B of the FC Act or relevant sections of the Indian Forest Act, 1927 and the Local Forest Act, as applicable, based on facts of each case.</p> <p>Government of Odisha All the working mines in the State have required statutory clearances and if any of the mines is found working without such clearances, the operation of the said mine will be immediately stopped and necessary action as per law will be initiated. The previous occurrences of violations have been reported to MoEF.</p>
2	<p>The Government of India, vide its Notification F. No.5-5/98-FC, dated 01.10.2003, have authorized the Chief Conservator of Forest, Regional Offices, MoEF to file complaints against persons prima facie found guilty of such offence in Jurisdictional Courts for prosecution. But till date, no such case has been registered by the CCF/APCCF, Regional Office, Bhubaneswar. It is an utter surprise to the Commission that though there are serious violations under the FCA, not even a single case is registered in the State. The Regional Office of Bhubaneswar has completely failed to perform its duties and responsibilities. Therefore, accountability should be fixed on them.</p>	<p>Ministry of Environment and Forests As at Para 1 above.</p>
3	<p>Almost all the offence cases booked by the Forest Department, only manager of leases and/or low ranked officials/persons were named in the FIRs as accused. This is totally unacceptable logic. Such approach has emboldened the lessee to violate the relevant provisions of laws. All such cases should be reviewed and action should be taken as per law.</p>	<p>Government of Odisha The action taken under the Orissa Forest Act, 1972 is given at Chapter 4 - Para 13. It clearly points out that action is initiated against Senior Officers. In case action is not initiated against any person as per the provisions of section 27 of the Orissa Forest Act, 1972, the cases will be reviewed and action will be taken as per said provisions.</p>
4	<p>It is noted that in all offences under FCA, liberal and lenient approach has been adopted by the MoEF. The MoEF has introduced a concept of “Penal Compensatory Afforestation”</p>	<p>Ministry of Environment and Forests MoEF in the past dealt cases involving violations of the FC Act or the Indian Forest Act, 1927 in accordance with</p>

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	<p>(PCA) in the guidelines for the violations committed under Section 2. It is stated here that there is no provision under the Forest (Conservation) Act, 1980 and Rules thereunder for PCA.</p> <p>The provisions of FCA do not empower the MoEF to frame such guidelines which substitutes penal provisions of the Act for offence punishable under it. By issuing such guidelines, MoEF has virtually amended the FCA which is not permissible in law.</p> <p>The list of leases where the PCA has been imposed alongwith the extent of the forest land used in violation of the Section 2 of the Act is given in Annexure: VIII. As discussed earlier, there is no provision of PCA under the FCA, 1980 and Rules framed thereunder. Action should be taken as per the provisions under the FCA.</p> <p>Such guidelines have completely diluted the provisions of the Act and created a fearless atmosphere where the defaulters are walking away by paying a paltry amount as PCA. However, at the other hand, the lessees are making super phenomenal profits by committing such violations under the Act. There is no even a remote relation between the PCA and Sections 3A & 3B (which provides for prosecution and came into force from 15.03.1989) of the FCA. No lessee would mind to pay PCA twice or thrice or more as imposed by MoEF. No protest or litigation came across, while examining the records by the Commission for payment as PCA. At the same time, it has become a routine exercise committed regularly by the MoEF to impose PCA in all such offences, even in very serious offences.</p>	<p>the provisions of the para 4.3 of the guidelines issued under the FC Act. The said para provides for grant of ex-post facto approval under the FC Act after imposing penal compensatory afforestation for the area worked/used in violation.</p> <p>However, the MoEF proposes to formulate, in consultation with the Ministry of Law and Justice, appropriate guidelines to deal with cases involving violations of the FC Act, the Indian Forest Act, 1927 and the local Forest Acts. Such guidelines may inter-alia provide that approval under the FC Act for diversion of forest land to cases involving violations shall be subject to:</p> <ol style="list-style-type: none"> (i) Initiation of proceedings under section 3 A and 3 B of the FC Act, and/or relevant sections of the Indian Forest Act, 1927 and/or the relevant sections of the local forest Act, as the facts of each case may demand; and (ii) Realization of penal net present value (NPV) of the forest land used for non-forest purpose and/or cost of creation of penal compensatory afforestation commensurate with the extent and duration of the violation. <p>Government of Odisha The Forest (Conservation) Act guideline provides for imposing Penal Compensatory Afforestation by MoEF in cases of condonation of violation. The guideline also provides for imposing Penal Compensatory Afforestation over the area worked/used in violation.</p> <p>All cases of violations have been reported to MoEF in a very transparent manner at the time of submission of Forest Diversion proposal. The recommendation for approval under Forest (Conservation) Act has been made by the State Government in individual cases after considering all facts and circumstances of each case in accordance with the guideline of MoEF. Imposition of Penal Compensatory Afforestation has been recommended in accordance with guidelines of MoEF and as decided by MoEF in other similar cases.</p>
5	<p>It is highlighted that there are 10 leases of iron and manganese ores among others falling within 10 kms. radius of outer boundary of Simlipal National Park (SPNP) (Annexure: VI) covering an area of 1470.404 ha.</p> <ol style="list-style-type: none"> (a) None of the mining lease is approved by the Standing Committee of National Board for Wildlife. (b) Out of 10 mining leases, 7 lessees have not obtained EC. <p>Hence, in all, as such mining operations should be suspended till approval is obtained or lease should be cancelled.</p> <p>Out of 10 lessees, 3 lessees have obtained ECs. The information submitted for the distance from the outer boundary for obtaining ECs is found apparently incorrect. Therefore, they are operating the mines in violation of E.P. Act and Rules, 1986 and also the Supreme Court's order dated 04.12.2006.</p> <p>The names of the aforesaid 3 leases are as under:-</p> <ol style="list-style-type: none"> (i) M/s. Lal Traders & Agencies, Badampahar Iron Ore 	<p>Ministry of Environment and Forests Show cause notices under section 5 of Environment (Protection) Act, 1986 are proposed to be issued to the concerned project proponents for cancelation of ECs of these 3 mining leases.</p> <p>Government of Odisha The State Government is fully committed to protect the Wildlife resources of the State and comply to the provisions of Wildlife (Protection) Act, 1972, Forest (Conservation) Act, 1980, Environmental Protection Act, 1986 as well as orders of Hon'ble Supreme Court of India in this regard.</p> <p>As per directions of Hon'ble Supreme Court of India dated 14.02.2000 in W.P(C) 202 of 1995 & order dated 13.11.2000 in W.P(C) 337 of 1995, not a single mining lease is operating in the State which is located inside the National Park or Wildlife Sanctuary.</p> <p>As per directions of Hon'ble Supreme Court of India, dated 04.08.2006 in IA No.1413 & 1454 in WP(C) 202 of</p>

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	<p>Mines (129.610 Ha.); (ii) B. C. Dagara, Suleipat Iron Ore Mines (618 Ha.); and (iii) D. C. Dagara, Ghusuria Iron Ore Mines (54.585 Ha.)</p> <p>The remaining seven leases have not obtained EC till date. All 10 leases are also the part of Notified Elephant reserve and Biosphere reserve. Hence, it has increased importance. Overall, the area is densely elephant infested habitat areas. Hence, 10 kms. radius is fully justified around the SPNP.</p> <p>It is also stated that while granting EC, a specific condition is incorporated in two leases (M/s. Lal Traders & Agencies, Badampahar Iron Ore Mines and D. C. Dagara, Ghusuria Iron Ore Mines) to the effect that the EC was subject to obtaining clearance under the Wildlife (Protection) Act, 1972 from the competent authority as may be applicable to this project. This has not been obtained by the lessee. Hence, it is contravention of the E.C. approval. Mining operations should be suspended till it is obtained and produced by the lessee. Any other penal action arising out of the above violation should also be taken.</p> <p>In case of other 07 leases, even though there is the direction to obtain approval from the Standing Committee of the National Board for Wildlife, the same is not done and the leases are being operated. Therefore, action should be taken to close them, till the approval of NBWL is obtained. No further renewal of all three leases listed in Annexure: VI should be accorded.</p>	<p>1995 all mining activities have been stopped within 1 Kms from the boundary of National Park and Sanctuary.</p> <p>In pursuance to the order of Hon'ble Supreme Court of India dated 4th December, 2006 in Writ Petition (Civil) No.460/2004, in case any project requiring Environmental Clearance, is located within the eco-sensitive zone around a Wildlife Sanctuary or National Park or in absence of delineation of such a zone, within a distance of 10 kms from its boundaries, the User Agency/ Project Proponent is required to obtain recommendations of the Standing Committee of NBWL. However, there has been no orders or Notification restraining non-forest activity within the distance of 1 to 10 kms from the boundary of Sanctuary & National Park. As observed by the Hon'ble Commission, 3 mining lessees were operating within the distance zone of 1 to 10 kms on the strength of EC/ Temporary Working Permission. However, the Ghusuria mines of D. C. Dagra is not under operation. Suleipat mines of B. C. Dagra has been suspended w.e.f. 08.3.2013 and the Badampahar Iron Ore Mines of M/s Lal Traders is operating on the strength of Forest Clearance and Environmental Clearance granted by GoI, MoEF. However, as regards grant of Environmental Clearance on wrong premises, a view may be taken by GoI, MoEF on the validity of the Environmental Clearance granted in favour of the said mining leases. The State Government will abide by the decision of the MoEF in this regard.</p> <p>In respect of area in and around the Elephant Reserve and Elephant Corridor, which do not fall within National Park and Sanctuary, presently there is no provision under the Wildlife (Protection) Act or notification by MoEF or directives of Hon'ble Supreme Court of India prohibiting mining operation/ grant of ML in such area.</p>
6	<p>The MoEF, in its Environment Section, vide Office Memorandum dated 02.12.2009, has directed to all concerned to stipulate condition as per the order of the Hon'ble Supreme Court of India dated 04.12.2006 after a gap of three years. That means, a specific condition should be stipulated stating that the EC shall be subject to their obtaining prior clearance from the National Board for Wild Life including from Standing Committee of National Board for Wild Life, as applicable. But the said Office Memorandum by Environment section of the MoEF office has not implemented its own directions.</p>	<p>Ministry of Environment and Forests Pursuant to the directions of the Hon'ble Supreme Court dated 4.12.2006, the Ministry of Environment & Forests issued a circular vide letter no. L-11011/7/2004-IA.II(I) (Part) dated 27th February, 2007 stating that 'all development projects falling within 10 km radius of the Wildlife Sanctuary and / or National Parks and which have been recommended for environmental clearance by the respective Expert Appraisal Committee shall be accorded environmental clearance subject to their project proponents obtaining clearance under the Wildlife (Protection) Act, 1972.</p> <p>The position was further clarified vide circular no. J-11013/41/2006-IA.II(I) dated 2nd December, 2009 giving the procedure in detail for consideration of proposals for grant of environmental clearance under EIA Notification, 2006, which involves forest land and /or Wildlife Habitat. It was, inter alia, stated in this circular that while granting environment clearance to projects involving forestland, wildlife habitat (core zone of elephant/tiger reserve etc.) and or located within 10 km of the National Park / Wildlife Sanctuary (at present the distance of 10 km has been taken in conformity with the order dated 4.12.2006 in the writ petition no.460 of 2004 in the matter of Goa Foundation Vs. Union of India), a specific condition shall be stipulated that the environmental clearance is subject to their obtaining prior clearance from forestry and wildlife</p>

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		angle including clearance from the Standing Committee of the National Board for Wildlife as applicable.
7	Issue of working permissions by Steel and Mines Department of the State Government under MCR, 1960 for the leases (leases which fall in forest areas), when their lease period expired and came in deemed refusal category is considered as flagrant violation of the FCA (including leases for which the forest areas were broken prior to 25.10.1980). The State does not have any power or authority to issue such working permission for the leases which ceased to exist. It is also applicable to leases where lease period expires after 25.10.1980 and working permission [under MM(DR) Act] is issued or mining allowed in broken up forest areas.	<p>Ministry of Environment and Forests After the FC Act came into force, grant of working permission in forest area, including the broken up forest area, after expiry of the mining lease, requires prior approval of Central Government under the FC Act.</p> <p>Government of Odisha The cases of Temporary Working Permission accorded by Steel and Mines Department after 1980 have been reported to MoEF at the time of submission of diversion proposals. MoEF have regularised by imposing Penal Compensatory Afforestation.</p>
8	The extension of period by 200 days by Ministry of Mines (GoI) in the cases of deemed refusal where the lease period expired and no approval is taken under the FCA, for such leases (having forest land), the extension of 200 days is considered as a violation of the FCA.	<p>Ministry of Environment and Forests After the FC Act came into force, extension of lease period for the leases having forest land in part of full requires prior approval of Central Government under the FC Act.</p> <p>Ministry of Mines The extension of lease period by 200 days by the Revisionary Authority does not absolve leaseholders from compliance of prescribed statutory provisions in force including the forest clearances.</p>
9	Breaking/Clearing of fresh forest areas in the subsisting leases (granted prior to 25.10.1980) after the commencement of FCA is considered as violation of Section 2(ii) of the FCA.	<p>Ministry of Environment and Forests The advice of the Ministry of Law and Justice on the renewal of mining leases as reproduced in Annexure-III to guidelines issued under the FC Act is as below:</p> <p>(i) In respect of the mining operations being carried out on forest lands leased before the commencement of the FC Act during the continuance of the lease period, the approval of the Central Government under Section 2 of the said Act is not required.</p> <p>(ii) A renewal of a lease is really the grant of fresh lease. (See Delhi Development Authority Vs. Durga Chand Kausish, AIR 1973 SC 2609). The prior approval of the Central Government in terms of Section 2 of the Forest (Conservation) Act, 1980 would be required when a mining lease granted before the commencement of the said Act is renewed after its coming into force.</p> <p>(iii) As held by the Supreme Court in State of Bihar Vs. Banshi Ram Modi (supra), prior approval of the Central Government in terms of Section 2 of the FC Act would not be required for mining and winning any new mineral from a forest land leased for mining before the commencement of the said Act during the leased period originally granted, if the said land is already broken up or cleared before the commencement of the Act. Otherwise, the prior approval of the Central Government under Section 2 of the said Act would be required.</p>
10	In many cases, NPV has been collected without having obtained the approval under FCA. Payment of NPV without FC approval would not make good the violation of Section 2 of the FCA. All such cases are taken as violation of FCA, provided, approval was necessary for use of forest land for non forest purpose.	<p>Ministry of Environment and Forests Net Present Value of the forest land without obtaining approval under the FC Act have been collected in compliance with order of the Hon'ble Supreme Court.</p> <p>Government of Odisha The collection of Net Present Value for the entire forest land has been in accordance with the recommendation of</p>

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		CEC and approved by Supreme Court of India. The payment of Net Present Value does not guarantee the clearance under FC nor does it permit the operation of the mines without the statutory clearances which is being followed scrupulously. All these proposals are brought to the notice of MoEF at the time of diversion of forest area.
11	<p>It is observed in the State of Odisha that in some of the cases, the post facto approval had been granted with retrospective effect without recommending action under Sections 3A and 3B of the FCA. There are very few cases where prior approval under Section 2 of the Act is obtained. As such, there is no power to grant post facto approval with retrospective effect. All the production and working of mining is considered as "illegal" in such cases before the date of approval under FCA.</p>	<p>Ministry of Environment and Forests Same as reply to para 4 above.</p> <p>Government of Odisha The post facto approvals by Government of India have been granted by imposing Penal Compensatory Afforestation. The State Government had informed the violation in a very transparent manner to MoEF and MoEF have regularized the issue by imposing Penal Compensatory Afforestation / Net Present Value.</p>
12	<p>In respect of renewal of mining leases, temporary working permission may be granted by the Central Government to continue working in already broken up area up to maximum period of one year, even without formal approval for the renewal, provided that:-</p> <p>(a) The user agency has submitted the required proposal with complete details to the Forest Department at least one year prior to the expiry of existing lease period.</p> <p>(b) The State Government has sent the formal proposal to the Central Government for renewal of mining lease prior to the expiry of the existing lease, alongwith particulars and reports as are required to be furnished in the normal course of renewal.</p> <p>(c) The temporary working permission will be confined to areas already broken up prior to the expiry of the lease, and no fresh areas will be broken up until formal renewal is granted. These amendments came into force with effect from 25.10.1994.</p> <p>It is observed that in large number of cases, the mining operation continued even after the expiry of TWP period till the formal approval is accorded (it would be discussed in individual cases in the subsequent Report).</p> <p>Further, it is observed that in many cases, TWP is given by MoEF in violation of their own guidelines.</p>	<p>Ministry of Environment and Forests Hon'ble Supreme Court in their order dated 4th August 2006 in the I.A.s No. 1413, 1414 etc. in Writ Petition (Civil) No. 202 of 1995 in the matter of T.N. Godavarman Thirumulpad versus Union of India and Others issued guidelines to regulate grant of Temporary Working Permission on expiry of a mining lease. From the 4th August 2006 onward, the MoEF has issued TWPs in accordance with the said guidelines.</p> <p>MoEF will seek from the State Government details of the cases where mining operations continued even after the expiry of TWP period till the formal approval was accorded and will issue appropriate directions to its Regional Office and State Government to take action as per Section 3 A and 3 B of the FC Act or relevant sections of the Indian Forest Act, 1927 and the Local Forest Act, as applicable, based on facts of each case.</p> <p>In the absence of specific details, it may not be feasible for the MoEF to furnish comment on observation of the Commission that in many cases, TWP is given by MoEF in violation of their own guidelines.</p>
13	<p>Penal provisions (Sections 3A and 3B of FCA) cannot be substituted by penal compensatory afforestation (PCA) by framing guidelines for which there is no power.</p> <p>Firstly, in most of the cases, State has not recommended action under Sections 3A and 3B of the FCA.</p> <p>Secondly, while granting approval, the MoEF has not recommended taking action in individual cases for violation of the FCA, punishable under Sections 3A and 3B. Though the then Secretary, Shri T. N. Seshan has pointed out in his D.O. letter No.19-19/87-FP(R), dated 05.05.1988 to Shri N. K. Panda, the then Chief Secretary as early as on 05.05.1988 to take action in the cases of FCA violations. The provisions of Sections 3A and 3B of the FCA are required to be implemented. Not even in a single case of violation of the FCA in the mining leases of Iron and Manganese Ores, the penal provisions for prosecution have been exercised by MoEF (Chief Conservator of Forests, Regional Office, Bhubaneswar) in the State of Odisha, since he has been</p>	<p>Ministry of Environment and Forests Same as reply to para 4 above.</p> <p>Government of Odisha In continuation of reply at para 4, it is incorrect to state that the lessees and the State authorities have colluded in illegal mining. The following cases had been booked by the forest authorities under Orissa Forest Act, 1972 before the visit of Hon'ble Commission.</p> <p>No. of vehicles seized - 154 No. of prosecution cases sent to Judicial court - 59 Show cause notice issued - 39 Closure notice issued - 21 Quantity of Iron ore seized - 31,282 MT Quantity of Mn. ore seized - 1,049 MT</p> <p>Cases of illegal mining activities which came to notice have been dealt with diligently. Actions have been initiated against the delinquent officers whose</p>

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	<p>authorized to do so since 01.10.2003.</p> <p>In this context, it is recommended here that the imposition of PCA should be done away from the approvals given and actions should be initiated as per the provisions of Sections 3A and 3B of the FCA or approval should be withdrawn by following due course of law. The list of such leases where the PCA has been imposed alongwith the extent of the forest land used in violation of the Section 2 of the Act is given in Annexure: VIII.</p> <p>It is to state here that the MoEF, New Delhi and Regional Office, Bhubaneswar were fully aware about these violations, since most of such violations were reported to the MoEF by the State Government during the submission of proposals for diversion of forest land. Of course, the seriousness of the matter was lacking. Except one or two cases which came to notice of the Commission during the enquiry (violation under Forest (Conservation) Act, 1980) wherein MoEF had directed to take action to State Government (before 2000), remaining all other cases were left free. Further, no action has been taken in those cases also where Government of India had recommended doing so. There appears no seriousness in this regard at the State level and is left to the low ranked officials to handle such serious issues.</p> <p>During the inquiry, it has been noted that in large number of cases (individual cases would be discussed in the subsequent Report), the lessees had applied for diversion of forest land under FCA but the proposal were kept pending for years together on one pretext or the other at various levels. However, during this period, the mining operations were allowed in the forest land. This has mainly happened during the "china boom" (from the year 2000-01 to 2010-11) and lessees were also getting super profit in domestic market. The lessees and State authorities have fully colluded in illegal mining and caused a mass destruction of forest wealth; plunder of natural resources, irreparable damage to ecosystem and environment and also loss to State exchequer. It may be noted that during this period, royalty was very less and profits were exceedingly high. It is further observed that during this period, the production of iron ore in the State have been increased approximately from 1,18,02,931 MT per year to 8,08,96,000 MT per year since 1999-2000 to 2009-10 respectively. Actions should be taken in all 31 cases, as mentioned in Annexure: VIII and others, as per Sections 3A, 3B of Forest (Conservation) Act, 1980 and Section 27 of Orissa Forest Act, 1972.</p>	<p>involvement in illegal mining has come to the notice of the State Government.</p>
14	<p>Extraction of the ore or any mining activity beyond the leased period and also during deemed extension period under Rule 24A(6) of MCR, 1960 without prior approval under FCA of forest land is a violation of Section 2 of the Act. Forest land includes DLC land after 29.08.1998 or the date of intimation to lessee whichever is earlier.</p> <p>All the production carried out without having approval under FCA (wherever it was necessary) is considered as illegal and without lawful authority. It attracts the provisions of Section 21(5) of the MM(DR) Act, 1957. Action should be taken accordingly.</p> <p>As per the record submitted by the Regional Office, MoEF and also State Government, out of 176 mines (located in</p>	<p>Ministry of Environment and Forests The MoEF will examine each case of mining leases and will issue appropriate directions to its Regional Office and State Government to take action as per Section 3A and 3B of the FC Act or relevant sections of the Indian Forest Act, 1927 and the Local Forest Act, as applicable, based on facts of each case.</p> <p>Government of Odisha There are 176 Mining Leases in the State comprising forest land in full or part. At present, the mines which are presently in operation are having necessary statutory clearances. Other mines are not operating for want of statutory clearances. Any violation, if detected, is being dealt as per law.</p>

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	<p>forest area), in 78 mining leases, MoEF has granted diversion of forest land under Section 2 of the FCA, 1980, leaving 98 leases without approval under the said Act. The list thereof is at Annexure: III.</p> <p>Out of 98 leases, 51 leases are/were running without obtaining forest diversion under FCA in contravention of provisions of the said Act (for a certain period including deemed extension period under Rule 24A of MCR, 1960). They should have obtained MoEF's permission before operating mines, but failed to do so. The list with illegal/without lawful authority production carried out during the period thereof is at Annexure: IIIA.</p> <p>Further, out of 176 mines (which comprised of forest area), in 98 mining leases, no approval has been obtained from MoEF for diversion of forest land at all. But in many leases, mining operations are/were carried out. That is without obtaining FC at all. The list thereof is at Annexure: IV.</p> <p>However, it is to be noted that out of these 98 leases, in 45 leases, iron/manganese ore is/was extracted illegally/ without any lawful authority, that is to say, in contravention of provisions of FCA, the mines are/ were being operated without FC. The mines are/were operated even during the deemed extension period. Hence, production is considered as illegal/without any lawful authority. The list thereof is at Annexure: IVA.</p>	<p>Whenever any illegal mining/irregularity/ forest offence has been observed, immediate action has been taken by the concerned field staff of Forest Department under the provision of Odisha Forest Act and Rules made thereunder. The cases referred to in Annexure-III, III(A), (IV) and IV(A) will be examined and action will be taken, as required.</p>
15	<p>Out of the said 72 leases [Annexure: IX at Page 127-128, Vol III], in 30 leases, ex-post facto approvals have been accorded by MoEF wherein violation under Section 2 of Forest (Conservation) Act, 1980, has been committed by the lessees, covering the forest areas, as listed in Column: 8 of the said Annexure. (The lessees had worked for extraction of ores and other activities in such areas). There was no recommendation made by MoEF for taking actions under Sections 3A and 3B of the Act for such cases. There may be some more cases of this kind.</p>	<p>Ministry of Environment and Forests MoEF will re-examine each of the 30 cases and issue appropriate directions to its Regional Office and State Government to take action as per Section 3 A and 3 B of the FC Act or relevant sections of the Indian Forest Act, 1927 and the Local Forest Act, as applicable, based on facts of each case.</p> <p>Government of Odisha Same as reply at para 13 above.</p>
16	<p>Under the provisions of Rule 24A of MCR, 1960, many leases in the State were fallen in the category of deemed refusal and legally ceased to exist. The State Government, without authority, competence and power, issued Temporary Working Permission in 34 leases under MCR, 1960 in violation of provision of Section 2 of FCA. (There is no provision as well as power with any authority to issue such permission under the law where lease did not exist.) A list of such leases where full or part of leased area consist of forest land (reserve forest, revenue forest, Section 4 notified forest) is enclosed herewith at Annexure: X. The State Government/ lessee did not obtain prior approval under Section 2 of FCA, 1980 before or after issuing TWP. All such TWPs are in violation of Section 2 of FCA, 1980 (together with violation under MCR, 1960). Action should be initiated under Sections 3A and 3B of FCA in all such leases given in Annexure: X. It is to state here that the then Secretary, MoEF, Shri T. N. Seshan had also written to the Chief Secretary, Shri N. K. Panda on 05.05.1988 regarding issue of illegal work permits in utter disregard to the law. He further requested to the State Government to fix responsibility on the persons responsible for this unlawful act and to take action.</p>	<p>Ministry of Environment and Forests Same as reply at Para 7 and 8 above.</p> <p>Government of Odisha At the initial stage of implementation under F.C. Act, there were few cases where Temporary Working Permission have been granted by State Government for continuance of mining operation on forest land after expiry of the lease period. This was based on the genuine belief that mining on broken forest land could be continued without approval under F.C. Act.</p> <p>After the above issue was clarified by Govt. of India, MoEF as well as directions issued by Hon'ble Supreme Court of India, the confusion ceased to exist. Thereafter issuing of such permissions was stopped. The State Government is fully committed to proper implementation of the Forest Conservation Act and has also fully complied with the orders dated 12.12.1996 of Hon'ble Supreme Court of India. That is how as per order dated 12.12.1996 of Hon'ble Supreme Court of India, all mining operations on forest land without approval of MoEF were stopped forthwith and proposals under FC Act were submitted to MoEF.</p>

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		<p>Details of all such Temporary Working Permission granted by Mining Department of State Government have been clearly brought out and communicated to MoEF while forwarding the Forest Diversion proposals in individual cases. The MoEF have also considered the same and granted approval under F.C. Act thereafter.</p>
17	<p>As stated, 176 leases are comprised of forest (part/full) areas. These leases were granted in favour of particular lessee. But some of them transferred in favour of another lessee under Rule 37 of MCR, 1960, without obtaining prior approval under the FCA (Annexure: XI). The transfer of forest leased land without prior approval under FCA (after 25.10.1980) has been considered as violation of Section 2 of the Act. It is to note here that the leases were given to a specific user agency and without transfer under FCA, it cannot be used by a different user agency. Action should be initiated against the authorities responsible for it under Sections 3A and 3B of the Act. There is no provision of condonation under the Act for such illegal transfers. Such transfers are null and void.</p>	<p>Ministry of Environment and Forests The MoEF will examine each case and will issue direction to its Regional Office to initiate appropriate action in accordance with the provisions of the Section 3A and 3B of the FC Act in the cases where specific approval of the Central Government for transfer of mining lease, wherever required, has not been obtained.</p> <p>Government of Odisha The transfer of leases has been granted by the State Government strictly in accordance with the provisions of Rule 37 under MCR, 1960. All these grants pertain to the period prior to the notification of Forest (Conservation) Amendment Rules, 2004, wherein the issue of prior approval under FC Act, 1980 for such transfer cases was made mandatory. However, in all cases of transfer of ML involving forest land without F.C.A. approval have been brought to the notice of MoEF along with the Forest Diversion proposal. MoEF has considered the same and accorded approval under F. C. Act.</p>
18	<p>During the inquiry, it has been observed that in some of the leases, diversion of forest land was approved subject to obtaining approval under the E.P. Act, 1986 (EIA Notification dated 27.01.1994). But most of the lessees have not obtained EC and operated the leases in contravention of the said conditions. Such approvals cannot be made effective till conditions are fulfilled. All the production, during this period for such leases, is considered as illegal and without lawful authority (Annexure: XII). The Deputy Directors/ Mines officers should not have allowed the production. Action should be taken against the officials responsible, by following due process of law.</p> <p>At the same time, in other leases for similar circumstances, no such condition was stipulated by MoEF (FC Section) during the approvals. Why it is so? They are the leases other than 24 leases (Annexure: XII) out of 78 leases, wherein FCA approval is accorded.</p>	<p>Ministry of Environment and Forests Requirement of obtaining environment clearance for a mining project is governed by provisions of the EIA Notification, 1994 or the EIA Notification, 2006, as the case may be.</p> <p>Government of Odisha Proposals of Forest Diversion and proposals for Environmental clearance are processed simultaneously and independently of each other. The former is routed through Forest Department and the latter is applied directly by the User Agency to MoEF. All the statutory clearances are then examined and accordingly the mining operation is allowed. The State Govt has initiated action for recovery of cost price of the minerals under section 21(5) of MMDR Act, 1957 in cases of the mines, which were operated without Environment Clearance.</p>
19	<p>Prospecting Licenses and new leases granted after the year 2000.</p> <p>The Commission has requested the State Government to submit the list of leases granted between the years 2000 to 2012 and in compliance thereto, the State Government has submitted a list of 23 leases with records (files) which has been granted during this period.</p> <p>It is found that in 8 mining leases so granted were found invalid as per Section 4 of MM(DR) Act, 1957 and the State has to take action as per the provisions of the MMDR Act, 1957 read with MCR, 1960.</p> <p>Prospecting Licenses:- It is further observed that 15 prospecting licenses were granted by the State Government in the forest areas. As per letter No.7905, dated 07.06.2013 of</p>	<p>Ministry of Environment and Forests The MoEF will seek, from Government of Odisha, details of each of the 15 prospecting licenses which were granted by the State Government in the forest land without obtaining prior approval of Central Government under the Forest (Conservation) Act, 1980 and will examine whether grant of these licenses requires prior approval of Central Government under the FC Act. In case it is found that any of these licenses requires prior approval of Central Government under the Forest (Conservation) Act, 1980, the MoEF will direct its Regional Office to file complaint under section 3A and 3B of the FC Act against persons prima-facie found guilty of such offence in the court having jurisdiction in the matter.</p> <p>Government of Odisha The F. C. Act guideline at Para-1.3(v) provides for the</p>

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	<p>the Forest Department, no approval under the FCA, 1980 has been obtained by the prospecting license-holders during that period. Hence, prospecting licenses issued and operated under the FCA, 1980 are under the clouds of doubt or all the prospecting done in contravention of Section 2 of FCA, 1980. The list of the said 15 leases is enclosed herewith at Annexure: XIV.</p>	<p>procedure of prospecting of mineral done under Prospecting License granted under MMDR Act which involves removal of samples from Forest land.</p> <p>The State Government has been acting as per the guideline of MoEF.</p>
20	<p>With regard to all such cases wherein iron and manganese ores were extracted from various leases which did not have FC clearance, these extractions have been considered as illegal and without lawful authority since the lessees were not entitled to carry out mining during this period. The cost equivalent to market value (domestic or export whichever is applicable) should be recovered under Section 21(5) of MM(DR) Act, 1957 from the concerned lessees after following due process of law.</p> <p>Further, the provisions of the FCA with regard to punishment for the offence of mining in the forest area, require to be suitably amended to make it deterrent. At present, the provisions prescribe fly bite punishment. As such, illegal mining in a forest area not only amounts to trespass and theft of minerals but also it disturbs the ecosystem. Therefore, mining in a forest area without approval should be made punishable with imprisonment for a period not less than six months but which may extend to seven years and shall also be liable to pay fine in proportion to amount of illegal mining. The offence would be held to be cognizable offence. Such cases should also be tried by the Special Courts, constituted for trying such offences so that result would be fast and would have deterrent effect not only to the accused persons who are prosecuted but also to others.</p>	<p>Ministry of Environment and Forests</p> <p>The MoEF will advise the Government of Odisha to examine all such cases of illegal mining in forest land and initiate appropriate action in accordance with the relevant sections of the Indian Forest Act, 1927 and the Orissa Forest Act, 1972.</p> <p>The MoEF in consultation with States will take action to appropriately amend section 26 of the Indian Forest Act, 1927 and to extend the provisions of the Section 26 of the Indian Forest Act, 1927 to all categories of forests.</p>
21	<p>In cases where even after grant of approval by the MoEF for FC and EC, the officers of the State Government had not decided or initiated the renewal applications under MM(DR) Act, 1957 and the Rules framed there under, responsibility should be fixed on the erring officials. Unless this is done one cannot expect discipline and control in administration.</p>	<p>Government of Odisha</p> <p>The Apex Court is seized of the matter in respect of the mines covered under the deemed extension clause in I.A. No. 2747-48/2009 in W.P. (C) No. 202 of 1995.</p> <p>For the compliance of other statutory provisions, renewal of leases having only EC and FC clearances is not possible. However, best efforts are being made for renewal of those of the mining leases which have all the statutory clearances and have not violated the provisions of the MM(D&R) Act, 1957 and the rules made thereunder as well as the other extant laws which has bearing on the lease and operation of the mines.</p> <p>In order to streamline the process for disposal of renewal of mining leases (RML), an Inter-Departmental Committee headed by the Development Commissioner-cum-Additional Chief Secretary have been constituted by the State Government as per notification dated 9.10.2012. The Committee has so far met four times to decide on the renewal of mining lease.</p>
22	<p>The State Government should take action as per law against all the officers of district level belonging to Mines, Forest and Revenue Departments as well as Odisha State Pollution Control Board who are responsible for regulating and administering the leases and who have allowed the lessees to operate the mines illegally during the deemed extension period or otherwise, without obtaining statutory approvals (FC, EC and consent to operate, by OSPCB and others) for their</p>	<p>Government of Odisha</p> <p>The State Government is fully committed for proper implementation of the F. C. Act. It has always taken proactive steps for implementation of FCA as per provisions of the Act, the Rule and guideline of MoEF. Violations, if any, observed in case of any ML holder has been brought to the notice of the MoEF in a transparent manner for follow up action. So, the State Forest Officials</p>

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	<p>omissions, commissions and misconduct. This could be out of collusion with lessee or neglect towards duty or inefficiency of personnel at the realm of affairs. They must make good the loss to public exchequer and environment. By allowing lessees to operate the mines without approvals, it is construed that undue favour has been extended by the officers and thereby allowing undue gain to lessees. Hence, time bound exercise should be taken up under the chairmanship of Chief Secretary to take action as per law against them.</p>	<p>are never in collusion with the mining lease holders in violation of F. C. Act. Whenever involvement of mining officials has been noticed, appropriate action is initiated by State Vigilance Department. State Government has also undertaken departmental action against the erring officials.</p>
23	<p>In all such cases where forest land is involved, there is also need to take action as per the provisions of Sections 3A and/or 3B of Forest (Conservation) Act, 1980 for the violation of Sections 2(ii) and 2(iii) of the Act against the lessee.</p> <p>Further, action should be taken against the concerned officers under Section 3B of the FCA who had allowed use or working of forest land for non forest purpose and grant of lease without prior approval under the FC Act.</p> <p>As this matter pertains to Department of Revenue, Forest and Mines, the Chief Secretary, State of Odisha is required to take immediate action in this regard.</p>	<p>Ministry of Environment and Forests Same as reply to para 1 and 15 above</p> <p>Government of Odisha Government of Odisha will enquire into the matter and take necessary action.</p>
24	<p>The Secretary, MoEF, Government of India, New Delhi and Secretary, Ministry of Mines should also take similar exercise to find out the involvement of officers of their Ministries, Regional offices (MoEF) and IBM, respectively and if found guilty, take action accordingly under the relevant law. Till the corrective and ameliorative measures are completed and illegalities rectified, all the mines which were involved in such unlawful operations should not be allowed to operate.</p>	<p>Ministry of Environment and Forests MoEF will inquire into the matter for taking appropriate action against the defaulting officials.</p> <p>Ministry of Mines The Ministry has directed the IBM to inquire and fix responsibility for failure on any part of any officers / officials of IBM regarding approval for increase in production through modification in mining plan by misusing Rule 10 of MCDR, 1988 including cases mentioned in the Report.</p>
25	<p>The Hon'ble Supreme Court in the year 2002, based on the recommendations of the Central Empowered Committee (CEC), considered to impose Net Present Value (NPV) on the user agency to compensate for diversion of the forest land for non forestry purposes.</p> <p>In this regard, a range of Rs.5.8 lacs to Rs.9.2 lacs per ha. was decided to impose. The imposition of NPV would depend on the type and nature of the forest amongst others.</p> <p>During the inquiry, it has been observed that in Sundargarh and Keonjhar districts of Odisha State which comprised of very good forest of eastern ghats, the forest have been diverted for mining purposes. In some of leases like Joda East of Tata Steels, a minimum amount of Rs.5.8 lacs per ha. had been collected as NPV. This is found quite lower side if compared the surrounding forests and forest inside lease. There may be many more cases of this kind. The collection of NPV in this area should be between Rs.8 to 9 lacs per ha.</p> <p>Hence, it is recommended that the higher authority of the Forest Department should revisit all the leases wherein forest land is diverted and collect difference amount from all such cases.</p>	<p>Ministry of Environment and Forests MoEF will advise the Government of Odisha to reassess the rates applicable for the Net Present Value by using satellite imageries of the corresponding period, and collect difference amount, if any.</p> <p>Government of Odisha The Hon'ble Supreme Court of India vide their order dated 30.10.2002 and 01.08.2003 in IA No.566 in W.P(C)202 of 1995 have issued directions for collection of Net Present Value of forest land being diverted for non-forest purpose. The prescribed rate was Rs.5.80 lakh to Rs.9.20 lakh per hectare depending upon the quality of forests and density of the crop in the forest land in question. Subsequently, the Hon'ble Supreme Court of India vide their order dated 28.03.2008 and 09.05.2008 in IA No.566 have revised the rate of Net Present Value as Rs.6.26 lakhs to Rs.10.43 lakhs per hectare depending upon the criteria of eco-value class of the forest and density sub-class of the forest crop in question. The State Government has been scrupulously following the above direction of the Hon'ble Supreme Court of India.</p> <p>The density of forest is a dynamic entity and will vary in time scale and more so in Moist Deciduous forests as it exists in the mineral belt of the State. Protection of forests and Afforestation measures will also contribute to the density of the forest. The calculation of Net Present Value</p>

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		at the relevant time has taken into consideration the parameters applicable at that point of time.
26	<p>The Commission has observed that no agreement is signed between the lessee and the State Government after the approval under FC has been granted by the Government of India in case where there is the deemed extension of the lease period. Such agreements have been made mandatory as per the existing forest laws in other states like Karnataka. Absence of such agreements have not only lead to poor compliances it has also lead to ineffective monitoring and enforcement of compliances as the obligatory conditions under EC and FC are not explicitly part of any agreement.</p> <p>The absence of a registered agreement has also led to certain anomalies. For example, it is observed that in many cases, FC approval with conditions is granted during the mid of deemed extension period. However in such cases, no agreement is entered into with lessee by the Mines and Geology department as the lease is operating under deemed extension clause.</p> <p>Even under the mining Rules and Regulations, agreement is an integral part of any mining lease which is completely bypassed because of deemed extension. The State has to take immediate action in this regard. The State has also lost stamp duty of hundreds of crores.</p>	<p>Government of Odisha The type of forest land involved in the mining lease in Odisha is different from that of Karnataka. Most of the mining lease in Odisha comprise of Reserve Forests, Revenue Forest, Village forest, DLC forests, Non-forest land and Tenanted land. At present, the Collector & District Magistrate of the District executes the mining lease deed on behalf of the State Government.</p> <p>The State Government is of the view that there is no need to execute a separate agreement by Forest Department for mining lease particularly when a proper mining lease deed under MMRD Act has been executed by the Collector incorporating all relevant conditions. However, all the stipulations imposed by MoEF in their approval under F.C. Act and E.P. Act may be annexed to the lease deed for proper compliance and monitoring.</p>
27	<p>Monitoring of the projects is the weakest link in the entire forest clearance process. It is more complex, when the leases consist of various types of land in the lease hold areas i.e. forest, non-forest Government land, DLC and private land. These forest lands, DLC, non forest Government lands and tenant lands within leased area have not been demarcated on the ground which has led to various violations. Therefore it is essential that they should be demarcated permanently and marked on ground with DGPC readings in all leases.</p> <p>The outer boundary of the leases so geo- referenced with DGPS readings shall be monitored twice in a year mandatorily. The satellite images of high resolution of leased areas should be submitted by the lessee in the months of October – November and April – May each year. These images shall be compared with preceding year and action should be taken accordingly. The Forest and Mines Department and MoEF should also evolve a methodology on these guidelines to monitor the projects.</p>	<p>Ministry of Environment and Forests MoEF has formulated draft policy on inspection, verification, monitoring and identification of forests. The draft policy contains provisions for satellite based monitoring of mines by using high resolution imageries.</p> <p>Government of Odisha The State Government is fully committed for effective monitoring of activity on the ML areas. The DGPS survey of forest and non-forest areas in mining lease has been under progress. Different categories of land in ML area stands clearly demarcated in the field with posting of pillars. The exercise when completed will facilitate the monitoring different conditions of the lease.</p> <p>Annual satellite images of the lease may be compared at the district level every year for proper monitoring.</p>
28	Detailed monitoring of the compliance to stipulate conditions in forest land diversion cases, as approved by the Government of India u/s. 2 of the Forest (Conservation) Act, 1980, by a third reputed organization is the need of hour. Follow up action should be taken till it reaches to logical end. It is an ongoing process and Government of India / State Government should continue the monitoring work till the project ends.	<p>Ministry of Environment and Forests MoEF has formulated draft policy on inspection, verification, monitoring and identification of forests. The draft policy contains provisions for third party monitoring by institutions/ organization of repute.</p> <p>Government of Odisha Self compliance report once in a year from the Lessee is insisted upon at present to evaluate the status of compliance of stipulation. The Regional Office of MoEF also carried out periodic inspections of different leases to monitor the status of compliance. However, a third party monitoring may be carried out in specific areas whenever felt.</p>
29	Though there is well meaning, National Forest Policy, 1988 framed and backed with various laws but neither	<p>Ministry of Environment and Forests MoEF will review the existing mechanism for</p>

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	<p>infrastructure nor manpower is created to implement, monitor and execute it in the field. It is observed that willpower to implement is lacking at all levels both in political as well as executive wings. A large number of vacancies, inadequate and inefficient infrastructure in all the concerned departments have been observed.</p>	<p>implementation of the National Forest Policy, 1988 and will take appropriate measure to strengthen the same. The MoEF will also advise the States/ UTs to strengthen/improve infrastructure and staff support for implementation of the National Forest Policy.</p> <p>Government of Odisha The State Government has taken effective steps to comply with the objectives of National Forest Policy, 1988. However, the Forest Department in the State is being strengthened with better infrastructure and human resources.</p>								
30	<p>The Commission has been informed that substantial amount of Compensatory Afforestation Fund Management and Planning Authority (CAMPA) funds are locked in Govt. treasuries which should be made use of.</p> <p>The Commission has observed that in many cases the compensatory afforestation work, as stipulated in the Government of India approval, has not been taken up by the Forest Department for various reasons including non release of funds by the State Government.</p>	<p>Ministry of Environment and Forests In compliance with orders of the Hon'ble Supreme Court, the funds realised from the user agencies on account of compensatory afforestation, Net Present Value etc. have been transferred to ad-hoc Compensatory Afforestation Fund Management and Planning Authority (CAMPA).</p> <p>The Hon'ble Supreme Court in their order dated 10th July 2009 permitted the ad-hoc CAMPA to release, a sum of about Rs.1,000 crore per year, for the next 5 years, in proportion of 10% of the principal amount pertaining to the respective States/UTs. Accordingly, State CAMPAs have been constituted in all concerned State/ Union Territories. Funds are therefore, being released to State CAMPAs in accordance with the said order of the Hon'ble Supreme Court for implementation of the Annual Plan of Operations (APO) approved by the respective State CAMPA Steering Committee, containing provisions for creation of compensatory afforestation and other activities for conservation and development of forest and wildlife resources. To ensure expeditious utilization of accumulated funds, the MoEF is taking measures for constitution of Regular CAMPA.</p> <p>Government of Odisha It is not a fact that Compensatory Afforestation has not been implemented in the State due to non-release of fund. The details of Compensatory Afforestation taken up in the State (as on 01.1.2013) is as under:-</p> <table border="0" data-bbox="868 1473 1501 1599"> <tr> <td>Forest land diverted</td> <td>- 39957.08 ha</td> </tr> <tr> <td>CA stipulated by GoI, MoEF</td> <td>- 47449.90 ha</td> </tr> <tr> <td>CA achieved upto Dec. 2012</td> <td>- 41535.84 ha</td> </tr> <tr> <td>CA being undertaken during 2013-14</td> <td>- 2431.17 ha</td> </tr> </table>	Forest land diverted	- 39957.08 ha	CA stipulated by GoI, MoEF	- 47449.90 ha	CA achieved upto Dec. 2012	- 41535.84 ha	CA being undertaken during 2013-14	- 2431.17 ha
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CA being undertaken during 2013-14	- 2431.17 ha									
	<p>Further, there is no evaluation of the compensatory afforestation already carried out by an independent third party. It requires further investigation to find out, whether afforestation has been carried out as per the area mentioned in Annexure: VIII and its present status. MoEF should take immediate action to get evaluation of compensatory Afforestation of all types since the year 2000-01 onwards and take remedial measures.</p>	<p>Ministry of Environment and Forests MoEF has already initiated measures for constitution of regular CAMPA having two tier structure viz. a National CAMPA at the Central Government level and State CAMPA at each State/ Union Territory.</p> <p>One of the important mandates of the National CAMPA and State CAMPAs will be to monitor physical and financial progress of compensatory afforestation undertaken in the States.</p>								
	<p>During the enquiry it has been observed that in most of the cases, the assessment of broken up areas prior to 25.10.1980 has been done after a lapse of 20 to 30 years. It is further observed that the assessment has been done by the low ranked officials of Mines, Forest and Revenue Departments without taking any reliable factor into consideration prevailing before</p>	<p>Ministry of Environment and Forests MoEF will formulate appropriate guidelines for verification of areas broken up prior to 25.10.1980 and communicate the same to State Government for their compliance.</p>								

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	<p>25.10.1980.</p> <p>Some of the factors that should have been considered are the production, period of lease run before 25.10.1980 and Satellite Images. The reporting of more areas as broken up before the year 1980 has deprived the Forest Department of additional equivalent areas for the compensatory afforestation and consequently the protected forests. Therefore, it is recommended that all such broken up areas as approved under the FC proposals (which have been marked as broken up before the year 1980) should be revisited, verified and accordingly, required follow up action should be taken.</p>	<p>Government of Odisha The State Government do not agree that assessment of the pre-1980 broken up forest land has been done by low ranked officials of different departments without considering relevant factors.</p> <p>While the State Government is not opposed to the recommendation of re-verification of broken up forest lands, there may be operational difficulties since the exercise will be taken up after a long gap.</p>
31	<p>In case of two lessees, namely, M/s Lal Traders & Agencies (Badampahar Iron Ore Mines) and B.C. Dagara (Suleipat Iron Ore Mines) (Sr. Nos.1 and 2 of the Annexure: VI), incorrect information have been submitted to the MoEF regarding the distance from the National Parks and sanctuaries. Accordingly, based on this incorrect information, EC was accorded to the said two lessees without verification. Since the said EC was accorded on incorrect information, both the ECs should immediately be withdrawn and to be treated as void and no effect.</p> <p>Action should be initiated against the consultant who has prepared the EIA plan, the officer who has given No Objection Certificate (NOC), the officers who have recommended and the officers in MoEF who have accorded EC without verification of the records.</p>	<p>Ministry of Environment and Forests Show cause notices under section 5 of Environment (Protection) Act, 1986 are proposed to be issued to the concerned project proponents for cancellation of ECs of these 3 mining leases.</p>
32	<p>The State Government should take immediate action to prepare and implement Rehabilitation & Reclamation Plan (R & R Plan) as being done under the direction of the Hon'ble Supreme Court of India in the State of Karnataka.</p> <p>The R & R Plan should be an integral part of the environmental clearance as well as mining plan.</p>	<p>Ministry of Environment and Forests The R&R plan is examined by the Expert Appraisal Committee and forms part of the EC letter issued to the project proponent.</p> <p>Ministry of Mines Rules 23A, 23B, 23C and 23D of MCDR, 1988 provides for progressive mine closure plan and final mine closure plan. The lessee has the responsibility to ensure that the protective measures contained in the mine closure plan including reclamation and rehabilitation works have been carried out in accordance with the approved mine closure plan. IBM has been directed to ensure compliance of provision of law.</p> <p>The Government introduced the MMDR Bill, 2011 in the Lok Sabha on 12th December, 2011. The Bill, inter-alia, empowers the Government to institutionalize a statutory mechanism for ensuring sustainable mining through a Sustainable Development Framework (SDF).</p>
33	<p>No forests are permitted to be managed without approved working plan/management plan, as per the orders of the Hon'ble Supreme Court. Therefore it is imperative that the approved Rehabilitation and Reclamation Plans for each mining lease, stipulated conditions of EC and FC clearances shall also form part of working plan / management plan thereby ensuring better compliances.</p> <p>The grant of permission for mining and approving mining plan and the scheme by the Ministry of Mines, Government of India by itself does not mean that mining operation can commence. Section 18 of MM(DR) Act, 1957 deals with the commencement of mining and steps</p>	<p>Ministry of Environment and Forests MoEF will appropriately incorporate recommendation of the Commission in the Working Plan Code.</p>

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	required to be taken for protection of environment by preventing or controlling any pollution which may be caused by mining operations.	
34	<p>Following the "Polluter Pays" principle, Lessees who are permitted to carry out mining and quarrying in forest land and in land covered by trees, should be mandated to repair, reclaim, rehabilitate and re-vegetate the area in accordance with established forestry practices. The safety zones which are completely neglected in all the leases should immediately be restored by proper planting of natural native species. Offence cases shall be booked against the lease holders (lessees) where there is violation of safety zones under the Odisha Forest Act, 1972, Forest (Conservation) Act, 1980 and any other Act, applicable for the revenue forest.</p>	<p>Ministry of Environment and Forests MoEF will issue directions to the Government of Odisha to ensure proper maintenance/ afforestation of safety zone, and to file complaint in accordance with the provisions of the Indian Forest Act, 1927 or the local Forest Act against persons prima-facie found guilty of violations of safety zone.</p> <p>Government of Odisha The details regarding delineating safety zone around mining lease area, its maintenance, protection and regeneration have been laid down by MoEF vide Para-4.7 of the F.C. Act guideline and amended provision vide Circular of MoEF dated 01.02.2013. Accordingly, the State Govt. have prepared schemes and taken effective steps for protection, regeneration and maintenance of safety zone and Afforestation over 1.5 times of the area of safety zone elsewhere in degraded forests. As on 01.01.2013, steps for protection & regeneration has been taken on 1315.54 ha of safety zone area and 2486.45 ha of Afforestation measures have been taken up in degraded forests against the safety zone as per stipulations of MoEF. In case of violations in safety zone area, forest offence cases have also been booked.</p> <p>Hence, it is not a fact that the safety zone areas have been neglected.</p>
35	<p>The national goal is to have a minimum of one-third of the total land area of the country under forest or tree cover. In the hills and in mountainous regions, the aim should be to maintain two-third of the area under such cover in order to prevent erosion and land degradation and to ensure the stability of the fragile eco-system.</p> <p>The State Government should take immediate steps to declare more areas of Govt. land (degraded/ stocked forest) as reserve forest/protected forest/ others. All the Section 4 areas declared under the Orissa Forest Act, 1972 or Indian Forest Act, 1927 should be processed and declared as Reserve forest at the earliest in a time bound programme. In the State, the areas notified under Section 4 of Orissa Forest Act, 1972 or Indian Forest Act, 1927 even before the year 1980, are yet to be processed to declare as Reserve forest.</p> <p>Therefore, immediate action is required to be taken by the Chief Secretary, State of Odisha by appointing Forest Settlement Officers for declaring reserve forest.</p>	<p>Ministry of Environment and Forests MoEF is taking several measures to achieve the national goal to have a minimum of one-third of the total land area of the country under forest or tree cover. Notable among them are Green India Mission and setting up of the Regular CAMPA to ensure expeditious utilization of accumulated funds amounting to Rs. 30,000 crores along with fresh accruals of funds to be realised from the user agencies in lieu of forest land diverted for non-forest purpose.</p> <p>Government of Odisha The State Government stand committed to take effective steps for expediting the process of forest consolidation for sustainable management of forest resources of the State.</p>
36	For the new mining projects in forest, a Site Clearance from MoEF should be made mandatory before proposing / notification of area under MM(DR) Act, 1957. Once Site Clearance is obtained, only then initiation of grant of lease should be taken under MM(DR) Act, 1957.	<p>Ministry of Environment and Forests Parameters for identification of 'inviolable areas' are being finalized by the MoEF. Once these parameters are finalized, the MoEF will identify the inviolable areas and notify them under Section 5 of the Environment (Protection) Act, 1986. Till inviolable areas are notified, before proposing/notification of area under MM(DR) Act, 1957 concerned Ministries/Departments will seek comments from the MoEF on likelihood of notification of such area as 'inviolable areas'.</p>
37	The diversion of forest land for non-forest purpose, in general and in particular for mining purpose should be subject to the	<p>Ministry of Environment and Forests To ensure processing of applications seeking prior</p>

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	<p>most careful examinations by specialists from the standpoint of social and environmental costs and benefits. The provision of Schedule V of the Constitution of India should be kept in mind and applied. The orders issued by the Hon'ble Supreme Court at various point of time in this regard should be taken into consideration.</p>	<p>approval of Central Government under the FC Act in an objective and transparent manner, an elaborate mechanism, both at State and Central Governments has been set up. Diversion of forest land for non-forest purpose is permitted after careful examination from stand point of social and environmental cost and benefit.</p> <p>MoEF has assigned a study to the Indian Institute of Forest Management (IIFM), Bhopal to examine the guidelines issued under the FC Act on cost - benefit analysis of the project and to suggest appropriate amendments.</p> <p>Government of Odisha As per provisions of Section-3 of the F. C. Act, 1980, Forest Advisory Committee has been constituted by GoI, MoEF to examine each case of Forest Diversion proposal for approval under Section-2 of the Act. All proposals received by GoI, MoEF are placed before the Statutory Committee comprising of Expert Members for scrutiny.</p>
38	<p>The Eco-fragile (eco-sensitive) zones around the Simlipal National Park shall immediately be notified without further loss of time.</p> <p>It is also to be noted that there is a notified Elephant Reserve bordering the Simlipal National Park wherein all 10 mining leases are located. This Elephant reserve also overlaps the distance of 10 kms. from the outer boundary of Simlipal National Parks. 25% of population of Odisha elephants are having habitat in Simlipal National Park (SNP), elephant reserve and biosphere reserve. In light of the above the elephant reserve of that area may also be considered for declaring it as 'inviolable area' by the Committee of MoEF constituted for identification of such areas.</p>	<p>Ministry of Environment and Forests MoEF will expedite notification of the Eco-Sensitive Zone around the Simlipal National Park.</p> <p>Parameters for identification of 'inviolable areas' are being finalised by the MoEF. Once these parameters are finalised, the MoEF will consider declaring the elephant reserve area suggested by the Hon'ble Commission, or a part thereof, as 'inviolable area' in case it meets the parameters finalised by the MoEF.</p> <p>Government of Odisha Delineation of the eco-sensitive Zones around National Park and Sanctuaries in the State including Similipal is in process.</p>
39	<p>It is especially essential to provide corridor linkages to the protected areas in order to maintain genetic continuity between artificially separated sub-sections of isolated wildlife. A corridor for free migration of wildlife should be notified to link the Mayurbhanj, Balashore Districts through Keonjhar and Sundargarh Districts to Seranda Forest of Jharkhand and adjoining Districts of West Bengal and Bihar. As a whole, a continuous corridor should be notified so as to link Jharkhand, Odisha, West Bengal and Bihar areas.</p> <p>In order to prevent further fragmentation of wildlife corridor and for conservation of wildlife, the already leased mines in Mayurbhanj District (in Elephant reserve areas), shall not be renewed. Follow up action should be taken in this regard. New leases within 10 Kms. radius of the protected area should also be prohibited under Rule 5 of the E.P. Rules, 1986.</p>	<p>Ministry of Environment and Forests MoEF will examine suggestion of the Hon'ble Commission and request the State Governments to identify corridors to link the Mayurbhanj, Balashore Districts through Keonjhar and Sundargarh Districts to Saranda Forest of Jharkhand and adjoining Districts of West Bengal and Bihar to facilitate free migration of wildlife between these areas.</p> <p>Government of Odisha 14 Elephant Corridors have been identified in the State which include intra-district, inter-district and inter-state corridors. An Elephant Corridor Management Plan is being implemented in the State under State Plan for protection and enrichment of the corridors as well as to ensure food and water security.</p>
40	<p>It is observed that due to existing skewed policies, the rich is becoming richer at the cost of natural resources which belong to the country and the community. The State should not fall in a trap of self-propagated false projections of various kinds like efficiency, employment generation, abundance of mineral resources and others by a few individuals to further their interest and not of the Nation. In any case, failure to protect forest cover as per National Forest Policy, 1988, would be at the cost of State Government. Such failure may result in soil erosion as well as pollution of river and on occasion, heavy</p>	<p>Ministry of Environment and Forests MoEF has formulated draft guidelines on inspection, verification, monitoring and identification of forests. The MoEF has also obtained approval for strengthening of its existing six Regional Offices and opening of four new Regional Offices to facilitate intensive monitoring of conditions stipulated in the FC and EC.</p> <p>Government of Odisha The State Govt. stands committed for proper scientific</p>

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	<p>flood, similar to, what has had recently happened in the State of Utrakhand.</p> <p>For the aforesaid reasons, the authorities should be directed to monitor and observe whether FC conditions are followed or not. If there is any failure in discharge of duties on the part of officers, they should be held responsible.</p> <p>Further, law should be enforced without any latitude. Otherwise, violators of the Act and Rules would presume that non-compliance of the provisions of the Acts or Rules or Conditions of lease, is their right and/or that they can "manage" the lapses. The result is that the violators fearlessly violate the provisions of law/Rules, as if they do not exist.</p>	<p>monitoring of the stipulations imposed by Govt. of India through appropriate institutional mechanism, to take appropriate legal action against all violators of Environmental Laws and to implement all Acts and Rules under FC Act, Odisha Forest Act, EP Act, Water & Air Act as well as direction of Hon'ble Supreme Court of India in letter and spirit.</p>

Chapter No.5: Misuse of Rule 24A of Mineral Concession Rules, 1960

S. No	Gist of Commission's Observations/ Findings / Recommendations	Action Taken Report
1	<p>Misuse of Rule 24A of Mineral Concession Rules, 1960 which provides for deemed extension</p> <p>Lessees are permitted to continue in possession of the mining area for prolonged periods; sometimes running in years, without deciding renewal application under the guise of deemed extension, over-looking the provisions of Section 4 of the MM(DR) Act, 1957 which leads to all mal-practices / illegal mining because unusual delay breeds unusual corruption.</p> <p>After having examination of about 375 mining leases in State of Odisha, Goa and Jharkhand, it is observed that in very few mines, leases have been renewed after 27.09.1994 and much to say after the year 2000. The illegalities committed in mining are directly proportionate to the deemed extension period .</p> <p>Permitting the lessee to continue and possessing the land on a deemed extension ground, the lease deed is not required to be executed. Due to non-execution of the lease deed, the State Government suffers loss of stamp duty payable at the time of execution of the lease deed and also its registration charges.</p> <p>The terms and conditions which are required to be incorporated and complied with by the lessee would not be available. This may lead to illegal mining or in some cases; lessee may encroach upon adjoining land.</p>	<p>Government of Odisha The State Government is not in agreement with the observation that there is systematic failure in implementing the MMDR Act, 1957.</p> <p>Instructions were issued by the State Government to the field functionaries as early as 1.10.2009 to allow mining operation only when the lessee had all the statutory clearances including mining plan approved by IBM, forest and environment clearances required under various Statutes. These instructions were reiterated in letter dated 15.04.2010 on receipt of the report of the Central Empowered Committee (CEC) Therefore, no mining lease is being operated in the State since then under rule 24A (6) of MC Rules, 1960 without having all statutory clearances and approved mining plan.</p> <p>Pending RML applications have been scrutinized as per the provisions of the Act and the Rules. Efforts are being made for renewal of mining leases which have all the statutory clearances and have not violated the provisions of the MM(D&R) Act, 1957 and the rules made thereunder.</p> <p>To avoid loss of stamp duty on account of deemed extension the State Government of Odisha enacted the Indian Stamp (Odisha Amendment) Act, 2013 to enable collection stamp duty from the mining lessees who are under deemed extension. The High Court of Orissa has stayed the operation of the amended Act. Steps are being taken to get the stay vacated.</p> <p>The observance of the provisions of MC Rules, 1960 is being ensured even in case of leases which are working under deemed extension.</p> <p>Out of the working iron and manganese ore mines, 40 mines fall within the Scheduled Areas and are subject to the provisions of the Odisha Scheduled Areas Transfer of Immovable Property (By Scheduled Tribes) Regulation, 1956 (Odisha Regulation 2 of 1956). Details regarding the same are to be submitted by the lessees after being duly certified by the Revenue Officers before their application for renewal can be taken up for consideration.</p> <p>A few leases requiring renewal have been resurveyed as per the direction of the Hon'ble Commission to ascertain the extent of encroachment, if any, by the RML applicants. It is observed that due to difference between the traditional technology and the DGPS, there is a mismatch between the lease area as per land schedule and the area enjoyed by the lessees. However, the extent of the area is more or less matching thereby indicating that there is no large scale violation leading to illegal mining. The report of the joint survey is already brought to the notice of the Hon'ble Commission.</p> <p>Mining operation beyond the leasehold area is treated</p>

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		<p>as illegal mining and action being taken according to law.</p> <p>The Supreme Court is seized of the matter in respect of the mines covered under the deemed extension clause in I.A. No. 2747-48/2009 in W.P. (C) No. 202 of 1995.</p>																														
2	<p>Out of 192 mines, 147 mines [Annexure: I at Page 22-38, Vol IV] of Iron Ore and/or Manganese are running under deemed extension under Rule 24A of MCR, 1960 (even in cases of some leases which stood terminated because of deemed refusal).</p> <table border="1" data-bbox="161 568 887 887"> <thead> <tr> <th>S. No.</th> <th>Period of Deemed Extension (in years)</th> <th>No. of Mines</th> <th>Annexure of the Report</th> <th>Page No. (Vol. IV)</th> </tr> </thead> <tbody> <tr> <td>1</td> <td>More than 20 years</td> <td>47</td> <td>Annexure VII</td> <td>51-71</td> </tr> <tr> <td>2</td> <td>15-20</td> <td>8</td> <td>Annexure II</td> <td>39</td> </tr> <tr> <td>3</td> <td>10-15</td> <td>35</td> <td>Annexure III</td> <td>40-43</td> </tr> <tr> <td>4</td> <td>5-10</td> <td>43</td> <td>Annexure IV</td> <td>44-47</td> </tr> <tr> <td>5</td> <td>0-5</td> <td>14</td> <td>Annexure V</td> <td>48-49</td> </tr> </tbody> </table> <p>For the reasons best known to the concerned authorities, the applications for renewal are not dealt with and decided within the prescribed time or in any case, within reasonable time.</p> <p>Further, the facts stated above would reveal that for years together the lessees are illegally operating mines on the basis of deemed extension without executing lease deed and/or in some cases, without complying with various other conditions of EC and FC and/or without obtaining EC/FC.</p>	S. No.	Period of Deemed Extension (in years)	No. of Mines	Annexure of the Report	Page No. (Vol. IV)	1	More than 20 years	47	Annexure VII	51-71	2	15-20	8	Annexure II	39	3	10-15	35	Annexure III	40-43	4	5-10	43	Annexure IV	44-47	5	0-5	14	Annexure V	48-49	<p>Government of Odisha</p> <p>Only 41 iron and manganese ore mines which are having requisite statutory clearances are in working condition. All other iron and manganese ore mines are in non-working condition awaiting statutory clearances.</p> <p>The State Government has already issued necessary instructions to the Director of Mines, Odisha to the effect that wherever the RML applications are deemed to have been refused as per the provisions of rule 24A of MC Rules, 1960 as it existed prior to 27.09.1994, the leases shall revert to the Government and can, therefore, not be renewed. Steps will be taken for refusal of renewal of mining leases as per the law that prevailed from time to time.</p> <p>The lessees of mining leases referred in the Commission's Report will be issued notice to explain as to why their renewal applications shall not be treated as refused. After hearing the renewal applicants, State Government would take necessary action depending upon the merit of each case.</p> <p>The provisions of the environment and forest law will be strictly followed by the State Government. Action as per law will be taken against those who have violated such law.</p>
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3	<p>94 mining leases were allowed to continue without having statutory clearances under Environmental Impact Assessment Notification 1994, FC Act, 1980 and so on. The deemed extension provisions have facilitated concerned officers, persons in public life, lessees and other concerned authorities together to earn ill-gotten money with no restriction.</p>	<p>Government of Odisha</p> <p>Only mining leases which have all the requisite statutory clearances are operating either in the non-forest area of the lease hold or the part of forest area for which has clearance under FC Act, 1980.</p> <p>The raising of ore by the lessees without statutory clearance under EIA Notification 1994 has been considered as unlawful by the State Government and action already initiated to recover the price of the ore. In case of violation of F.C. Act, 1980 similar action will be taken.</p>																														
4	<p>As per Rule 24A(1) of MCR 1960, renewal application in Form J must be filed atleast twelve months before the date on which the lease is due to expire.</p> <p>However, under Rule 24A(6) (as it existed before 27.09.1994), there was a provision to the effect that if an application for first renewal for mining lease made within the time referred to in Sub Rule (1) is not disposed of by the State Govt. before the date of expiry of lease, the period of that lease shall be deemed to have been extended by further period of one year or end with the date of receipt of the order from the State Govt. whichever is shorter.</p> <p>If not decided within that grace period of one year, it would mean that the lease stood terminated/lapsed, as provided in Sub-Rules(4) and (5) of Rule 24A as it stood prior to 27.09.1994.</p>	<p>Government of Odisha</p> <p>The State agrees with the observation of the Commission and will issue notice to all such lessees to explain as to why their renewal applications shall not be treated as refused. After hearing the renewal applicants, State Government would take necessary action depending upon the merit of each case. Based on the revision orders received, some leases were allowed to function.</p> <p>Temporary working permission was granted by the State Government as provided for in the instruction of Government of India in the erstwhile Ministry of Steel and Mines, Department of Mines contained in their letter No. 6/2/88-M.VI dated 3rd March, 1988</p>																														

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	<p>The State Government has submitted a list of 47 leases of which lease period expired before 27.09.1994 and came under deemed refusal provision of Rule 24A of the MCR, 1960. [Annexure: VII at page 51-71, Vol .IV] and allowed to continue in violation of the prevailing provision.</p> <p>Out of 47 leases, in 19 leases, even though deemed refusal provisions were applicable as per Sub-Rule (5) read with Sub-Rule (6) of Rule 24A of MCR, 1960 which were prevailing prior to 27.09.1994 the said leases were renewed after a gap of many years. This, itself, is unjustified. The list of the said 19 leases is enclosed herewith as Annexure: IX at Page 104 – 112, Vol. IV.</p> <p>However, for remaining 28 leases, there is no renewal as well as deemed refusal stands yet, they are allowed to continue in violation of the prevailing provisions for more than 20 years. Hence, at least, action can be taken to determine the said leases. The list of the said 28 leases is enclosed herewith as Annexure: X at Page 113 – 124, Vol. IV.</p>	<p>subject to observance of certain conditions. Accordingly in some cases such permission was accorded by the State Government.</p> <p>Ministry of Mines The instructions of the Central Government dated 3rd March, 1988 were issued to enable implementation of the amended provisions of the MMDR Act 1957 and rules made thereunder as made in the year 1987 by giving working permission only for the specific purpose of giving lessees sufficient time to submit approved mining plans within six months.</p>
	<p>On perusal of 47 cases, it is observed as follows:–</p> <p>(a) In a number of mining leases, the Government of India has directed the State Government to dispose of the application within 200 days. In many cases, this direction has been issued after the expiry of lease period. In some other cases, it is done while the lease period still to expire but the period of 200 days goes beyond the expiry of lease period. In both the cases, it is unlawful because there is no power under the law to do so.</p> <p>Though there is a provision to file an appeal against any order passed by the State Government, the Central Government could not have granted a relief not provided for in the Act or Rules prevailing at that point of time i.e.to say it could not have extended the lease period beyond prescribed time of one year as Rule 24A(4), (5) and (6) of MCR, 1960, as they stood then.</p> <p>(b) In most of the cases, the State Government has not decided the renewal applications even within this extended period (i.e. 200 days). Instead, the State Government issued Temporary Working Permission (TWP) without any jurisdiction, competence and authority. Based on this TWP, the leases were operated illegally.</p> <p>(c) In another type of cases, no extension of 200 days was given by Government of India and also the State Government did not grant the renewal of leases within the stipulated provisions. But TWPs were granted illegally and leases were operated.</p> <p>(d) In some cases, the Central Government has conveyed approval for renewal under the MMDR Act, 1957 after expiry of along gap of lease period. But under the law, the leases legally ceased to exist. Hence, these delayed approvals were not within the stipulated period and were in violation of the then provisions of Rule24A of the MCR, 1960. It is to state here that the Central Government does not have any authority, power and competence to issue such approval orders against the then existing provisions under the law.</p> <p>(f) There are some cases wherein no order of any kind is</p>	

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	<p>issued by the Central/State Governments, but allowed to continue to operate leases illegally.</p> <p>In most of the cases, the State Government issued Temporary Working Permission for these leases which were actually ceased to exist under the law. The State Government does not have any authority whatsoever to issue such Temporary Working Permission for the leases which ceased to exist under the then provisions of Rule 24A of the MCR, 1960.</p> <p>There was also no provision at all for giving Temporary Working Permissions in the then MCR, 1960 as granted in many cases by the State Government. Granting of such permission beyond one year was in clear violation of the Rules and it can be inferred that undue favour was extended to certain persons.</p> <p>In many cases, repeated Temporary Working Permissions had been given till 27.09.1994. This is misuse of power vested with the Authorities.</p> <p>The Commission highlighted one illustrative case with regard to working permits issued in deemed refusal by Department of Steel and Mines, Government of Odisha to Dr. Sarojini Pradhan for Balita Iron Ore Mine (64.75 ha.) and Inganijharan Iron Ore and Manganese Mines (118.5 ha.), for 17 times.</p> <p>Mines were operated on the basis of temporary working permission, as pointed out in Annexure: VII at page No. 51-71 In case of many mines, as pointed out in the Annexure: X, the lease stood terminated and yet, they are permitted to continue for more than 20 years in possession and with mining activities. Immediate action may be taken for taking possession of the mines and also for recovery of value of the mineral extracted.</p> <p>(g) Many mining leases pertain to first renewal of mining leases (RML), after expiry of period of six months as provided in Sub Rule (4) of Rule 24A as it existed and also one year period as provided in the Sub Rule (6) of Rule 24A of MCR, 1960. However, they were renewed after a gap of many years which was against the then prevailing law. As per law, the prevailing application for RML would be deemed to have been refused and the lease would come to end. Hence, the renewal should be considered as null and void and action should be taken accordingly against the lessees and authorities.</p> <p>It is recommended that the State should take action as per the then provisions of Rule 24A of MCR, 1960 in its letter and spirit in all 47 cases which have been submitted by State Government.</p>	
5	<p>In all such cases where the leases came under the deemed refusal provisions, State Government should have taken action as per the then existing law i.e. to notify the leases under the relevant law to re-grant in a transparent manner.</p>	<p>Government of Odisha Leaseholds made free on account of refusal of renewal of mining lease will be disposed following the provisions of the MMDR Ac, 1957 and the rules made thereunder.</p>
6	<p>Both leases, Balita Iron Ore Mine (64.75 Ha.) and Inganijharan Iron Ore and Manganese Ore Mines (118.5Ha.) were expired on 31.01.1984. Therefore, she was required to file renewal application one year prior to the date of expiry of the leases i.e. before 31.01.1983. The application in respect of 34.75 Ha. has been received on 08.02.1983 and the application in respect of 18.70 Ha. has been received on 01.03.1983. (After these communications, she is protesting by saying that her renewal application was presented on 29.01.1983, and therefore, Form D may be corrected.)</p>	<p>Government of Odisha Applications for condonation of delay and the applications for renewal of mining lease of Balita iron ore and Inganijharan Iron Ore and Manganese Ore Mines has since rejected.</p> <p>While rejecting RML applications, the mining operation was declared null and void with orders for recovery of cost and penalty for undertaking mining</p>

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	<p>Both the leases, Balita Iron Ore Mine (64.75 ha.) and Inganijharan Iron Ore and Manganese Ore Mine (118.5 ha.), were expired on 31.01.1984. The lessee was entitled to operate the lease for a period of six months from the date of expiry of lease term provided renewal application filed in time i.e. one year before the date of expiry of the lease. The extended period of lease would expire on 31.07.1984.</p> <p>The first renewal of mining leases over 18.70 ha. for Manganese in village Inganijharan has been granted in the department proceedings No.14765, dated 17.02.1986 (p.199-200/c) for a period of 20 years with effect from 01.02.1984. Although these two grant orders have been issued in the year 1986, the lease deeds have not been executed due to the default of the party in not taking required steps for de-reservation of the forest land included in the above granted areas. It is relevant to mention here that in the granted area of 34.75 ha. in village Balita, there are 38.60 acres of forest land. In village Inganijharan, the total granted area of 18.70 ha. is forest land.</p> <p>As per the information available with the Commission till 27.08.2012, application for 2ndRML till date has not been decided.</p> <p>Hence, these leases have been operated throughout 1st RML period (20 years) in the forest land without having FC approval of MoEF on the basis of unlawful working permits granted by the State of Orissa.</p>	<p>operation without lawful authority.</p>
7	<p>To control delay in deciding renewal applications, Rule 24A of MCR, 1960 may be suitably amended. Considering all the factors involved in renewal of leases and communication technology, it is recommended that the Sub-Rule (1) of Rule 24A could be amended to the extent that –</p> <p>(a) the renewal application in Form J should be submitted twenty four months before the date on which the lease is due to expire; and</p> <p>(b) the renewal application shall be disposed off in any case within one year after the date of expiry of lease for the first and second renewals and two years for the third and subsequent renewals if at all, it is required to be granted. (Amendment of Rule 24A(6), accordingly). If renewal application is not decided within the stipulated time, it should be deemed to have been refused.</p> <p>The State Government should be given liberty to withdraw the lease granted after completion of first lease period and not to grant renewal in the interest of the State. Accordingly, Rule 24A may be modified.</p> <p>In any case, if the procedure as suggested by this Commission is not acceptable or not workable, then a default clause should be included, providing that if the renewal application is not decided, as stated in Para: 3, the application would stand rejected.</p> <p>Secondly, the concerned officers who have not dealt with the application within stipulated time should also be held personally responsible for their lapses and appropriate action should be taken under the Rules. Pushing of file from one table to another should not be considered as the sufficient ground for their default.</p>	<p>Ministry of Mines The Ministry of Mines agrees to amend Rule 24A(1) of the Mineral Concession Rules, 1960 (MCR 1960) to provide that applications for renewal of a mining lease shall be made to the State Government at least twenty four months before the date of expiry of the lease, to bring it in conformity with similar provisions for Forest Clearance.</p> <p>The Ministry of Mines agrees to amend Rule 24A(6) of the Mineral Concession Rules, 1960 to provide that if an application for renewal of a mining lease made within the time prescribed in the statute is not disposed of by the State Government before the date of expiry of lease, the period of that lease shall be deemed to have been extended by a further period of 2 years or till the State Government passes order thereon, whichever is earlier, with prospective effect.</p> <p>Approvals under the MMDR Act, 1957 does not absolve leaseholders from compliance of prescribed statutory provisions in force.</p> <p>Ministry of Environment and Forests The deemed extension, however, does not absolve the lease holder from complying with other statutory provisions.</p> <p>Government of Odisha While agreeing with the recommendations of the Commission, the non-renewal of mining leases is mainly on account of non-availability of statutory clearances. Therefore, it may not be proper to attribute the lapse to any particular person. However, specific allegations will be dealt according to law.</p>

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8	<p>As suggested in the previous Report, the procedure for granting of lease/renewal of lease requires to be streamlined and should be made transparent so as to avoid delay in disposal of the application. For this purpose, procedure can be evolved by amending the Rules, if required and such applications should be decided by a Committee headed by Additional Chief Secretary of the State and Secretaries of concerned departments as members of the Committee.</p> <p>For grant of lease / renewal of the mining lease, a Committee consisting of one person from different Departments, as stated below, may be constituted.</p> <p>(i) Secretary of the Mines Department; (ii) Secretary of the Revenue Department; (iii) Secretary of the Forest Department; and (iv) Secretary of the Environment Department.</p>	<p>Government of Odisha An Inter Departmental Committee has been constituted on 09.10.2012 under the chairmanship of Development Commissioner-cum-Additional Chief Secretary, Odisha for examination of RML applications. The Committee has met four times and deliberated on the matter.</p>
9	<p>During the inquiry, it is observed that the provisions of Rule 24A of the MCR, 1960 has been grossly misused for both; provisions of deemed refusal and deemed extension. Therefore, appropriate action, in this regard, should be taken against the concerned authorities for misuse of the law for extending undue favour to lessees.</p>	<p>Government of Odisha Lapses, if any, will be dealt on a specific case to case basis. If need be collective or individual failure will be identified for necessary action. Suitable steps would be taken to factor in administrative measures to improve the systems.</p>

Chapter No.6: MODIFICATION AND REVIEW OF MINING PLAN/SCHEME: Misuse of Rules 10 and 12 of Mineral Conservation and Development Rules, 1988

S. No	Gist of Commission's Observations/ Findings / Recommendations	Action Taken Report
1	<p>Increase in production by modification in Mining Plan The variation in increased production by modifications and review of mining plans are manifolds and highly unreasonable as approved by the IBM. Phenomenal increase in production in such mines is illogical, unscientific, violation of provisions of G.O. No. S.O. 60(E), dated 27.01.1994 under Environment (Protection) Rules, 1986, Water and Air Acts, consent of operations issued by OSPCB under Air and Water Acts wherein upper limit is fixed. Such limit has had boost up the moral of its lessees for alleged mining without any fear or hindrance.</p> <p>Frequent Modification of Mining Plan/Scheme of mining List of 85 mining leases of iron, iron ore – manganese ore for which mining plan/ scheme was modified by IBM under Rule 10 of MCDR, 1988 is enclosed herewith as Table: 1 at page 174-189, Vol IV. Out of these, for 30 mining leases, the modification of mining plan/scheme done more than once.</p> <p>Further, out of 85 mining leases shown in Table: 1 at page 174-189, Vol IV, in case of 53 mining leases (Table 4 and 4A), mining plans/ schemes for increase in production were modified by the IBM Authority with retrospective effect. This would mean that without prior approval, lessee increased the production of iron ore for some purpose, may be, export and that has been tried to be legalized by IBM. This is unjustified.</p> <p>List of 11 mining leases of manganese ore for which mining plans/schemes are modified by IBM under Rule 10 of the MCDR, 1988 is enclosed herewith as Table: 3 at page 200 – 201, Vol IV</p> <p>The reasons given for modification of mining plan are de-hors the provisions of Rule 10 of MCDR, 1988.</p> <p>Frequent and post-facto mining plan modification It is further observed that from 2005-06 to 2011-12 i.e. within five years' span, modification/review has been done four times in each mine. These are exemplary cases of misuse of power for extending undue favour.</p> <p>On perusal of some of the said details, it has been noticed that in certain mining leases, modification/review has been done with retrospective effect to cover up lakhs of MT excess production done by the lessee in violation of provisions of Section 21(5) of MMDR Act, 1957 and MCDR, 1988. The modification with retrospective effect has been done while the lease was in deemed extension without having statutory approvals i.e. EC and/or FC. Hence, it amounts to serious violation of Rule 24A(6) of MCR, 1960.</p> <p>The State Government in the Department of Mines and IBM, Government of India have completely failed to check the mining operations required to be undertaken by lessees in a scientific, sustainable and environmental sustainable manner.</p> <p>IBM has given approval in many cases post-facto and against the norms of Rule 10 of the MCDR, 1988 thereby covering illegalities committed by the lessees in the past. Some of the examples are given in the aforesaid Table: 4.</p> <p>Such post-facto approvals have encouraged illegalities in mining in the State at large and have caused serious damages to the sustainable extraction of minerals and environment of the area. With such irregularities and illegalities, the lessees have taken undue advantage in the era of low rate royalty payment and the super phenomenal benefits as wind-fall profits to the lessees and no substantial return to the Government exchequer / society / consumers.</p>	<p>Ministry of Mines Mining plan is for the entire lease period. It includes a tentative scheme of mining and annual excavation plan for five years periods. At the end of each five year period, the Mining Scheme is subject to fresh approval. At the start of mining activity a tentative scheme of mining is conceptualized based on preliminary information on geology and reserves. Laying the limits for annual production for the entire life span of a mine, which is generally 20- 30 years, at the time of approval of first mining plan, is not practicable for the following reasons:</p> <ul style="list-style-type: none"> (i) Complete information on geology and reserves is not available; (ii) The mining rights encompass the area from the surface to the core of earth for which advance geological information is not available, and anticipated depth of mine changes depending upon many technical factors; and (iii) Change in the method of mining from manual to mechanized; <p>IBM, while communicating the approval for mining plan, including modification in mining plan, mentions that the approval is without pre-judice to any other law applicable to the mine area from time to time whether made by the Central Government, State Government or any other authority.</p> <p>Approval of mining plan does not absolve the lessee from obtaining approvals from and complying with provisions of other Acts and Rules.</p> <p>The Controller General, IBM has authorized the Controller of Mines to exercise the powers vested under Rule 10(2) of MCDR 1988 for approval of modification of Mining Plan vide letter dated T-43010/CGBM/88 dated 27.4.1989 and published in Part III Section 1 of the Gazette of India dated 03rd June 1989.</p> <p>The Ministry of Mines directed IBM, vide letter no.16/12/2009-M.VI dated 29.10.2010, to ensure that the approvals of modification of mining plans for increase in production shall be with prospective effect only.</p> <p>The Ministry has also directed the IBM to inquire and fix responsibility for failure on any part of any officers / officials of IBM regarding approval for increase in production through modification in mining plan by misusing Rule 10 of MCDR, 1988 including cases mentioned in the Report.</p>

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	<p>Mining plans have been approved irrespective of the area granted under the Forest (Conservation) Act, 1980. There is no relation between the mining plan approved by IBM and the land available in the mining leases with the lessees, since the entire land is not diverted for having mining activities. This has resulted into violation of mining plans. But no action has been taken by the lessees or by the IBM to recast the mining plan based on the land available in the leased area with the lessee (if the land is a forest land or a part of the forest). IBM should take immediate step to modify all the mining plans in this respect and till this exercise is completed, mining should not be allowed in such leases. Action should also be taken for omission/misconduct on the part of the officers in IBM.</p> <p>It has also been noted here that in mining lease of M/s. Essel Mining & Industries Ltd. (Jilling, Langalota Iron & Manganese Mines) retrospective annual production from 2004–05 is given even there was no environmental clearance under the Environment (Protection) Act, 1986 (MoEF Notifications, 1994 and 2006 and other modifications). It would be in the right context to state here that the excess production has been post-facto rectified by the Controller, when the illegal mining in the State was touching to the peak. This post-facto approval is also an illegal ratification of the illegalities committed by lessee in violation of Section 21(5) of MM(DR) Act, 1957. Such types of retrospective approvals have aggravated the illegal mining which was rampant during that period.</p> <p>These two cases are glaring examples wherein Rules 10 and 12 of the MCDR, 1988 have been misused to a great extent. Immediate action should be taken against the concerned officers who have approved such modification/review. Action should also be taken for the recovery of market value of excess iron ore covered under retrospective effect with exemplary penalty. The details of these mining leases are given in Tables: 10/A & 10/B respectively.</p> <p>There may be many more such examples of this kind and the Secretary, Ministry of Mines should examine all such other cases and take necessary action. The State Government should also find out from their records and submit the same to Secretary Mines, Government of India for further needful.</p> <p>Encroaching the power of Controller General & defeating the principles for modifications</p> <p>Rule 10 of MCDR, 1988 makes it abundantly clear that in case of modification of mining plan, only Controller General will receive the proposed modified mining plan and not any other authority on his behalf for its modification under above Rule 10(1). After receipt of the proposed modified mining plan, the Controller General may himself approve it or forward it to “authorized officer” for further process. The Controller General would take note of modifications by considering following aspects for modification:—</p> <ul style="list-style-type: none"> (i) safe and scientific mining; (ii) conservation of minerals; (iii) the protection of environment; and (iv) in case of modification, explanation for the same. <p>Contrary to the above provisions in MCDR, in Odisha as well as in other States, the Regional Controller of IBM has accepted the modified mining plans submitted by lessee. Such unscientific and illogical modifications for steep increase in production by Regional Controller is in violation of this rule and is against the interest of the scientific mining, Conservation of minerals and protection of environment at large.</p> <p>The definition of “conservation” as provided in Oxford Dictionary</p>	

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	<p>means preservation, protection or restoration; prevention of wasteful use of a resource.</p> <p>Similarly, Merriam Webster Dictionary provides Conservation means – a careful preservation and protection of something; especially planned management of a natural resource to prevent exploitation, destruction or neglect.</p> <p>Further, as per the Strategy of Mineral Development, 1993, the conservation of mineral is also through augmentation of resource base through improvement in mining methods, beneficiation and utilization of low grade ore and rejects, reduction in the requirement of minerals per unit of material output.</p> <p>Modifications done by the IBM, it was a mechanical increase in the manifold production purely for the commercial gain (mostly export). Not only this, in many cases, post facto approvals were given which actually nothing but to rectify the illegalities committed by lessees. Hence, the logic submitted by the IBM vide its letter dated 13.06.2012 is untenable, unfounded and unacceptable.</p> <p>In any case, modification of mining plan could have been approved only by Controller General.</p> <p>Defeating the NMP principles This Commission, on perusal of all individual modifications and review of mining plans for increase of production, has observed that all the above objectives of National Mineral Policy (NMP) are ignored and are not taken into consideration. A total 78.76 MMT increase of production in all mines during the year 2009–10 from 14.76 MMT in the year 2000–01, in no way, is conformity to the above objectives.</p>	
2	<p>Intergenerational equity It is accepted principle of inter-generational equity that present generation has a solemn responsibility to protect and improve the environment for the present and future generations. For this, present generation must safeguard the natural resources of the earth through careful planning and to undertake to pass on to the future generations and environment as intact as the one, it inherited from the past generation.</p> <p>A sudden increase in production has resulted into drying of these streams, degradation of environment, loss of micro bio-diversity of these streams, adverse effect on all roads, agriculture, horticulture, ground water table level, pollution of air and water and eco-system as a whole.</p> <p>Demand-Supply: Intergenerational equity Considering the rising demand – supply gap, the Ministry of Steel (MoS) is actively considering setting up of ultra-mega steel projects (UMSP) on fast-track basis. This ultra-mega steel projects (UMSP) will be of 8–10 million tonnes capacity each and would come up in the iron ore rich states of Orissa, Jharkhand, Chhattisgarh, Madhya Pradesh and Karnataka. The Steel Ministry also envisages a production capacity of about 120 million tonnes per annum by the financial year 2012 to meet demand – supply deficit in the Sector.”</p> <p>In view of the Commission, if the aforesaid industries are to be established for ultra-mega steel projects, then preservation and conservation of iron ore is must.</p> <p>Hence, in real terms, in the most of the working mines, the quality (+55 grades) iron ore is likely to disappear from the State of Odisha much earlier as predicted.</p> <p>The permission granted so far for extraction of 154.263 million tonnes by</p>	<p>Ministry of Mines Conservation of minerals for intergenerational equity was examined in detail by the High Level Committee (Hoda Committee), which concluded that Indian resources and reserves of iron ore, which have been made compatible with the international UNFC classification, have not been static and have been increasing over the years.</p> <p>It is incorrect to equate conservation with preservation. Preservation of minerals may be resorted to only in the case of strategic or scarce minerals, no such measures of preservation are required with respect to iron and manganese ore in India at the present.</p>

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	<p>IBM and MoEF if taken into consideration and achieved, then the reserve would last only for 30 years (i.e. $4704.249 / 154.263 = 30.4949$ years) in the State for good quality ore. A list of such modifications / reviews approved by the officers of IBM is given in Table: 7.</p> <p>Preserving Natural Resources Further, for preserving national non-renewable, finite mineral resources for future generation, it is recommended to bring down the consent for production to the level equivalent to domestic consumption with the increase of 7.5% per annum or equivalent to the growth of Steel and Sponge iron industry's requirement.</p> <p>Capping of production can reasonably be fixed between 50 to 55 MTPA. This would meet the requirement of domestic consumption.</p>	
3	<p>Committee for Approval of Modification in Mining Plans In any case, the authorization given for approval of modification in mining plan to Controller General/ Regional Controllers is required to be withdrawn immediately and the said powers should be given to a Committee with a suitable modification of Rule 10 of MCDR, 1988.</p> <p>A committee should be constituted under the chairmanship of Controller General and with members as,</p> <ul style="list-style-type: none"> (i) Director of Mines of the State concerned; (ii) Director (Environment) in MoEF; (iii) Chief Conservator of Forest/Additional Principal Chief Conservator of jurisdictional Regional Office; and (iv) Two experts in the field with known integrity <p>Modification in the mining plan should be in accordance with provisions of Rule 10 which shall be approved by the Committee.</p>	<p>Ministry of Mines Mining Plan being a dynamic document requires a periodical review every five years as per Rule 12 of MCDR 1988 and may require modifications in terms of the provisions of Rule 9 and Rule 10 of MCDR 1988. To constitute a single Committee under the Chairmanship of Controller General as suggested by the Commission for granting approvals for modification of mining plan will not be convenient and administratively feasible as the leases are located through-out the country.</p> <p>Ministry of Mines vide letter No. 10/29/2012-M.V dated 19.09.2012 has directed IBM to setup a Consultative State level Mining Plan Committee in each region, comprising representatives of the State Directorate of Mining and Geology, Pollution Control Board, and Environment Department. The directions are in the process of being implemented.</p>
4	<p>Implementation of Principles laid down by the Supreme Court for mining of iron ore in the State of Karnataka The Hon'ble Supreme Court of India, in case of Government of A.P. & others v/s. Oblapuram Mining Co. Pvt. Ltd. & others, [2012 (4) Scale 402], has fixed a ceiling of 30 Million Metric Tonnes per annum for total production in all the iron ore mines in the State of Karnataka.</p> <p>The Court has considered and accepted the Report of Central Empowered Committee dated 13th March, 2012 and directed as under:-</p> <p>“(A) the findings of the Joint Team and as modified after careful examination by the CEC may be accepted and directed to be followed by the concerned authorities and the respective leases, notwithstanding anything to the contrary. The boundaries of the mining leases should accordingly be fixed on the ground;</p> <p>(B) a ceiling of 25 Million Metric Tonnes (MMT) for total production of iron ore from all the mining leases in District Bellary may be prescribed. A ceiling of 5 MMT for production of iron ore from all the mining leases in Districts Chitradurga and Tumkur together may be prescribed;</p> <p>(C) the proposed "guidelines for the preparation of the R&R Plans" may be approved by this Hon'ble Court and the prescriptions/ provisions of the R&R Plans, prepared as per these guidelines, may be directed to be followed by the respective lessees and the concerned authorities;</p>	<p>Ministry of Mines The recommendation of the Commission for e-auction of iron and manganese ores will be examined in consultation with State Governments and the concerned Ministries of the Government of India.</p> <p>The Mines and Minerals (Development and Regulation) Bill, 2011 (Bill) in the Lok Sabha on 12th December 2011, inter-alia, empowers the Government to institutionalize a statutory mechanism for ensuring sustainable mining through a Sustainable Development Framework (SDF).</p> <p><u>Reclamation and Rehabilitation</u> Rules 23A, 23B, 23C and 23D of MCDR, 1988 provides for progressive mine closure plan and final mine closure plan. The lessee has the responsibility to ensure that the protective measures contained in the mine closure plan including reclamation and rehabilitation works have been carried out in accordance with the approved mine closure plan. IBM has been directed to ensure compliance of provision of law.</p>

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	<p>(D) the iron ore which becomes available should be used for meeting the iron ore requirement of the steel plants and associated industries located in Karnataka and also of those plants located in the adjoining States which have been using the iron ore from the mining leases located in these Districts. Exports, outside the country, should be permissible only in respect of the material which the steel plants and associated industries are not willing to purchase on or above the average price realized by the Monitoring Committee for the corresponding grades of fines/lumps during the sale of about 25 MMT of the existing stock of iron ore. Similarly, the iron ore produced by the beneficiation plants after processing should also not be permitted to be exported outside the country;</p> <p>(E) the sale of the iron ore should continue to be through e-auction and the same should be conducted by the Monitoring Committee constituted by this Hon'ble Court. However, the quantity to be put up fore-auction, its grade, lot size, its base/floor price and the period of delivery will be decided/provided by the respective lease holders. The Monitoring Committee may permit the lease holders to put up for e-auction the quantities of the iron ore planned to be produced in subsequent months. The system of sale through the Monitoring Committee may be reviewed after say two year;</p> <p>(F) 90% of the sale price (excluding the royalty and the applicable taxes) received during the e- auction may be paid by the buyer directly to the respective lease holders and the balance 10% may be deposited with the Monitoring Committee alongwith the royalty, FDT and other applicable taxes/charges;</p> <p>(G) the responsibility of the Monitoring Committee will be (a) to monitor the implementation of the various provisions/prescriptions of the R&R Plans, (b) to ensure strict compliance of the conditions on which the environment clearance, the approval under the Forest (Conservation) Act, 1980 and the other statutory approvals/clearances have been accorded, (c) to ensure that the mining is undertaken as per the approved Mining Plan, (d) to ensure that the ceiling on annual production fixed for the lease does not exceed, (e) to ensure that the safety zone is maintained around the lease area and in respect of the clusters of mining leases around the outer boundary of such cluster of mining leases and (f) to ensure compliance of the other applicable condition/provisions. Any lease found to be operating in violation of the stipulated conditions/provisions should be liable for closure and/or termination of the lease;</p> <p>(H) the present Members of the Monitoring Committee should continue for a period of next two years; and</p> <p>(I) in the larger public interest the mining operations in the two leases of M/s NMDC may be permitted to be continued. However, it will be liable to deposit penalty/compensation as payable for the mining leases felling in "Category-B".</p> <p>The implementation of Reclamation and Rehabilitation Plans for all three categories shall start immediately. It is made clear that preparation, implementation and monitoring of Reclamation and Rehabilitation Plan will be under the supervision of Central Empowered Committee. Central Empowered Committee shall inform this Court, next week, whether the suggestions.”</p> <p>A similar exercise is required to be carried out for Odisha State, too. The Central Government and State Government should sit together and complete the exercise within 6 months. All the mining plans and EC should be modified so as to bring down the approvals of production from</p>	

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	<p>154.26 Million Tonnes (approximate) to 50 Million Tonne per annum by taking the same criteria fixed for individual mines as adopted in Karnataka State.</p> <p>The concerned authority shall also take into consideration the concept of sale of iron ore through e-auction as directed in the aforesaid order. Such e-auction would bring the transparency on the production, sale, its price and would definitely increase the royalty. Not only this, this would control the prevailing corruption. The aforesaid figures should also be displayed on the departmental website containing the list of mines, owners, etc. which is recommended in previous chapter.</p>	
5	<p>Implementing Mine Closure Plans</p> <p>The State of Odisha has to gear up for implementation of the Mine Closure Plan wherever there is "Zero ore left" is reached in all such mines. In addition, wherever mines are going to be exhausted within 1 to 14 years, appropriate action for the same should be taken in advance.</p>	<p>Ministry of Mines</p> <p>Mine Closure plans are prescribed under Rule 23 of MCDR 1988 which states that every mine shall have mine closure plans namely,</p> <ul style="list-style-type: none"> • Progressive Mine Closure Plan • Final Mine Closure Plan <p>The closure plans also enumerates the methods of reclamation and rehabilitation of areas affected by mining operations.</p> <p>IBM officers at the time of inspection as per the MMDR Act, 1957 and rules framed thereunder also ensure compliance of the aforesaid provisions.</p>
6	<p>Pollution due to dumps</p> <p>It is learnt that more than 120 million tons of fine is stocked in mines presently which is also a cause of water pollution. All such unused/unsold fine stocks shall be covered with coir mats. OSPCB should take immediate action in this regard.</p>	<p>Ministry of Mines</p> <p>The Government of Odisha is being advised to take remedial measures in this regard.</p>
7	<p>Excess Production & Application of Section 21(5) and fixing responsibility</p> <p>Admittedly, in the matter of M/s. Essel Mining & Industries Ltd. [Jilling, Langalota Iron & Manganese Mines] and M/s. Essel Mining & Industries Ltd. [Kasia Iron & Dolomite Mines], modifications have been granted with retrospective effect to cover up the illegal excess production. This is a serious matter for which strict action is required to be taken.</p> <p>Production of excess iron ore without lawful authority by the lessee from the leased area (any land) is also a violation of Section 21(5) of the MM(DR) Act, 1957. In many such cases, the Chief Controller/Controller (IBM) has illegally rectified by according post facto sanctions. This is a flagrant misuse of powers by the concerned officers. There may be other many cases of this nature and the Secretary (Mines), Government of India should identify all such cases and take appropriate action.</p> <p>To do this exercise, the Secretary (Mines), Government of India can constitute a Committee of:-</p> <ol style="list-style-type: none"> (i) Regional Controller, IBM, Bhubaneswar; (ii) Director of Mines, State of Odisha; and (iii) Additional Principal Chief Conservator of Forest, Regional Office, Bhubaneswar <p>to submit time bound report for further action. The report should be placed on website of the Ministry.</p> <p>Action Against Officers</p> <p>The officers responsible for grant/approval of increase of production (including post facto approval) ignoring the requirement in violation of</p>	<p>Ministry of Mines</p> <p>The Ministry has directed the IBM to inquire and fix responsibility for failure on any part of any officers / officials of IBM regarding approval for increase in production through modification in mining plan by misusing Rule 10 of MCDR, 1988 including cases mentioned in the Report.</p>

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	<p>mandatory criteria of Rule 10 by ignoring concept of conservation, scientific development, protection of environment and requirement of future generations should be identified by the Heads of IBM and MoEF and appropriate deterrent action should be taken against them and for that, proceedings should be initiated at the earliest for misuse of Rule 10 of the MCDR, 1988 under the relevant laws including departmental proceedings for their omissions, commissions and misconduct.</p> <p>The result thereof should also be displayed on the Government website.</p>	

Chapter No.7: Encroachment

S. No	Gist of Commission's Observations/ Findings / Recommendations	Action Taken Report
1	<p>Illegal mining in Uliburu Reserve and Revenue Forests. The pits and dumps of an area of 54.00 ha. has been marked as illegal mining with latitudes and longitudes. On verification by this Commission, by incorporating the said readings in the Google Images of 2010, prima facie, it is found that the contents are correct. The mining pits and dumps, found inside the Uliburu Reserve and Revenue Forests, are quite clear and apparent.</p> <p>In the complaint which is filed by Sr. Inspector of Mines, Joda before the Judicial First Class Magistrate, Barbil, it has been stated that a quantity of about 40,24,400 MT of iron ore and 610 MT of manganese ore had been removed from outside the leased areas. The iron and manganese ores had been illegally extracted and transported from this area since the year 2004 onwards. In the complaint before the Magistrate, the value of iron ore is estimated as Rs.1776,37,01,600/- (Seventeen Hundred Seventy Six Crores Thirty Seven Lacs One Thousand Six Hundred) of iron ore and Rs.59,08,460/- (Fifty Nine Lacs Eight Thousand Four Hundred and Sixty) of manganese ore.</p> <p>After the receipt of the aforesaid complaint, the Commission has received copy of the report submitted by the State Level Enforcement Squad (SLES), comprising of Md. Q. J. Khan, MO, Sri S. K. Rath, Forest Ranger and Sri L. D. Sahu, SI of Police, who proceeded to Joda, Mining Circle on 20.03.2013 to conduct enquiry on the basis of the petition sent by Govt. in GA (Vigilance) Deptt. vide Lt. No.2644/VSS (N), dated 04.03.2013. The said report points out that, in all, from the years 2003-04 (Jan., 2004 to March, 2004) to 2009-10 (April-July), production was 47,48,826 MT (Forty Seven Lacs Forty Eight Thousand Eight Hundred Twenty Six) and total dispatch for these years was 45,22,639 MT (Forty Five Lacs Twenty Two Thousand Six Hundred Thirty Nine).</p> <p>Its valuation, as per the said report, is approximately more than Rs.2,000 crores (Two Thousand Crores).</p> <p>Admittedly, no mining lease whatsoever has been granted for this area and, therefore, obviously and apparently, it is illegal mining which can be visualized from the pit, dumps and other materials. For this purpose, appropriate proceedings may be initiated under Section 21(5) of the MM(DR) Act, 1957 and also as suggested in other Chapters of this First Report.</p>	<p>Government of Odisha Action has been taken by the State Government against the lessee and power of attorney holder for encroaching upon adjoining Reserve and Revenue Forest land and illegally extracting and removing iron ore. The following action has been taken in this regard:</p> <ul style="list-style-type: none"> Registered vigilance case against the accused; Through GPS survey involvement of the accused in illegal mining was established; Disciplinary action has been taken against the concerned officers of the Mining, Forest and Revenue Departments of the State Government, who are involved in illegal mining; Bank Accounts of accused individuals and Companies have been frozen, and requisitions sent for restraining sale/ transfer of their immovable properties; attachment proceedings have been filed for attaching movable and immovable properties; and the State Vigilance has already charge sheeted 25 persons including officers from Forest and Mining Department, the lessee B K Mohanty, the Power of Attorney Holder, Shri Deepak Gupta and the Directors of Deepak Steel and Power Ltd, Barbil for illegal mining activities beyond lease area and removal of 65,25,741.438 MT of ore amounting to Rs.1520,39,64,049. The case is now sub judice in the court of Special Judge, Vigilance, Keonjhar vide VGR No. 5/2013. Disciplinary action has also been initiated against Government servants including Senior Officers. <p>The Vigilance Department of State Government has taken prompt steps and conducted investigation effectively in this case. Therefore, there is no need of investigation by Central Bureau of Investigation.</p>
2	<p>(i) The State of Odisha has carried out survey of the mining leases by DGPS method. The same was submitted to the Commission.</p> <p>Based on the longitude and latitudes of the boundary pillars or outer boundaries of leases, they were marked in the Google Earth / Google Pro and encroachments were identified.</p> <p>On the basis of the DGPS based survey, it is observed that in 82 mining leases, there was encroachment of various types of mining activities. Notices, on that basis, were issued to each lessee. Thereafter, each lessee was informed about the encroachment so identified. Lessees were heard extensively for that purpose.</p> <p>No re-survey sought:- (a) For 48 leases out of total 82 leases wherein encroachments were noted, no order for re-survey was passed, since there was no request/dispute from the representative and/or Ld. Counsel for the respective lessees. The list of said 48 leases is enclosed herewith</p>	<p>Government of Odisha Regarding lease wise resurvey, the State Government has informed that resurvey was taken up in 39 leases. The total area of the 39 leases is 7244 ha. and on resurvey by a multi-disciplinary committee, it was found out that the area enjoyed is 6855 ha. The State Government has mentioned that due to the difference between traditional technology and the DGPS, there is a mismatch between the lease area as per land schedule and the area enjoyed by the lessees. However, the extent of the area is more or less matching thereby indicating that there is no large scale violation leading to illegal mining.</p> <p>The State Government has invoked section 21(5) of MMDR Act, 1957 against the lessees to recover the price of ore raised in excess of the</p>

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	<p>as Table: 2.</p> <p>(b) The total encroachment so identified, for which no re-survey was asked for, is about 836.31 ha. in 48 leases. Out of this encroached area, about 79.26 ha. is used for illegal extraction or removal of iron ore.</p> <p>(c) The total encroachment, as noted for both the categories, comes out about 1388.66 ha.</p>	<p>quantities specified in various statutory clearances. Some of the lessees have obtained stay orders from the Revision Authority against the recovery. The State Government has taken decision to move the Hon'ble High Court of Orissa for vacation of such stay orders by filing writ petition. Thus, the action of State Government in these cases for recovery of the assessed amount is at present sub judice. In the remaining cases, efforts are made to recover the amounts by finalizing the proceeding on the basis of the reply furnished by the lessees.</p>
	<p>(ii) Order for re-survey:-</p> <p>(a) At the time of personal hearings of the lessees held from 27.02.2013 to 04.03.2013 at Bhubaneswar, Odisha, number of Ld. Counsel for lessees disputed the said extent of encroachment and requested for re-survey of the leased area at the cost of lessees. Thereafter, as suggested by the Commission, the State Government had appointed Committees to re-survey the exact area of the land occupied by the lessees. On that basis, the Commission passed the order for re-survey for 37 leases. The said re-survey is under progress and is likely to take some time. The list of said 37 leases is enclosed herewith as Table: 1.</p> <p>(b) The areas of encroachment have been calculated by in-built auto-device of the programme (Google Earth Pro) and listed into Blocks, as A, B, C. Total encroachments are compiled lease-wise by the engineers / officials who are expert in handling such type of programmes. The exact extent of encroachment for those 37 lessees who have sought for re-survey, is shown in the Table: 1 at Page 12 – 18, Vol V. The marking of pits from where mineral is extracted is indicated as 'pit' (A, B, C).</p> <p>With regard to the above 37 mining leases, for which an order for re-survey is passed, total provisional encroachment is estimated about 552.35 ha. However, as re-survey is still going on, final figure and finding regarding encroachment, would be stated after completion of re-survey along with other illegalities.</p> <p>With regard to 05 leases, there was no encroachment found. However, boundaries measured as per DGPS survey were not matching on the basis of Google Images. Therefore, for those 05 leases, re-measurement of lease area was ordered. The list of said 05 leases is enclosed herewith as Table: 3.</p>	<p>Action has already been initiated under section 21(1) of MMDR Act, 1957 to prosecute the encroachers and arrested for violations of law.</p> <p>Action has been taken against the concerned officials of the Mines, Forest and Revenue Departments for their omissions and commissions.</p>
	<p>(iii) For the encroachment and unauthorized extraction of minerals from the pits which are shown in the Table, appropriate action is required to be taken under Section 21(5) of the MM(DR) Act, 1957.</p> <p>In addition to prosecution for the occupants, who have extracted/removed iron ore from outside the lease area, the cost of iron ore at market rate with the exemplary penalty, of whatever grade of mineral was extracted from the said pits, should be recovered under Section 21(5) of the MM(DR) Act, 1957.</p> <p>And also to recover cost of damage caused to the environment, ecology and others.</p>	
	<p>(iv) Action should also be taken against the concerned officials of the Mines Department as well as Forest and Revenue Departments (in case of forest and non forest land) for their omission and commissions who failed to restrict the encroachment.</p>	
