

# ENDANGERED SYMBIOSIS

## Evictions and India's Forest Communities



*Report of the Jan Sunwai (Public Hearing)  
July 19-20, 2003*

***CAMPAIGN FOR SURVIVAL & DIGNITY***

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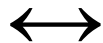
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## LIST OF ABBREVIATIONS

CAMPA	Compensatory Afforestation Fund Management and Planning Authority
CEC	Central Empowered Committee (set up by Supreme Court in <i>Godavarman</i> case)
CFM	Community Forest Management
FCA	Forest Conservation Act, 1980
FD	Forest Department
FSI	Forest Survey of India
GR / GO	Government Resolution / Government Order
IA	Interlocutory Application (a petition in a pending case in the Supreme Court)
IFA	Indian Forests Act, 1927
IGF	Inspector General of Forests, Government of India
JFM	Joint Forest Management
MoEF	Ministry of Environment and Forests, Government of India
MoTA	Ministry of Tribal Affairs, Government of India
NPV	Net Present Value
PF	Protected Forest
PA	Protected Area (either a sanctuary or a national park)
RF	Reserved Forest
WP	Writ Petition

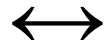
# PART I



REPORT OF THE JAN  
SUNWAI



# *INTRODUCTION*





## INTRODUCTION

Another milestone in the long history of the use of the armed might of the state to arbitrarily evict adivasis and the rural poor from their habitat occurred on 3 May 2002. On this day, the Inspector General of Forests (IGF) issued a letter (Annexure 7.1) to the Chief Secretaries of all the State Governments informing them that in response to the problem of encroachment of forest lands raised in the *Godavarman Thirumulpad vs Union of India* case (in Interlocutory Application No. 703 in Writ Petition No. 202/95), the Supreme Court had by its order (dated 23 November 2001) restrained the Central Government from regularizing encroachments in the country without its permission. The letter then went on to direct the State authorities to prepare a

diverse coercive means. While elephants were used to evict the adivasis of Maharashtra and Assam, the State Reserve Police (SRP) was deployed in many other states. In Gujarat and Madhya Pradesh, the forest department even resorted to burning adivasi houses and fields in order to meet their objective.

Interestingly, the implementing agencies misinterpreted the directive of the Supreme Court, purposively or otherwise, so as to hurt the interests of the adivasis and other poor forest dependent people the most. Through a subtle bureaucratic juxtaposition the letter of the IGF created the legal illusion that the Supreme Court had actually directed eviction of encroachers, *even though no such order had yet been passed*.<sup>1</sup> Further,

**Ministry of Environment and Forest**  
**Figures in response to**  
**Starred Question No. 284 in Lok Sabha, 16.8.2004**

- 13.43lakh hectare (1.3 million ha) of forest land is under (pre and post 1980) encroachment in the country.
- The total area under pre-1980 eligible encroachment regularized so far is 3.66 lakh hectare.

time bound programme for summary eviction of all encroachments not eligible for regularization as per the Ministry's 1990 guidelines by 30 September 2002 (cf. Annexures 3.1-3.6 for the guidelines).

In the months following this letter, forced evictions of adivasis occurred across the country at a scale unprecedented in recent history. Forest personnel in different states employed

<sup>1</sup> The IGF also recommended that a committee be constituted in each district under the chairpersonship of Conservator of Forests with District Collector and Superintendent of Police as members and that this committee should meet every quarter to take effective steps. He also recommended that forest officers should be delegated powers under relevant acts to try encroachers and take adequate steps to complete the eviction process through summary trials in a time bound manner at the Forest Circle level.

even though the letter admits that “such encroachments are generally done by the powerful lobbies”, these were left untouched in all the states. No punitive action was taken regarding the front line staff of the forest department either, who the letter admitted “did not take timely action” resulting in an expansion of encroachments. Instead, adivasis and other rural poor were made easy targets and thousands were summarily evicted – history, ruthless and unrepentant, was only repeating itself.

This new development in the shape of this letter of the IGF and its aftermath signifies the qualitatively new character of the conflictual relationship that has existed so far between the forest dwellers and the State. Armed in their belief that they had the power of the Supreme Court on their side, the forest department threw caution to the winds and proceeded with little regard for the rule of law or due process.

### **The Godavarman Case**

In a sense, the story of the present crisis began with the Godavarman Case (Writ Petition 202 of 1995, *T.N. Godavarman Thirumulpad vs. Union of India*). Distressed by the illicit felling of timber from forests nurtured by his family for generations, T.N. Godavarman Thirumulpad, an ex-estate owner in Gudalur, Tamil Nadu, filed a Public Interest Litigation (PIL) in the Supreme Court. Subsequently, in response to petitions (over 1126 interlocutory applications or IAs) from all over the country, the Court extended the scope of the petition and passed several significant

orders during the course of hearings over the last decade.

Advocate Harish Salve, the Amicus Curiae in the case, filed an Interlocutory Application (IA 703/2001) on 23 November 2001; this has proved to be the most crucial. In response to this IA, the Court in an interim order on the same day restrained the Central government from regularizing any encroachment without prior permission of the Court. No order was, however, passed regarding eviction of “encroachers”.

On 18 February 2002, the Supreme Court passed the following further orders in IA 703/2001: “The Chief Secretaries for the States of Orissa, West Bengal, Karnataka, Tamil Nadu, Assam, Maharashtra, Madhya Pradesh, Chattisgarh and Kerala are directed to file a reply to this IA, in so far as it concerns the said states in relation to the steps required to be taken by them to prevent further encroachment of forest land and in particular the land in the hilly terrains, national parks and sanctuaries, etc. It should also be indicated as to what steps have been taken to clear the encroachments from the forest which have taken place at an earlier point of time...”

On 9 May 2002, the Supreme Court ordered the setting up of a Central Empowered Committee (CEC) to make recommendations on existing IAs, monitor the implementation of the Supreme Court’s orders and place non-compliance cases before it, “including in respect of encroachment removals, implementations of working plans, compensatory afforestation, plantations and other



conservation issues”.<sup>2</sup> In the following month, the composition of the CEC was finalised and a notification issued regarding rules and procedures to be followed in order to approach the CEC.<sup>3</sup> In July, the CEC made a set of detailed observations and recommendations on the encroachment issue (brought up in IA 703/2001) and their report was placed before the Supreme Court in September (Annexure 9.2). In this report, the CEC endorsed the MoEF letter and recommended the removal of all post-1980 encroachments from forests within a short time span.<sup>4</sup> No mention was made, however, regarding the set of six circulars that the MoEF had issued on 18 September 1990 to facilitate the resolution of disputes related to forestland between the adivasis and the State. The CEC recommendations ignore these circulars, except for one.<sup>5</sup>

As we can see, through the numerous Supreme Court directives in the hundreds of interventions in the Godavarman case, the history of forest conflict is being written anew. The forest

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<sup>2</sup> No. 1-1/CEC/2002, dated 20.6.2002, Notification No. 2, Rules and Procedures for the Central Empowered Committee Constituted by the Hon’ble Supreme Court of India in Writ Petitions No. 202/95 and 171/96. (see Vol. 2, Section 2, Document 9.1).

<sup>3</sup> Ibid. Notification No.1-1/CEC/SC/2002, dated 3.6.2002, nominated 3 officials from the MoEF and 2 NGO representatives to the CEC (see Vol. 2, Section 2, Document 9.1).

<sup>4</sup> This was in accordance with the Forest Conservation Act (1980) which specifies that no forestland could be transferred to non-forest use after 25 October 1980 without the permission of the Central government.

<sup>5</sup> This circular pertained to the regularization of pre-1980 encroachments (see Vol. 2, Section 1, Document 3,1).

department is rewriting the Indian Forest Act (1927) through the orders of an ‘environmentally sensitive’ and activist Supreme Court. The Godavarman case, in effect, has created a frame through which the executive (forest department) has taken on the mantle of the legislature (Parliament) via the hundreds of interventions that have been admitted and the directions issued by the judiciary in these cases (Supreme Court). This frame has also allowed these two institutions of the state, i.e., the executive and the judiciary, which are largely insulated from the public, to write a new law in the public realm, effectively bypassing the elected representatives. The process of law making has thereby lost its democratic character. In a surreal twist of fate, India’s largest landholder has metamorphosed overnight into prosecutor, jury and judge.

### **The History of Evictions**

As mentioned earlier, the letter of 3 May 2002 is only one more milestone in the long history of the use of the armed might of the state to arbitrarily evict adivasis and other forest communities from their habitat. Communities which have evolved in the forest habitat for centuries but whose legal rights have neither been recorded or respected by the forest department, are being transformed into encroachers to be evicted summarily. The colonial period witnessed the most systematic colonization of the adivasis’ forest habitat and disruption of their society. The policy of earmarking reserved forests through “Forest Settlements”, ostensibly through due process of law as defined by the clauses of the Indian Forest Act, was a misnomer for forced evictions

of entire communities, since the law itself was authoritarian. The post-colonial phase, characterised by internal colonization, has involved the displacement of thousands of adivasis and other rural poor inhabiting resource rich areas for large-scale projects on the one hand, and a displacement of the forest itself through the state-sponsored timber lobby on the other. In the guise of 'scientific forestry', vast areas of natural multi-species forests were converted into monoculture plantations of teak and other timber species. More recently, adivasis are being evicted in the name of conservation.

"Conservation", as viewed increasingly by the State, has no place for the traditional rights of the adivasis over forestland. It does not recognize forest dwellers as part of the forest habitat and argues for their exclusion and eviction as a necessary prerequisite in order to revive plant and animal populations. This new insistence by the state on 'formal' conservation (often ostensibly through 'community participation') has not only negated popular 'stewardship' but also accentuated the alienation of the adivasis from the forests as well as the forest department. The opposing perceptions of the adivasis and the forest department officials on the question of territorial rights over the natural forests, combined with the negative – almost hostile – attitude of the officials towards adivasis has resulted in a relationship of mutual mistrust. This unhappy situation has further deteriorated because no attention has been paid to the fully justified demands of the people regarding their rights. Instead, attempts have been made

to impose the law unilaterally even if this has meant resorting to violent repression.

Today, not only have these past follies remained uncorrected, but new areas are also being declared state forests through a similar blatant misuse or perhaps, use, of the law. Large cultivated areas have remained in outdated revenue records as 'forests'. By declaring them 'state forests' through blanket notifications, the government has made it possible for the forest department to treat those occupying these lands as 'forest encroachers'.

The longstanding conflicts concerning the rights of adivasi communities living in forest areas has resulted from the colonial and authoritarian nature of the Indian Forest Act on the one hand, and the failure of the forest department to implement relevant laws and regulations, especially those pertaining to regularization of land, on the other. Over the years many State governments have recognised the rights of adivasis and other forest dwellers over forestland. Accordingly regularisation (of encroachments) orders have been passed in Maharashtra, Gujarat, Madhya Pradesh and Rajasthan, amongst other states. However, these orders have often remained dead letters or have been insufficient to respond to the magnitude of the problem. This was highlighted and elucidated upon by the Commissioner for Scheduled Castes and Scheduled Tribes in his letter to the President (dated 28 May 1990). This resulted in the issuance of a set of six circulars by the MoEF. However, these too were not implemented for twelve years (until 2002). The IGF letter (3 May 2002) sought to complete within a period of five months what the state had

not been able to implement for more than a decade. The irony of the situation lies in the fact that even when the forest department finally got round to implementing orders, it began implementing a non-existent Supreme Court direction to evict encroachers. Adivasis and the rural poor were to be punished for the failure of the forest department to have previously performed its duty. The enthusiasm of the foresters in evicting the so-called encroachers was not misplaced. The letter of the IGF clearly stated that approval of relevant working plan and funding under Centrally Sponsored Schemes would be linked to the progress shown in eviction of the encroachers. And so post 3<sup>rd</sup>. May 2002 the forest department intensified its drive to evict all “encroachers”.

### **People’s Resistance**

It is in this context that people’s movements and organizations began to organize themselves to resist the evictions across the country. Some organizations filed Interventions before the Supreme Court, while many others filed applications before the Central Empowered Committee. But most importantly, concerted resistance on the ground through protest demonstrations, jail bhara andolans, and written counter replies to the eviction notices issued by the forest department brought out the people’s views on this issue loud and clear: “There are no adivasis without forests, and no forests without adivasis. We are one. We will not give up our rights. Try and evict us!”

In Maharashtra, due to the collective efforts of various organizations,

the Maharashtra government was forced to issue a Government Resolution on 10 October 2002 outlining a time bound programme to verify claims of all adivasi cultivators by village level committees. In the face of resistance, the MoEF was forced to backtrack. Accordingly, on 30 October 2002, the IGF issued another letter stating that a Primary Offence Report (indicating that the Forest Department had filed a case of encroachment prior to 1980) would not be the only criterion on which a claim for regularization would be considered. In Andhra Pradesh, following a writ petition (No. 20936 of 2002) against evictions by an organisation, Sakti, the High Court directed the State Government to maintain status quo regarding the proposals to evict adivasis from forestlands.<sup>6</sup> However, in many areas where organizational presence was weak, the forest department continued its high-handedness.

The gross violation of the democratic rights of adivasis and other forest communities by the forest department continues to be a matter of grave concern. It is in this context that the groups who came together to form the Campaign for Survival and Dignity organised a Jan Sunwai (Public Hearing) in Delhi on 19-20 July 2003 as one step in the ongoing struggle. The Jan Sunwai had before it two goals. First, to bring to the notice of the society at large – through the panellists at the hearing - why adivasis and other forest dwelling communities believe they have the right to reside in their forest habitat. Second, the Jan Sunwai wished to evolve an understanding that ensures both

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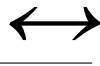
<sup>6</sup> The *Hindu*, 25 October 2002.

conservation of the forests as well as a life with dignity for adivasi communities in their forest habitat.

This report is a product of that Jan Sunwai. It starts with an overview of some common themes and concerns, which put the issue of 'encroachment' in a wider perspective. This is followed by reports on the situation in different states submitted by the organisations from that state, and then by individual depositions. Both the reports and depositions are quite different in their scope and coverage, but together, we hope, they will provide an idea of the seriousness and magnitude of the issues. Since the hearings happened a year ago, we have tried to bring matters somewhat up to date in an epilogue. Finally, we list a number of recommendations, which evolved out of the hearings, and which have been endorsed by the panellists who come from a wide variety of fields.

# CHAPTER

## I



# KEY ISSUES

This section is an attempt to draw together some of the concerns that emerged at the jan sunwai on the basis of the different state reports and depositions.

### **1. Who is the real encroacher?**

Today the state invariably labels adivasis and forest communities as “encroachers on forest land”. But for these communities, and particularly for adivasis – the original inhabitants of these lands - it is the forest department (FD) that has encroached upon and usurped their ancestral lands. It is the country’s

predominantly adivasi areas that have been declared state owned 'forests'. 60% of India's 'forest' lands lie in the 187 adivasi districts, which in turn comprise 33% of the country's geographical area.<sup>7</sup> The adivasis were there long before the state started encroaching on their lands, and the condition of both the adivasis and the forests at the time, even accounting for increases in population over time, was far better than it is today.

What few people realize is that the forest department is India's single largest landlord; it controls about 22 percent of the country's land area. Conversely, 62.9% of adivasis are either landless or own less than 1 ha of land.<sup>8</sup> As the 1984 Yellurkar Task Force noted in its state-wise listing of the causes for encroachment, the primary cause of encroachment by adivasis is landlessness.<sup>9</sup> Encroachment is a question of survival. In the absence of an effective land redistribution program, the problem of encroachment by marginal groups is hence impossible to resolve. In a situation where the state does not provide alternative social security mechanisms, it has little moral right to halt and criminalize people's efforts at ensuring their own survival. It is true that encroachment reduces common property resources, which are equally crucial to the survival of the poor. Yet, faced with a choice between subsistence on common property resources and cultivation –

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<sup>7</sup> Forest Survey of India, *State of Forests Report*, 2001.

<sup>8</sup> Report of Expert Group on Prevention of Alienation of Tribal Land and its Restoration, Ministry of Rural Development, Government of India.

<sup>9</sup> Yellurkar Task Force on Encroachment in Forest Areas, Government of India, 1984.

especially in the absence of any enabling state input – it is inevitable that land will offer a better chance of survival.

But quite apart from the genuinely landless, others who have been cultivating their customary lands, but without record, are in constant danger of being made landless. By labeling them encroachers, the state can evict them at any time. Although several states conducted a round of regularisation of 'encroachments' prior to 1980, and the MoEF has recently claimed that 3.66 lakh hectares of pre-1980 encroachments have been regularized<sup>10</sup>, many people who were in fact eligible for regularisation did not find their names on the lists (this is borne out by Table I, which lists both pre and post 1980 encroachments). In 1984, the Yellurkar Task Force estimated that 7 lakh ha. of forest area was under encroachment prior to 1980, which means that only about half has since been regularized. To give an example from just one state, Andhra Pradesh (AP), official records note that 77,661 acres of land in 'reserve forests' was under cultivation by adivasis prior to the enactment of the Forest Conservation Act (FCA) in 1980<sup>11</sup>. A 1987 government memo requiring the regularization of adivasi rights to this land went unheeded for eight years. In 1995, it was overruled by a new memo issued after the World Bank-funded AP Forestry Project was initiated. This new memo directed that the adivasis' lands be brought under joint 'forest' management, effectively changing

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<sup>10</sup> Data provided by Minister of Environment and Forests in response to starred Parliamentary Question No. 284, 16.8.04

<sup>11</sup> "HC orders status quo on tribals' eviction", *The Hindu*, October 24, 2002.

its legal status to state owned 'forest' land.<sup>12</sup>

While the popular impression that has been created is that large tracts of forest land are being lost to encroachment, the truth is that between 1961 and 1988 the total land under the forest department's control nationally did not decrease but increased by 26 million hectares (from 41 million hectares to 67 million hectares). During this period, the area falling within reserved forests, in which people have limited or no rights, increased from 26 million hectares to 46 million hectares. Comparatively, the total land under agriculture increased by only 24 million hectares during the same period.<sup>13</sup> According to the Forest Survey of India, between 1951-81 a total of 4.238 million hectares of forest land was diverted to non-forest use. This includes 1.618 million hectares (38.2% of all diversions), which were diverted for other purposes like river valley projects, highways and industries.<sup>14</sup> These have created secondary encroachments, as cultivators, mostly adivasis, were thrown off their land without any rehabilitation and were forced to shift onto forest land.

"Encroachments" are considered a serious problem because they lead to permanent loss of tree cover (unlike, for

instance, illicit timber felling, after which the tree cover can ostensibly be regenerated). Given the importance of forests to the ecological balance, biodiversity conservation, rainfall etc., the official target is that the country as a whole should have 33% of its total area under forest cover. This is far more than what it has at present (moreover, there is no scientific basis for the 33% target).

However, if the loss of ecosystem diversity is an issue, the primary culprit for this is the forest department itself, with its replacement of natural forest with monocultural plantations. Between 1951 and 1979, the various State departments clear felled over 3.33 million ha of 'economically less important forests' and raised industrial plantations in their place.<sup>15</sup> This is about 2.5 times the area currently estimated to be under 'encroachment', which is 1.3 million ha (see Table I). Ninety percent of the country's natural grassland ecosystems have been destroyed, either due to being treated as 'blanks' needing 'afforestation' by forest departments or as 'wastelands' available for other uses by revenue departments.<sup>16</sup> . Even if we assume that tree cover is important in itself, regardless of its contribution to an ecological system, the cumulative area of forest plantations raised by forest departments from 1951 to 1999 is 31.2 million ha.<sup>17</sup> Had a decent percentage of these survived, combined with the surviving natural forests, we would have more than the national target

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<sup>12</sup> See AP state report for more details.

<sup>13</sup> Madhu Sarin, "Real forests versus forests on paper? Challenges facing forest conservation", 27.02.03. Available at <http://www.iucn.org/themes/ceesp/Publications/CMWG/forests-MSarin.pdf>

<sup>14</sup> Saxena, N.C., 1995, *Forests, People and Profit, New Equations for Sustainability*, Centre for Sustainable Development and Natraj, Dehradun and Saxena, N.C., 1999, *Forest Policy in India*, WWF-India and IIED, New Delhi.

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<sup>15</sup> Forest Survey of India (FSI) 2000

<sup>16</sup> Draft National Biodiversity Strategy and Action Plan, 2003, prepared by Kalpavriksh and a Technical and Policy Core Group for MoEF.

<sup>17</sup> FSI, 2000

**MINING A NATIONAL PARK  
Shivpuri District, Madhya Pradesh**

From 1994 onwards, about 3000 hectares of forest land in Shivpuri (Madhya Pradesh) was diverted for the Mohini Phase II irrigation project, after the State forest department had concealed from the Union Ministry of Environment and Forests that half of this land came under the Madhav National Park. On discovery, this diversion was halted.

The district also recently earned notoriety for widespread illegal mining on forest land. The Madhya Pradesh government amended its Minor Mineral Rules in 1997, ostensibly in order to allow 'poor' adivasis to mine in land less than five hectares. State law requires an environment impact assessment (EIA) and an environment management plan (EMP) for mining above five hectares of land. In 2000, the committee appointed by the Supreme Court to inquire into irregularities found mines of up to 100 hectares area illegally operating on forest land.

Earlier, between December 1995 and late June 1996, the Union Ministry of Environment and Forests had allowed seven mines to 'complete mining operations and remove existing material' in what was called (without legal basis) the 'proposed extension area' of the Madhav National Park. Mining was stopped only in 1997 after major damage had occurred. However, later, over 2000 hectares of land under the Madhav Park was dereserved by an SDO (Revenue) in Shivpuri. This transgression of the Forest Conservation Act and Wildlife Protection Act suggests high-level political collusion to divert forest land.

of 33% tree cover (though the resulting 'forests' would not have been bio-diverse).

Apart from the follies of the 'scientific forestry' model, in the 1950s and 1960s the colonial agenda of state commercial exploitation of forests for expansionist projects was refashioned to include an emphasis on industrial development in the 'national interest'. Vast additional areas of community lands were re-labelled as 'national' forest resources for meeting 'national' needs, but were then placed at the disposal of a handful of industrialists for pitifully low rates. These industrialists were permitted to clear forest growth for their profits.

In short, even as the state has progressively reduced the rights of forest communities, reducing their relationship to the forest to something that can be

'settled' by the state, there are no limitations on the way in which the state itself uses forests. The state has not held itself accountable in any manner for the loss of forest cover. Instead, it is the forest communities who have been projected as the arch depredators and who are now being sent into exile. This is the illogic of the law. The pertinent question then is: who is the real encroacher upon the forests - the people or the forest department?

While it is also true that the land mafia has encroached upon extensive areas of forest lands in most states - for plantations and other commercial activities - as yet there is no evidence that the forest department or any other government agency has resorted to forcible eviction of these "powerful



lobbies.” Ironically, then, the poor, the marginalized and the historically alienated are being hounded out, while the forest department and powerful encroachers continue their illegal activities.

## **2. Laws versus laws - which law is the greater law ?**

### *Violation of Constitutional Provisions*

A significant proportion of the forest communities are scheduled tribes. Scheduled tribes have a special status in the Constitution. Recognising the importance of protecting their habitat from incursions and being taken over, the Constitution created “scheduled areas” which the President can notify for special protection. The 5<sup>th</sup> Schedule and the 6<sup>th</sup> Schedule to the Constitution provide for a different dispensation in the administration of Scheduled Areas. Further, in the directive principles of state policy, Article 46 contains a specific provision stating that “the state shall promote with special care the educational and economic interests of the weaker sections of the people, and in particular, of the scheduled castes and scheduled tribes, and shall protect them from social injustice and all forms of exploitation.” Finally, the evictions are a clear travesty of Article 338(9) of the Constitution, which places protection and welfare of adivasi people as a sacred trust with the state.

In accordance with Article 243 M of the Constitution, in 1996 Parliament passed the Panchayats (Extension to the Scheduled Areas) Act (PESA), which gives adivasi communities the power to manage their natural resources. PESA does not say that these have to be managed in accordance with working plans or the

diktat of the forest department, or that the customary area must necessarily fall outside the purview of reserve forests (RFs) in order to be covered by the Act. Yet, surprisingly, an Act passed by a sovereign independent parliament has been neglected in favour of a colonial act like the Forest Act of 1927, and the post colonial acts which build upon it, namely the Forest Conservation Act (FCA) of 1980 and the Wildlife Protection Act (WPA) of 1972, in order to hound out adivasis from so-called state forest lands.

In violation of Schedule V, which requires the Governor to appraise the applicability of any law to scheduled areas before assenting to it, and to withhold any law considered detrimental to adivasi interests from a scheduled area, no thought has been given to the application of these laws. There has been widespread negation of communal tenures and the role of forests in adivasi livelihoods and culture through the blanket application of conservation laws in adivasi areas. Surely, at least the judiciary must enforce all aspects of the constitution fairly. How then has enforcement of the forestry and wildlife laws ended up on a higher pedestal than Schedules V & VI of the Constitution?

The government itself has been the biggest violator of the spirit of the constitutional provisions, particularly through its repeated indiscriminate notification of customary adivasi lands as state forests or protected areas without proper land settlements, thus converting adivasis into ‘encroachers’ on their ancestral lands. Adivasi economies have historically been based on managing cultivated lands and the uncultivated commons as an integrated resource base

through diverse communal resource management traditions and systems. The poor recognition of communal tenures in India (except in the Schedule VI areas) has decimated their economies and livelihood security, due to their being stripped of their communal lands. The impact of the relatively greater autonomy and control over communal lands and resources enjoyed under the sixth schedule is evident from the far superior status and condition of communities as well as their forests in such Scheduled Areas in the North East. However, even these are now under increasing threat due to their simultaneously being classified as 'unclassed forests' and thereby brought under the purview of the FCA.

The government and courts have been selectively applying laws in other ways as well, thereby privileging the state's interests over the fundamental right to life. In the late 1970s, the substantive content of the 'right to life' in Article 21 was expanded. The right to dignity, health, clean environment, education, livelihood and shelter were some aspects of this wider meaning given to the Article. Forest evictions hence imply the violation of the right to life and amount to a clear violation of human rights.

#### *Violation of National Forest Policy 1988*

The National Forest Policy of 1988 mentioned the symbiotic relationship between the forest dwellers and the forests and made the needs of forest dwellers the first charge upon the forests (Annexure 1). However, the recent MoEF move to evict forest dependent communities from the forest is an unsubtle attempt at projecting them as a foe of the forest and of wildlife, and as a threat to the national and global

environment. This is based not on empirical fact, but on what may be termed "institutionalised prejudice". A version of environmentalism has been foisted on forest communities, conspicuously through the court, by which forest 'management' has become a bureaucratic enterprise *to the exclusion* of those who, over generations, have been part of forest life, and whose fate and future are linked inextricably with the forest. In one sense, this is a continuation of the colonial legal regime that was imprinted into the statute books, such as the Indian Forest Act (IFA) 1927 (which had a predecessor in the Indian Forest Act 1878), and which the National Forest Policy was meant to redress.

#### *Ignorance of parliamentary purpose*

The Wild Life (Protection) Act, which was passed in 1972, was amended thrice: in 1982, 1991 and 2002. Even as the forced eviction of forest communities based on court sanctions and directions seems imminent, it is instructive to recall what the Statement of Objects and Reasons to the 1991 Act said:

*While making the provisions of the Act more effective and stringent due regard has also been given to the rights of the local people, particularly the tribals. It is being provided that except for the areas under reserve forests, (where the rights of the people have already been settled) and the territorial waters, no area can be declared as sanctuary unless the rights of the people have been settled. State Wild Life Advisory Boards are also being made responsible for suggesting ways and means to harmonise the needs of tribals and the protection of wildlife.*

Local people, especially adivasis, are, according to this parliamentary dictum, to be taken into the reckoning when sanctuaries are declared, even if the colonial language of ‘settling’ of rights has been retained. The effort is to be towards harmonising the interests of the adivasis with those of the forest, not tearing them asunder. Yet, when the order of the Supreme Court was interpreted to mean forcible eviction of forest communities, this parliamentary purpose was not even acknowledged. The Court itself has ordered extinguishing the livelihood rights to collection of NTFPs from protected areas, even where these are legally recognised.<sup>18</sup>

The 42<sup>nd</sup> Constitution Amendment Act, 1976, inserted Article 48A into the Directive Principles of State Policy: “The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country.” Article 51A (fundamental duties), also introduced by the 42<sup>nd</sup> Amendment, said: “It shall be the duty of every citizen of India – .... (g) to protect and improve the national environment and forests, lakes, rivers, wildlife and to have compassion for living creatures.” The forest department’s arbitrary and illegal evictions, based on a non-existent Court order, are being carried out without recognising the relationship between the forest communities and the forest. Nor has

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<sup>18</sup> Supreme Court Order dated 14.2.2000 in IA 548 in Civil Writ Petition No. 202/95; CEC order No. 1-26/CEC/2003 dated 2 July 2004 to all Chief Secretaries, Principal Chief Conservators of Forest and Chief Wildlife Wardens, asking them to comply with the Supreme Court orders.

there been any recognition of the damage to the forest resources that will almost inevitably result from emptying the forest of its dwellers and the forest dependent communities, hence leaving the protection, and the nurturing, of forests to the forest bureaucracy alone.

A bizarre form of urban environmentalism, uninformed about ground realities, has captured the imagination of the court. In turn, this has resulted in a prioritisation of conservation interests and rights, displacing altogether concerns about the lives of those who are forced to live on law’s margins, such as the forest dwelling communities or the fish workers of Jambudwip<sup>19</sup>. Increasingly, with a strident environmentalism that is exclusive and excluding, the interdependence between the forest communities and the forests is being drowned out.

#### *Violation of International Law*

These moves to empty the forest of forest communities are also in violation of international law. India is a signatory to the International Covenant on Economic, Social and Cultural Rights; acts contrary to the Covenant represent violations of international law. The rights guaranteed under the Covenant include “the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing, and housing, and to the continuous improvement of living conditions.” (Article 11)

The Maastricht Guidelines on Violation of Economic, Social and Cultural Rights explains that states are obligated to “respect, protect and fulfil” the rights set

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<sup>19</sup> See West Bengal deposition.

out in the Covenant. “The obligation to *respect* requires states to refrain from interfering with the enjoyment of economic, social and cultural rights. Thus, the right to housing is violated if the state engages in arbitrary forced evictions. The obligation to *protect* requires states to prevent violation of such rights by third parties...The obligation to *fulfil* requires states to take appropriate, legislative, administrative, budgetary, judicial and other measures towards the full realisation of such rights.”<sup>20</sup>

With respect to the Right to Housing the Committee on Economic, Social and Cultural Rights denounced forced evictions when it said “In this regard, the Committee considers that instances of forced eviction are *prima facie* incompatible with the requirements of the Covenant and can only be justified in the most exceptional circumstances, and in accordance with the relevant principles of international law.”<sup>21</sup> Further, the Committee has also recognised the burden of suffering placed on some sectors in particular: “Women, children, youth, older persons, indigenous people, ethnic and other minorities, and other vulnerable individuals and groups all suffer disproportionately from the practice of forced evictions”<sup>22</sup>. At the least, it proposed, a procedure preceding forced evictions had to be instituted if forced eviction could not be avoided. The Committee also spelt out the obligation of the State: “Evictions should not result in rendering individuals homeless or vulnerable to the violation of other human

rights. Where those affected are unable to provide for themselves, the State party must take all appropriate measures, to the maximum of its available resources, to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available.”<sup>23</sup>

None of these provisions have been respected in the arbitrary eviction of forest communities. Instead, a language is being developed which dispossesses and disenfranchises forest communities by referring to them as ‘encroachers’ and foisting ‘illegality’ on them.

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<sup>20</sup> Paragraph 6, Maastricht Guidelines.

<sup>21</sup> Committee on Economic, Social and Cultural Rights, General Comment 4, paragraph 18.

<sup>22</sup> Committee on Economic, Social and Cultural Rights, General Comment 7, paragraph 11.

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<sup>23</sup> *Ibid.*, paragraph 17.

### **Vast Lands Declared to be 'Forest' Without Surveys**

- In 1893, all uncultivated common lands (unmeasured lands) in Uttarakhand under direct British rule were declared to be state owned 'District Protected Forests' without any vegetation or ecological surveys. While large parts of this land could never support forests, much of the area that was not subsequently reserved was converted to other uses (especially for housing) over the last 110 years. In its submission to the Supreme Court under the *Godavarman* case in 1997, however, the UP government included *all* of this land as 'forests' and therefore as lands coming under the purview of the FCA.
- Sweeping notifications issued in 1896, 1897 and 1952 similarly declared all government 'waste' lands in Himachal Pradesh as protected forests (which now cover 66.4% of the state's geographic area) irrespective of their actual use or cover. Over 55% of this 'forest' land is incapable of supporting tree cover due to its being under alpine pastures, permanent snow or above the tree line; grasslands and alpine pastures comprise the single largest actual land use in the state.
- Due to the definition of 'forest lands' used in the FCA, the passage of the Act suddenly increased the area of the state 'forests' of both HP and Uttaranchal by about one third (from roughly 44% to 66%) in FD records without any change in forest cover on the ground. Similar situations prevail in many other states.
- According to the Forest Survey of India (2000), the recorded forest area of Mizoram comprises 75.59% of the state's geographic area. 32.9% of this land, now labeled 'unclassed forest', is under jhum cultivation and is under the jurisdiction of village councils. Another estimate suggests that jhum cultivation land comprises about 38% of the state's area. The due process of law for settling existing rights has not been followed for the 44.7% of state area declared RF and 22.4% declared PF.

### **3. Nature of disputes regarding demarcation, ownership and land-use**

The disputes regarding demarcation, ownership and land-use of so-called "forest" land have been long-standing. The definition of 'forest' land has now become an even more contentious issue, in light of the Supreme Court's ruling in the *Godavarman* case. What are the major issues regarding demarcation, ownership and cultivation around which the current disputes revolve?

#### *Shifting cultivation*

The Forest Survey of India includes all fallow lands under shifting cultivation (both in the north-eastern states as well as in Orissa, Andhra Pradesh and elsewhere), in its 'estimates' of 'forest cover'<sup>24</sup>. This is a grossly erroneous depiction of land use, as these lands are not forest but are *cultivated* lands, albeit under rotational rather than settled cultivation. It needs to

<sup>24</sup> Madhu Sarin, "Comment", *Seminar*, 519, November 2002.

### **Adivasi and Community Lands Declared State Forests Without Settling Rights**

Due to the higher costs, revenue land settlements carried out during the 1970s in Orissa did not survey hilly lands with over 10 degree slope and declared them (including their unsurveyed villages and cultivated lands) as state owned forests or 'wastelands'. These areas were predominantly inhabited by the state's 7 million adivasis. In fact, 44% of Orissa's supposed 'forest land' is actually the shifting cultivation land of adivasi communities whose ancestral rights have simply not been recognised. Moreover, 55% of Orissa's supposed 'forest' area is under the revenue department, and in areas surveyed for revenue settlements this land is not recorded as 'forests'. Consequently, it has been used for different purposes for 30-40 years. About 40 per cent of even the reserved forest areas have been 'deemed' to be so without any survey or settlement. Cases against 'encroachers' on forest land due to their lacking land titles have been thrown out by the courts as the FD cannot produce notifications under section 20 or 29 of the IFA.

Similarly, in Andhra Pradesh, fallow shifting cultivation lands of adivasis were declared reserve forests in which no rights are allowed; the adivasis have still not been granted land rights over the limited cultivable land left with them. Recently, the FD proudly claimed to have retrieved 37,000 ha of 'forest' land from 'encroachments' in the district of Vishakhapatnam alone, though in reality this resulted from the eviction of shifting (podu) cultivators via a World Bank sponsored JFM project (see state reports for Orissa and Andhra Pradesh).

be noted that the FAO does not include shifting cultivation lands in its assessments of forest cover for all countries in the world; it categorizes them as forest fallows instead. Official estimates of such land in India vary from 5 million to 11.5 million ha.<sup>25</sup> By bringing all such lands under the purview of the Forest Conservation Act with a single stroke of its pen, the Court has negated one of the country's most ancient agricultural cum forestry systems as well as the wealth of indigenous knowledge and agrobiodiversity it harbours.

<sup>25</sup> Ministry of Environment and Forests 1999, National Forestry Action Program. New Delhi: MoEF, Vol. 1, p. 30.

#### *Disputes arising out of forest settlement*

A major contradiction in the government's approach to forest conservation is that it focuses on protecting state forest *land* instead of real *forests*, given the serious discrepancies between real forests on the ground and the area declared as state 'forests'. During the colonial period, while some forests were selectively reserved for commercial exploitation, large areas of the uncultivated commons (called 'wastes' as they did not yield land revenue) were declared state forests through blanket notifications.

Post-Independence, the major increase in *net* 'national' forest estate (see section 1) was achieved by declaring most

formerly unsettled common lands and forests (particularly those owned by princely states and zamindars) as state forests, largely through blanket notifications unaccompanied by surveys of their vegetation/ecological status and settlement of the rights of pre-existing occupants. Many of these are yet to be clearly demarcated on the ground and notified as forests under section 20 or 29 of the Indian Forest Act. Consequently, even their legal status as state 'forests' is open to challenge.

Many of the above lands, although entered as 'forests' in official records, harboured a wide diversity of communal property use and management systems recognised by custom rather than formal law. These included shifting cultivators, hunter-gatherer adivasi groups, forest based settled cultivation and nomadic pastoralists, besides other communities with diverse livelihood systems. They also included tenant cultivators of zamindars and private forest owners besides village/community forests for bona fide local use. Although there was extensive codification of rights in some areas like Himachal Pradesh, in general there was poor reflection of these pre-existing users and customary tenures in official records.

In this context, notification of these lands as state 'forests' converted them in one stroke from local livelihood resources into 'national forests'. Local management authority was simultaneously replaced by a uniform, centralized management system for state revenue generation. Both processes severely impoverished forest dwelling communities. Large numbers were now labeled 'encroachers' on their

ancestral lands; even their villages, which remained unsurveyed, were often notified as state 'forests'.

These acts of omission and commission over half a century have left a large number of predominantly adivasi people cultivating and living on their ancestral lands without any formal land titles, thereby making them vulnerable to forcible displacement without rehabilitation. Periodic promises to grant property rights to the shifting cultivators and other adivasis have mostly remained unimplemented, resulting in uncertainty of rights and day-to-day exploitation and harassment of adivasis. In Orissa, lakhs of shifting cultivators are not even recorded as 'encroachers' either pre or post 1980, effectively making them 'invisible'.<sup>26</sup>

#### *Disputes regarding leases/pattas/grants of forest lands*

There are many cases where villagers are suffering due to disputes between various departments of the Government over the legal ownership of land. Although these villagers have been given pattas, leases or land grants under the proper authority of the State and are in possession of the land, they are being penalised for the inefficiency of the administration. Although Circular No. 13 – 1/90-FP(3) of 1990 of the Union Ministry of Environment and Forests dealt precisely with this issue (see Annexure 3.3), no state government has taken steps to resolve this dispute. At any rate, whatever the resolution of the dispute between the

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<sup>26</sup> Kundan Kumar & Y Giri Rao, Vasundhara, Perpetuating Injustices: Tribal rights and forestland cultivation in Orissa, September, 2004.

departments, the sovereign state must honour its commitments to its citizens.

Some examples of such disputes are:

➤ In 1949, in several former zamindaries and princely states in Madhya Pradesh, large blocks of uncultivated land, including the village *nistari* forests, were declared government Protected Forests (PFs) with the condition that the *nistari* rights of the people would not be affected.<sup>27</sup> *Nistar* referred to the British practice of setting aside some areas for fuelwood and fodder needs (though the best forest areas were taken for colonial use). While the bigger forest blocks were demarcated and taken over by the forest department, less well stocked and scattered patches of these forests remained unsurveyed and were marked as ‘orange areas’ on official maps. Some of them, essentially *nistari* forests for villagers’ use, were also entered in revenue records as *chote jhad* and *bade jhad ka jungle*. At some point, a fresh survey of these orange areas was ordered, with the intention of returning areas unsuitable for reservation or protection to the revenue department. Although the official denotification was never actually performed, in accordance with the then government policy large areas of these lands were distributed to landless and agricultural co-op societies under the grow more food campaign.

Following the 1996 interim orders of the Supreme Court (see below), the Madhya Pradesh forest department included all these areas in the state’s forest

area on the basis of their paper records. In some places, these orange areas (including land under cultivation) are being surveyed and afforested under JFM. Yet surely such demarcation cannot be performed half a century late as if time and people have stood still and waited for the forest department to get its act together. In some areas, people have legal pattas, in others they have long standing ‘encroachments’, and still others have continued to be used for their original function - fulfilling the villagers’ *nistari* needs. In many villages in Bastar (now in Chhattisgarh), the forests have survived on these orange areas only because people managed them according to their customary traditions.

➤ In Raigad district of Maharashtra, ‘dali’ lands were granted to village communities in the late 19<sup>th</sup> century by the colonial government. Despite a 1971 government resolution on the matter, dali land holders have till date not been granted ownership title. The case of the Ek Sali leases in Thane district is similar. In some cases, the state granted leases for cultivation, agro-forestry or tree plantation. These leases were not renewed after the Forest Conservation Act 1980, even though the lessees continued with their activities on these lands.<sup>28</sup>

#### *Forest Villages*

When the forest department needed labour for its forestry operations, such as felling, it established or recognized a number of ‘forest villages’. Approximately 2500 to 3000 such villages exist across

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<sup>27</sup> See Chhattisgarh and Madhya Pradesh state report for further details.

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<sup>28</sup> See Maharashtra state report for more details.



India<sup>29</sup>. The residents of these villages, in effect, functioned as bonded labour for the forest department, and were allowed to cultivate their own land whenever the forest department could spare them. These villages are dependent on the FD for all development work. Despite a Government of India policy decision, these villages have still not been converted into revenue villages. By no stretch of the imagination do any of these villages and their lands represent real forests. Yet on paper, they comprise government ‘forests’ and the MoEF demands compensatory afforestation (and now, under orders of the Court, even the so-called ‘net present value’ of between Rs. 6 to Rs. 9 lakhs per hectare) on an equal area of other land before converting these ‘forests’ into revenue villages.

Bringing community lands with diverse tenurial status and livelihood functions under the FCA’s purview, purely because they happen to be ‘recorded’ as ‘forest’, has confused management objectives, diluted or erased community rights, and has created jurisdictional conflicts between forest and revenue departments, panchayats, and traditional community institutions, in addition to being very difficult to enforce. As pointed out by the Supreme Court’s Central Empowered Committee itself in its recommendations on ‘encroachments’ on ‘forest’ lands, “In respect of deemed forest area, unclassed forest and areas recorded as forest in Government records, which are not legally constituted forests, the

provisions under which an offence can be booked are not clear.”<sup>30</sup>

#### **4. The Forest Conservation Act and the Godavarman Case: Providing a legal framework to de-legitimise rights and aggravate disputes**

Compounding the existing confusion is the Forest Conservation Act, 1980, that freezes legal land use on roughly 22 per cent of the country’s land area, despite, as mentioned above, the serious anomalies in the process by which this land has been classified as state ‘forest’. The Act was intended to shift and centralise power over forests in order to check deforestation, which, the Statement of Objects and Reasons states, “had been taking place on a large scale in the country”. The Act, like the Ordinance that preceded it, “made the prior approval of the Central Government necessary for dereservation of reserved forests and for use of forest land for non-forest purposes.” Since the Act came into force, it is mining interests that have liberally filed court cases seeking permission for non-forest uses of forest lands, despite the devastating effect mining has on forests. Increasingly, the large scale displacement that “development projects” such as dams engender have had the consequence of making State governments seek Central permission to de-reserve forest areas so as to provide rehabilitation sites to the displaced: the option of altering these so-called “development” projects has almost never been considered. Ironically, to compensate for the loss of forests to

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<sup>29</sup> Circular 13-1/90/FP-5, 18.9.1990 (Annexure 3.4).

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<sup>30</sup> Point 12(v) of the recommendations of the 5.8.2002 recommendations of the Central Empowered Committee (Annexure 9.2).

‘development’ projects, additional non-forest lands are now being notified as reserved forests, protected forests or protected areas, thereby displacing still more people from their livelihood resources. Such double displacement, particularly from *jhum* (shifting cultivation) lands, is beginning to acquire ominous proportions in the northeastern states, due to the large number of dams planned and already under construction there.

The Act’s mandate even extends to lands for which only notifications under Section 4 of the IFA have so far been issued.<sup>31</sup> Areas recorded as ‘forest’ in any government record also come under the Act’s purview. As neither the IFA nor the FCA actually define what a ‘forest’ is, on 12.12.1996 the Supreme Court ruled in the Godavarman case that the Act’s provisions would apply to any area conforming to the dictionary definition of forest, irrespective of ownership (Annexure 5.1). This also includes all lands entered in any government record as ‘forest’, whether or not that land actually has any tree cover on it and whether or not even preliminary notifications have been issued to notify it as forest. It also applies to all community managed forests on revenue lands – forests which have been maintained and nurtured precisely because villagers did not follow the forest department’s

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<sup>31</sup> Section 4 (1) (c) of the IFA of 1927, which declares the state’s intention to reserve an area as forest, also requires appointment of a forest settlement officer (FSO) to settle claims of pre-existing occupants and users. This safety clause has often been dispensed with. An area is formally notified as a forest only after the formalities associated with Sections 20 and 29 are completed.

‘scientific forestry’ prescriptions, which would have involved clear felling and mono-cultural plantations for ‘sustained yield of timber’. Given the disarray in government land records, and the diverse categories of land in different contexts for which the term ‘forest’ has been used in them, a very wide range of common lands critical for local livelihoods will now be forcibly brought under the ‘scientific’ management of the forest department’s ‘Working Plans’. There is no requirement to verify the current status of these lands, whether any forests on them ever existed in the past or still exist, the rights people enjoy in them or the function these lands play in people’s livelihoods.

It does not seem to have been brought to the Court’s notice that many of these lands are riddled with disputes, including pending claims for land rights by their indigenous inhabitants. On September 18, 1990, the Ministry of Environment and Forests (MOEF) itself issued six circulars (No. 13-1/90-FP), four of which discussed these disputes and problems and created a framework for their resolution. The four circulars were:

- FP (1) Review of encroachments on forest land (Annexure 3.1)
- FP (2) Review of disputed claims over forest land, arising out of forest settlement (Annexure 3.2)
- FP (3) Disputes regarding pattas/ leases/ grants involving forest land (Annexure 3.3)
- FP (5) Conversion of forest villages into revenue villages and settlement of other old habitations (Annexure 3.4)

The omission of these circulars is particularly serious because they

contained a frame for the resolution of the disputes between adivasi people and the State over so-called forest land. These circulars were the result of consultations between the Union Government and the Commissioner for Scheduled Castes and Scheduled Tribes (the Constitutional predecessor of the National Commission for Scheduled Castes and Scheduled Tribes) in 1990, initiated at the intervention of the Commissioner. At the time, the MOEF conceded that disputed claims are to be settled through a transparent and just process, namely through verification of adivasi claims by teams of officials from the revenue, forest and tribal departments, and subsequent possible consultation with the village *gram sabha*. No action on these circulars has been taken for the past 14 years.

### **5. The blinkered vision of *Godavarman*-related policies**

The new policies that have followed on the Supreme Court's interventions in the *Godavarman* case, particularly the recommendations of the Central Empowered Committee (CEC) set up by the Supreme Court to assist and advise it, have aggravated the situation with their blinkered vision. The CEC in particular is composed only of foresters and wildlife conservationists and has issued recommendations that virtually ring the death knell for forest communities (see Annexures 9.1, 9.2). The CEC views 'forests' as areas divorced from any socio-economic or cultural contexts, and hence areas from which forest dwellers need to be removed like vermin. This body often transcends its advisory and monitoring mandate to issue draconian recommendations that not only

cause havoc in the lives of lakhs of the poor in many states, but also imperil the cause of sustainable natural resource management. Some examples of such recommendations and of similar policies in other contexts are given below:

#### ***Orissa***

Despite the pathetic status of survey and settlement of 'forest' lands in the state, the CEC simply expressed 'grave concern about the ownership and control over more than 50% of the state's forest land by the revenue department' and demanded that it be transferred to the forest department at the earliest for 'scientific forestry'<sup>32</sup>.

#### ***Madhya Pradesh***

As mentioned above, the MoEF's 1990 circulars required that pattas/leases/assignments issued by the Revenue Department for 'orange areas' be recognized. Yet, in a 2002 order, an earlier Supreme Court empowered committee directed that these areas be handed over to the forest department (FD) "after removing encroachment, if any, within a period of six months" in compliance with the Court's interim orders. An internal order to district officials by the MP Commissioner for Revenue, Relief and Religious Affairs conveyed the above orders and ended by stating that: "The Empowered Committee's orders represent an order of the Supreme Court. It is essential to implement such orders within

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<sup>32</sup> Memo No. 9877 / LR & S. dated 31.10.2002 from Director, Land Records and Survey, Board of Revenue, Orissa to All Settlement Officers / Charge Officers, Subject: Transfer of Revenue Department Forest Land to Forest and Environment Department.

the given time limit. Otherwise it can result in a contempt of court situation”.<sup>33</sup>

### *Jharkhand*

For implementing the Court’s interim orders of 1996, an administrative order dated 27.7.2002 from the Dumka District Collector’s ‘secret’ (*gopaniye*) branch to all settlement officers instructed them to cancel all pattas that have been issued on three types of land recorded as ‘forest’ in government records. These are any sakhu (sal), rakha (protected) and jhanti (scrub) forests that lie outside the boundaries of demarcated forestland. Jhanti jungle is actually village common (scrub) land, which, under the Santhal Parganas Tenancy Act, the village headman is legally empowered to settle with raiyats. The DC’s order does not mention any cut off date beyond which such allotments are to be cancelled, but entries in the last Gantzer Settlement of 1922-35 are apparently being used as the basis for cancellation. The allotment of any land to a raiyat that is recorded as ‘forest’ in this settlement is to be cancelled and the land ‘returned to the forest department’, although the court has made no such order and the forest department never owned the land. This will have horrendous consequences for some of the most marginalised adivasi communities, particularly in some of the forest blocks in Dumka, Pakur and Sahebganj districts in Santhal Parganas. A subsequent circular reported that 2000 acres had already been ‘returned’ to the forest department and required the drive to continue.

<sup>33</sup> See Madhya Pradesh State report.

## **Maharashtra**

Using a similarly bizarre interpretation of the Court’s interim order, the Maharashtra forest department has pressurised the revenue administration to transfer all lands that were declared to be ‘private forests’ under the Maharashtra Private Forests (Acquisition) Act, 1975. Entries of ‘forests’ in government records, however, bear little correlation with the situation on the ground, as the area in question is generally not forestland at all. In the four Konkan districts of Thane, Raigad, Ratnagiri and Sidhudurg alone, 3.03 lakh ha of agricultural land, belonging to more than one lakh mostly adivasi cultivators, has, without the knowledge of the cultivators, been declared to be ‘private forest’<sup>34</sup>. Without any verification on the ground, all these lands were acquired and vested in the state in 1975. Following the Court’s interim order of 1996, the process of removing the cultivators’ names from the land records and inserting that of the FD has recently begun. Ironically, many of the cultivators received titles to their lands under tenancy legislation or through allotment of ceiling surplus land<sup>35</sup>.

## **Himachal Pradesh**

In 1998, the state government issued a notification that “areas classified as “gair mumkin” and “charagah bila drakhtan” (grazing land without trees) in the revenue records were not to be included among the ‘Waste Lands’

<sup>34</sup> See Maharashtra State report.

<sup>35</sup> See Maharashtra State report.

declared to be state 'forests' by the 1952 notification (for which detailed surveys and settlements are yet to be completed in most districts). However, the Central Empowered Committee (CEC) recently termed the state government's 1998 notification a violation of the FCA, thereby insisting that even village grazing lands without trees continue being notified as state 'forests'<sup>36</sup>.

### *West Bengal*

In its zeal to prevent all kinds of non-forest activity taking place on forest lands, the CEC has destroyed the livelihood of thousands of traditional fisher-people who worked in mangroves. It has banned the use of gillnets along portions of the eastern and western coasts. The most glaring instance, however, is the CEC's ban on any kind of fishing or drying activity in Jambudwip, a small island in the Sunderbans. This has historically been used by fisherpeople for a certain kind of fishing that is only possible in the mangroves; nevertheless, however, it was declared to be a reserved forest in 1939. Perhaps it is not coincidental that this comes at a time when the Government of West Bengal is promoting elite tourism in the Sunderbans<sup>37</sup>.

### *General recommendations*

The CEC's general recommendations include a provision that:

*A notice shall be published in the local/ vernacular newspapers at least 7 days before the actual removal is undertaken specifying, to the extent feasible, the*

*compartment/survey no., the forest range, forest division and district from where the encroachments are being removed in compliance of this order. Whether an area is a forest or not shall be determined on the basis of the forest department records and in its absence, from the other relevant government records.*<sup>38</sup>

Given that the target population of this notice are poor villagers often living deep in the forests, the idea that they are going to read newspapers and make representations within seven days is manifestly ludicrous and a clear violation of the Right to Information. Equally, given that such a major part of the problem is caused by the incomplete and faulty nature of forest department records, to use those same records as the basis for determining the status of lands is clearly problematic. This is true even if this is land that is not contested by any other department – e.g. the revenue department, or the forest department in some places. For instance, Uttaranchal includes homestead land in its records.

In the same document, the CEC also included these three recommendations:

*A Committee [be] constituted under the Chairmanship of the Chief Secretary with Director General of Police, Principal Chief Conservator of Forests and Forest Secretary as its members in each state/Union Territory for supervising and coordinating the removal of encroachments. [...]*

*The performance of the revenue, police and forest officials in removing*

<sup>36</sup> *The Tribune*, Chandigarh.

<sup>37</sup>CEC report dated December 20, 2002

<sup>38</sup> Point 13(f) of the August 2002 recommendations of the Central Empowered Committee (Annexure 9.2).

*encroachments shall be recorded in their Annual Confidential Reports. [...]*

*Any person or authority aggrieved by any action taken during the course of removal of encroachments in compliance with the orders of this Court including in respect of alleged excessive use of force, unprovoked firing, atrocities punishable under the SC/ST Atrocities Act will be at liberty to approach this Court through the Central Empowered Committee for redressal of the grievances. The Committee after examining such complaints shall place its recommendations before this Court for passing appropriate orders.*<sup>39</sup>

On reading these recommendations, one would conclude that the CEC was deliberately mandating the use of excessive force and leaving open the possibility of unprovoked firing. Already we have had the experience of police firing in Dewas in 2000 when four people were killed, the murder of one person in Kawardha in 2002, and the bloody firing in Muthanga in 2003 - all in pursuit of the forest department objective of removing encroachers or organisations which may challenge its authority.

Fortunately, due to the large scale protests against evictions and the above CEC recommendations, the Court has not yet accepted them – but they are pending with the court.

Many questions arise. Will neglecting long pending issues of land tenure ensure forest conservation? Can such an exercise ignore the fact that a large number of new uses and users must have come up on these lands, given that

<sup>39</sup> Points 13(e), 13(i) and 13(j) respectively of the August 2002 recommendations of the Central Empowered Committee (Annexure 9.2).

the blanket notifications were issued more than fifty or even a hundred years ago? Why should non-forest adivasi lands included in ‘deemed forests’ through blanket notifications be transferred to the FD? Will the FD’s control over small patches of village forests scattered within and between villages improve their management? Shouldn’t village institutions manage village forests for satisfying local needs, as is already specified in existing rules (for instance, the Orissa Survey and Settlement Act, or PESA for schedule V areas)? Even in the case of fully notified reserved forests adjoining villages, why can’t they be declared Village Forests under Section 28 of the IFA instead of being managed under forest department working plans? The Uttaranchal government has already issued such an order.

Most strikingly, the CEC does not seem to have brought the widespread existence of self-initiated community forest management to the Court’s notice. Transferring these lands to the forest departments for ‘scientific forestry’ could prove disastrous (see next section). Instead, the FD and the CEC are waging a veritable war against the land and resource rights of predominantly adivasi people through their bizarre interpretations of the Court’s interim orders. These include retrospective application of the FCA even on land legally settled in cultivators’ names and cancellation of legally issued land titles. The CEC has been responding with lightning speed to complaints from conservationist organisations about threats to ‘forests’ or protected areas. But it is yet to reply to a single one of the many

petitions filed by adivasi organizations against the appropriation of their land as 'forests' and the threat of evictions.

A secure foundation for sustainable forest management in India cannot be built by riding roughshod over adivasi land rights in violation of Constitutional values. Improving forest governance requires making community institutions key actors in local forest management by empowering them with genuine management authority, supported by clear common property rights. Such a task is clearly beyond the competence of a 5 member CEC consisting of two conservationists and three MoEF officials; its membership needs to be balanced by including both government and non-government persons with the requisite expertise to also address adivasi rights and livelihood issues. Adivasi communities, the Ministry of Tribal Affairs and the constitutional authority of the National Commission for Scheduled Castes and Scheduled Tribes are completely unrepresented. If the Supreme Court accepts the CEC's recommendations on forest evictions, this will amount to an ex-parte injunction against poor rural communities all over India on a matter that centrally affects their lives and livelihoods, without even giving them an opportunity to be heard.

## **6. The 'claims' process – 'eligibility' criteria and transparency**

The process of exiling forest communities from their habitat and livelihood has a way of classifying them into the 'eligibles', the 'ineligibles', and the 'invisibles'. The eligibles are those who are recognised as having interests in the forest

that must be 'settled' as part of the displacement process. The ineligible are those whose claims to having interests are not accepted. And the invisibles are those who do not feature in any government document or register, thereby ensuring that the whole exercise of dispossession and displacement is effected as if they do not exist. The poor state of land and habitation records, as mentioned in the previous sections, contributes to this process of systemic denial of rights. The fact that many forest dwellers have remained uncounted, have not been given pattas, and have been forced by the law into various states of illegality, also lends itself to creating this unjust situation.

As mentioned earlier, in 1990, the Ministry of Environment and Forests issued six circulars to deal with such disputed lands, but these were never implemented. Strangely, in its directive issued on May 3, 2002, the Ministry of Environment and Forests (MoEF) (Annexure 7.1) referred to only one of these circulars (FP 1, Annexure 3.1) and asked states to summarily evict "all illegal encroachment of forestlands in various States/ Union Territories" before September 30, 2002. The result has been that even those adivasis and other forest dwellers who may have genuine claims as per the Government's own limited procedures have been treated as 'encroachers'. In the absence of dispute settlement, how are states to decide what really constitutes an 'encroachment' and what does not? Although, after public outcry, the Ministry clarified its stand on October 30, 2002, and asked the states to constitute committees consisting of officials of the revenue, forest and tribal

welfare departments to settle disputed cases and thence submit proposals to the Centre for regularisation in a time bound manner, no further action has been taken on this except in Maharashtra. Instead, the process of forcible eviction has continued with scant regard for the actual legal position.

One very important aspect of this issue is the type of evidence that can be used to establish the validity of a genuine claim. In the absence of written records in the possession of forest dwelling communities, and given the horrendous inconsistencies and omissions in official records, there is no alternative but to place emphasis on oral evidence. In 1991 the Supreme Court had held that, “the competent authority may even in cases where the claim is not supported by documents make an appropriate inquiry, receive evidence and then come to accept the claim” (Annexure 13). Moreover, the MoEF’s first circular of 1990 states that, “In cases where proposals are yet to be formulated, the final picture after taking into consideration all the stipulations specified here may be placed before the concerned *Gaon Sabha* with a view to avoid disputes in future” (Annexure 3.1).

Finally, the Maharashtra Government Resolution on the matter specifies that documentary evidence for the relevant period can be regarded as proof of encroachment, but that circumstantial and oral evidence should also be accorded due importance (Annexure 15). Spot verification, the evidence of neighbouring cultivators and that of senior citizens of the villages is also treated as permissible evidence. Most importantly, the GR also makes the opinion of the Gram Sabha paramount in

decision-making, and indeed the entire inquiry must take place and the decision must be taken in the open gram sabha. Transparency and participation of the village community (three members of which are part of the five member inquiry committee) are also essential ingredients of the inquiry process.

## **7. Neglect of democratic decentralization of forest governance**

All over the world, the trend is towards democratic decentralization of forest governance and recognizing the rights of indigenous communities over their ancestral lands. Innovative collaborative governance systems with adivasi and other indigenous communities for biodiversity and forest conservation are being developed, systems that include the restoration of their customary tenures and resource rights and build upon their indigenous knowledge and cultural diversity. The Convention on Biodiversity Conservation, to which India is a signatory, requires paying special attention to these aspects. Yet despite existing legal and policy provisions permitting devolution of forest management authority to local communities, the Supreme Court’s interim orders have made it mandatory that all forest lands be managed in accordance with working plans prepared by forest departments. This represents the antithesis of community participation and good forest governance, as mandated by the 1988 forest policy and the constitutional mandate for decentralization of governance.

Governance is fundamentally concerned with who makes resource



management decisions and how those decisions are made. The Supreme Court's interim order is further delinking resource users and owners from the authority to manage them. It needs to be recognised that forest departments do not have a monopoly over forest management knowledge, and that serious concerns have been raised about the ecological insensitivity of 'scientific forestry'.

Continuing expansion of FD control over common lands is based on the premise that local people are incapable of conserving their forests and that only the forest bureaucracy can do so. Once again, the ground reality in many states is quite the opposite. One of the best outcomes of the forest department's limited control over protected forests and unclassed forests has been that in roughly 7,000 to 8,000 villages under revenue department control in Orissa, community-based organisations are protecting and regenerating their forests on their own without any forest department or donor funding support<sup>40</sup>. Similar community based conservation efforts are evident in several other states, notably Jharkhand and Chhattisgarh. This is largely because people depend on these forests for diverse products and see them as 'their' forests, not as the forest department's fiefdoms. Community Forest Management (CFM) groups in Orissa have formed their own federations at cluster, block and district levels and have been demanding that the state adopt a community forest management policy instead of the FD-controlled Joint Forest Management (JFM) process. In Uttaranchal, over 7000 Van Panchayats have been managing their

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<sup>40</sup> Survey conducted by RCDC, Bhubaneswar.

village forests since 1931<sup>41</sup>. A recent study has indicated that the quality of Van Panchayat forests is more or less the same as that of the reserved forests under the FD, despite their having received little government support - in contrast to the relatively well-resourced FD.

Further, while the forest department continues to employ its old methods to evict people - destroying standing crops, burning houses, stealing grain and other household goods - it has also added a new weapon to its arsenal, 'Joint Forest Management'. Although JFM was meant to reverse the earlier hostility between villagers and forest staff and enable villagers to manage their own resources, in the hands of a department unwilling to give up its exercise of arbitrary power, in many places JFM has turned into an exercise of divide and rule. Some people - usually the better off and more influential sections of the village or neighbouring villages/hamlets - are mobilised to join the forest department initiated forest protection committees and to assist the department in evicting the poorer, landless villagers (see depositions).

Had the CEC included members sensitive to community and adivasi issues, it would have advised the Court that it will be best to leave village forests in the hands of existing community institutions under the Panchayats (Extension to the Scheduled Areas) Act, 1996 (PESA) and/or

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<sup>41</sup> Sarin, M. with Neera M. Singh, Nandini Sundar and Ranu K Bhogal, *Devolution as a Threat to Democratic Decision-making in Forestry? Findings from three states in India*, in Edmunds, David and Wollenberg, Eva (Eds.), Sept 2003, *Local forest management: the impacts of devolution policies*. Earthscan Publications, London.

through declaring them village forests under Section 28 of the IFA, besides giving priority to the long pending settlement of rights through an open and transparent process, as outlined in the MOEF's own circulars of 1990 (Annexure 3) and the 2002 Maharashtra Government Resolution (Annexure 15).

Section 28 of the IFA provides that "The [State Government] may assign to any village community the rights of Government to or over any land which has been constituted a reserved forest, and may cancel such assignment. All forests so assigned shall be called village forests." The survival of Van Panchayats in Uttaranchal for over 7 decades indicates the potential of the village forests provision. PESA provides a more radical constitutional and legislative mandate for devolution of local self-governance in Schedule V areas. In contrast to JFM, which establishes new village committees under forest department supervision and control, PESA mandates community based natural resource (including forest) management by *Gram Sabhas* and also endows them with ownership of Minor Forest Produce. PESA needs to be used as the framework while determining the rights of the adivasi people or dealing with the status of land in their possession. However, neither the Court's orders nor the CEC's approach take any of this into account.

**Table I: MoEF Figures on  
Encroachments, Regularisation and  
Eviction (31.3.2004)**

State/UT	Existing encroachment (pre and post 1980) in ha	Total (pre-1980) eligible encroachments regularized over forest area by Central Government (in hectare)			
			Dadar & Nagar Haveli	614.350	
			Gujarat	22,139.540	31,982.800
Andhra Pradesh	2,95,383.000		Goa	1012.000	
Assam	2,99,710.000		Haryana	1274.060	
Arunachal Pradesh	3887.810	13,419.290	Himachal Pradesh	2841.875	
A& N Islands	2057.490	1367.000	J&K	9284.000	
Bihar	251.869		Jharkhand	48,438.410	
Chandigarh	0.000		Karnataka	67710.000	14848.830
Chhattisgarh	150,495.000		Kerala	7,290.000	28,588.159
Delhi	0.000		Lakswadeep	0.000	
Daman & Diu	87.960		Maharashtra	79,641.730	

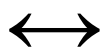
<sup>42</sup> In Bihar the area evicted appears to exceed the existing encroachments.

Manipur	533.240	
Meghalaya	6584.490	
Madhya Pradesh	138,110.585	275,405.692
Mizoram	18759.616	
Nagaland	0.000	
Orissa	42,605.530	29.940
Punjab	6812.806	
Pondicherry	0.000	
Rajasthan	6712.742	
Sikkim	3499.640	
Tamil Nadu	17555.564	
Tripura	59,336.150	27.400

Uttaranchal	9668.000	
Uttar Pradesh	27,214.630	
West Bengal	13,834.536	
Total	13,43,346.622	3,65,669.111

**Source:** Reply to Lok Sabha Starred Question No. 284 by Shri Tathagata Satpathy and Shri Mahavir Bhagora regarding regularization of encroachments on forest land, due for reply on 16.8.2004, Annexures I-III. MoEF data as on 31-3-2004, collected from the States/UTs

# *CHAPTER II*



## *STATE-WISE REPORTS OF THE FOREST RIGHTS SITUATION*

CHAPTER II  
STATE-WISE REPORTS ON THE FOREST  
RIGHTS SITUATION

I.

ANDHRA PRADESH

*Background*

Andhra Pradesh is India's fifth largest state in terms of geographical area and third largest in terms of forest cover. According to the 1991 census, Andhra Pradesh has 4.2 million adivasi residents, who constitute nearly 6.3% of Andhra Pradesh's population and approximately 6.2% of the total Indian adivasi population. The traditional habitation of adivasi communities, which have subsequently been notified as Scheduled Areas, spreads over 31485 sq. km or 31,48,500 ha. of land i.e 11% of the total geographic area of the State<sup>43</sup>.

Of the total forest area of 63.81 lakh hectares (63,813 Sq. Kms), approximately 31.76 lakh hectares (54.5% of total forest area) is located in the Scheduled Areas and another 8.45 lakh hectares (14.1%) in the Nallamali Hills<sup>44</sup>. The latter is also mainly inhabited by adivasi communities. Nearly all the Scheduled Areas have thus been classed as forests. In total, of the 64 lakh hectares of forest area in AP, 53 lakhs fall within tribal sub-plan areas<sup>45</sup>.

*Land Tenure and Border Disputes*

As with other States, the original process of forest notification in Andhra Pradesh was supposed to have involved conducting an inquiry into the rights

(habitation, agriculture, use of forest resources etc.) exercised by the people in or over the forest. Even as recently as the 1990's, there are reports that the forest department has demarcated agricultural fallow lands as reserved forests. No statistics or written records are available on whether the communities were consulted at the time of notifying forests. However, through oral histories and testimonies, communities can substantiate the fact that for generations they have owned tracts of land that are now classified as forests.

Since the original notification, the government of Andhra Pradesh has taken a severely inconsistent stand on the forest rights of communities, particularly in the Scheduled Areas. Thus, in 1969 the Andhra Pradesh Forest Settlement Rules attempted to settle the claims over forest lands in Rajamundry and Vishakapatnam circles between 1969 and 1974. Even at this time other parts of the state's scheduled areas, such as Adilabad, Khammam and so on, were not included in this process. Less than a decade later, in 1978, the government changed its position and ordered that, "All lands in the scheduled areas containing trees, shrubs and coppice growth shall be forest"<sup>46</sup>.

In 1987, the Ministry of Energy,

<sup>43</sup> Government of Andhra Pradesh.

<sup>44</sup> Forest Survey of India, 2001.

<sup>45</sup> Rao, R.K. and Sankaran, S.R. "Tribal People and Forests". Unpublished manuscript.

<sup>46</sup> G.O.Ms.No.816, Forests and Rural development (for-III) dt.25-11-1978 (Extension to Scheduled areas of Andhra Pradesh Forest Act 1967.

Forests, Environment, Science and Technology once again issued a memo<sup>47</sup> on adivasi land rights; this now ordered the assignation of forest lands to local tribals who were in possession of them prior to 1980. The memo said that the date on which forest legislation had come into force in 1980 would be the cut off date. Local tribal occupation of reserved forestlands prior to 1980 should be regularized, and evictions of local tribals should be halted pending the completion of this new process. The Principal Chief Conservator of Forests was also requested to permanently demarcate forest boundaries, as well as undertake a survey and sub-division of the land being enjoyed by tribals. Both were to be done in consultation with revenue officials. The then Revenue Minister asked that this work be completed by 31.12.95.

These instructions were hardly obeyed, however. Even a decade later, as per the government's own note, 21210 kms of boundary remained under dispute and 77661 acres of cultivated land still fell within forest boundaries, despite the fact that the latter had been under cultivation prior to 1980<sup>48</sup>.

Meanwhile, in 1995, the Forest Department once again changed tack and suppressed the 1987 instructions<sup>49</sup>. The new instructions said that any forest land under encroachment which had not been regularized by 1995, for various reasons (which are not mentioned), are to be managed under Joint Forest Management.

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<sup>47</sup> Memo No. 26531/For.I/87-1, dated 28.12.1987

<sup>48</sup> Note # 26531/For. I/87-31 dated 9.5.1997 issued by the Ministry of Environment, Forests Science and Technology, Government of Andhra Pradesh.

<sup>49</sup> Memo No. 26531/For. I/87 dated 3.11.95

Further, the concerned Forest Officers were to undertake intensive tree plantation programs with the participation of local people. The result is described in the next section.

One can get some sense of the scale of the problem from the Forest Department's own statistics. In June 2002, the department declared that if evictions took place, 30,000 non-adivasi poor people and 5,20,000 adivasis would be affected. It also claimed that by 1994, 3,27,742 hectares of forest land was under illicit cultivation and encroachment.



Joint and Community Forest Management:  
Invisible Displacement

The new Joint Forest Management/Community Forest Management Programmes promoted by the State government have served as a convenient pretext for the gradual takeover of non-forest land, and as the prime alternative to settling the disputed areas in the state. The government and Forest Department are now attempting to evict people through these projects, and it is this subtle and invisible displacement that is the objective of government policy.

In the first phase of joint forest management project (JFM) (1995), neither the consent of the entire community of a designated “JFM village” nor neighbouring villagers dependent on the same piece of “JFM” forest was obtained when the concerned forests were demarcated for protection under JFM. Moreover, the demarcation of forest lands is left to the Vana Samrakshana Samitis (Forest Protection Committees), thus making demarcation a highly undemocratic process and undermining the Constitutionally mandated role of panchayats in Scheduled Areas. These VSS committees have since been responsible for tree plantations on reserved forest lands where people had been cultivating food crops. Finally, the provision of monetary compensation in the name of Rehabilitation and Resettlement (R & R) implies that those whose land is taken, whether ‘voluntarily’ or not, will not be given other lands.

In its official policy on relief and rehabilitation, the Forest Department claims that 37,000 hectares of encroached land in Vishakapatnam district has been “voluntarily” handed over to the

department, supposedly as a result of JFM procedures, ‘educating’ the tribals and providing viable alternatives. But no details are provided about the farmers who had been cultivating this land, and it is not clear whether they came from JFM villages. More importantly, such ‘reclamation’ totally contradicts the 1990 Central government circulars that mandate regularisation of pre-1980 encroachments.

‘Settling’ Shifting Cultivators

In the districts of Srikakulam, Vijayanagaram, Vishakhapatnam, East Godavari, Adilabad and Khammam, shifting cultivation is soon going to become another source of conflict. In the first four districts alone, a 1991 base-line survey by the Integrated Tribal Development Agency (ITDA) found that 62,504 adivasi households are estimated to be engaged in shifting cultivation over 62,948 hectares as their only means of survival and livelihood.

Despite these huge figures, the Department is attempting to use CFM to force shifting cultivators to become settled cultivators. The 2002 Government Order specifying the AP government’s forest policy treats encroachment and *podu* (shifting cultivation) as equivalent<sup>50</sup>. It states that, “*podu*... is turning into settled cultivation. ... tribals who resort to such type of unsustainable practices will be educated about these adverse effects and motivated to take up viable alternate land use practices on such lands.” The R&R policy claims that, “it was generally felt that the shifting cultivation and the encroachment into the forest for cultivation are not good practices and they

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<sup>50</sup> GO MS No.34, dated 16<sup>th</sup> April 2002. Forest Policy 2002.

needed to be discouraged. The shifting cultivators and encroachers into the forest for cultivation should be motivated to leave the practice and surrender their lands encroached upon for cultivation.”

Thus, ironically, a practice that has been recognized as a major survival strategy and source of livelihood is today one of the government’s prime targets. Indeed, plantations under the Joint Forest Management Program have been set up on lands used for shifting cultivation.

## Conclusion

In sum, what we are witnessing today is the accumulation of longstanding conflicts over the rights of adivasi in the forest areas and Scheduled Areas. Though the 1988 National Forest Policy strongly recognises the symbiotic relationship between adivasis and forests, there has been very little effort to settle these disputes and assign entitlements to forest people.

Instead, the State continues to completely ignore, or, worse, displace human habitations in the forests. The three most important departments, namely the Forest Department, the Tribal Welfare Department and the Revenue Department, have together taken action that has made tribals extremely vulnerable. Each department independently sets up various policies and schemes, creating yet more disputes between the adivasis and the Forest Department. It is a sad comment on the State government’s attitude that, fourteen years after the Central government issued the 1990 circulars, these three departments have yet to come together to form a joint committee to implement them.

### *Background*

In early 1945, the Government published a "Resolution of Land Settlement"<sup>51</sup>. Included in this document was a paragraph meant to provide protection to the tribals and other backward classes of the people. It read as follows:

*Special provisions will be made for protection of the tribal classes by constituting a tribal belt in the sub-montane tract where they predominate.*

Finally, in July 1945, the Government adopted a resolution<sup>52</sup> for protection of tribal classes of people in areas predominantly inhabited by them against aggression from outside elements. The Resolution laid down a guideline that all villages in which the percentage of tribal classes of people exceeded 50% of the total population should be marked on the map and tribal belts or blocks as the case may be in the sub-montane area should be constituted by issuing notifications to the effect or safeguarding interests of the tribals and other backward classes of people living there.

### *Situation*

The six-week eviction drive launched in May by Assam's Forest Department was in fact a response to a Supreme Court of India directive issued in December 1996<sup>53</sup>. On January 15, 1998, the apex court directed that forest wealth in the northeastern States should be safeguarded, and forest officers in these

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<sup>51</sup> Published under No. RD. 68/44/52, dated 15<sup>th</sup> January, 1945.

<sup>52</sup> No. RD. 68/44, dated 13<sup>th</sup> July, 1945

<sup>53</sup> Annexure 5.1

States should be empowered to investigate, prosecute and confiscate - powers similar to those conferred on forest officers in other States. In January 2000, the Guwahati High Court ordered the P.K. Mahanta government to take steps to protect the Sarusola beel and other wetlands around Guwahati.

On May 3, 2002, the MoEF directed all State governments (including Assam) to ensure that the eviction operations against encroachments that were not eligible for regularisation were completed by September 30, 2002. This directive prompted the State Forest Department to intensify its drive against encroachers.

Eviction notices were not served prior to eviction drive. There was no rehabilitation arrangement prior to the eviction drive. The areas to be affected by the eviction drive are mostly inhabited by bona fide indigenous peoples of Assam. Many genuine encroachments by dubious claimants were exempted from the eviction drive. The forest department of Assam Government used brutal tactics, such as elephants, bulldozers and the like to carry out evictions. At least eight people died: three people in the vicinity of Guwahati city and five in Sonitpur district<sup>54</sup>. The massive 'eviction drive' in Botahguli witnessed the killing of one person by the paramilitary forces deployed to control protesters. In Sonitpur district, families rendered homeless by the eviction are living beneath the trees under open skies.

In the course of its eviction drive in the reserved forests in and around the city, the Forest Department met with violent

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<sup>54</sup> Forest Peoples' Programme, Urgent Action, December 6, 2002.

resistance from encroachers. The Dakshin-Pachim Guwahati Samaj Hitaishi Sabha has vehemently opposed the eviction of people from the revenue village in the Fatasil reserved forest area. The Sabha claimed that the area had been gradually developed by various government departments - the Departments of Education, Social Welfare, Electricity, Public Works, Telecommunication, and so on - and that the Revenue Department was in the process of issuing pattas to the residents.

more than five decades that have passed since Independence.

### *Assertion*

Several people's organisations of the State formed a joint action committee to resist the ongoing eviction process. The constituents of the joint action committee include the Tribal Students' Federation, All Assam Moran Students' Union, All Assam Deuri Students' Union, All Tai Ahom Students' Union, Assam Sonowal Kachari Students' Union, Assam Tea Tribes Students' Association and the Tai Yuba Chatra Santha. The AJYCP and AASU have lent moral support to the new outfit. Speaking to *The Assam Tribune*, the convenor of the committee, Milan Sonowal, said that the Assam Government has resorted to large-scale eviction of indigenous Assamese people from their hearths in the name of recovering three per cent of the State's total forest cover. He said the native population of the State is furious that the Government has selected the indigenous communities to face the brunt of the eviction process "while doing nothing to evict the actual encroachers which are the tea gardens and illegal foreigners." A key activist of the Tirap Autonomy Demand Committee, Prasanna Turung, said the Assam Government has failed to demarcate the State's forests in the



In this report, the states of Madhya Pradesh (MP) and Chhattisgarh are dealt with together, since until 2001, when Chhattisgarh was formed, the laws and situation relating to encroachment and regularisation were the same in both states. Undivided MP had 20% of all the forest department owned land in India, the largest proportion of any state in the country.<sup>55</sup>

The 'encroachment' problem in Madhya Pradesh is at once a semantic, a real and a historically rooted problem. On the one hand, faulty land settlements and the resultant disputes between the forest and revenue departments – the so-called 'orange area' problem - have turned large numbers of long term cultivators (some of whom even have land titles or *pattas*) into 'encroachers'. *Indeed, as of December 2003 even official Forest Department statistics indicated that rights had still not been settled in 83% of all forest blocks in the State*<sup>56</sup>. On the other hand, given the growing fragmentation of existing holdings, the absence of irrigation facilities which might have made the existing lands more productive, and the desperate need for land for survival, many families have no option but to carve out fresh fields in forest areas, fields which are variously known as *nevad* (western Madhya Pradesh), *marhan* or *penda* (southern Chhattisgarh). While some of these forest encroachments involve the destruction of forests, some of them are on land which is legally forest land, but has

long been devoid of trees. In some cases, as in Bastar (Chhattisgarh), the encroachments involve returning to villages which the forest department had usurped in its first round of reservation in the early 20th century. It is true that not all the encroachers are landless adivasis – after all, it takes some money to bribe the forest department to allow cultivation to take place - but what inevitably happens in eviction drives is that the genuinely needy are the first to be removed.

#### The Historical Context

To understand the forest issue in Madhya Pradesh, a detour into history is inevitable. Western Madhya Pradesh had a number of princely states – Dhar, Indore, Dewas and so on, while the southern and eastern part of Chhattisgarh was composed of states collectively known as the Chhattisgarh Feudatory States (later part of the Eastern States Agency). This included Bastar, Kanker, Sarguja, Jashpur etc. After Independence, they were all merged into Madhya Pradesh. The process of reservation first began in British India in the 1860s and, though the pace of reservation was usually faster in British India than in the princely states, in the princely states too forest advisors were gradually appointed in order to introduce 'scientific forestry'. Demarcation of reserved forests had started taking place almost throughout the province by the early decades of the twentieth century.<sup>57</sup>

Reservations were usually justified on the grounds that the forests needed to

<sup>55</sup> Sundar, N., R. Jeffery and N. Thin, *Branching Out: JFM in India*. Delhi, OUP, 2001, p. 68.

<sup>56</sup> Survey Department, MP Forest Department, 2.12.2003

<sup>57</sup> Rangarajan, M., *Fencing the Forest*, Delhi, OUP

be preserved from the ill effects of shifting cultivation, even though the evidence that shifting cultivation was harmful was debated within the department itself. Indeed, the extension of teak forests in the west could be attributed to the peasant practices of burning and grazing, while sal forests flourished in areas of shifting cultivation. The actual reason for reservation, and one which was also explicitly stated, was the need to establish exclusive control over the forests for revenue generation, for ship building, railway sleepers and imperial expansion. In effect, the people of the state were forced to give up their rights to their forests in order for the British to use those forests to exploit the state and people even more efficiently (e.g. through railways which took out resources from the state).

In fact, far from destroying the forests, communities in many regions had well developed systems of forest protection. In Bastar and Kanker, this tradition continues even today and involves charging residents of other villages a small fee known variously as *devsari*, *dand*, *man* or *saribodi*, in exchange for use of one's forest. In some villages in Kanker, the fee is based on the amount of timber taken, some villages charge only for good timber and not for dry or fallen wood, and others only if the wood is stolen. In south Bastar, villages that use the forest of other villages make collective contributions to the arth of that village at festival times. This is not necessarily a system of forest protection as it is understood today, but it restricted excessive felling and enabled a supervisory eye on what was happening.

Rebellions by adivasis and peasants against forest reservation, strict grazing

rules and monopolies over NTFPs succeeded in gaining some measure of recognition for their customary rights. In Bastar, for example, a large scale rebellion in 1910 in response to forest reservation led to some rolling back. In the 1930s, forest satyagrahas raised the issue of forest rights and smaller struggles continued in different parts of the state. In response to these struggles, the forest department recognized the right to *nistar*, i.e. the right to take forest produce for non-commercial household use. In the colonial period, certain areas were set aside for this purpose, known as *Bade Jhar ka Jungle* (for fuelwood etc.) and *Chote Jhad ka jungle* (for grazing).

#### *Orange Areas: Survey and Settlement Problems*

Till the time of Independence, these nistari forests were under community management in accordance with local customs and traditions. After Independence, the abolition of zamindari and merger of the princely states, all these community lands were declared undemarcated protected forests (UPFs) and transferred to the forest department. In 1949, all the nistari forests of Bastar, for example, were declared Government Protected Forest (PF) under a blanket notification, with the condition that the nistari rights of the people would not be affected.<sup>58</sup>

In 1959, the same undemarcated lands were entered in the revenue records under MP's Land Revenue code under different categories of revenue land. *Thus, the same lands were simultaneously*

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<sup>58</sup> Government of CP and Berar, Notification No. 3282 to 3284-2845-IX dt. 17.10.1949.

*recorded as belonging to two different legal categories falling under the jurisdiction of two different government departments. Apparently, this situation continued until recently.*<sup>59</sup>

The better forest blocks were subsequently surveyed (from 1963 to 1967) and classified as Demarcated Protected Forest (DPF), under section 4 of the 1927 Forest Act, while others were left unsurveyed and painted 'orange' in the maps. In Betul district, the undemarcated areas considered unsuitable as forests were returned to the revenue department after de-notifying them as forest land. However, these changes were not entered in the land records, and the earlier contradictory situation of dual entries for the same lands continued. Traditional community institutions which earlier managed these lands were divested of their authority to do so while jurisdictional authority between the forest and revenue departments remained unclear. Many of these lands became open access lands. In any case, massive destruction of these forests took place during the period of transition from their erstwhile owners to the new Indian state.

Under the grow more food campaign of the early 1960s, the Revenue Department issued pattas for these lands to agricultural co-operative societies of landless cultivators. It also distributed land to other landless households under other schemes or through regularization of revenue land encroachments (permitted under the Revenue Land Code) over the years. In the late 1970s, a scheme

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<sup>59</sup> Garg, Anil, 2002, Evidence submitted to the MP Forest Department and the World Bank during a consultation on PFM issues held in Bhopal on June 7, 2002.

for granting ownership of patta lands to members of the agricultural co-op societies was finalised. However, before it could be implemented, the Forest Conservation Act was enacted in October 1980. The intended ownership titles could no longer be granted to the thousands of the above cultivators without MoEF approval, even though they had been cultivating the land for two decades.

In the current round of enquiries on the status of encroachments, when asked by MoEF for details of the state's 'forest' land, the FD included the *entire* area transferred to it in 1949. In its list of 'pre-1980' encroachers sent to MoEF in 1994, however, it only surveyed those cultivating the land under its effective jurisdictional control. All the cultivators on the remaining lands under the RD's effective jurisdiction, some of whom had been given pattas as long ago as 1960, were not included. This discrepancy was not brought to the notice of the Empowered Committee set up by the Court to assist it in dealing with its interim orders. This Empowered Committee has required that the *entire* land transferred to the FD in 1949 be demarcated as 'forests' and handed over to the FD after evicting encroachers, despite the fact that during the demarcation carried out in the early 1960s, a lot of it was considered unsuitable for forests and returned to the RD<sup>60</sup>. This has meant that thousands of poor cultivators, who had been promised titles before the FCA, are now in the category of unrecorded 'encroachers' ineligible for regularization.

The CEC has also asked the revenue department to explain why it has violated

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<sup>60</sup> CEC order in IA 513, January 29, 2002.



the Forest Conservation Act. The Central Government may consider imposing a penalty of 4 times the area of non-forest land in exchange along with money required for compensatory afforestation. It has also been proposed that any land with any semblance of 'forest' cover within five kilometers of a notified forest should also be demarcated as forest and transferred to the forest department. Patches of forests found even away from notified forest areas, which are over 20 hectares in size are also to be demarcated as forest and transferred to the forest department.

There is no mention of the existing owners and their rights over these lands, or these lands' livelihood uses. The clear assumption is that the best management for such lands is by the forest department through 'scientific' forestry. With large areas of these lands brought under cultivation over the decades, often with active government support, demarcating them as 'forests' today on the basis of a blanket notification issued half a century ago will hardly contribute to biodiversity conservation. Replacing long standing cultivation with tree plantations to increase 'forest cover' will deprive large numbers of impoverished households of their only means of subsistence, in turn compelling them to encroach on other public lands, possibly by clearing good natural forests elsewhere. It will simultaneously increase local hostility to conservation objectives. *Post facto* enforcement of the FCA that results in denial of the land rights that cultivators are entitled to under the Land Revenue Code will reduce livelihood and food security while being patently unjust. As it is, denial of secure tenure over cultivable

lands for decades has deprived such 'encroachers' of their legitimate access to government loans and subsidies, while leaving them vulnerable to day to day harassment and exploitation.

#### *Regularisation of Encroachments*

There have been two rounds of regularisation in MP. The first was carried out in 1990 when all encroachers till 31st December 1976 were given title deeds to the land. This covered 2.76 lakh ha of forest land.<sup>61</sup> The second round of regularisation took place in 1995 for land encroached up to 24 October 1980.<sup>62</sup> These rounds were very incomplete. Many longstanding residents were not given pattas in the 1990 round, even though they had been cultivating from 1976 or earlier. For example, in Jali Kheda forest village in Hoshangabad division, M.P., only 12 out of 33 households have temporary pattas. In Nani Kanar in Seoni circle, 10 out of 28 households were 'thalvas' with no pattas.

Forest staff often complain that these repeated rounds of regularisation encourage people to cultivate new forest areas, ostensibly in the belief that these will eventually be regularised. But mainstream political parties often use this issue to win votes when out of power.

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<sup>61</sup> V.K. Bahuguna, Inspector General, MoEF, Presentation on the problem of encroachments on forest lands, 15 November 2002.

<sup>62</sup> It is not clear how much land was regularised this time. The presentation by Bahuguna (15 November 2002) notes that approximately 65,000 ha was regularised in the second round. However, the figures submitted to Parliament (see table in Chapter 3) mention only 2.75 lakh ha (which according to Bahuguna, was regularised in the first round, i.e. before 1976).

Promises of regularisation before the 1989 state elections helped the BJP win in Madhya Pradesh and led to increased felling just before the elections. The eagerness with which the MoEF wanted to regularise encroachments upto 1993 just before the 2004 Lok Sabha elections, after having directed forced evictions in the preceding year, again displays this dynamic at work. A solution to this problem, which many campaign member groups and others have been fighting for, would include enforcement of the ceiling laws, land distribution *and* forest protection.

#### People-Forest Department Conflicts over Encroachment: Use of Violence

Struggles over cultivation in forest areas have long been a feature of forest department-people relations. The rationale for state action may have changed from revenue generation to conservation and the people's reasons for 'encroaching' may vary between ancestral right, political encouragement for votes, or hunger. But again and again, the methods used by the forest department involve force, burning, assaults, and arrests. JFM may have tried softer means to achieve the same objective, but soft approaches have since given way to the old harsh measures. The only difference between now and a hundred years ago<sup>63</sup> is that villagers organised in forest protection committees run by the department are now pitted against other poor and landless villagers (see incidents cited in epilogue). Surely, this situation cannot go on for yet another century. There has to be a new way forward.

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<sup>63</sup> See Sundar, *Subalterns and Sovereigns*, p. 154

### *Background*

The Portuguese ruled Dadra and Nagar Haveli from 1783 to 1954. Prior to the Portuguese, the Marathas held sway over the territory, and collected revenue through contractors (Patels and landlords). The Portuguese initially continued the system. However, it led to a lot of exploitation and consequent migration and was therefore discontinued. The adivasis practiced *shift and burn* cultivation, and the concept of land ownership was absent until 1910. The Portuguese conducted land surveys in that year, and the consequent preparation of land documents finally established the concept of land ownership.

The administration of Dadra and Nagar Haveli reports its population at 2,20,451 (2003-2004 figures). According to the 1981 census data, the adivasi community primarily consisted of Warlis (52,270), Kathodis (1,350), Kokanas (12,410) and Dhodias (16,899). More recent studies claim that of the 72 villages in the territory, adivasis form more than 80% of the population of 52 villages; in another 18 villages, adivasis are roughly 50% of the residents, and in 2 villages it falls below 2%.

As with other adivasi areas, the development of forests is synonymous with the development of the adivasis. Official records indicate that the forests are concentrated in clusters covering nearly 58 villages, and the total forest area is estimated at 20,359.06 ha (as on 31<sup>st</sup> March 2003). All the forest area has been declared to be reserved forest. Out of the total forest cover, 9,200 ha has been

reserved for the protection of wildlife.

### *Forest Regime under Colonial Rule<sup>64</sup>*

As stated earlier, the forests of Dadra and Nagarhaveli remained under the control of the Portuguese until 1954. During the Portuguese regime, sixty villages were declared forest villages, and the adivasis of these villages were allowed to draw firewood and minor forest produce. Even the felling of trees from the forests was so tightly regulated that every year one village was selected for felling operations and a regeneration program. Villages were thus only scheduled for felling every sixty years. The Portuguese had detailed regulations on the creation and maintenance of boundaries; trees were considered the exclusive property of the government.

Another arrangement during the colonial era was that of the *Teram* plot. The Teram plot arrangement was basically a lease that granted the adivasis a right to cultivate a plot for the duration of the lease. The adivasis were required to pay a certain sum in order to enjoy the benefits of a Teram Plot and fines/penalties were imposed on defaulters. The Teram plot arrangement has remained a controversial issue in the union territory, as there is a lack of clarity regarding the rights of the adivasi-cultivators of such plots. According to official reports, approximately 800 Teram plots continue to exist; these primarily cover 600 ha of

<sup>64</sup> Most of the information in this and subsequent sections of this state report has been drawn from the Forest Working Plan, Dadra and Nagar Haveli, 1983.

area belonging to the southern regions.

In Dadra and Nagar Haveli, the process of land alienation took place primarily during the first two and a half decades after independence. For the adivasis here, land is not merely a survival resource bearing economic significance; it is also the basis of a sense of belonging and a link to the traditions of adivasi life. The adivasi religion and folk tales are abundant with anecdotes, incidents and tales that continuously reiterate the spiritual significance of the forests and their forest plots. Alienation of land here has not only resulted from the merger of adivasi lands into state forest lands, but also from transfers to non-adivasis like moneylenders, contractors etc. In the process, adivasi survival has been criminalized. Official reports state that approximately 300 forest criminal cases have been registered, mainly against adivasis.

#### *Forest Regime after Independence*

During the initial years after independence Dr. G.R. Kelkar's working plan (1957- 58 to 1962 - 63) was adopted. The forest department believes that the administration during this time was overburdened with rights and concessions, as the people were allowed to cut trees and cultivate forest area. The Kelkar plan advocated the clear felling of coupes in forest areas, with the exception of steep slopes where 'selection cum improvement' fellings were prescribed. Unfortunately, even the forest cover along the steep slopes was clear felled and the plan was not able to achieve its objectives. The subsequent working plan under M.S. Khanchandani (1963-64 to 1981-82) advocated, among other things, leasing out

the entire area in one or two blocks; this was meant to help the adivasis form co-operative societies for the collection of Minor Forest Produce. Unfortunately, most of the objectives of this working plan remained unfulfilled. The current working plan, written by C.M. Pandey, Y.R. Ladwa and R.R. Joshi, was originally formulated for 1985 to 1995, but the forest department continues to adhere to the same working plan due to the lack of any revisions.

#### *Absence of Settlements*

Several decades ago, a settlement process was initiated under the Indian Forests Act, 1927. In 1967, all the forest areas were notified under Section 4 of the Indian Forest Act, 1927, and the reservation process was started under Section 20 of the Indian Forest Act<sup>65</sup>. The final notifications under Sec 20 were issued in 1969.<sup>66</sup> The process of settlement appears to have remained on paper only. The reluctance of the forest department to describe even a few specific cases of settlement was evident in all our interactions with concerned officials. While specifying the rights and privileges of the local adivasis, the present working plan speaks exclusively about the grant of timber under varied circumstances but makes no mention of the rights of claimants as part of the settlement process. As the depositions show, many people are suffering from not having their plots recognised and have had cases filed against them for encroachment. Instead of cultivators' plots being regularized, forest land has been handed over to a sugar

<sup>65</sup> Vide notification no SRV/F.S.O./5/67, dated 21<sup>st</sup> March 1967

<sup>66</sup> ADM/ALQ/98/II of 27<sup>th</sup> March 1969 and ADM/LAD/98/II of 27<sup>th</sup> March 1969.

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V

GUJARAT

### *Background*

Gujarat has 18,61,000 hectares of reserved forest (9.89% of the State's total area), though only about 12 lakh hectares in the State have actual forest cover (further, only half of this area has dense forest). The main forest areas of the state are concentrated in the eastern hilly region and parts of Junagadh and Amreli districts in Saurashtra. The eastern hilly belt of Gujarat is also home to various Scheduled Tribes, like Vasavas, Tadavis, Rathwas, Naykas, Chaudharis, Gamits, Dhodiyas, Bhils, and many other tribes.

The most productive of these forests, the moist deciduous, are found in the eastern hills of south Gujarat covering Dangs, Valsad, Surat and Bharuch districts. This is followed by the dry deciduous forests in the eastern hills of central Gujarat in Bharuch, Vadodara, Kheda and Panchmahal districts and dry deciduous and scrub forests in the hills of North Gujarat covering Sabarkantha and Banaskantha districts<sup>67</sup>.

Until Independence, large parts of the state were under the rule of different princely states, each of which had its own system of forest management. Although the ownership of forests remained with the rulers, the local communities had by and large unhindered access and control on forest resources at the local level to meet their grazing, firewood and timber requirements. Many of these communities

had evolved informal norms and customs for protection of forests as evidenced by existence of sacred groves in many areas. Many of the princely states also maintained well-managed hunting reserves, which provided game for the nobility as well as a permanent supply of fodder and small timber for local communities.

The areas of Panchmahals and Surat were under the administration of provincial government of Bombay during the British rule and were as such directly governed by the policies of the British government. Dangs, on the other hand, is a special case where the forest areas were under the control of many local Bhil chiefs, but were taken away on lease by the British in exchange for token yearly payments. These were administered first by the central government and then by the Bombay Presidency. The leases the Bhil Chiefs were made to sign were totally one sided and soon led to intense discontent and hostility in the region, forcing the British government to make a new agreement in which it agreed to pay more and to give a commitment that not more than 50% of the area would be converted to reserved forest.

The forests of Panchmahals and parts of Surat districts were constituted into reserved forests and demarcated. This was followed by formation of the working plans to exploit the timber from these forests on a sustainable basis. Many of the princely states, notably the Baroda state, also initiated similar measures by appointing British resident officers. After the agreement with Bhil chiefs in 1892,

<sup>67</sup> Forest Survey of India.

some parts of Dangs were also constituted into reserved forests and demarcated, while the remaining areas were constituted as protected forests. This is the reason why a relatively large proportion of the Dangs area is still classified as 'protected forests'.

### *Situation*

#### Notified Forest Area vs Forest Cover

The notified forest area in Gujarat has increased from about 1.5 M ha (7.87% of the Total Geographical Area -TGA) in 1960 to the present figure of about 1.9 M ha (9.63% of the TGA). This gives an overall impression of increasing forest cover in the state. But in reality it only shows the increase in the area under the administrative control of the Forest Department (FD) and is no indication of the increase in the actual forest cover. A large proportion of this increase is due to acquisition of private forests and bulk transfers of government wastelands under the Revenue department to the Forest Department during sixties and seventies. These notified forests of the state fall under the three categories of Reserved (71%), Protected (5%) and Unclassified (24%) forests. The area under reserved forests has increased over years, indicating increase in the area under total jurisdiction of the Forest Department.

#### Irregularities, Illegalities and Non-observance of the Due Process of Law by the Forest Department and the State Government

Most of the private forests under the ownership of Jagirdars and Dumaldars were brought under reserved forests after independence. Although the Indian Forest

Act provides for elaborate procedures to ascertain the existing claims of the inhabitants of the forest area before declaring the area as a reserved forest, in many cases, the relevant records show that procedure has not been fully followed.

- First of all, in many cases, the Forest Settlement Officer (FSO) has never visited, or never met villagers to inquire into their rights or claims over lands which were to be declared as reserve forests. Almost all the villages in Dediapada suffered this fate. As per the village records, section 4 notification under the Forest Act of 1927 was issued around 1965, and we find from some government records that the area was declared under section 20 as reserved forests around 1975. In between, no FSOs have visited or asked for any evidence or claims of the people, leave alone inquired for themselves, as is required under the Act, into any of the existing claims. Hence, without villagers' claims being verified, the area was declared as reserved forest.
- In some cases, such as in villages Samaria, Bhilvasi and so on in Rajpipla and many villages of Sagbara, the tribal people have revenue receipts. These were called receipts of "*farati*" and were issued by talatis for cultivations in revenue *kharaba*. As such these receipts were not regular revenue receipts for their titled lands, but were for the revenue *kharabas* they were cultivating in the 1960s and 1970s. Though the FSO did take

note of these cultivations, the amount of lands that he actually recommended and allotted for entitlements was much less than the actual cultivations and also less than was indicated by the *kharaba* receipts issued by the talatis. On field verification, it turned out that he never actually measured the lands under cultivation. This reflects the trend and pattern of the government officials, whether revenue or forest, to show meanness in giving to the people what was rightfully due to them. These claims were not excluded by the FSO from the reserved forest boundaries. No procedure was carried out to give titles of these lands to the cultivators, nor were they given other lands in lieu of these lands. This should have happened before 1975, but never in fact occurred. In fact, the FD tried to carry out plantation activities in the early 1980s on these lands. Under the 1992 GR, the tribals were given *sanads* for fractions of these lands in 2002.

- In Dediapada, in many villages, after reserved forests were declared, they were not transferred as such in the revenue records of the villages. The forest department did not notify the revenue authorities of the change in status required after the reserved forests were declared. The mamlatdar only received instructions for the mutation in 1990.
- There are some cases where the title of the land is either unclear or the land falls under both the

revenue and the forest departments, implying thereby that both authorities would collect either fine or revenue for the same piece of land. In some case, after the revenue officer has given title over revenue *kharaba* that had been occupied by the tribals for more than 30 years, the land was declared reserved forest (village Gadi of Dediapada).

- In many cases (such as Zer in Rajpipla, Vedachha in Dediapada), only section 4 notifications have been issued and the FSO's inquiries are said to be still incomplete. Section 20 notification has either not been issued or was issued very late, in the late 1990s, and yet the department started claiming the land as reserved forest as long ago as the mid 1980s.

#### Causes of Deforestation

The issue of encroachment is seen by all concerned as the root cause of deforestation. That was the very argument put forward by the amicus curiae while raising the issue before the Hon'ble Supreme Court in the Godavarman case, and has since become the basis of the drive against cultivations. However, one has to look historically into the real causes of deforestation.

- After independence, the forest areas under princely states came under the control of the forest department after the merger of these states with the Union of India. This still left out large chunks of forest areas vested in private individuals who had rights over such lands, such as Jagirdars. These private forests were

also brought under increasing state control by amendments in the Forest Act, and were eventually nationalized and brought under the total control of the forest department through the Private Forest Acquisition Act of 1973. The whole process of nationalizing the private forests led to massive tree cutting by the then owners/jagirdars with a view to earning as much revenue as possible before the forests were to be handed over to the state.

- Another massive, systematic assault, and that too with legal pretext, came in the form of state-ordered clear-cutting of vast areas of forests. During the 1960s to early 1980s, under various Working Plans, the forest department gave contracts to forest cooperative societies and private contractors to clear-cut various coupes for many years, thus denuding almost all the hills and forest areas. The forest department had little concern for the outcome of the plantation activities they tried to carry out and thus, wherever they tried various social forestry schemes, little success was achieved. The Satpura and Vindhya Hills became denuded and naked.

#### The Farce of the 1972 GR

As per the 1972 Government Resolution (GR)<sup>68</sup>, the cultivations up to 1967 were to be regularised and title deeds were to be executed in the names of the cultivators. The official record required the regularisation of 10,900 ha. of such cultivated lands in the state. As per the above data, only 1396 ha of land was

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<sup>68</sup> Dated July 5<sup>th</sup>, 1972.

regularised<sup>69</sup>. What happened to the remaining large area of land remained a mystery until 1994. Another GR<sup>70</sup> then brought back the issue and *de facto* accepted that nothing had been done regarding these cultivations. Introductory remarks in the GR suggested that the process required by the 1972 GR around regularisation of eligible encroachments and the grant of titles had not been fulfilled. As such 10,900 ha lands still remained to be regularised. These were not approved due to the issuance of the 1980 Conservation Act. The fate of these cultivators hung in the air.

After the issuance of the latest GR of 1992, these cultivations were said to only have been approved by the MoEF very recently. This shows the lethargy on the part of the government to implement its own GR and policy. This belies the on-going incorrect propaganda of the environmentalists, including the CEC, that time and again encroachments are regularised, resulting in massive deforestation and degradation.

The same has been the fate of those who are eligible for regularization as per the 1992 GR<sup>71</sup>. Many, many problems afflict the implementation of the GR even after a decade.

#### Problems with the 1992 GR

Currently proposals for regularizing the 10,900 ha eligible under the 1972 GR and an additional 39,750 ha under the 1992 GR are said to be approved/ pending with the Central Government. There are many problems with these GRs, some of

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<sup>69</sup> As per information provided by Forest Department.

<sup>70</sup> Dated November 16, 1994.

<sup>71</sup> Dated October 6<sup>th</sup>, 1992.



which are as follows:

- As with the MoEF circulars, in the GR only pre-1980 fine receipts are acceptable as evidence of eligibility. Instances abound in many villages, such as Vaghumer of Dediapada, where not a single fine receipt has been issued, even though the cultivations started long before 1980.
- The area of land recorded in the fine receipts is always far less than the area actually under cultivation. The FD only considers fine receipts to be the basis for allocation of the land and takes away the remaining land under occupation. As it is well-known that for many reasons, either the foresters/beatguards have not bothered to visit the area, let alone measure it, or they enter any imaginary and very small amount so as to demonstrate that they have very little land under cultivation in their round/beat. The FD also approves of this, as that reflects less land under cultivation. Hence, the people get title for far less land than they actually cultivate.
- As per the GR, the land to be regularised should not exceed 8 acres, which includes the titled revenue lands as in 1980 in the cultivators' names. In Adivasi areas, there have been joint khatahs – land-holdings. The forest land is calculated for entitlement only after the total, undivided titled land is first deducted from the total entitlement of 8 acres for each claimant. This causes great injustice.

All the provisions thus seem to have been formulated with a paramount concern that as little land should be regularised as

possible, regardless of the land actually being cultivated. There is no clear-cut guideline on how claims should be verified. Inevitably, the implementation of the GR is still in a mess, even after a decade.

#### Extent of Encroachment

The actual area of encroachments that have been regularised in the state after independence is quite miniscule. As per the Report of the Expert Commission of Enquiry, instituted by the Hon'ble Gujarat High Court in *ARCH-Vahini vs Government of Gujarat* in 1984, the figures for regularisation were as follows: in 1964, 197 ha; in 1971, 123 ha; and in 1972, 1396 ha

According to the figures for encroachments since independence stated in the official records (and not those of regularization), about 52,000 ha land is reportedly under encroachment. This does not mean all these lands have been regularised. Compared to the reported forest cover of 19 lakh ha. in the state, these encroachments amount to only 2.75% of the forest cover and still less of the total notified forest area. Another important point is that of 19 lakh ha of recorded forest, 12 lakh (63%) is degraded forest; the reasons for degradation are to be found elsewhere. If it is assumed that encroachment causes degradation, then we have to compare the extent of total degraded forest areas with that of forest areas under encroachment. The figure is an eye-opener. Of the total degraded forests, encroachment cover only 4.3% of the area. Thus, it can be said that encroachment is the least of the reasons for degradation of forests<sup>72</sup>.

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<sup>72</sup> Forest Survey of India, 1999.

Again, compared to these figures of encroachment, about 3 lakh ha of additional lands have been brought under reserved forests after independence through acquisition of private forests and transfer of revenue wastelands to forest department. Thus, conversion of non-forest land to forestland is far larger than the regularization of encroachments on forest lands<sup>73</sup>.

### Other Policies

#### a) *Total Lack of Implementation of the 1990 Circulars*

Not a single 1990 MoEF circular has been implemented in the state. Regarding forest villages, it is learnt that a proposal has been sent to the MoEF for those forest villages that are covered by any of the sanctuaries or national parks. There are no proposals for the forest villages that happen to be inside the protected areas. Not a single forest village has been converted into a revenue village.

#### b) *Poor Implementation of the JFM Circular*

Apart from these GRs, there are no policies to grant the tribals entitlement to the forests and natural resources in the state. Even the policy of JFM, truncated as it is, is still very poorly implemented and the FD is not at all interested in implementing and devolving an inch of its power with the communities. That means that *in situ* rehabilitation of the post-1980 cultivations under the JFM programme, as envisaged by the MoEF circulars, has no chance of success.

#### c) *Plight of the Tribals*

<sup>73</sup> The affidavit of the Chief Conservator of Forests, 26.8.2000, filed in the *Eklavya* case before the Supreme Court, gives some details of regularisation figures.

### *Affected by the Protected Areas (Sanctuaries/National Parks)*

In almost all the cases where sanctuaries/ national parks have been declared, no procedure of inquiry into the existing rights of the people over land, waterways, etc. was carried out by revenue officers and no procedure under Land Acquisition Act was carried out, as was required under the Wild Life (Protection) Act, 1972. For instance, in the case of Shoolpaneshwar Sanctuary encompassing two Talukas, Rajpipla and Dediapada, no examination of rights was undertaken before the declaration of the sanctuary. In fact, the people of one village, Zarwani, filed their rights and claims before the collector within the stipulated time limit before the declaration in 1989. Their claims were never examined. The Hon'ble Gujarat High Court was also approached, but to no avail.

The irony of the situation is that the claims of the people who have been living in the area for generations were never heard, leave alone examined and allowed, but a powerful paper mill was allowed to continue to annually cut at least 65,000 tonnes of bamboos from within the sanctuary after paying a throw-away royalty! The double standards of the state are only too evident. The cultivations of the tribal families preceded the declaration of sanctuary. In fact, they should have been regularised even earlier, which was not done because of the State's total non-compliance with the due process of law. Now, the MoEF has ordered that pre-1980 cultivations will not be regularised and alternative lands will be given to them outside the sanctuary. The MoEF has not thought about cultivators,

whose post-1980 cultivations would not be regularised and hence who both not be able to avail of the “in situ” rehabilitation as per the 1990 circular on Joint Forest Management and or be entitled to lands outside the sanctuary. The plight of these affected families is worse than those affected by development projects, whose plight is highlighted by many, whereas those affected by green projects are always ignored.

#### *Recent Developments*

Last year, thanks to the elections, there were no actions on the 3<sup>rd</sup> May circular in the state. This year, however, the FD started acting with a vengeance in late June and early July. In many forest divisions, State Reserve Police have been deployed to enable the FD officials to carry out plantation activities in the cultivated areas.

### *Background*

Kerala's approximately 3,20,967 (1991 census) adivasis mostly live along the Western Ghats and constitute a minority of 1.1 per cent of the total population of Kerala. Thirty five communities are officially listed on the Scheduled Tribes list. The major communities are the Paniya, Kurichia, Kuruma and Irular. These communities' general situations, and specifically their land situations, have varied historically.

### *Forests and People*

Out of Kerala's total geographical area of 38,863 sq km, recorded forests cover 11,125.59 sq km (though only 9400 sq km of this is actual forest)<sup>74</sup>. There are 44 rivers in the state, of which 41 originate from the Western Ghats and flow west into the Arabian Sea. Three tributaries of the river Cauvery originate in Kerala and flow east into neighboring States. The state has eleven wildlife sanctuaries, two national parks and one bird sanctuary.

The erstwhile Malabar region, the northern part of the state was under the Madras Presidency and was thus covered by the Madras Forest Act, 1882. Large parts of the region were declared as forests under this act. The Madras Preservation of Private Forests Act, 1949, was also applicable to this region. This covered lands that do not

<sup>74</sup> "Forestry and Wildlife", Government of Kerala, <http://www.kerala.gov.in/economy/forest.htm>.

fall within the 'Reserved Forests' declared under the Madras Forest Act.

'Vested' forests, declared under the Kerala Private Forests (Vesting and Assignment) Act of 1971, cover a large area of the State<sup>75</sup>. Erstwhile private forests were covered under the MPPF Act but were not directly declared to be 'Reserved Forests'. After 1980, the government claimed that the Forest Conservation Act had foreclosed the possibility of the land ever being transferred to Adivasis.

There are also revenue lands that are wrongfully notified as vested forests by the Forest Department. One such example is the notification of 189.697 areas of revenue land as vested forests in RS.No.2 of Vemom Amsham in Mananthavady village, Wayanad. An area of 249.60 acres once owned by a European, N.M.Weir, was managed by the Collector of Bombay since 1922 under the provisions of the Bombay Court of Wards Act, 1906. Later this land became the property of the Maharashtra Government; they lost interest and the Kerala government became its rightful owner.

It is reported that there are thousands of acres of so-called 'excluded tracts' (neither reserved forest nor revenue lands) controlled by the Kerala Forest Department<sup>76</sup>. In the Attappady Hills, 4,978 acres of

<sup>75</sup> "Centre to transfer 7,693 hectares of forest land", The Hindu, October 21, 2003.

<sup>76</sup> Prabhakaran, G. "Excluded tracts not covered by Central Act", The Hindu, May 13, 2003.

'excluded tracts' are available in Sholayur village. Another 3,000 acres at Kinnakkara in the Pudur village of Attappady have been encroached. Such lands are also available in the districts of Idukki, Kannur and Kasargod<sup>77</sup>. These are said to be wrongfully categorized as 'vested forest' and placed under the control of the forest department, as they are lands owned by the government. These excluded tracts do not attract the provisions of Section 2 of the Forest Conservation Act of 1980.

### *Adivasi Situation*

The northern districts of the former Malabar region, which was under the direct administration of the British till 1947, have the largest concentration of Adivasis, especially in the Wayanad region. As per census data, the Paniya and Adiya tribes constitute 27 per cent of the tribal population of the state. In the 18<sup>th</sup> century, non-tribal landlords brought in large numbers of these communities to the Wayanad Valley from the neighbouring forests to work in the fields as serfs. There has since been a process of proletarianisation of them with the development of huge plantations.

Attappady Valley in Palakkad District has the next major concentration of tribals in Malabar. Living relatively free until the mid 1950s, the Irula, Muduga and Kurumba tribes experienced a large-scale influx of immigrants from the erstwhile Travancore-Cochin area, and also of Gownders from Tamil Nadu, who

robbed them of their lands, destroyed the forests and threatened their very existence.

The small population of adivasis in the princely state of Cochin became labourers engaged in the extraction of forest produce. By the end of 18th century, they had come under the control of the government, with some moving on to settled agriculture. In the Travancore region, the adivasis were conferred inalienable peasant ownership rights by the princely state. There was a specific protective policy for the hill tribe that included a ban on the entry of outsiders. By the end of 19th century, the Mala-arayan, the Muthuvan, the Kanikar and the Urali had become settled agriculturists. The Malapandaram remained at the hunting stage, living in rock caves and in the hollows of trees in the highest elevations of the hills where the forest regulations were enforced less strictly.

The Chola Naickan tribe, district who lived in caves till late 1970s and had no implements for hunting, kept themselves away from the expanding economy and cultures of the 'civilized world', withdrawing to the most inaccessible and inhospitable areas. The Kattu Naickan tribe, who were food gatherers, have now found that they cannot survive on food-gathering alone and have taken to wage earning. The Urali Kurumba, potters and artisans, the craftsmen of the area, have gradually given up their trade because of the penetration of the market into the region, and have become farm workers. The Kurumba and Irula have been absorbed as wage labourers.

Groups like the Mullu Kurumba,

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<sup>77</sup> *Ibid.*

who are engaged in cultivation, derive a considerable amount of their food through hunting and fishing. The Kuruchia, who are settled agriculturists, supplement their diet with hunting. The Mullu Kurumbas now depend on wage labour and have adopted plough cultivation. The Paniya and Adiya who used to be serfs live by their labour. For the Betta Kurumba, demand for their baskets has increased but they are now facing acute shortages of raw materials, which are being extracted at a give away rate by the paper and rayon industries.

The colonization of the forests by the Indian government intensified the displacement of Adivasis. The process of transmigration of non-tribals from the plains intensified with the support of government policies and programmes. This historical process created differentiation amongst the tribal peasantry into primarily the landed and landless - a problem traditionally unknown. In the mid-1970s, 30 percent of the tribal households in the state were landless.

Landlessness is lowest in the former Princely State of Travancore and Cochin. The proportion of landless households is the highest in the Malabar area, particularly in Wayanad and Palakkad districts. The Paniya and Adiya, who form 27 percent of the total tribal population of the state, were traditionally slaves. They have not owned any land in recent centuries. As a result of the large-scale influx of non-Adivasis, particularly those from the former Travancore State, sizeable chunks of arable land, which the Adivasis used for shifting cultivation,

have been encroached upon and hence they have been deprived of their only means of subsistence. The 'Grow More Food' campaign in the post-Second World War era by the government contributed considerably to migration to the Malabar region. Extensive tracts of tribal land were stealthily acquired or usurped by immigrants from the plains and the Adivasis were reduced to landless serfs. By 1976, 61% of the Adivasi households had become landless [with the remaining as landless field labourers] in the Wayanad region. Large numbers of Kurichian and Kuruman, who were traditionally land holding tribes, were dispossessed in the wake of expansion of land markets to the forest region. In Attappady, 20 percent of the tribal households were rendered landless over a period of 25 years. The incidence of land mortgage is also highest in Attapaddy.

Dependence on wage-labour for supplementing household income is very high. Ninety one percent of the cultivating tribal households have to offer themselves, to varying degrees, in the labour market to supplement their income from self-cultivation. Primitive subsistence agriculture of the slash and burn type is no longer possible. Cultivation of coarse grains as ragi and cholam (maize) has given way to diversified agriculture with cash crops. The wage rates of the tribal workers are lower than the ruling wage rates for agricultural workers. Slavery soon gave way to a system of bondage, despite the formal abolition of bonded labour in 1976. While land is scarce, there is a surplus of labour available.

Non-availability of cultivable

land and/or alternative employment opportunities has compelled Adivasi labourers to turn again to their former non-Adivasi employers for their sustenance. Progressive legislation like the Kerala Land Reforms Act were used in order to alienate tribal land. Thus, non-tribals would take tribal lands on short-term leases for cultivation and register themselves as "tenants" with the authorities. Later on, they would claim and obtain title deeds to the lands, dispossessing the tribal owner who had become the 'landlord'.

The latest (2001) government figures show that there are 22,491 landless families in the State. Moreover, a further 30,981 families have less than an acre of land, making the overwhelming majority landless or near landless. These figures also indicate that the process of appropriation of land has been rapid.

Consistent with the high overall general level of literacy in the State of Kerala, government data indicates that 57.22% of Scheduled Tribes are literate in the State. The number of educated unemployed is also on the increase, with only an insignificant number employed in the formal public and private sectors. A 2% reservation for STs has been instituted in the state.

Cattle rearing, primarily for economic security during emergencies, is on the decrease, with less and less adivasis involved in livestock and allied activities because of the systematic denial of traditional grazing rights, particularly in the reserved forests.

Forest depletion, increased soil erosion and decreased productivity on the one hand, and land alienation and

increasing poverty on the other, have pushed adivasis into a survival crisis. With the breakdown of traditional livelihood patterns in the past few decades, the intricate relationships that were traditionally woven amongst various Adivasi communities in each of the geographical niches have all but collapsed or weakened rapidly. Antagonism and conflicts with the migrant population, both the earlier migrants as well as the newer ones, have increased as the livelihood resources of the original settlers are colonised by the state and the settlers.

The existence of bonded labourers in Palakkad, Wayanad and Pathanamthitta districts has been confirmed by an official State government enquiry, carried out on instructions from the Supreme Court. A large number of Adivasi girls are in bondage, some within the State and some outside. Bonded labour exists also in the colonies where they were rehabilitated by the Government, such as the Sugandhagiri Cardamom Project and in the Vattachira Collective Farm. Hunger deaths are also prevalent, but most are dismissed as death due to ill health.

Hydroelectric projects and dams, such as the Idukki, Chimmini and Karapuzha projects, have also increased the numbers of the landless. Wildlife sanctuaries and national parks, such as those in Periyar and Wayanad, have resulted in the displacement of thousands of adivasis. The forests and protected areas are thrown open for tourism operators and projects, due to the state's wild dreams of making these forests global tourist destinations.

Development projects have only arisen where there are economic interests for the mainstream as, for example, with plantations. Tribal development projects, which are only infrastructure development projects, aid the settlers and promote further immigration. Under the Tribal Sub-Plan, huge amounts have been spent either in the name of rehabilitation of bonded labourers or for specific tribal development work. These have been diverted, mismanaged or spent fraudulently.

Urbanisation and industrialisation have taken their toll on the mountain ranges. Vast evergreen forests have been devastated. Rivers that flow into all three states have catchment areas in these mountain regions and are hence under severe stress. Forests have been systematically converted into plantations of tea, coffee, rubber and fast growing timber trees, the last under the garb of social forestry and afforestation. Scarcity of drinking water, previously an unheard of problem, has become common. The tourist industry, especially the much-touted eco-tourism sector, is now being given priority. A string of tourist resorts dots the hills.

Traditional communitarian life among the tribals has been shattered, weakening the social fabric that is the essence of tribal existence. Sexual exploitation has been so intense that the issue of 'unwed mothers' has become a major phenomenon. The State is not willing to take firm counter measures. Mental illness, another new phenomenon for the adivasis, also stalks them. In this context, land in

their traditional homelands has become the single most crucial element for the survival of these communities.

#### *Legal Protection*

No tribal area in Kerala has thus far been notified as a 'Scheduled Area'. As all the STs of all the States come under the purview of Article 244(1) of the Constitution, all States – including those that have no Scheduled Areas - are also constitutionally bound to enact suitable legislation to protect land rights. Hence, on November 14, 1975, the Kerala government unanimously enacted the 'Kerala Scheduled Tribes (Restriction on Transfer of Lands and Restoration of Alienated Lands) Act. This Act (KST Act 1975) was further included in the Ninth Schedule of the Constitution to ensure that the Act itself was not challenged in any court of law. But the rules under the Act were only operationalised in 1986, a decade later. Under this Act, all transactions of Adivasi lands during the period 1960 to 1982 were invalidated, and the lands were to be restored to the original owners. Transfer of lands from tribal to non-tribals was also prohibited from 1982. An estimated 8,553 applications for restoration of lands totalling some 10,177 hectares were filed before the last date for receipt of applications. The number has since risen to 8,879. Despite the restriction, however, transfer of lands continued unabated, in violation of the Act. The government did not implement the KST Act.

Consequent to a case filed in 1988, in 1993 the High Court directed the government to "dispose of the applications pending before them



within six months". Subsequent attempts in 1996 by both the United Democratic Front and Left Democratic Front governments to change the law were rejected by the then Governors. Faced with the deadline of 30 September 1996 set by the High Court, the government on September 23 unanimously passed 'The Kerala Scheduled Tribes (Restriction on Transfer of Lands and Restoration of Alienated Lands) Amendment Act, 1996'. This Act was intended to subvert the very intent of the 1975 Act - of restoring alienated lands back to the Adivasis – but this effort was once again blocked when the President, K.R. Narayanan, withheld his sanction. Then, to avoid being held guilty of contempt of court, the government passed the Kerala Restriction on Transfer by and Restoration of Lands to Scheduled Tribes Bill, 1999. This Act legitimised land alienation and offered to provide alternate land. However, the relevant clauses of the Act were declared unconstitutional and the court charged the government with contempt of court; both decisions were appealed by the state in the Supreme Court.

Of the 72,843 hectares of 'vested' forest, official statements indicated that half the area was to be handed over to the adivasis. However, this too has not been carried out. The government is using the Forest Conservation Act, 1980, as a pretext for not allotting these lands, though this would not be applicable as these were proposals prior to 1980 and hence eligible to be assigned.

#### *State's Response to MoEF Circulars*

The State government has ignored all the circulars No. 13-1/90-FP dated 18.9.90 of the Ministry of Environment and Forests. Regarding the settlement of adivasi rights, the State G.O (Ms.) No.88/97/Rev. dated 11-2-1997 does not refer to the Ministry's 1990 circulars. Instead, the only right it confers is the right to stay in the forest without any change in the land's reserved forest status; hence all forest laws will remain applicable. In effect, the rights of pre-1980 occupants remain unrecognised in Kerala.

#### *Adivasi Assertion*

The issue of land rights and land struggles have become the single most vital issue before the adivasi population in Kerala. Quite naturally, intense land struggles have come to the fore, making it a significant contentious political issue.

During the late 1960s, mainstream political parties such as the CPI, CPM, Indian National Congress and the Jana Sangh had organized the adivasis demanding enactment of laws to restore alienated lands. The Karshaka Sangam of the Naxalites also raised the land question in the 1970s, but the movement was crushed brutally. New adivasi organisations emerged in different parts of Kerala in the latter half of 1980s and early 1990s. They included Mala Araya Mahasabha in Idukki, Girijan Sevak Samithi in Attapady, All Kerala Tribal Workers Union in Pathanamthitta, and the Adivasi Vikasana Pravarthaka Samithi, Adivasi Federation, Adivasi Aikya Samithi and so on in Wayanad. More

recently, the Adivasi Vimochana Munnani in Kannur, and the state-level CPI (M)-led Adivasi Kshema Samithi came into prominence, riding on the success of the autonomous movements such as the one initiated by C K Janu.

In mid-July 2001, 32 starvation deaths were reported from the tribal areas of Palakkad, Kannur and Wayanad districts. Responding to this, an intense struggle was launched by Adivasi Dalit Samara Samithy, a struggle that spawned the AGMS and successfully negotiated the historic 2001 accord with the state government. The agreement required the grant of upto five acres of land to all adivasi families having less than one acre of land and a cabinet decision to include the adivasi areas in the V schedule, amongst other points. However, the state bureaucracy and its political leadership failed to implement the agreement.

Early this year, in an attempt to take the issues further, the Adivasi Gothra Maha Sabha peacefully occupied the Muthanga forest area in Wayanad Wildlife Sanctuary; this led to the unwarranted violent attack by the state in early 2003.

Recently, it has been reported that the Central Government has agreed in principle to grant 25,000 acres of forestland for distribution among adivasis in Kerala. There were also reports that the Union Ministry of Environment and Forests (MoEF) had agreed to the State government to release 12,196.1829 hectares of vested forestland for the purpose.<sup>78</sup> Invariably,

such efforts to distribute land have followed the forcible occupation of identified land by the Adivasis across the state.

<sup>78</sup> Roy Mathew, "Government reneging on promises to tribals", The Hindu, May 29, 2003.

## VII

### MAHARASHTRA

#### *Background*

As per the 1991 census, there are 73 lakh tribals in the State of Maharashtra, comprising 9.27% of the state's total population. However, official reports indicate that the 6.34 lakh land holdings belonging to tribals account for only 6.7% of the total land holdings in the State. 20.7% of tribals are landless, while 42.2% hold less than one hectare. Among primitive tribes, the level of landlessness is 56%, much higher than for the other communities.

#### Land Rights

As in other parts of the country, the State took over the lands of tribals, who have lived and cultivated lands in forests for centuries. The 1887 Forest Commission notes that approximately 400,000 acres of community owned tribal lands were acquired by the State in Thane district alone. The entire process of settlement of rights took place largely on paper. No settlement took place when the former princely states merged with Independent India. Large scale alienation of land to non-tribals without effective redress and displacement without proper rehabilitation have also pushed tribals into the forest, where they have begun to cultivate degraded forest lands.

Over the years, the Forest Department has recognized that forest protection will not be possible without the active support of the tribals. As far back as 1884, the Forest Department therefore decided to allot *Dali* plots to tribals in Raigad District. Similarly, as

per a recommendation in 1895, Woodland Plots were allotted to adivasis in Thane District, and Fireline, Pillarline and Agro-silvi plots were allotted in Nandurbar (formerly Dhule) district. The allottees were expected to protect the adjacent forests, particularly against fires, while cultivating the land allotted to them. However, till date these lands have still not been transferred to the names of the cultivating tribals.

#### *Woodland Plots and Eksali Plots*

In 1938, in Thane District alone, records indicate that there were 11,374 woodland plots covering 28,972 acres. Immediately after World War II, as part of the "Grow More Food" campaign, tribals were encouraged to cultivate forest lands. Most of the woodland plots were therefore converted into Eksali Plots (i.e. one-year leases). In addition, other wastelands were also converted into Eksali Plots. On 22.3.1969, the State Government issued a resolution to regularize all Eksali Plots.

However, since the resolution was not implemented, one Vishwanath Jadhav approached the Bombay High Court, which specifically stated on 13.2.1987 that, since the decision to regularize had taken place prior to 1980, the Forest Department could not take refuge under the Forest Conservation Act; therefore the Eksali plots in Sholapur taluka should be regularized (covering 32,000 acres and 10,000 families). However, till date in Thane District alone, 16,960 Eksali plots are yet to be regularized. On

*19.11.1998, the Mumbai High Court ordered the Maharashtra Government to complete the process of regularization of all plots in Thane district within one year. However, the government has not complied with the orders till date.*

#### *Dali Plots*

Under Peshwa rule, the system of *Dali* cultivation on hilly lands was prevalent and a tax was levied on it. *Dali*, which is a mode of preparing 'warkas' land by burning on site vegetation, ploughing or hand digging and sowing in the burnt areas, is mainly performed by forest based tribal communities like Thakars, Katkaris and Mahadev Koli (though some Maratha and Mahar farmers do so as well).

This cultivation practice was formally stopped around 1878. A number of petitions were made by *dali* cultivators to the government. Thus, in 1887, the Forest Settlement Officer of Kolaba stated before the Bombay Forest Commission that, "the *Dali* is not only a possible means but almost the only possible means of improving the forests..." and suggested that plots should be assigned to Thakars, Katkaris and Dhangars "to... provide them with a suitable means of livelihood..."

*Dali* lands were leased out to communities, though the actual lease title was made in the name of the local headman or "naik." The *dali* lease was renewed annually and regular passbooks were issued by the Forest Department, which recorded the names of fellow community men and retained a map of the *dali* plot and a schedule of the land cultivated. A separate written agreement between the cultivators and

the Forest Department would also be made and a license to cultivate issued.

On 14.1.1970, the Maharashtra government passed a resolution to regularize all *Dali* plots on the names of the beneficiaries. In Raigad district, there are a total of 458 plots with 4,872 plot holders covering 12,919.54 hectares. Of these, the Forest Department has deforested 11,389.51 hectares (88.15%) but has till date transferred only 1,405.859 hectares (10.88%) to the revenue department.

However, this resolution has once again not been implemented. Despite the fact that the government resolution was issued prior to the 1980 Conservation Act, and that the Central Government has stated that no compensatory afforestation is necessary, the *dali* plots have not been regularized. In fact, on 15.1.1999, the Attorney General clearly mentioned in the Supreme Court that such permission is not necessary. Meanwhile, the regularization proposals sent by the Maharashtra government to the Central government understates the area under cultivation. *While the 1971 GR states that 5924 dali ploholders with an area of 11,042 hectares are eligible for regularization, the Maharashtra government proposal in 1999-2000 proposes only 4804 ploholders with an area of only 4359 hectares.*

#### *Fireline, Pillar line and Agro Silvi plots*

These are to be found in parts of Nandurbar district (Shahada taluka). As mentioned earlier, these were allotted to the tribals to assist in forest protection. *Resolutions to regularize*

*these plots were issued around 50 years ago; however, till date, the resolutions have not been implemented.*

#### *Forest Plots or Encroached Plots*

Besides the above mentioned plots, the tribals continued to cultivate land in the forests. As the lands belonged to the Forest Department, these tribals were treated as encroachments. Over the years, some of these lands were regularized as per government orders. However there were also attempts made from time to time to evict the encroachers. Sustained tribal resistance and the likely political fallout of evictions forced the state to regularize encroachments.

In 1978 and 1979, the Maharashtra government passed two Resolutions that ordered the regularization of cultivation on fallow lands, forest lands and grazing lands being held by tribals and non-tribals below the poverty line. However, the Resolutions were never implemented, and the cultivators continued to face harassment and eviction by the forest department.

In 1982, tribals from Dhule district approached the Supreme Court seeking implementation of the said Resolutions. In 1986, tribals from Thane District also filed a Writ Petition (*Pradip Prabhu vs. State of Maharashtra*, WP 1778/86) with the same prayer. In 1995, the Supreme Court ordered the State of Maharashtra to appoint responsible officers in different districts to examine the claims of adivasis who are in possession of land, and to decide their claims for regularization in accordance with the

law and the 18.9.1990 Central government circulars. Earlier, in 1991, the Supreme Court in the said case had held that “the competent authority may even in cases where the claim is not supported by documents make an appropriate inquiry, receive evidence and then come to accept the claim” (see Volume II). It should be noted that the 1979 Maharashtra government resolution itself states that “all other forms of evidence” are admissible when deciding the eligibility of a claim. In the course of the inquiry ordered in WP 1778/86 (the *Pradip Prabhu* case), procedures were also laid down regarding the conducting of inquiries, acceptance of oral evidence and affidavits in addition to documentary fine receipts, and the involvement of the village community and panchas in assessing the year of cultivation.

In 2002, following the infamous 3.5.2002 letter of the Inspector General of Forests, on September 4<sup>th</sup> the Maharashtra government initially issued a circular regarding the formation of a “time-bound Action Plan to remove unauthorized encroachments from Forest lands.” *Eviction notices were issued to thousands of cultivators. In Amravati district, elephants were used to trample and clear cultivators’ farmlands.* However, subsequently, due to sustained pressure from various quarters, the Maharashtra government was forced to reconsider its stand and made a series of decisions. These included the following:

**17.9.2002:** Temporary stay on the eviction of adivasis’ encroachments.

**30.9.2002:** Temporary stay on eviction of encroachments extended to encroachments made by SC's, NTs and Denotified tribes and Neo-buddhists.

**10.10.2002:** In pursuance of the pattern adopted for regularization in Amaravati district (which itself had followed the procedures ordered by the Supreme Court in the *Pradip Prabhu* case), village level and taluka level committees were appointed to decide on eligibility of encroachments made by adivasis. A time-bound programme was announced to complete the identification of eligible encroachers. The Committees are to decide on whether the encroachment occurred prior to 1978 and whether it thus fulfils all the conditions of the 1978 and 1979 government resolutions. Details of the Maharashtra GR can be found in the box on the next page.

**Salient Features of the Maharashtra Government Resolution,  
10.10.2002**

Composition of committee: Two government officers (Talathi and Forester) and three non-government representatives (including a member of a panchayati raj institution, such as a sarpanch, a police patil or kotwal, and a senior citizen or NGO representative).

The functioning of the committee:

- ❑ the inquiry is to take place in open Gram Sabha
- ❑ the committee is to do site-inspection at place of cultivation
- ❑ the examination of proofs of cultivation is to take place in said open Gram Sabha
- ❑ The decision regarding eligibility is to be announced in open Gram Sabha.

The acceptable forms of evidence

- Documentary evidence – government fine receipts/non-government written proof
- Circumstantial evidence collected during site inspection
- Oral evidence of neighboring plot holders and senior residents of the village
- Affidavit of plot holder
- Opinion of the Gram Sabha

The opinion of the Gram Sabha has been given importance. In the absence of any other evidence, if, in the opinion of the Gram Sabha, the encroachment is pre-1978, the benefit of doubt is to be given to the plot holder.

The attempt to make the identification of eligible encroachers a transparent and participatory exercise is laudable. However, a majority decision of the committee requires four out of five votes (i.e. 80%). Such a high majority criteria is undemocratic.

The State Government has reported that encroachments cover about 73,000 hectares of land. However, the actual area is many times more. In Nandurbar district alone, 44,000 tribals have made claims for regularization, while in Thane and Nashik districts about 30,000 claims each have been made. The process of

inquiry as per the 10.10.2002 G.R. is still in progress in a number of districts. In some areas, the inquiry has taken place as per the norms prescribed in the G.R., namely inquiries have been held in open Gram Sabhas, oral evidence including that of the Gram Sabha has been relied upon and eligibility criteria have been followed. *However, in many areas, in contravention of the conditions laid down in the G.R., only documentary evidence of fine receipts has been accepted, and the inquiry has not taken place in the Gram Sabha. Many of these claims have hence been rejected and thousands of tribals face imminent*

*eviction. Furthermore, even in cases where the Village level committee has accepted the claim, the Forest department is pressurizing the State Government to overrule these decisions and rely on only the documentary evidence of fine receipts.*

#### *Forest Villages*

There are 73 Forest villages in Akrani Taluka of Nandurbar district. Land settlement has never taken place in these villages. In 1985-86, a survey of the lands was conducted and in 1992 a notification granted land titles to the tribals. However, as twenty six villages fall within the submergence area of the Sardar Sarovar Project, and forty eight are to be included in a wildlife sanctuary, if land titles had been issued those affected by these projects would have been eligible for the full rehabilitation package. Therefore, in 1994, the State government cancelled the 1992 notification. After a prolonged agitation and the intervention of the Mumbai High Court, the Maharashtra government submitted a proposal to transfer 14,790 hectares of land within these forest villages to the revenue department. However, the Central government has approved the transfer of only 4,073 hectares of land. *All the tribals in these villages are facing imminent submergence (and consequent eviction) without any proper rehabilitation.*

#### *Private Forests*

In the four Konkan districts of Thane, Raigad, Ratnagiri and Sindhudurg alone, 3.03 lakh hectares of agricultural land were declared to be private forests

in the 1950's<sup>79</sup>. This was done without the knowledge of most of the over one lakh cultivators in the area, who are mostly tribal. In 1975, all these lands acquired and vested in the State with a single stroke of the pen. *Many of the cultivators are tenancy legislation beneficiaries, surplus land allottees and non-recorded tenants, but are now facing eviction nonetheless. The process of removing the names of the cultivators from the land records and inserting that of the Forest Department has recently begun. In Shahapur taluka of Thane district, the Forest department has recently begun the process of erecting poles to wall off these lands.*

In its 1996 interim order in the *Godavarman* case, the Supreme Court directed that the term "forest land ....will not only include forest as understood in the dictionary sense, but also any area recorded as forest in the Government record irrespective of the ownership." Armed with this judgment, the forest department began pressuring the State government. The Divisional Commissioner (Revenue), despite not being the competent authority, issued orders to the concerned Tahsildars to make the respective entries in the land records forthwith. Without any verification and due inquiry, the Revenue officers have made mutations in the records. Thus, in the 7/12 extracts of the tribal farmers, the following remarks have now been added: "Maharashtra Government Forest

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<sup>79</sup> Prabhu, Pradip. "Land Alienation, Land Reforms and Tribals in Maharashtra", Land Reforms in India: Performance and Challenges in Gujarat and Maharashtra (Vol 8), Surat: Centre for Social Studies.



Department Reserved Forest”. “Use for non-forest purpose prohibited without prior permission of Central Government.” “The provisions of the Maharashtra Private Forests Acquisition Act are applicable”.

Tribals have therefore demanded an immediate cancellation of all mutation entries made in this regard, as the mutations have been ordered by a non-competent authority, have been made without following the procedures laid down by the MLR Code, and have thus been made behind the back of the concerned farmers. They are also demanding a Review of the Maharashtra Private Forests (Acquisition) Act, seeking exemption from acquisition for all lands in the possession of tribal farmers, all lands sold under the Tenancy Act, all lands being cultivated by non-recorded tenants, and all lands received through the Ceiling Act or any other land reform legislation.

## **VIII**

## **ORISSA**

### *Background*

Officially, Reserved Forests (RF) in Orissa cover an area of 26,329 sq.km, whereas Demarcated Protected Forest (DPF) and Un-Demarcated Protected Forest (UDPF) cover 15,525 sq.km. Village forest and other enclosed categories of forest cover an additional area of 16,261 sq.km. All forest categories together cover a total area of 58,135 sq.km, which constitutes 37.33% of the state’s geographical area<sup>80</sup>. These different forest categories, however, need to be treated with great caution

since the settlement of rights, demarcation of boundaries and conversion from one category to another has either not been done at all or, wherever it has ostensibly been carried out, suffers from serious infirmities. The Orissa Forest Department (FD) has direct jurisdictional control over only the reserved forests (RF), which represent approximately 45% of the forest lands in the State<sup>81</sup>. All other categories, including demarcated protected forests (DPF), are under the legal jurisdiction of

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<sup>80</sup> Forest Survey of India.

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<sup>81</sup> *Ibid.*

the revenue department, although the Forest Department controls their protection and management.

### *Situation*

#### Confusion During Post Independence Boundary Settlement

The major forested areas of Orissa before independence were controlled by princely states and zamindars. They contained established forest habitations, consisting mostly of tribals, in the area of present-day Mayurbhanj, Keonjhar, Sambalpur, Dhenkanal, Jharsuguda, Kalahandi, Bolangir, Boudha and Nayagarh districts. These villagers played a significant role in protecting the forest from fire and illegal felling. They also worked as forest labour for the Zamindars and helped in hunting. Each ex-princely state had its own forest rules, and each state recognized different community rights and concessions.

After independence and zamindari abolition, due to the absence of proper records, even lands cultivated by tribals were recorded as government lands and transferred to the forest department. They were declared to be state property through blanket notifications and categorized as demand forest or wasteland. However, the majority of the village population continued to enjoy their customary rights in these lands.

In 1959, the Forest Enquiry Committee constituted by the Government of Orissa submitted its

recommendations<sup>82</sup>. It recommended carrying out a survey and settlement in favour of the tribals on forest lands under their possession and conducting an enquiry into their traditional rights. The sub-committee constituted by the Central Forest Board submitted its recommendations somewhat later but took a similar position. As a result, the Government of Orissa enacted the Orissa Forest Act, 1972 and the Orissa Land Encroachment Prevention Act, 1972 in order to settle forest lands in favour of tribals who were in possession of such land. However, the process foundered on a lack of political will and administrative stagnation. Accordingly, the Government of Orissa passed another G.O. on 8<sup>th</sup> July 1975, directing all district collectors to complete this survey and settlement by 31<sup>st</sup> December of the same year.

Unfortunately, this GO also failed to give the process any momentum. Even after the passage of the Forest Conservation Act, 1980, ground level survey and settlement activities remained improper and incomplete. In some places, they were not carried out at all. With the overlap of jurisdiction between the revenue and forest departments, there is dual control of both land and forest and consequently in many places virtually no management exists.

Protected forests, both demarcated and un-demarcated, were classified as non forest areas in a Record of Right (ROR) prepared and

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<sup>82</sup> Committee constituted on March 9, 1957, and headed Dr. D.N. Rath. Recommendations were submitted on 19<sup>th</sup> March 1959.

maintained under the Orissa Survey and Settlement Act<sup>83</sup>. This Revenue Department G.O. also reserved some land for specific purposes like house sites. This land is known as “Rakhita Sarkari Khata”.

However, once again due to the lack of goodwill on the part of government officials who were supposed to carry out the settlement process at the ground level, most of the protected forests were either declared as such under sub-section 3 of section 33 of the Orissa Forests Act or deemed to be protected forests under sub-section 4 of section 81. No survey or settlement has taken place on such lands. Forests constituted under section 21 of the Act and deemed to be reserved under section 81 of the Act are also excluded from survey and settlement. Various land classifications, including the category of gramya jungle, khesra jungle, pattia jungle, and pratra jungle are recorded as such in the rights based records of the revenue department, but if any forest growth exists on such land, the land is controlled by the forest department.

Finally, even those revenue settlement surveys that were undertaken excluded lands with over 10 degree slopes, ignoring the fact that many tribal communities live in hilly areas.

Thus, unfortunately, the eight to ten year long settlement process in the whole State did not do justice to the poor tribals and other forest communities, who have been left on their own and helpless. Till date they

have not been able to get their land rights recorded (ROR) either in revenue areas or in protected areas.

#### Shifting Cultivation

Further, 44% of the state's total 'forest' area (the highest in India) is estimated to be under shifting cultivation, of which 8.8% (5298sq.km.) is under active shifting cultivation and the rest is either dormant or abandoned. Nearly 150,000 tribal households depend on shifting cultivation. The state policy towards shifting cultivation has been confusing and inconsistent. The Orissa government reportedly granted ownership rights to shifting cultivators in Koraput and Ganjam districts in 1982-83, but did not do so in other districts. Similarly, in 1993, the then Chief Minister of Orissa struck down all restrictions imposed by the Revenue and Forest Departments and granted property rights to the tribal people in Kashipur Block of Rayagada district. Not all such pronouncements have been effectively implemented, leading to substantial confusion at the ground, uncertainty of rights and daily harassment of tribal people.

#### Industry and Mining

The threats of displacement from forest areas are acquiring a still more serious dimension due to the planned major investments in the mining and power (coal-based) sectors. Both of these projects usually fall in tribal-forest interface areas.

The projected plans of Mahanadi Coalfields Ltd and proposed power plants by the private sector near MCL mines indicate that approximately 51,000 acres of land will be acquired by

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<sup>83</sup> G.O No. 4898 of 1966.

the year 2007 AD. This is likely to result in the displacement of approximately 50,000 families. Given the present status of survey and settlement in the forest and revenue areas, people are likely to be displaced from ancestral lands that they have been cultivating for decades; moreover, they will now receive no compensation in the absence of documents that show settlement of the lands in their names. This is the tribals' biggest fear about the government's effort to promote industrialization in the state. The government's efforts to create a 'land bank' for industries from such lands is viewed by many NGOs and community organisations as a mechanism for taking over people's land at low prices.

#### *Overview of Settlement of Rights in Orissa*

Over 50 percent of Orissa's supposed 'forest' area under the jurisdiction of the revenue department has never been properly surveyed, and even some of the reserved forest area under the forest department has been 'deemed' to be reserved without any survey or settlement. The rights of approximately 150,000 tribal families practicing shifting cultivation have never been properly recorded.

The combined results of these acts of omission and commission have been as follows:

- A large number of predominantly tribal people continue to cultivate and live on lands declared to be 'government' lands without any formal land titles.
- Even the rights on ancestral

lands within declared forest areas and on hill slope above 10 degrees are not recognised.

- Since there is no demarcation of boundaries, even settled agriculturists are declared to be 'encroachers'.
- In the absence of recognised land rights, displacement without any compensation has been a recurring experience for the state's tribals. In the 1970s, for example, the Soil Conservation Department raised cashew plantations on 120,000 hectares of tribal cultivated land after evicting the cultivators; it thereafter leased the plantations to private parties. Irrigation and development projects have also caused large-scale displacement, and in several cases the same people have been displaced several times.
- Impoverished tribal cultivators get no credit from banks or support for their agricultural operations due to the lack of titles to land.

While the exact number of people whose rights have not been settled is not known, the number is likely to be large. Due to land being the main source of livelihood in rural Orissa, non-settlement of land rights is the biggest threat to livelihoods.

Both the MoEF order requiring time bound eviction of 'encroachers' and the recommendations of the Central Empowered Committee should be seen in this context of industry/'development'-induced

displacement and non-settlement of land rights. The CEC has recommended that only those people who can 'produce the first offence report issued under a relevant forest act before 25.10.1980', can claim regularization of their so-called 'encroachment' on forest land (see Annexure 9.2). Further, the transfer of any land thus 'regularized' even in the past shall only be permitted by testamentary succession and not be eligible for alienation through sale.

The implications of such recommendations, which would be enforceable as orders of the Supreme Court, for the hundreds of thousands of Orissa's adivasis are self-evident. The Committee has also proposed that any state government which fails to expeditiously remove forest encroachments shall be liable to pay compensation for environmental losses at the rate of Rs. 1000/- hectare per month. Whether an area is a forest or not is to be determined on the basis of the forest department records, and, in their absence, from other relevant government records.

This is ironic, given that historically the major destruction of forests has been caused by industry for mining and other purposes. Huge tracts of forestland were earlier allotted on long-term lease to industry, many of which have still not been fully utilised. 25,249 hectares of forest land have been diverted for industrial and development projects in the state after enactment of the Forest Conservation Act in 1980 whereas barely 2,500 ha of pre-1980 'encroachments' have been

regularized during this period<sup>84</sup>. In November 2001, the Supreme Court stayed any further regularization of encroachments (Annexure 6.2). Even now, the major industrial demand is for forest-land for exploitation of mineral resources. Mining is the fastest growing sector in Orissa: the value of mineral production having increased by nearly 60% between 1995-96 and 1999-00.

Displacement of forest dwellers has itself been a cause of further forest destruction, as they are left with few options other than clearing new forest lands. The same is likely to happen with the eviction of so-called 'encroachers' whose legitimate rights have not been settled. Once they are forced out of lands that do not have forest cover, they may be compelled to clear good forests for survival elsewhere. Rather than restraining state governments and MoEF from granting further approvals for forest-destroying 'development projects', the CEC has taken a completely ahistorical position and decided to target the weakest and most defenseless community in the state – the tribals.

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<sup>84</sup> Forest Survey of India.

*Background*

The Rajasthan Forest Act, 1953, converted tribal forest rights into concessions. The settlement procedures required by the Act were not followed by forest officials, resulting thereby in large numbers of tribals losing their land rights arbitrarily. The land tilled by the tribal people was suddenly transferred to the forest department, and hence a situation of confrontation arose. Thus, just one year after the Rajasthan Land Reforms and Resumption of Jagir Act, 1952, had made tillers the owners of their lands, the 1953 Act declared tillers to be trespassers.

In 1978, a government notification was issued in order to redress the problems of tribal tillers. This notification ordered that forest land possessions from prior to 1971 be regularized. However, only 1506 tribal tillers' possessions were subsequently identified and regularized, as against thousands of other such pending possessions. Further, even the fate of these 1506 tillers was not very encouraging.

One example was what occurred in Umara forest of Kherwara tehsil, Udaipur district. Thirty tillers were identified and the land in their possession recommended for allotment. In 1980, the Collector, Udaipur, issued orders for their allotment, but till date their names have not been registered in the register of records (Jamabandi). These thirty tribal tillers have been running back and forth between

various offices, including the tehsil, sub-divisional and district headquarters, in order to get their names registered. Needless to say, in the process they have already spent thousands of rupees, but no change has resulted and forest personnel still keep harassing them.

In 1991, the Government of Rajasthan issued a notification<sup>85</sup>, on the lines of the 1978 notification, that supposedly regularized the possession of tribal tillers over forest land where cultivation had begun prior to 1980. The regularization process was due to be completed by July 31<sup>st</sup>, 1991. The genuine implementation of this circular would have changed the lives of nearly 40,000 people, but this did not happen. However, a detailed probe pointed out that the forest department identified only 11 persons in connection with this notification. The fact that such a notification had been issued at all was not made public by the Forest Department until 1995, by which time its period of implementation had expired. After becoming aware of this notification and its non-implementation, activists communicated this news to thousands of affected people. In August 1995, the affected people along with other activists formed an organization to fight against this injustice, the "Jungel Jamin Jan Andolan". Through this organization the then Chief Secretary of the Government of Rajasthan, Mr.

<sup>85</sup> No. 5(9)/3/91 dated 24.1.1991.

Meethalal Mehta, was approached.

Recognizing the gravity of the situation, the State government agreed to extend the implementation period of the notification. However, despite the extension, the forest department once again did nothing to identify land possessions. In the absence of any effort on the part of the forest department, the Jungel Jamin Jan Andolan moved from village to village and collected detailed information on 15,000 valid possessions. This detailed list was submitted to the Tribal Commissioner of Rajasthan State, who forwarded it to the forest department. Besides the list prepared by Jungel Jamin Jan Andolan, there are still thousands more existing possessions eligible for regularization which the Andolan could not identify. Sadly, the forest department has not collected/identified any such possessions; this fact speaks volumes about the intentions of the forest department. Moreover, they are adopting strategies that would defeat the very purpose of the government notification.

#### Assertion

With no state action evident and all other avenues of pressure exhausted, an indefinite 'Dharna' was begun on 6<sup>th</sup> February, 1996, in front of Tribal Commissioner's Udaipur office. On 7<sup>th</sup> February, 1996, the Tribal Commissioner on behalf of State government gave the Andolan a written assurance that the resolution would be implemented. Upon this assurance the Dharna was withdrawn.

The assurance specified that the

period from April 1997 to June 1997 was to be used for identification of possessions prior to 1980. Accordingly, the impending visit of the official committee was notified at forest nakas, and hundreds of affected people reached their respective forest nakas on the prescribed dates, along with their documents and other evidence. Barring a few places, almost everywhere the quorum of the committee was not complete; moreover, the convenor, the assistant conservator of forests, would conspicuously remain absent. At certain places, the lowest functionary of the Forest Department was deputed as a formality. In effect, this was another assurance that was not honored. The constituted committee to implement the circular failed to do its assigned task and did not make any effort to ascertain claims for possession of land.

A year later, once again thousands of people took to the streets to protest the non-implementation of the 1991 circular and the failure to fulfill the 1996 assurance. A detailed list of 8788 tribal people was submitted to the Tribal Commissioner. This exhaustive list was based on an in-depth survey carried out by the JJJJA. Once again, people only received assurances.

It is now increasingly evident that the Forest Department of Rajasthan State never intended to implement the Central government's 1990 circulars. The fact that the department had identified only 11 claims prior to 1980 within the prescribed period ending on 31st July, 1991, is proof enough.

Besides, in spite of the state government providing an extension on the implementation of the circular on the Andolan's request, the forest department forwarded the claims of only 5355 claimants to the Central government. In fact, the Department had identified 9,000 claimants, in itself a very low figure, but had chosen to only forward 5,355 of them.

Finally, in August, 2003, nearly 17,000 tribals in Udaipur, Banswara, Chittor, Dungarpur, Sirohi, Pali and Rajsamand, who have been in possession of forest land for generations, and whose claims had not been identified, individually presented their claims to the Collectors of their respective districts. Among the Sahariya tribe in Baran District of Rajasthan, where not a single person was included in the list of 5355 people mentioned earlier, nearly 1000 people presented individual claims in October 2003.

#### *Industry, Timber Contractors Favoured*

Despite the fact that the rights of deprived communities continue to be ignored, large scale mining activities on forest land have received active support from the Rajasthan Forest department. In order to protect the forests, the Hon'ble court directed the government to halt non-forest activity on forest lands. As a result, mining on forest lands was halted for a while. Ironically, the otherwise passive and apathetic forest department suddenly became active, and within no time identified mining companies' claims, processed these claims and forwarded them for regularization to the Union Ministry of

Environment and Forests. Today, mining on forest land continues and flourishes.

Moreover, large-scale contracts for the felling of trees were granted by the department until the 1990's. The forest department should have planted trees in proportion with those felled, but this did not occur. In the name of collecting easy revenue from forest, dense forests were also clear-cut, and tribals residing in the forest peacefully were blamed for this destruction. Despite the ban on felling of trees in forest areas, timber contractors have felled large numbers of trees in collusion with forest officials. Indeed, the forests are in better condition wherever tribals are residing in them.

#### *Final Issues*

In many areas, the demarcation between forest and revenue land is still ambiguous. In the absence of such clear-cut demarcations, the revenue department had earlier allocated land to the tribals in hundreds of the villages. The tribals improved the lands and have been using them for a long period. However, hundreds of villages situated amidst forest remain unrecorded as revenue villages in the revenue records. Now, with the recent eviction drive, the Rajasthan forest department is issuing blanket orders and notices for eviction to tribal people.

In sum, today, the State government and the Rajasthan Forest Department have successfully rendered the tribals, the most deprived of communities, dispossessed and homeless.





**NADU***Background*

Adivasis in Tamil Nadu, with a population of 5.74 lakhs, form 1.04 percent (1991 Census) of the total population and live mostly in the mountainous areas in the central, southern and northern and northwestern parts of the State. There are 36 officially recognized Scheduled Tribe communities. Most of them live in the hill regions, particularly the Nilgiris, though there are pockets of habitation in the plains with significant numbers in the northern part of Tamilnadu. The dispersed and so-called primitive tribes live in the Nilgiris region. Of the below poverty line population in Tamil Nadu, eleven lakh people are of Scheduled Caste origin and 76,000 are of tribal origin.

It is, however, important to note that forest issues do not only affect adivasi communities alone. While these communities are the most closely bonded with the forests, arbitrary evictions, denial of land rights, and government seizure of common property resources have also affected other communities severely. For instance, in the area where evictions have been the most serious problem (Gudalur), those who have been targeted include Dalit and lower-caste families in addition to adivasis.

**Forest and People**

Forest covers 22,845 sq. kms. or 17.56 % of the total area of Tamil Nadu<sup>86</sup>. The Western Ghats comprise of 5,596

square kilometers of forests. Of the total area, 2917 sq. kms or 12.8% of the total is dedicated to wildlife conservation through five national parks, six wildlife sanctuaries and twelve bird sanctuaries. There are 32 river systems, 11 Major reservoirs, and thousands of canals and tanks in Tamilnadu. A majority of the catchment areas for these structures lie in forest areas. There are some 3072 abutting villages adjacent to the Reserved Forest; most of these villages are inhabited by Adivasis, whose survival is threatened by the denial of their traditional rights to the forests on which their livelihood mostly depends. Large areas of forest are degraded as a result of natural causes, forest department mismanagement and plunder by the urban-industrial complex. It is estimated that 3,250 square kilometers of forestland are degraded<sup>87</sup>. The forests of Tamil Nadu are governed by the Tamil Nadu State Forest Act 1882, the Wild Life Protection Act 1972, the Forest Conservation Act 1980 and a host of Rules formulated under the rule enabling powers of the Acts.

Most forest areas were the ancestral territories of Adivasis. The conversion of these lands into reserved forests was carried out without the least concern for the provisions of the forest laws, and consequently the rights of the forest dwellers were not settled but largely ignored. The Tamil Nadu government has also continued to

<sup>86</sup> Forest Survey of India.

<sup>87</sup> Forest Survey of India.

disregard the Ministry of Environment and Forest's 1990 orders regarding the settlement of rights and the regularization of pre-1980 cultivations (those lands that have been in cultivation since prior to the enactment of Forest Conservation Act of 1980). The forestry programmes have further intensified these state government violations. There are a large number of forest villages that exist within enclaves inside the reserve forest without any ownership titles to the lands that they have cultivated for generations, or rights to their village commons. They are thus at the mercy of the forest department, and even development activities fall within the department's purview. They are in effect non-citizens, denied their fundamental rights under the Constitution. They exist as *de facto* bonded labourers of the Forest Department.

#### *Situation*

In the northern parts of Tamilnadu, the Irulas lost their traditional forest habitat as a result of ecological changes that occurred while they were still hunter-gatherers centuries ago. Even though each tribe is culturally, economically and politically homogenous, as a result of state policies and the demarcation of State boundaries, their homogeneity has been broken and a section of the tribe has been made to integrate with the culture of the State where it resides. Most of the adivasi communities also lost land to the settlers and plantations in their respective regions, and thus most adivasis work as daily wage earners. Their traditional economy has

broken down.

The literacy rate for adivasis in Tamilnadu (27.89%) is lower than that of neighbouring Kerala and Karnataka. The percentage of tribal cultivators has been decreasing. This has resulted from environmental degradation, including the depletion of forests, increased soil erosion, and decreased productivity on the one hand and land alienation and increasing poverty on the other. Correspondingly, the number of adivasi agricultural labourers working for non-adivasis has increased.

Hydroelectric projects and dams have resulted in the increase of the landless, such as in the Amaravathi area. Wildlife sanctuaries and national parks, including the Indira Gandhi National Park (Anamalai), Mudumalai and Kalakkad Mundanthurai have all resulted in the displacement of thousands of adivasis from their hearths, even as these rich patches of forest are thrown open to tourism operators - both state and non-state. The government now proposes to convert the last patches of natural forests into wild life sanctuaries and national parks threatening survival of thousands more.

Development projects have come up where there are economic interests for the mainstream, as in, for example, plantations in the Palani Hills, Nilgiris, etc., where tea and coffee among others are the main crops. Forests have been systematically converted into tea and coffee plantations. Urbanisation and industrialisation have taken their toll on the mountain ranges. Vast evergreen forests have been devastated.

The government is now giving

the tourism industry a great deal of importance. A string of tourist resorts dot the hills. Pilgrimage centers, wildlife sanctuaries and national parks, tourism projects, major tourist spots and so on have all come up, with each taking over more lands. The mountain ranges are targeted for 'eco-development', conservation and forestry projects, all of which further marginalise the adivasis.

Forest communities have attempted to retain their relationships with the forests, particularly those necessary for livelihood purposes, but they have faced severe pressure, especially since the introduction of forest conservation as the prime focus of the Forest Department. This process forces these forest dependent communities to instead become dependent on land to survive. Meanwhile, just as land is increasingly becoming crucial for survival, the assault on this source has also increased. Consequently, land rights and land struggles have become the single most important issue for these peoples in the southern region.

Most have become landless or small and marginal farmers depending on agriculture wage labour. Minor forest produce collection and sales are another major source of income. Cattle grazing is primarily either carried out for plains people as a source of income or as security for hard times and emergencies. Antagonism and conflicts with the migrant population, both earlier migrants as well as the newer ones, have increased as the state and the settlers colonize the livelihood resources of the original communities.

For example, with the take over of 10,112 hectares by the forest department, 55% of lands were lost by Adivasis in Kalrayan Hills when the government took over the area in 1978 from 3 *Jagirs* through *Inam* Estate (Abolition & Conversion into *Ryotwari*) Act 1963. As this was challenged in the court, the final takeover only took place in 1976.

In the Gudalur taluk of Nilgiris district, 324 square kilometers of land belonging to the Nilambur Kovilakam (a royal family), which was the habitat of Adivasis, was taken over by the Government by the Gudalur *Janmom* Estates (Abolition and Conversion of *Ryotwari*) Act 1969<sup>88</sup>. Large parts of these areas have been deforested and the land grabbed by forest and land mafias aided by the forest department and large plantation lobbies.

About 10,045 acres in Kanyakumari and Tirunelveli districts belonged to the Kanis through a "Royal Neetu" of 1918 of Marthandavarma Maharaja of Travancore, which granted a total of 36,000 acres of land to the Kanikars. The Tamilnadu government has usurped these lands and planted rubber on them. A portion of land was assigned to non-Adivasis and the Forest Department claims another portion. In another part of the region - Anaikatti hills in Coimbatore district of Tamilnadu - over 180 acres of land enjoyed by Adivasis was granted to a non-governmental organisation to establish a zoological park in 1998, though the park has yet to be approved

<sup>88</sup> People's Union for Civil Liberties, "The Land Situation in Gudalur Taluka", Fact-Finding Report, June 2002.

by the Ministry of Environment and Forests. In the Palani Hills, an extension of the Western Ghats, plantations and the forest department have taken over most of the traditional territories of the Adivasis. Their efforts to reestablish their rights to these lands has led to conflicts with the authorities. In the Sathyamangalam forests, the forest department has occupied large tracts of adivasi lands and is pushing adivasis out of their villages.

#### Legal Protection

Adivasis in Tamil Nadu do not enjoy any legal recognition of their rights as provided for under Article 244 (1) of the Constitution. Tamil Nadu is the only major State that has not enacted legislation to restore adivasi land alienated to non-adivasis and to prevent the further alienation of such lands. Only a standing order No.40 exists on land alienation, but this order is not statutorily binding in the same way as a law. There are no Scheduled Areas in the State, and consequently the Adivasis are denied the powers their communities should enjoy under the constitutional provisions of the Panchayats (Extension to Scheduled Areas) 1996. Welfare schemes of the government have treated Adivasis on a par with Dalits and other marginalized communities, and there has been no specific attention to adivasi rights or the issues they face.

The only major study (1989) on land alienation indicates that 25 percent of adivasis are landless, while another 35 percent marginal farmers and 24 percent small farmers. 84 percent of Adivasis possess less than 5

acres of land. The incidence of landlessness is moreover higher in areas where STs populations are high, such as in the Nilgiris. The situation has since worsened.

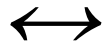
In 1986, a draft bill [The Tamilnadu Scheduled Tribes Restoration and Transfer of Immovable Property Bill] to prevent alienation of tribal lands to non-tribals and to restore alienated lands was drafted and sent to the Central government. Nothing has been heard of it since then. Some lands have been allotted to the Adivasis under conditional *pattas* that specify that the lands should not be transferred, donated, sold or mortgaged for a period of 10 years after the issuance of the *patta*. This has normally not been adhered to.

#### Assertion

There has historically been little Adivasi political presence in Tamil Nadu at the State level. During the period of the Dravidian movement, they were conflated with Dalits as 'Adi-Dravidars', but their specific issues were ignored. The situation has largely remained the same since. Some districts have seen sporadic local adivasi mobilizations, but there have been few sustained or broad-based adivasi movements anywhere in the State. Currently, NGOs dominate most adivasi issues, with the State actively involved in the promotion of development through NGOs. This has ensured that the basic issues of forest rights, land rights and self-governance remain a non-issue. However, localized bitter struggles against further loss of livelihood rights have been occurring.

Testimonies are listed in alphabetical order by State. The last section includes depositions made on behalf of the national campaign.

## *CHAPTER III*



# *STATE-WISE DEPOSITIONS OF PARTICIPANT S IN THE JAN SUNWAI*



**CHAPTER III**  
**DEPOSITIONS OF PARTICIPANTS IN THE**

**Andhra Pradesh**

**JAN SUNWAI**

**Buddhu**

*Pallamgodu Village*

*Vishakhapatnam District*

We have been farming in this area since our childhood, but the Forest Department has been harassing us for a long time. We do not have a patta for our lands. A Van Saurakshan Samithi (VSS) was imposed upon us. When the Department offered to use our land for a VSS plantation, we refused. So they asked the neighbouring village to come to our lands and start a VSS plantation. Due to this there was a dispute between the two villages after which the forest department lodged cases on us. When they came to our village they took away our farming implements and our papers. They once called us to the forest office but the officers themselves were not present. We were made to stand outside in the rain the whole day. Now there is enmity between the two villages. The forest department is very corrupt and is making lots of money. They are trying to evict us from our lands. But we are quite certain that we will not leave our lands and will continue to farm here.

**Rama Rao**

*Ramagadda Village*

*Vishakhapatnam District*

Our village falls within the boundaries of the reserved forest, but we've been farming there since my childhood. The Department has filed

many cases against us. However, while they file cases against us they have given permission to the Coffee Board to cultivate coffee plantations in the neighbouring areas which are reserved forests. And because they want to start these coffee plantations they are not giving us our land pattas. The revenue department is ready to regularize our lands but it is the forest department which is creating trouble.

The Department wants our land to make further plantations, that's why they don't want our lands to be regularized. It is almost as though we are "bonded" to the Forest Department. Even if our village is to have a school built, it is necessary to get a No Objection Certificate from the Department. And this they do not give. We have submitted many petitions to them but it has been of no use.

We fear that, at any moment, we could be evicted because the Department wants the coffee plantations to grow there.

**Vishwa Reddy**

*Madukkota Village*

*East Godavari District*

Our lands are lie within the reserved forests. Today we are reminded of 1974 when the forest department came into our villages and burnt down our houses. Today they want to evict us through VSS plantations in our villages. In our area, the Department has been trying to get a VSS plantation in place. However,



we have been refusing because we want pattas.

We planned to petition the VSS Committee at a meeting in Hyderabad. However, before we could be heard, the Department told the VSS Committee that there are already VSS plantations in our area and that there are representatives from our area as well. This is not true, but once the Department had given this wrong information the Committee would not hear our objections.

The Department has told us that it is firm that there will be VSS plantations on these lands, even if people have to be thrown out.

### **Raghavulu**

*Krishna Sagar Village*

*Khammam District*

In our village we have been farming for generations. Now the forest department has implicated us in several cases and is harassing us. In the year 1987-88 the forest department filed a series of cases on us because we have been cultivating our lands. But the fact is that we have been living and cultivating there for several years. We even have proof of this. There is a dispute between the Revenue and Forest Departments. Our people were given patta books last year. According to this book, the area is under reserved forests, but this is disputed by the Revenue Department. The victims in the midst of this dispute are ordinary people who are being harassed and have to do the rounds of the courts after being falsely implicated. Under the Van Saurakshan Samithi (VSS) programme they are planning to do plantations in our area. The Forest Department wants to set up VSS plantations on our lands, so that they can

then point to the plantations and say that the land belongs to them.

So far, nobody has ever been ready to listen to us. Now, at last we have an opportunity to tell our side of the case.

**Debraram Musahari**

Bodos live in 47 different tribal blocks covering 3980 villages in Assam.. Earlier different ethnic groups lived happily together. 70% of the land of this area covering 85,80,842 bighas were alienated by migrants from W. Bengal or Bangladesh. The illegal influx has been so much that today it is difficult to find tribal people in these blocks. Instead of genuine indigenous people you will find many different persons mostly from Bangladesh. When indigenous people lost their land they were forced to move into forest areas. Even in traditional forest areas they are not left in peace, as the migrants from adjoining countries have now entered forest areas. These migrants are being “subguarded” by the government because these are the real pockets of their politics. Real dirty politics is being played in our areas. After losing all livelihood means some of our people have begun clearing the adjoining areas. They have no other alternative but to enter forest areas. There were lots of conflicts and the government has tried to forcibly evict them. People have been tortured inhumanly, killed and neglected. Forced evil eviction in Assam must stop. More than 2,000 tribal or so-called forest villages are being evicted. More than 10 tribals have been killed while they were resisting evictions, for which bulldozers and elephants have been used. They have plundered our valuables including gold ornaments. They have beaten up our women and children. More than 10 people have been gunned down brutally, when they just challenged them asking why are you evicting us. There was no prior notification or information from

department concerned, nobody knows what is happening.

Two days ago we came to know that evictions are going on in Kosaigaon in the Western part of Assam in Pokadar district. Some of the evicted families have a receipt and annual fariza patta issued in 1921. They have land deeds which they can produce, but these families have also been evicted along with the so-called encroachers. We went to the Guwahati High Court and the Supreme Court, but no clear action or direction has been issued in our favour.

We have also filed a case before the Human Rights Commission. I find that in my own state if we take this up as a Human Rights issue then the next day we are in trouble. I was put in jail for 3 months because I spoke up on this issue, I was put in under TADA and tortured, insulted and humiliated.

We spoke to the UN Permanent Working Group on Indigenous People. We spoke to the Special Representative of Indigenous People in the World Bank. He assured us that he would see whether funds to the government of India in the name of regeneration of forests could be discontinued.

We will continue to fight for our survival. Our goal is not against the country, it is to assert our right of livelihood and survival.

**Ram Kumar Nimbu**

*Sunaimheer Village*

*Sunitpur District*

I have a land deed dated 26.2.1926. My forefathers were born in my village. My father died in this village. I was born

here. There are about 750 families belonging to 3 communities viz. Nepali, Miri, and Santhali tribals, who live here. Large scale evictions which started in 1984 have taken place four to five times. On April 27-28 2002, our houses and trees were destroyed. Forest department looted our chicken and animals. Many people were beaten up. About 8,000 government forces including Forest Protection Force, Assam Police, Army and CRP guards had been brought to the area. Our valuable trees like supari and mausami were destroyed. On May 7, they came at one o'clock at night and forcibly picked up Harka Thapa and Shir Bahadur Gurung. They remained missing for a long time till they were found in Tezpur Jail. Even till today they threaten us, saying evictions will take place at any time – tomorrow or day after or whenever they feel like. They daily ask for liquor and money, chicken, vegetables and wood from the fields. Gurung and Thapa were released after 45 days. The reason for their arrest is still not known to us. We went to file a complaint in the local police station – viz. Saridwar Police Station, but we were threatened and nothing happened regarding the complaint. Now we have formed a Resettlement Committee, of which I am the President. We are now searching for justice. We have been living in this area from pre-independence and are now being driven out for reasons unknown to us.

**Peta Basu Mantary**  
*Wan nu Phukripara*  
*Sunitpur District*

I was horrified when at about 10 a.m. on 10.6.2002 about 1000 government forces belonging to the Assam Forest Protection Force, Assam Police and

hundreds of non-tribal hired labourers, stormed my village, burnt our houses, cut down our fruit orchards and plundered our valuables including cash, gold ornaments, utensils, clothes and cattle. Some villagers including women tried to resist but they were beaten up brutally and sent to jail without having committed any crime. Our village consists of 38 families and there are about 240 villages in our area where we have been living on our traditional land for many decades. There are about 50,000 people in this area, but our names are not entered in the Voters lists. Our village is in Balipara block, which was created by Govt. Notification in 13.3.1951, with an area of 19,360 bighas. This was not the first eviction that took place in my area. Earlier on 8.3.1996, we were also forcibly evicted, and 2 persons viz. Chakra Musahari aged 55 years and Sandi Boro aged 38 years were killed while they were resisting the inhuman eviction. On 21.10.1998 the Forest Department evicted us for a second time, where Hari Basumatary aged 42 was killed brutally and on 6.2.2002 Rabiram Basumatary aged 35 years was gunned down near his eye when they were being evicted for a third time. A total of about 7,200 families have so far been evicted in our area without any prior information, warning or notification from the Forest Department. We have formed a Committee viz. Kinkrajuli Abadari Aafat i.e. Kinkrajuli Farmers Union, of which I am the President. We have filed a case in the Guwahati High court on 13.5.1996 and we have a stay order in our favour preventing any evictions till further orders are issued from the Court. We have also filed another case in the Guwahati High Court

WP 55845/02 in 2002 about the latest evictions and the matter is still pending. I have dared to come for this Jan Sunwai though it is risky for my life.

<b>Chattisgarh</b>
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**Chamru**

*Dhabba Village*

*Rajnandgaon District*

We have been living here for generations ... from much before these Forest Acts ! And now the forest department is making our lives miserable. They are coming and destroying our crops and trees. They are even using the police force to harass us. They think that if they use physical force we will get scared. They are creating lots of trouble in our villages.

**Chain Singh**

*Kuracha Village*

*Rajnandgaon District*

This year in January the forest department people came to our village. They took 3-4 people aside and forced them to sign some papers. Then a few days later the foresters came and drew lines on the land. They told us that the next day they were going to dig trenches. They thought that we would not understand what they were planning to do. So the next day all of us gathered and protested and called for a panchayat meeting. In the panchayat meeting we decided to invite the Collector to come and see the trouble that the forest department was creating in our village. We wrote to him three times. However, not a single government official came. Then in the beginning of this month we sat in protest and the SDO came only on the third day.

The forest department is trying to evict us but we will not allow the government to do this to our forests and our villages.

**Bhikuram**

*Purotola Village*

*Rajnandgaon District*

Our land has been with us for generations. We have built our houses and have been farming on it as well. However, the local panchayat and the Forest Department are colluding against us. The government has taken back our ownership documents and burnt them. I still have my father's papers, though; he is the only one in the village who kept his documents. This document has Mahatma Gandhi's seal on it. Since the government took away our documents, naturally we don't possess any documents today. Yet we are expected to produce documents to prove that we have lived here.

We have been oppressed by the Forest Department. The rangers are essentially our enemies. Our lands should be regularized. We belong to an oral culture and tradition and have always trusted others. But the forest department has cheated us.

**Ram Kumar**

*Bastar District*

There are Baol areas in three districts of Chattisgarh. However, 25% of these people don't have pattas, despite living there for generations. They have been earning their living in these areas.

People are being branded Naxalites when they rebel. The CRPF is deployed in our area and we are being evicted by force.

The government authorities do not speak to the people, only the chowkidar is called for a hearing when deciding on reserved forest rights. When the forest officials begin laying new boundary markers in the forest, they do not ask the

locals - they simply lay the markers and then post forest guards in the area.

Forest committees have been formed in this area, but these committees are used as weapons to split the adivasis.

Adivasis have been tilling these lands for a long time. They have also paid fines many times, though they've been there for generations. Now, they are being evicted from their own lands.

## Dadra and Nagar Haveli

### **Anil Dhodi Patel**

#### *Baldevi Kuapada Village*

Dadra and Nagar Haveli became independent on 2<sup>nd</sup> August 1954. However we did not have any relation with the Centre till 1961. The officials from Delhi who come to Dadra and Nagar Haveli do not understand our language. The Government of Dadra and Nagar Haveli is run from Delhi, which is very far away.

Ninety percent of the population of D&NH is adivasi. There are 72 villages in D&NH. Earlier these were fully forested. But when our area came under Delhi rule, the government sold all the timber and “ate up” all the money. Now all the forests have been cut down. Our adivasis are illiterate. They cannot read the laws and its provisions and the government takes advantage of this. The officials who came from Delhi, arrested many adivasis and sent them to jail. We did not know what to do. They told us to pay a “tax” for our land. Officials took ten or twenty rupees from us whenever they wanted. This continues even today.

The land of 20,000 people who cultivate in the forest are called ‘chorti’. And so they are filing cases on us. We are also in possession of “teram plots”. Even today adivasis do not have these lands on their names. We do not even know the provisions of law that will enable us to get our lands regularised.

In D&NH, they are now evicting us to begin sugarcane plantations. A big sugar factory is being set up. One hundred and ten acres of forest land has been handed over to the sugar factory. They take away our lands. How can they give these lands to some sugar factory? We are asking – under which law are they giving the lands

to the sugar factory and not to us? Does that mean that the law is made to give land to sugar factories and not to the adivasi?

### **Mohanbhai Shivji Delkar**

#### *Baldevi Village*

I am an adivasi from Nagar Haveli. There are at least 20,000 adivasis starving in our forests today. We have no food to eat or clothes to wear. To keep ourselves warm we have to burn the dry leaves of the forests.

The forest department has been making a lot of trouble. People were in possession of a few gunthas of land. The forest department has destroyed the houses on these lands. We went to meet the Collector. Ten thousand of us went to meet him. The Collector said that our problem will get resolved slowly. But till today nothing has happened. Prior to Portuguese rule, adivasis have been living in these forests and have been cultivating and eating bajri, nagli, jawar. Now there is starvation. From the time the Delhi government took over we have been told that we cannot enter the forest. The beatguard and watchmen chase men and women with sticks. They even take away our ploughs and seeds. So we went to meet the Collector. He said that he will go to Delhi to resolve this issue. We even met the Governor, but he said that he has no powers.

They are harassing us. They have taken over our lands and have started industries thereon. And they don't even employ the adivasis in them. Now there is no land to grow our crops. What will we eat? And they come to our house and ask for liquor and chicken. What will we do? When 20,000 people are starving how can

they say that our plots are 'chorti'? In the Portuguese time there used to be big big trees. They cut down all of them and sold them – like "chori" Now instead they are calling the lands that we are cultivating 'chorti plots'. The government took over the forests, now go and see, there is not a single tree in the forest. They have sold all the trees. The adivasis were protecting the forest and have very small huts and yet they are calling the adivasi the 'chor' !

We want to tell the Supreme Court these things.

**Tanhyabhai Uglaya Bond**

*Rudana Chimbapada Village*

If we enter the forest the forest department files false cases on us. The forest department has also been taking money from us. It takes 40 Rupees to take out a photograph ( for bail purposes) and then more money to engage a lawyer. The forest department has simply been harassing us with all these false cases. Wherever we go they take money from us. It is so expensive to even come to the town from our villages. How are we supposed to survive? How will we even feed ourselves?

*Bhadyabhai*

*Dapada Savarpada Village*

For generations my forefathers have been living in this land and yet the forest department people come to our houses, pick us up and take us to the 'chowki' (police station) and demand four thousand rupees from us! They don't only take money, they also beat us and demand chicken.





## Gujarat

### **Bharat Pawar**

*Dangs District*

Previously in the Dangs all the trees were medicinal and valuable . The lands were cultivated, we prepared the seedling bed and grew nagli, vari, and rice. But even after independence in 1947 we have not got independence because we do not even know when our forests went into the hands of the forest department. They measured the land and the forest department told the collector to give small portions of land to us. And the people whom they liked they gave them more land. People have been farming and living on these lands for more than 200-300 years. The forest department people would come and demand chicken and liquor and even took away our land.

One day in 1992, the forest department people came into heart of the forests, fired and killed Sarra ben. She died within a minute. They said that if they do this then we will get frightened and run away from the forests. We told them that we do not even know when you took away our lands. Now you are talking about frightening us out of the forest and are firing at us. Two months ago in May 2003 they came and burnt down two houses in the forest and beat the people and picked them up, and then lodged 30-40 cases on us. Even now they come anytime and pick us up, take us to the forest guest house and keep us there for 4-5 days. They beat us very much, and then file cases on us. Now in the Dangs we have become conscious of our rights and we will not take this anymore.

**Dodiabhai Mansinghbhai Rathwa**

*Dadhonia Village*

*Panchmahals District*

On behalf of the Adivasi Mahasabha of Panchmahals District, I would like to present our situation before you. My name is Dodiabhai Mansinghbhai Rathwa from Village Dadhonia, Taluka Godhra, Panchmahals District. I am a Rathwa from Dadhonia Village. We have been cultivating forest lands up to this day and the foresters have been oppressing us immensely. Foresters do not allow us to cultivate. These foresters have made a plan for Dadhonia and a neighbouring village and have forcibly planted saplings on our fields. Because we resisted them, they filed a case against us and we were arrested and locked up in jail for 24 hours, after which we were released on bail.

**Lallubhai Khatiabhai Nayak**

*Dadhonia Village*

*Panchmahals District*

We are residents of Dadhonia village and we have been cultivating 362 hectares since 1968-1970. We continue to cultivate these lands at present. Slowly the plantations have reduced our cultivation and now even the 5 acres of land that we had in our possession have been converted to plantations and only about 20 gunthas have been apportioned to us according to the Government Resolution. When it was time for transplantation we ploughed one acre to plant our crops. At that time the beat guard complained about us in the town and the taluka police arrested us. We were locked up for 24 hours. They took Rs 3000 from each of us and then we came home. In this way we are facing severe problems. They do not allow us to cultivate. The forest department is also threatening to break

our houses. In this way we are suffering in Panchmahal district. Even though lands have been regularised from Sera taluka to Lunavada taluka, we have not been handed over all the lands under cultivation. In Sera taluka there is prohibition on cultivating even the lands given to the adivasis. I want to tell my adivasi brothers that we need to record our suffering before the government so that our harassment can stop.

### **Deponent A**

#### *Panchmahals District*

There are nine tehsils in the Panchmahals of which 90 villages are affected. In eighty villages trenches have been made and plantation has been done. In the remaining ten villages the people who had been cultivating since 1962 have been forced out of their lands as a result of the severe repression unleashed by the police and forest department. Now their situation is such that they do not even have any proof of cultivation. In this connection I would like to mention village Zhaka where 32 adivasis have been cultivating for many years. The forest was known as Kadva Pani and the adivasis used to call it kado poni in their dialect. One day the forester called them and told them they will be displaced and relocated in Kadva Pani as their present cultivation was in forest land. The people did not know Kadva Pani was the same as Kado Poni and refused land. This is how they were deprived of their lands.

I would like to end my deposition with the story of a 75 year old adivasi man who has been cultivating for many years and he has been harassed innumerable times by foresters and beat guards. This

story goes back to 1960-61 but I am mentioning it as his problem remains unresolved even today. Once his house was burnt down and his name is Bhagubhai Bhimsinghbhai Rathwa, village Phajia Amba. He has been given alternative land 12 kms. away from where he was cultivating. Instead of the eight acres that he was promised he has been given only 4.5 acres.

## Jharkhand

### *Sanika Munda*

Jharkhand is a place where different kinds of laws and provisions are in place. There are places where there are forests and places where there are no forests. In Singhbhum district they have declared reserved forests, but there are places where the government has not taken the consent of the people at all. The forest department has also unleashed trouble in our areas. Cases have been filed on adivasi cultivators. The forest department has not had the guts to burn down peoples' houses. In Jharkhand under provision 356 mundari khudkati – tiller's own land right - the government has no right to enter these villages or to see our records and documents. I am from a khudkati area. The government of Jharkhand has failed in the Joint Forest Management programme. In the areas of mundari khud sheti (tillers own land), the government has not been able to take over these lands for JFM and will not be allowed to even in the future, because the government has no rights in these areas.

But the tragedy is that the rights for which the Mundas of the area have fought and won, are now being trampled upon. By declaring these forests as “private protected forest” they are trying to take them under their control. But the adivasis of the area have resisted. In 1955 when they declared these lands as “private protected forests” the adivasis cultivating thereon chased the forest department away. All the cultivators have been cultivating under the rights given in 1940. But when the government abolished zamindari they even declared the adivasis to be zamindars and evicted them. When people were being evicted they did not even know the reason for their eviction.

The adivasi is the tiller . The Chotanagpur Tenancy Act and the Santhal Parganas Samiti Act must not be misused to trouble the adivasis. The land is ours and we mundaris have after a lot of struggle gained these rights. We will decide our own ‘development’.



**Kerala**

**P.T John**

Wayanad District

I come from Wayanad, i.e. the place where the Muthunga land struggle was started by the Adivasi Gothra Mahasabha . I salute you all leaders and activists of the adivasi struggle in India, in the name of the Adivasi Land Struggle in Kerala. Wayanad has a history of land struggles from 1900 onwards. The Adivasi Gothra Mahasabha under the leadership of CK Janu , the Adiya community leader from Wayanad has organised a strong movement. Adiya means slave. The entire Adiya community were bonded labourers earlier.

From 1992 onwards, various adivasi groups have given strength to the movement for survival, for employment, for food, for right to the land. In June-August 2001 a large number of starvation deaths took place in Kerala. After these deaths the Adivasi leadership decided to shift their residences to the capital Trivandrum. They put up huts in front of the Secretariat and the Chief Minister. Hundreds of adivasis huts were constructed in and around the Secretariat compound and in front of Ministers' houses. Eventually an agreement was drawn up - the government agreed to grant land to adivasis. That was the success of that struggle. The govt. assured that every adivasi will be given a minimum of one acre of land and on the basis of availability up to 5 acres will be granted. In the age of globalisation, starving people having nothing to eat, the system provides them with no support. This 48 days struggle meant a lot.

Intellectuals, people from the spheres of culture and media supported the struggle and this contributed to the success.

For a year after the struggle, we continuously pursued the matter with the government. We identified where lands are available and suggested that these lands should be acquired and given to the adivasis. But within one year the government distributed only 1380 acres of land. There are 53,472 adivasi families who are landless in Kerala. 22,491 adivasis have not even one cent of land. 30,981 adivasis are living in the colonies and have 10-15 cents of land. As per the agreement 53, 472 adivasi families will be granted land. Since government was delaying the process of distributing the land, Adivasi Gothra Mahasabha decided to enter into the forest called Muthunga – the traditional lands of the adivasis. The government says that these are encroachments, but actually Muthunga is the traditional land of the adivasis. Adivasi families were staying in Muthunga till 1970. After the Private Forest Nationalisation Act came into being they declared this area as a Wildlife Sanctuary and these families were evicted from here. They have been evicted because the Muthunga forest area has been given to the Birlas for eucalyptus plantation. The whole area was deforested and then given over to the Birlas.

It is now a barren land and so Adivasi Gothra Mahasabha decided to enter thereon. The Mahasabha laid down a condition that each family must pay Rs. 250/- and 25 kg. rice which will have to be given near a check post put up by the Mahasabha. And they declared this to be a

Scheduled Area. 44 colonies in Wayanad District have been included in the Scheduled Area. 838 families went to the Muthunga area. Every family brought rice and Rs. 250/- . They constructed their huts and began farming and the struggle in the forest continued for 45 days. During this period the govt. didn't come forward for conciliation, negotiation, settlement, nothing. The people continued their cultivation, living with their traditional folkdances, music, everything. They believe that they have every right to enter into that land, live in that land, - it is not a forest at all. It is a barren land in Muthunga forest area.

The fact has been acknowledged by various authorities including the Commissioner for SC and STs in his 29<sup>th</sup> Report that govt. has no right to evict the adivasis. But without any notice forest people and police entered the area. This area is on the boundary of Bandipur Wildlife Sanctuary and Mudumalai Sanctuary. BWS is in Karanataka and MS is in Tamilnadu and Muthunga is in Kerala. This area in the Nilgiris has rich biodiversity. The govt. initiated the eviction because the govt. was conducting a Global Investors meet in Cochin at that time and the govt had intended to sell a lot of properties to private companies. That's why without notice the police began harassing the adivasis. There are accusations that this is an armed struggle. But people have only bows and arrows, not even one gun or arms and ammunitions of that nature. They have only their knives for farming purposes and their bows and arrows for fighting the wild animals. Children, women and entire families have been harassed. They burnt down all the huts . Detailed reports have

been made to the National Commission for Women and the National Commission for SCs and STs. Now a CBI inquiry is in process.

We are happy because the movement is on the way to create a new world. Nobody can stop this movement. We believe that not only Kerala, but the entire south India – Kerala , TamilNadu and Karnataka will carry the message that people have the right to the land and that the peoples' movement will continue . We believe that adivasis will get the right to the land, not only the right, but the land itself. Within one month of the struggle the MoEF people from Delhi came to Kerala to identify lands for adivasis. Unfortunately they came during the monsoons. Wherever they went they saw only greenery and trees – and they said that this is an ecologically fragile area and this land cannot be granted to the adivasis. Then we told them that this is the monsoon season – wherever you go you will see greenery and richness of nature. We are proposing that adivasis be given land near where they are living. They will protect the forests. They will never disturb the forests and natural resources. Bureaucracy, the agents, the contractors and politicians are looting the natural resources – not the adivasis. We convinced them and this month, 3,000 acres of land are being given to the adivasis. It has been decided to hand over the government plantations to adivasis. This process is going on. The politicians and chairmen and administrators in the government plantations have been looting the adivasis. Now the government has said that adivasis who are working in the plantations are eligible to get that land. In the Sugandhgiri Project Area six

plantations are in the process of being handing over to the adivasis.

So my dear friends, all the dalit groups in Kerala joined together with adivasis. And these down trodden people having nothing, only starvation and unemployment - no social security, nothing.

There have been two success stories in this region. The second one is the struggle against the Tatas. The Tatas constructed a resort in the forest area of Nagarhole and the forest department and the government started eviction of adivasis from that area. The government had given land in the nearby areas to the adivasis who have been evicted. The adivasis started the struggle against the Tatas and the government. The struggle continued for a hundred days. Finally, physically the adivasis were able to stop the resort in that area and the Supreme Court also gave a verdict against the Tatas and their resort in Nagarhole has been closed down. These two stories are success stories in the age of globalisation.

We don't know what will happen after the Godavarman case in the court .... but the struggle will continue .. because it is for land, it is for survival and for the dignity of adivasi societies.



## ***Madhya Pradesh***

### **Bhurubhai**

*Arada Village*

*Dhar District*

The Ranger goes to the Village but does not speak to the people. Instead he and other forest officials speak only to the chowkidar and ask him where the survey should be done. If they were to ask the villagers themselves they would come to know where exactly who cultivates which land. When the forest officials begin laying new markers for the forest boundaries, they do not ask the local villagers – they simply lay the markers and then post forest guards in the area.

Forest committees have been formed in the area for plantation activity. These committees have been formed without asking local people.

We have been tilling these lands for a long time. But the forest department has filed many cases on us – on as many as 30-40 people from each village. We have won two of the cases filed against us. We have also paid fines many times, though we have been cultivating the land for generations. Now, we are being forced out from our own lands.

### **Mukeshbhai Duduwe**

*Devli Village*

*Badwani District*

Our situation is similar to what our friends from other states have reported. Our forefathers have been living on these lands for years. We have been paying fines for years. Forest committees have been forcibly formed. Despite the fact that the Gram Sabha is empowered to control community resources, Forest committees have been formed without asking

anyone's permission. These committees have created internal disputes among ourselves.

Regarding encroachments, we have been cultivating the land from our forefathers' time. They received pattas but these pattas have not being renewed and we are paying fines for cultivating these lands. Now we are being evicted from them.

### **Ghan Singh Patel**

*Chikhlia Village*

*Burhanpur District*

There is severe oppression by forest officials in our area. It is like dacoity. They come to our villages in 30-40 vehicles, chase away the adivasis from the villages and then steal anything they can find – goats, chicken, grain, money, clothes. The people are left with only the clothes on their bodies. This is the kind of terror that is rampant in Khandwa district.

Adivasis are forced to flee from villages to save their very lives. Sometimes they are chased by forest officials in their vehicles. In Dahinala, the Department jeep chased a woman for about one kilometre in the jungle and then drove over her and killed her. Later it was said that she came in front of the jeep and was accidentally knocked down.

Recently in Bakadi one adivasi was shot dead. He was doing work on his fields. The Forest department picked up his wife. When he and others pleaded not to take his wife away, the forest staff fired and killed him. The postmortem report initially said that the death was due to a gunshot wound. However a second doctor

said that it was due to a sharp weapon. It seems that the doctors themselves cannot properly ascertain what was the cause of death. This implies that this is a case where money has been paid to hush up the matter.

In Mandwa, an attempt was made to evict adivasis and remove their standing crop from the land that they were cultivating. When the adivasis tried to prevent the eviction, they were picked up and beaten on the road. One adivasi was killed. The Forest Department did not give the body to the people but cremated it themselves.

**Tejraj Singh**  
**Gauhani Village**  
*Satna District*

We have been cultivating lands prior to 1975. The Forest department has begun plantation activity on the very lands that we are growing crops. So all of us sat on a protest fast for 16 days following which the forest department left the village. In village Gauhani, we have been cultivating these lands from the time of our ancestors. People from the forest department used to come and take away 10 kilos of grain, pulses etc. One day the Ranger came, and accusing us of cultivating on forest land, set the huts on fire and got ready to dig pits on the land. People assembled and said that they have been cultivating these lands from the time of the rajas and maharajas, and that they have also been grazing their cattle on these lands. Then all the villagers went and sat down on the ground at the place where the pits were being dug and plantation being done. We said that we were willing to die at this spot but will not allow it to be dug. After 15 days the DFO and Collector came and asked us why we

were sitting there. We answered that our ancestors had been cultivating here. The DFO then was forced to make the forest boundary such that it excluded the lands that were being cultivated, and then a stone boundary was erected, demarcating the lands. But last year the same problem cropped up. The forest department crossed the boundary, entered our lands and began making a nursery.

**Shantabai**  
*Upala Village*

Badwani District

I have a patta from both the Forest and Revenue departments. But the Forest department is now ordering me to get off the lands. The Forest Department demanded Rs. 10,000/- from me. If I paid them the money they said that they would not evict me. But I said to them that I have the patta, so why should I give you any money? A few days later, they came and broke down my house and then set it on fire. See the photograph of the burnt house. But I am still cultivating the same land. The Forest department continues to come and threaten and harass me but I am still cultivating it.

One day my children and I were working in the fields. Suddenly, the forest officials came to put up markers around our cultivated area. We and others protested. As a result, my entire family including myself were beaten up and taken to the police station. After we were released, we went back to the same piece of land. We have continued to farm there and we will not move.

*[A significant part of this deposition could not be translated from the local dialect.]*

**Jangilal Mawasi**

*Torra Village*

Satna District

We have been cultivating land . The Ranger and the DFO threaten us that if we continue to cultivate the land then even our skins will not remain on our backs. They tell us, “Collect a thousand rupees from each house. Bring us liquor and chicken. Make arrangements for our food or else we will directly ‘book’ you.” We say, “We are poor , we live in small huts, we don’t have enough to eat for ourselves and our children. From where will we get a thousand rupees and chicken for you?” They said, “If you stay here we will thrash and skin you alive.” This has been our story for the past fifty years.

In 1976, in compartment number 270 in the forest, the government distributed Bhooswami pattas to about 70 adivasis. People have built 50 houses on these lands. Slowly a village formed there and people have been cultivating since. Now, however, the entire village has received eviction notices ordering them to leave the land. Therefore, the villagers went to see the forest ranger and requested him to reconsider the decision.

**Govind Awate**

*Nandgaon Bombalwadi Village*

*Raigad District*

In the Konkan area, there is a big problem being faced by the adivasis. On the basis of the 1927 Indian Forest Act, the Maharashtra Government passed a Private Forests Acquisition Act on 30.8.1975. The officials of the Konkan Division Revenue Department issued a letter to all revenue officials – collector, tahsildar, patwaris, stating that land in the names of farmers will be transferred to the Forest department. This was done behind the back of the farmers. Later, when the farmers went to obtain their land documents (7/12 extracts) from the Patwari's office, they found that in the 7/12 extracts various types of remarks had been entered - Use for non-forest purpose prohibited without prior permission of Central Government; ownership lies with Forest Department, Maharashtra government; pending as per inquiry under section 22A. Farmers brought these land documents to the Sanghatna. We studied them and found out that despite the fact that these lands are in the possession of and were on the names of the cultivators and their forefathers, the revenue department had made mutations in the records and transferred them to the forest department. We took out a morcha on the Divisional Office on 28.11.2001. After that the Commissioner, Konkan Revenue Division admitted before the delegation of the Shoshit Jan Andolan that they had committed an error, and that they would make amends for the same. However, till date nothing has happened. The revenue authorities have misused the law. They had not, as per the law, issued notices to

the farmers prior to making the mutations. As per the law those who own less than 30 acres of land are exempt from acquisition, but the Maharashtra Government has transferred landholdings less than 30 acres on to the name of the Forest Department. This is unjust, and we will not suffer it.

**Ramdas Tadvi**

*Ambabari Village*

*Nandurbar District*

Last year on 8<sup>th</sup> July the Collector Shri Ashim Gupta and the DFO came to our village, - Ambabari, Akkalkuwa taluka, Nandurbar District, and threatened us – those who are cultivating land in the forest, whom the government calls encroachers. But will we get threatened? All the people in the village, men, women and children assembled. Villagers from the neighbouring Bharadaripadar village also joined us. People said let us go to the land which lies within the boundaries of Bharadaripadar. But Ashim Gupta said, “No, no, no”. People said come with us and let justice be done in the village itself, in front of the people. But he got angry, he hit a woman with a stick, abused and beat children. People from neighbouring villages gathered, and he tried to apprehend the activists of the sanghatna, and threatened them with a pistol. People including women and children came forward and said, “Arrest all of us, but do not arrest only the activists. It is our problem, we are fighting for it, why are you catching hold of the activists?” But he did not agree. All the people walked for 2 kms. to near the dam site, and chased the Collector out of the village. The women

picked up stones to throw at the Collector. Their patience had been exhausted. The people were beaten. We have the photographs of the two men who had been beaten up.

In Rozkund village, on 16<sup>th</sup>. September 2002, the Ranger sent his foresters and others to cut the standing crop, and that too during the Ganpati festival. Here too the people gathered, - and because of the strength of the Sanghatna the Ranger was also chased away.

After the Ambabari incident we took out a morcha of 5,000 persons to the Akkalkuwa tehsil office. After that the forest department got cowed down.

### **Kamli Ravji Phuphane**

*Ghevanda Village*

*Thane District*

I have been cultivating my land (in the forest) for the past 35 years. Earlier my father-in-law and mother-in-law were cultivating this land. Foresters come time and again and threaten me. I have suffered a lot. Suffering.... Suffering..... Once the forester said that he will measure my plot and make it on to my name. They went upon the land and measured it. They measured the girth of the standing trees, and said that the land is yours, but the trees we will fell and take away. They measured all this and then came to my house and said give us a meal. I fed them a meal, I served them chicken, also liquor. Then they asked for their "wages". When they asked for wages, what could I say? The government has sent you to measure the lands, how can I give you wages for this work? They began to threaten me and eventually took some money from me. Three years elapsed. Nothing happened.

One day the foresters and SRP entered upon my field. They cleared everything, they cut the nagli, vari, udid, tur, and khurasani (oilseeds). I tried to go on to the field and prevent them, but they said that if anyone comes near we will fire. I got afraid. I suffered this for a short while, but how long could I allow this to happen to my own field? I went and told them that I also have children, stop cutting the crop. But they said, come catch hold of our "lund". So I said by catching your "lund" will my children live? They threatened me more and more. They told me to keep quiet or else they would shoot and kill me. In this way, we have had to bear a lot of hardships.

### **Karan Singh Kokani**

*Visarwadi Village*

*Nandurbar District*

We have been cultivating land in the forest from the time of our ancestors. The forest department calls our cultivation encroachments. Our families have been surviving on these plots. The British government cheated the villagers who were settled in Nawapur taluka, and told them that they should get out from there. They threatened them that the lions will come. If they do not eat you up, then you will die eating the bullets from our guns. That is how we were forced to leave our lands. The old land records mention the survey numbers of our lands, our houses, our temples, our wells; also the coop numbers and compartment numbers ; maps are also available showing all these details. Borda, Umbarvihir, Salwan, Dilmal, and other villages are all the old traditional names of our villages, and these can be found on old maps - such

records are available both with us and the government. People have records – copies of court cases - to show that they were cultivating in 1970-71. In 1974 the SRP came to create terror, and the forest guards came with them and entered our villages. In 7 villages firing took place and people got injured. Women were arrested. In 1990-91-92, on the instructions of the Forest Minister, the MLA and the MP, police looted our villages and also burnt down our houses. The Bagul Committee came to Nawapur taluka of Nandurbar District in 2000, and declared 1050 cultivators to be eligible for regularization. In 2001 when the Deodhare Committee came the people told them that the persons who had begun originally cultivating have now died. And in 2003 as per the Amravati pattern the inquiry has taken place in our villages. The Gram Sabha has decided that the lands are to be regularized. With the signature of the Sarpanch and the elders of the village, we have tried to get our plots regularized. Our slogan has been, - everyone must get their land on the strength of the Gram Sabha.

**Kirsingh Vasave**

*Gaman Village*

*Nandurbar District*

I am the son of a displaced adivasi farmer from Akrani taluka in Nandurbar district. We have been living since the time of the British in these forest villages. Even today no land here has been made out as revenue land. In the 33 displaced villages the total area is 55,000 hectares, out of which 14,790 hectares was to be given the status of revenue villages. In the year 1985-86 the survey was done and in the year 1992 a notification was issued. But this notification was cancelled in 1994 because nine villages

of Akkalkuva and 24 villages of Akrani were going to be submerged in the Sardar Sarovar dam. If the land was converted from forest to revenue land, each person would become the owner or “khatedar” of the land and would get a patta. Then all these villagers would become eligible to receive 2 hectares each as rehabilitation land. Because of this they cancelled the notification of 1992 in the year 1994 and deliberately kept us landless – kept us encroachers. After that the forests were submerged in the Sardar Sarovar and trees in the forests were cut down in the name of rehabilitation. They started afforestation – in the name of compensatory forestry and brought saplings and planted them on the patta lands of the adivasis. This they have done extensively in Akrani taluka.

Then in 1995 after the Supreme Court order in the Pradip Prabhu case, a committee called the Badal committee was appointed under the chairmanship of the Deputy Commissioner Shri Badal in Dhule district. The Committee was appointed to verify the claims of the adivasi ‘encroachments’ during 1972-1978. But the Badal Committee did not do any work. So on the demand of the Narmada Bachao Andolan and Punarvasan Sangharsh Samiti, in 2001 the Daud committee was formed and this committee came to the villages and took peoples’ statements. And in Dhadgaon tehsil they searched out the claims that people had earlier submitted, but which had been kept hidden in the tehsil office.

The Maharashtra government has forwarded a request to the Central government for the approval to convert 14,790 hectares within forest villages to revenue land. But approval was given for only 4033 hectares while 8000 hectares were called encroachments. They said that these 8000 hectares are to be inquired into by the

Deodhare Committee. In Nandurbar, 44,000 have placed their claims before the gram sabha. Under the new government resolution the gram sabha has the powers to decide on the eligibility of an encroachment. But the officials there paid no heed to this provision and refused to accept it.

With the funds received in 1992- 94 for plantation in the basin villages of the Narmada, they forcefully did plantations in areas where people have been cultivating for generations. They kept watchmen in the area and created tension. In areas where people are united, where there are sanghatans, we did not allow them to plant on our lands. Plantation was done only in areas where there were no peoples' organisations. Not a single tree / sapling that they planted ever survived. While planting they knew that the saplings would get washed away. But still on paper it was shown that the funds had been used for plantation. Trees never grew, the area was barren, so people started cultivating. Now they have started filing cases against us and putting us in jail. On the 14<sup>th</sup> they caught one boy who was taking some wood from the forest and beat him very badly. The court ordered him to pay Rs 300 as fine for cutting one single branch. From where will that poor boy get Rs 300 to pay the fine? He was jailed for 15 days.

**A.K Pany**

*Dhenkanal District*

Last year mass organisations in Orissa formed the Orissa state level federation called the Orissa Jan Sangharsh Morcha. The fundamental question today is whom does the forest belong to? Does it belong to the state powers/rulers or does it belong to the adivasis of the country who have been living there for generations? This should be made clear first.

Since before independence adivasi communities used to live in the forests. There used to be a lot of forests, a lot of trees and biodiversity. People had a relationship with the forest. The kings and rulers allowed adivasis to live in the forests, they knew that the adivasis would protect the forest, save it from forest fires, take care of it and preserve it. They knew that as long as the adivasis are there, the forests will be there.

You look around here itself and see all these big wooden panels that have been used .... for whom have the big trees been cut down? All the trees have been cut down to bring wood to these big cities. And then today they blame the adivasis.

As per official figures there are 28,135 sq. kms. of forest land in Orissa. Of this 26,329 sq. kms are reserved forest, 15,525 sq. kms. are undemarcated protected forest and 16,221 sq kms. are demarcated protected forest. Official figures state that 35% of land is forest. This is a huge lie. It is absolutely wrong. There are no forests today, under whatsoever category. Come and see for yourself. On what they call protected forest, there is not a single tree, not a single plant. Even

been included in the reserved forests category. The tragedy is that they have not understood that adivasis used to live in and protect the forests.

In 1972, to bring everything under their control, the state government appointed a Forest Inquiry Committee and even made a sub committee of 'jathiya' jungle board. Both committees recommended that the forests should be given to the adivasis. The Orissa government adopted the recommendations and formed the Orissa Forest Act 1972 and Orissa Illegal Land Prevention Act 1972. According to both, Acts, forest land was supposed to be regularised. But now on the pretext of the Forest Conservation Act these lands are not being regularised.

There are lakhs and lakhs of adivasis who do not even have a patta for their houses today. Santhal adivasis have been living for generations in village Sunia in the Anantapur area. It is in a reserved forest. There are altogether 213 acres of land of which only 19 acres have been transferred on to the names of the adivasis. The land records show 'dakhil note' or entry note because apparently the previous category was of 'forest'. We do not know under which law they are doing this. There are several examples like this where adivasis have been deliberately evicted from their lands through survey and settlement processes. Till today they have not completed the record of rights. Even in Koraput and Ganjam where they have completed this process they have not done it properly.



In the entire eastern ghats region adivasis do 'poodo' cultivation, in small patches in the hills. They clear small patches and cultivate for a year, and then leave the land to "breathe and come back to life". They return to that land only after 6-8 years. This is an age old practice which they have been doing for generations and surviving. But today big companies, the Orissa government has granted these lands on lease to big companies like Jindal, Indal and big multi national companies. But the adivasis are not ready to give up their lands so easily. Their lands are their source of survival. In an incident three years ago they killed three adivasis. The Orissa government is trying to evict 50,000 adivasis from the areas where they want to start mining for bauxite, chromite and coal. They will start mining there and will evict the adivasis. Who will die? - the adivasi. There are no rights recorded in the land records so the people will not be eligible for rehabilitation. Where will they go? Wherever they go they will be forced to cut the forest. What will two lakh adivasis eat?

In response to the letter of the I.G Forests, the adivasis of Baliguda range have been evicted. On 9<sup>th</sup> January the Chief Secretary sent letters to all District Collectors to evict adivasis, under section 27 of the Orissa Forests Act. 262 families have been evicted. 262 families is not a very large figure for the Delhi government, so they do not care.

In addition, all categories of revenue forests eg. janya jungle, patra jungle, patit jungle, village waste land have been transferred to the forest department . The Revenue Secretary sent a letter to all the Collectors regarding this last October.

Protecting the forests is our religion, our 'dharm'. We have no life without our forests. We know the responsibility of saving and protecting the forests is ours. The state only makes a mockery of protection. We will continue to protect our forests.



## Rajasthan

### **Mangilal Gurjar**

*Udaipur District*

Seven districts of south Rajasthan, viz. Udaipur, Rajsamand, Dungarpur, Bansvara, Pali, Sirohi and Chittorgarh are part of the Jangal Jamin Jan Andolan. In 1991 the Rajasthan government and the Rajasthan Forest Department deliberately did not publicise the 1990 Government Resolution because it had something good to offer the adivasis. But when this information leaked and people came to know about the GR they demanded that cultivations before 1980, should be regularized.

The Forest department has committed atrocities - entering into peoples' houses without permission, taking their chicken and goats, demanding cash at every harvest, collecting 100-200 rupees, filing of false cases, sending to jail. These were routinely being done. In 1995, when the harassment went beyond limit, the Jangal Jamin Andolan was formed. About 1000 people assembled in Udaipur and demanded that our cultivations be regularized. In February 1996, 5000 people began an indefinite dharna. During this Dharna people came walking from their villages, and we decided that we will not withdraw the agitation until we receive some concrete assurance. We sat on dharna the entire night. On the second afternoon the Commissioner for SC/STs gave us a written assurance on behalf of the Chief Secretary that nobody who was cultivating prior to 1980 will be evicted, and that if that were to happen then it should be brought to our notice. Further a survey will be started to

identify the lands in our possession, after which action will be taken. We then withdrew the Dharna.

But till today no survey has been done. We have submitted 17,608 claims to the government. We asked them how many claims they have surveyed. They showed us a list of only 11 people and said that in the whole of Rajasthan there are only these 11 people who are eligible for regularisation. On hearing this people got very upset and demanded to know whether everyone else in Rajasthan are therefore encroachers. The department then replied saying that they have sent a list of 5395 persons to the central government for approval. But when we demanded to see this list they refused to show it. When we submitted a written demand they said that the lists are available at the range offices. At the range offices we were told to go to the Forest Conservator's Office. In this fashion we went from office to office and till today they have not given us any lists.

While we have submitted a list of only 17,608 persons, our MP the Hon'ble Girija Vyas had in the 1996 Dharna said that there are about 40,000 people who are in possession of land pre-1980 and that her government will take steps to ensure that their claims are regularized. But since then nothing has happened in spite of our repeated attempts to meet the government. After the Bhairon Singh government came to power we even went to Jaipur, but nothing came out of our visit. And now we are still trying to speak to the Ashok Gehlot government, but on such an important issue they are not even

ready to spare half an hour of their time to speak to us. In the winter of 2000 when we sat on dharna in Udaipur, Ashok Gehlot came to Udaipur and reassured us that he will do something and called us to Jaipur for discussion. When we went to Jaipur he even refused to meet us saying that he doesn't have the time. In spite of all that has come in the press, in spite of all the protests, dharnas and rallies the government continues to ignore us.

Adivasis have been blamed for the destruction of the forests but all forests have been destroyed by the government itself prior to 1970. You can see all the hillsides around Udaipur. During the British period, Katkaris (Kasodiya) were brought into the area and employed to cut down the jungle. Everyone knows about this. It is not true that adivasis are destroying forests. As per the government records the area under jungle is increasing in the adivasi areas of Rajasthan. Instead the area under forests has decreased in non-tribal areas.

When the Kumbargarh Sanctuary was declared, the government did not issue any gazette notification. The law stipulates that people should be informed in their local dialect; but the order was not made public. Now the claims of cultivators have become time-barred and so people can be easily evicted. Today they are being given eviction notices. There is not even one instance where the forest Dept has given an Eviction Notice in 1991, nor has been a site inspection of the lands in their possession. The Forest Dept. cannot be the one sitting in judgement, it is a party to the dispute. We want a different agency – a neutral agency - the Chairman must be neutral - then only can we expect justice.

As of today hundreds of people have received Eviction Notices. 17 people in Palegule who have received eviction notices have gone in appeal to the ADM . In Bogunda tehsil of Udaipur District, 300-400 persons have received eviction notices. They have been staying there since many generations but nobody is listening to them. They have receipts of 1971 and other documents but these are not being accepted. They have been served eviction notices stating that as they have no proof of possession, they are not eligible for regularization. There is not even one instance where the Committee has recommended that the encroachment should be regularized. We demand that the Committee be reconstituted and that the Committee should re-conduct its inquiry properly, visit the site of cultivation and decide judiciously . The decision should be taken in the Gram Sabha Those who are elders in the village should be asked regarding how old the cultivation is . Only then will the truth come out.

We demand that a proper survey should be conducted and fact finding be done of 50,000 persons in Udaipur , Bhilwara, S Rajasthan, Kota, Bara etc.. As per the 1991 Notification it is clear that if any person gives oral evidence that he is cultivating prior to 1980 and that he has developed his land – dug a well, built a house etc. and if the spot examination confirms his claim, then the land in possession is eligible for regularisation. But oral evidence has not been considered, and only documentary evidence like jail sentence, receipts, written evidence have been considered as evidence. In all only 5,695 cases have been recommended for regularization. All

of these are probably influential persons, because as far as we know no poor adivasi's claim has been approved. The department has not issued any receipts. If at all receipts have been issued these receipts mention that they are being issued for transport of timber, theft of forest products, mahua etc. These types of "ghatiya" receipts are of no use to the people.

On the one hand the govt. claims to be a friend of the environment. You see what happened in Rajsamand district, - the mines have destroyed the entire area, and the water table has gone down. The Rajsamand Lake has become dry and springs have disappeared. The govt. is giving permission for mining again but is not regularizing the adivasis lands. They are pandering their vote banks but are not regularizing the cultivations of the adivasis who have been living there for generations and for whom it is a livelihood resource. The government tells them to bring proof . What proof should we bring? We have grown up in that soil, live according to the traditions of the area, wear a 'dhoti', speak the language of the area. Asking for proofs is just an excuse. The fact that people are living there is sufficient proof.

In the written assurance given by the Chief Secretary it is clear that the opinion of the Gram Sabha will be taken. Why are they not asking the Gram Sabha? We do not agree with the forest department when they say that all claims have been rejected and demand that this process should proceed in an appropriate manner.

**Kalla**  
*Kisangad Taluka*

### *Banswada District*

We have been facing a lot of problems. On July 3<sup>rd</sup> 2003, I had gone out on mazdoori work. My wife was at home alone. A group of 20-25 persons from the forest department including the beatguard and ranger came there. We had 8 houses in the forest, our ancestors used to stay there and the forest department people came to evict all the eight houses. People chased them away but they cornered our daughter and forcibly took her signature. They came back after eight days and destroyed all the produce of cotton, maize and grain and they took away things from our house. They have even taken away my water pump. They threatened us saying that this is not your ancestors' property. I said to them that my forefathers have lived and died in this place.

We pleaded with them saying, "Please leave us at least a little grain to eat, sahib". They ignored this, took away some of the grain and destroyed the rest. I rushed to the police station to lodge a complaint. They told me this concerns the forest department, not the police. Then we went to the Collector. He also told us to leave. Then when the area manager came we showed him our 'pattas' and he said they were false pattas. But we said to him that these pattas had been issued by him himself. They are not ready to accept the pattas and they are not ready to show us the area maps. They even arrested ten of us and took us to jail.

Similar problems are being faced in Udhavgad 8-10 people who had earlier been given pattas have now been evicted. About 30-35 persons have been harassed and abused in the area. In Dungarpur people are facing similar problems. They

even destroyed the house next to mine. They have lodged false cases on people and have sent them to Udaipur jail. Once they filed a false cases on 12 people accusing them of having killed the forest department people. They lodge false cases on us, destroy our crop every year and then evict us. They do not file land related cases on us but false cases that we have killed rats, birds and other wildlife to harass us and put us in jail.

**Sunderlal Sari**

Kotra Chavni Village

Udaipur District

I am an activist of Lardesh Kisan Mazdoor Sanghatan. Nearly 2000 adivasi of Theroda are cultivating forest lands that should be transferred on to their names. Whatever be the status of the land – forest or revenue , the issue is that people have to cultivate at least for six months to feed themselves. The land around the area is hilly and undulating. If an adivasi has 10 bighas of forest land in this region he can effectively only cultivate 2 bighas. He also plants trees and uses it for grazing. In Theroda, people have cultivable lands that sustain them for only six months. The other six months they have to go out as migrant labour to Gujarat and other parts of Rajasthan.

They have been living here for 40-50 years and if these people are evicted from these lands one cannot image where they would go. They have always been under privileged , they work to survive, feed their children and educate them. They have been living on these lands, growing trees, digging wells and have

built their houses. The forest department people come there and in the name of the Supreme Court take money from them and do not issue any receipts. The forest department people say, “You can continue cultivating if you give us some money. But if you cultivate too much we will evict you.”

Not only in Theroda but in the whole of Rajasthan, the revenue and forest department have not been able to decide which land belongs to whom. The forest department says it is their land and the revenue department says it is theirs. The poor farmer is caught in the middle of this dispute.

There is a farmer in Theroda on whom in the year 1963 a case was filed. His name is Dhorathabra. He had to spend thousands of rupees. For 15 years this case remained pending. Later other cases were filed on him and he was even put in jail and his house was also burnt down.

**Natwarlal Grasia**

Devgarh Village

Chittorgarh District

I have brought with me today the appeal of the people of Kadanaband and Mahiband. They have lost everything. They have been beaten from all quarters. When the government built the dam here it gave people compensation. People took the money, but thought that they will not lose their right over the land. As the dam was built , the water in the river rose and people lost their lands. With no choice left, the people left their lands and went into the Sitamata forest areas. At that time it

was not a sanctuary and people encroached on the forest land during the 1960s and have been living here ever since. We have been fighting for regularization since then. The forest department has acted very cunningly. They ask the people to show their pattas and any other documents. They then take them away on the pretext that they will show it to the higher officials and obtain regularization orders in their favour. Five years back one forest official collected these proofs from many people and then said that he lost the papers in the river. People have been duped in this fashion. These things continue to happen even today. People have hardly any water to drink and food to eat and here they are taking away our rights over the land and the forest. But these people are very simple, they continue to live in fear.

**Narsaram**

Akra Bhatta Village

Abu District

I am an adivasi myself and in the place where I stay, Shiroi, 80% of the tribal population is living in the forests. In 24 villages people have been living there from much before 1980, in fact from generations. But till today they have not received any documents of possession from the state government. And now the forest department is trying to evict us. In Surbagla panchayat, Narsamithagar has possession of his land since his forefathers. Bundings have been made in his fields, wells have been dug, even a school has been built. But he was thrown out of his house and his house and crop was destroyed. They are still giving

eviction notices to people in Abrod tehsil and in Pinwada tehsil.

In Pinwada Tehsil, the forest department rejected all the pattas that were previously given to us by the revenue department.

I request the Supreme Court to give us justice.

**Ganesh Ram**

Kurka Village

Pali District

*In our area the forest department has burnt down and destroyed houses. We went and made a complaint with the police but till today there has been no hearing of the case. These things continue in our area even today. For the last 50 years and even before the rajas and maharajas, people have been living in Dehsari tehsil in the Kumbargad sanctuary. But till today they have not been given any pattas. The settlement of the adivasis on the fringes of the forest have been declared to be forest land and they have therefore not been given pattas. But the adjacent settlement of the Rajputs which is in the core of the forest has not been declared to be forest land and so the Rajputs have been given pattas by the revenue department. It is sad that those living for generations are now to be evicted while the more influential and better off are given pattas.*



## Tamil Nadu

### Shankar Gopalakrishnan

With regard to Tamil Nadu, the situation of the adivasis is that they are almost completely invisible. They are seen as a kind of dispensable commodity which can be moved if necessary, can be thrown out if necessary, not a community with any specific needs or concerns or issues. Tamil Nadu is the only state in the country that has not implemented the Act preventing the alienation of tribal lands by non-tribals, as required by the constitution. Nor has Tamil Nadu declared any area to be a Scheduled Area under the Fifth Schedule nor has Tamil Nadu constituted a Tribal Welfare Council or any of the other constitutional requirements for adivasi rights. In that sense, for political parties, for the government and for most movements, adivasis have been an invisible factor and have not been part of the political system of Tamil Nadu.

Godavarman Thirumalpad, who filed the "Forest case" is a resident of the Nilgiris district in the north western part of TN which has a large adivasi population. He filed the case in order to protect the forests of the district which are being destroyed by the rampant land grabbing and encroachment. In the six years from when that case was filed evictions have been taking place all over India, but even after the interim orders were issued by the Supreme Court, 3000 acres of forests have been destroyed in the Nilgiris. Nothing has been done regarding this. The people who have been evicted are the dalits and the adivasis - all small landholders. About 200 land grabbers control more than 10,000 hectares in the district. Their actions have been completely ignored by the State. We

see

again and again that in TN it is not just the adivasis, but also the dalits, the small farmers and all the marginalized classes who are evicted as they are considered as encroachers. But the larger encroachers, the land grabbers, the big corporations; they are simply ignored.

What has historically happened is that the forest department has declared settlements or sanctuaries without any notice, notification or due process. During British rule, all of TN came under the Madras Presidency. All the reserved forests were declared prior to independence. And no settlement nor legal procedure had been followed. Till this day no one knows the boundaries of the reserved forests in Tamil Nadu and the forest department demarcates boundaries based on the political climate in that area at that point of time. Today there is a movement building up that there should be no evictions in Tamil Nadu. So far there have been no evictions except in the Nilgiris District. But 1500 people have been issued eviction notices.

Lastly, the evictions issue is not just an adivasi issue, particularly in Tamil Nadu. It is also a dalit issue and an issue of small and marginal farmers, particularly if you look at Kodaikanal, Gudalur and other parts of T.N where eviction notices have been issued.

### K. Thangaraj

*Vasalur Village, Kollimalai  
Namakkal District*

The people of Kollimalai with a high adivasi population have been facing harassment from the forest department for almost 25 years now. Prior to 1980 there were not so many problems here. People were allowed to live here. Now there has been a lot

of pressure , there have been beatings and harassment. False cases have been filed against adivasis who tried to stop the forest department from cutting their crops. The government has tried to declare their lands as revenue waste lands, so that when they are declared as waste land they can be handed over by the government to any buyer of their own choice. Pineapple trees, coffee bushes, banana trees and other crops have been cut down in several areas. More recently in Kollimalai, eviction notices have been issued in 12 villages. The villagers organised a “rasta roko” in front of the Collector’s office and the Collector agreed to look into which lands are forest lands and which are not. So at least in the next week we will not see imminent evictions..... but they may happen within the next few months.

**C. Selvam**

*Kottapatti Village*

*Dharmapuri District*

We are from Siterimalai and Vettalmalai . Having declared that people have a right to collect minor forest produce, the government has now taken the position that they will limit the kinds of MFP; certain kinds of honey cannot be collected, certain kinds of plants cannot be collected and so on. And they are also placing limits on the timings during which people can enter into the forest areas. People have to be back outside the forest by 6 p.m. after which the gates will be locked. Any kind of cultivation inside the forest is completely banned. They are only allowed to take out specific kinds of minor forest produce as per the list drawn up by the forest department. This is making life next to impossible. These rules have now become convenient weapons for the forest department to extract bribes, put false cases on people etc.



## Uttaranchal

### **Trepan Singh Chauhan and Vinod Padoni**

Many persons from other states, particularly adivasi areas have put forward their views; our issues are not any different. We are from Uttarakhand – not Uttaranchal. I will place before you the short history of forests in Uttarakhand . Only after the British came to Uttarakhand, the state began to control the forests, and the forests began to get commercialized. Due to the British forest policy, trees were cut on a large scale and the villagers were physically alienated from the forests. As in other places, in Uttarakhand too, where there are People there are forests, where there are villages there are forests, and where there are forests there are villages. They are complementary to each other. Due to the large scale reservation of forests by the British during 1911-17, and severe restrictions on people's forest rights, large areas of Pine forests were set on fire by the villagers in protest. Concerned at the people's alienation, the British set up the Kumaon Grievances Committee in 1921 to identify the causes of people's anger. This committee recommended the restoration of people's rights in over 3000 sq. kms. of the RFs and handing this area back to the Revenue Department from the FD. The committee also recommended creation of village forests to be managed by elected Van Panchayats. Accordingly, the Kumaon Panchayati Forest Rules were notified in 1931. Under these, over 7000 Van Panchayats are managing their community forests in Uttarakhand today. A recent study based on satellite data found that the condition of Van Panchayat

forests is as good as that of RFs despite their having received almost no financial support from the government compared to the crores received by the FD.

Post independence the government of India continued the British policy of commercial exploitation of forests. Instead of strengthening and supporting Uttarakhand's unique Van Panchayats, through revising the Van Panchayat Rules in 1976, the govt. increased the control of both the FD and the Revenue Department over their functioning. Their share of income from their forests was reduced from 100% to 40% and to use even this reduced income, they were required to obtain the DC's permission.

The situation took a turn for the worse with the introduction of Joint Forest Management (JFM) with Van Panchayats under the World Bank funded UP Forestry Project in 1997. Instead of JFM on RFs, as in other states, in Uttarakhand JFM brought autonomously functioning Van Panchayats under the FD's control. Under the Bank project, the Van Panchayat Rules were also radically revised in 2002 making a forester or Range Officer the member secretary & joint account holder of every single Van Panchayat in the state. Now every VP has to get its annual budget approved by the DFO who can make changes to it if he deems fit. The Van Panchayat Sangharsh Morcha has been demanding withdrawal of the new rules and has drafted its own rules for acceptance by the govt. Till now the govt. has not changed the new rules.

Let me share some of the problems that we have had with joint forest management, and specifically the

problems that women have been facing. During the Chipko movement it was decided that we will protect and regenerate all our forests - whether they are Van Panchayat Forests or the reserved forests under the FD for our livelihoods and survival. Village women have therefore been protecting the forests. But suddenly, JFM was introduced and the forest personnel came and said that now we will take charge. JFM changed the practice that we had been following since long, viz. that of 3-4 villages that came under one gram panchayat having joint responsibility for their forest. The forest personnel replaced this by transferring this responsibility to only one village. With this they created tension between the villages and even today Kahabada, Bheti, Tabadgaon etc. are fighting each other in court. They have destroyed the peace of the forests and harmony between villagers. We have repeatedly asked the government that when our women have protected these forests for ever so long, what is the need for you to interfere. Now neither is the forest being protected nor is the Rs.15 lakhs coming in through JFM being handled transparently. It has created infighting among the villagers. We have continuously demanded that this program be discontinued.

In addition, a huge area of Uttarkashi is to be declared as a National Park. In the areas of Kedarnath and Badrinath where we stay, it is cold for eight months of the year and we have snow for four months. Rearing livestock has been people's traditional source of livelihood here but now the government is saying that livestock and cattle should not enter the forests. They are even asking us to start using gas instead of firewood.

What will we do with gas connections? Will that keep us warm like firewood? People have been protesting against being asked to take gas connections. We don't need gas. We have been living in these forests for generations, and our traditions and culture are intertwined with them. We worship the forests and have a strong bond - 'rishta' with them. During summers when the weather is warm, we take our livestock to the higher Himalayas. Now they have put a ban on this; how can the forest department tell us that goats, sheep and cattle should not go into the forests? When there are marriages in our community we give goats and sheep and wool as gifts - so people can keep warm because it is very cold in Uttarkashi - the area of Gangotri and Badrinath. They have even given people notices under section 4 of the Wildlife Protection Act. We cannot understand where people will go. When some of us in Uttarkashi protested against this, they filed cases against us. In the Uttarkashi area it takes a whole day to go over the hills and another to come back. People have to go twice a month to the Court in this manner.

Further, women face extreme harassment. The forest department and other government personnel verbally and physically abuse the women. The men are away at work and when they return they don't have enough money to do anything. This is the horrible situation in Uttarakhand. All our Van panchayats, which were previously mainly under the revenue department, are now under increased forest department control and they now harass us. Forests that we have preserved and grown for generations, they have now brought under parks and

sanctuaries and have made our lives  
miserable.

**Harekrishna Debnath**

We live in the islands of Jambudwip. Another community that has been seriously affected by this forest case is that of the fishworkers, who are both dalits and scheduled tribes. The forest department has unleashed terror in the forest areas where the fishworkers live, like for instance on 300 sq. kms. in Orissa. Now they have entered into the water basins. The Central Empowered Committee has imposed a ban on the use of gill nets along the Orissa coast right from Baleshwar to Jagatsinghpur. About 100,000 fishermen will not be able to go fishing anymore. How will they survive? They have done a similar thing in 21 islands in Rameshwaram in Tamil Nadu, where people have been fishing and earning a livelihood for generations. Now for the past two months the forest department has imposed restrictions on people entering this area. Today people are starving there. In Ratnagiri and Sindhudurg districts and many other areas the story is the same.

The fisherpeople live in the land or forest nearest to the coast. The forest department does not even know which forest they are talking about. Is it the rainforest, inland forest, hillforest, mangrove forests? What is it? These mangrove trees grow with the salt water of the sea. These forests and sea need each other. There are waterbodies in the forests also. If fishing communities do not fish there, what else will they do? Now the CEC is telling us that fishing is a non-forest activity. They do not even know what is a forest activity and what is fishing. These fish are not available anywhere else but in

mangrove forests because these mangrove forests require saline water and only here you get this type of fish. In the near future if we do not struggle and resist we will end up with many more Jambudwip-like situations all across the country.

Jambudwip is an isolated island 8 kms. into the sea. There is no habitation here. For generations and generations fisherpeople go there in the month of October and stay there till February and fish there. This is called transient or seasonal fishing. In the winter months nearly 10,000 fisherpeople go to Jambudwip. They build make-shift camps, from weeds and bamboo which they carry from the mainland. They live there for 5-6 months and come back for what is called natural sun drying of fish. The fish landing station at Jambudwip is both an operation station and a fish drying bed. The fishing ground in the sea nearby and the mangrove forests are all part of one fishing ecology. This is how our ancestors lived.

Till today not a single land or forest survey has been done in Jambudwip. Only when this case started did we come to know that in 1939 the entire Sundarbans had been declared as reserved forests. Perhaps a portion of this land is within the boundary of the Reserved forest. But no one still knows. But people have been fishing here much before the forest department office was built here. Records say that people were given passes by the forest department in 1954 to use the island for five months. The department collected taxes for this till 1998. After the circular of the I.G forests in the month of May the Forest department told us that

we can not go to Jambudwip. We try to tell them that we do not live here, - this is only a temporary seasonal activity of fish drying. We do not even have permanent constructions there; we only build temporary hutments. A particular IAS officer there does not even pay heed to the state government and is in cahoots with some environmental group. The CEC visited Jambudwip in the month of December.

Before we go into the sea we collect and keep lots of straw, grass and nets, which are used to dry the fish. One day the forest department people came and burnt down all this, worth lakhs of rupees. So on 21<sup>st</sup> November – on World Fisheries Day we, - more than 2000 fishermen - went into the sea and decided to stay there with our fishing boats in protest. On the 32<sup>nd</sup> day i.e. on the 22<sup>nd</sup> of December with the help of Shri Manoj Bhattacharya and Shri Sunit Chopra, the Parliamentary Standing Committee, was sent to the island. After this we were able to go there and that is how we could use the island for a month till the end of January. We showed the CEC all our documents but still the CEC thinks that fishing is a non-forest activity. But we know that the state government is going to give us the land. We have been taking care of these lands for centuries and will continue to protect them.



## National Campaign

**Pradip Prabhu**

*National Convenor*

*Campaign for Survival and Dignity*

We wish to place before civil society the reason why we hold the position that the tribal people and other forest dwelling communities have the right to reside in their forest habitat. We also wish to assert that it is absolutely necessary to evolve a tribal forest interface which would ensure both conservation of the forest and a life with dignity for tribal communities in their forest habitat. We therefore submit our arguments: Towards Survival and Dignity - A Tribal Forest Interface Based on Equity.

*Contested Belonging*<sup>89</sup>

We submit that the tribal-forest interface reflects a chequered history of contested belonging. At one end of the spectrum is the position that the future of both the forest and the tribals necessarily depends on the sustainable advancement of the other. For centuries the tribals were considered to belong to the forest and were called that way. Ensnared in the lap of nature, they built up a civilization centered around nature's bounty. The tribal people themselves believed they belonged to the forest, much like a child belongs to its mother. The tribal ethos and spirituality was built around the principle that 'the forest is the only power in the known universe that converts the energy of the sun into food', a truth only recently understood by most others. The Warli tribe celebrated the 'forest as the sustainer of life'; deified it as

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<sup>89</sup> Karlsson B.G. 'Contested Belonging', Lund Monographs in Social Anthropology, Lund 1997.

"hirva"

(literally meaning green) and placed it at the center of the pantheon, to be worshipped as the spirit that sustains all life, including humans.

At the other end of the spectrum is the western understanding of environment, which is gaining currency among Indian environmentalists. Western thought holds that the forest is 'wilderness', bereft of human presence and activity, to be experienced and enjoyed by humans as an esoteric act of leisure. By implication, tribals are unwanted elements in this wilderness, as they threaten its survival. Hence in the new scheme for forest conservation, tribals are required to be shifted out where forests are to be 'conserved' and evicted where forests are to be 'regenerated', oblivious to the fact that they cannot live with dignity in the urban jungle where they will be inevitably forced to flee.

We humbly submit that the tribal people are legitimate inheritors of the forest. We base our submission on the understanding of their multifaceted relationships with the forest. We argue that their right to live with dignity is coterminous with the conservation of the forest, which has been their habitat, the source of their sustenance and survival, the sub-stratum of their culture, religion and ethos. We submit that in their silence the forests bear mute witness to the unfolding of tribal history.

We humbly submit that the history of forest dwelling tribal communities is so intertwined with the history of the forests that both are inseparable. Hence tribal history can be narrated in terms of their changing relationship with the forests and

nature. This history of tribals and the forest spans four epochs; a) the pre-colonial phase stretching over centuries during when the tribals withdrew into the forest habitat as their last bastion for survival; b) the colonial period spanning two centuries, which witnessed the colonization of the tribal's forest habitat, disruptions of their society, resistance to colonial encroachment and a partial re-ordering of survival strategies; c) the post-colonial phase where internal colonization of the forest-tribal realm by the timber lobby in connivance with the state spelt doom for tribal communities and d) the contemporary phase of contesting ideologies, one that seeks integration as a means of tribal development, while the other argues for their eviction in the name of conservation. The four epochs throw light on a full cycle of eviction, which began with tribal communities being driven into the forests to survive, evolve, and celebrate nature over forty centuries ago only to be pushed out of the forest, presumably to ensure the forest's survival forty centuries later.

The pre-colonial phase begins with Aryan expansion. The so called tribals of India, it is well known, are the indigenous, autochthonous people of the land, in the sense that they had been long settled in different parts of the country before the Aryan-speaking peoples penetrated and took over these tracts. There is linguistic and archaeological evidence to suggest that the pre-aryan janas were settled on the plains and river-valleys of the land until they were slowly but surely obliged to move bit by bit to farther and farther areas and came to find their refuge in the relatively more inaccessible regions of the forests and hills and large mountain

slopes, i.e. in what the records call atavika rajyas, mahakantaras or great forest regions and pratyanta desas or frontier regions.<sup>90</sup> The process continued relentlessly for centuries as tribal communities were deprived of their legitimate lands and pursued to the inaccessible parts of the hills.<sup>91</sup> Notwithstanding violence during their eviction from their homelands, the tribals opened a new chapter in their collective histories. Forgotten in their splendid isolation in the inaccessible forests, tribal communities enjoyed a measure of peace and sovereignty, in command of their lives and their resources, till the advent of colonial rule.

Having already destroyed the forests in their own homeland by the end of the 18<sup>th</sup> century, the British viewed the extensive forested areas in India as a

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<sup>90</sup> Ray Niharranjan in Inaugural Address to Seminar on 'The Tribal Situation in India', Indian Institute of Advanced Study, Shimla.

<sup>91</sup> Thakur D & Thakur D.N. 'Tribal Life and Forests', Deep & Deep Publ., New Delhi 1994 p 104 speak poignantly of the history of the Bhil tribe in Rajasthan. 'First came the Rajputs, fleeing from the Mughal armies, who deprived the Bhils of their legitimate lands in the Rajasthan plains and pursued them to the inaccessible parts of the hills. Then came the Marathas to whom tribal life was no more precious than a common fly and killed them by the thousands, often for no rhyme or reason. Deprived of land to cultivate and opportunity to live at peace, the struggle for existence forced upon them a mode of guerilla warfare.'

major opportunity both for timber and for revenue. Through the enactment of numerous laws and regulations, the British acquired vast forested tracts as state forests without so much as a modicum of respect for the rule of law, de-recognizing tribal rights and substituting it by formal monopolistic control of the state under the argument of '*res nullius*'. The British forest policy was mainly based on commercial interests and it aimed at supplying timber and other resources to colonial forest based industries. The commercial exploitation of the forests was encouraged at the cost of forest-dwellers in the name of greater national interest. The Debar Committee observed that the total control of tribal communities over forest resources was changed into merely some rights and concessions by the 1894 Forest Policy. The government gradually increased its control over the forests and the Forest Department was strengthened with a view to regulating peoples' rights over forest lands and produce in the Indian Forest Act of 1927. The irony was that forest dwelling tribals with a life-long relationship with the forests, which were their homes, religion, culture and way of life, were conspicuously absent in that frame<sup>92</sup>. The colonial state began ruthless commercial exploitation and destruction of the forests in the name of 'scientific forestry'. The tribal people did not take the intrusion of the colonizers into their homelands without resistance. The earliest uprisings against the British, in the closing decades of the 18<sup>th</sup> century, were triggered by colonial expansion into the forests. The

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<sup>92</sup> Sharma B. D., 'Letter to the President' in 29<sup>th</sup> Report of the Commissioner for Scheduled Castes and Scheduled Tribes, Government of India, 1989 p ix.

conflicts with colonial forestry management had varied repercussions for the tribals. Uprisings were crushed with brutal force and a few palliatives. As the forests were enslaved for colonial commercial interests, their people suffered a similar fate. Where they could, i.e. where commercial forestry was unviable, the tribals withdrew further. Where they could not, the tribals were yoked in bondage to the contractors to clear fell the forests, and did '*veth*' (forced labour) for the forest department to plant the cleared areas.

The tribals looked forward to independence as freedom from slavery both of the forest and its people, but the exact opposite happened. The Indian states, anticipating that the forests in their territories would be taken, sold their private forests to contractors. These areas were totally deforested.<sup>93</sup> Many tribal communities lost their habitat in less than a decade. When the forests of the native Indian states were merged into the reserved forests, the requirements of the forest act were ignored, traditional rights were not recorded, age old arrangements discarded. The tribal was made a timber thief and an encroacher, a criminal in his own home. The National Forest Policy of independent India remained an extension of the old colonial policy. Rights of the tribals were considered a burden on the forests and an impediment to their scientific and economic exploitation. Hence the privileges of forest dwellers

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<sup>93</sup> Shrikant L. M., 'Forest and Tribal Life' in Thakur D & Thakur D.N. 'Tribal Life and Forests', Deep & Deep Publ., New Delhi 1994 p 127.

were reduced to concessions, rigid restrictions were imposed on access to forest resources even while the continued colonial commercial orientation caused massive destruction of the forest and forest resources as tribal habitat fell victim to the contractors' axe.<sup>94</sup> *Podu* was banned in Utnur taluka of Adilabad District in 1950, inflicting misery on the Kolams and Naikpods. The ban on *podu* without a viable alternative for the Hill Marias of Chandrapur District in Maharashtra in 1978 resulted in a loss of self confidence and an independent way of life and made them beggars dependent on government charity.<sup>95</sup> The National Commission on Agriculture in 1976 suggested production forestry with forest-based industry to tap forest wealth. The Forest Development Corporation was established depending on industrial finance. Monoculture of quick growing species such as eucalyptus and tropical pine failed as economic exploitation of forests without proper scientific understanding or insight into a complex and delicate ecological balance of the natural forests ended in a catastrophe.<sup>96</sup> We humbly submit that the epoch of freedom from colonial rule in independent India only resulted in a new form of slavery of the tribal people –

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<sup>94</sup> Debashish D, 'Tribal-Forest Relationship', op cit p 116.

<sup>95</sup> Pingle Urmila, 'Environmental Impact of Modernization on Tribal Societies' in Gupta G. P., Socio-Cultural Environment of Tribal Landscapes, Arihant Publications, Jaipur, 1992, p 313.

<sup>96</sup> *ibid* p 309

'Criminalization and Slavery in their own homelands'.

In the deteriorating history of survival of both forests and tribals, the fourth epoch is fraught with new controversies, contestations and conflict. It began with the alarm over the loss of forest cover, degradation of forestlands and the expansion of wastelands following unscientific 'scientific forestry'; uncontrolled illegal felling; increasing population pressure on forests following urbanization and in-migration and breakdown in stewardship of tribal communities due to alienation and the subjugation of nature to development.<sup>97</sup> A growing environmental lobby places the blame squarely on the victims. Forests have become the locus of contestation and conflict, in the jungles, in the corridors of power and the halls of justice. Unwittingly and inevitably, the tribals are caught in the vortex of the clash of contrasting ideologies of conservation. The contestations center around three reformulations of the term 'forest' - the definition of forests, the reformulation of conservation and the participation of tribals in restoring the forests.

The *new environmental dispensation, influenced by western thought, lays stress on an ecology that celebrates 'wilderness' even while it delegitimizes survival of sensitive sentient beings.* The alarm over rapid deforestation and environmental degradation logically means elimination of tree felling by the department or timber lobby but results in the eviction of tribals from the dense

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<sup>97</sup> Sharma B. D., 'Letter to the President' op cit p x

forests through the declaration of the forests as conservation areas, national parks and sanctuaries. It is no accident of history that dense forests and tribal communities are found co-habiting side by side, the reason being the unique tribal model of 'survival with stewardship'. The states with larger tribal population have a greater number of biosphere reserves in the form of wildlife sanctuaries and national parks. Madhya Pradesh, with the largest tribal population, has 42, Himachal Pradesh 29, Rajasthan 23, Karnataka 19, Uttar Pradesh 17, Orissa and Gujarat 16 each, Kerala and Maharashtra 14 each, and Tamil Nadu 12 while the east and the north eastern states comprising Bihar, Bengal and Assam with greater tribal population have altogether 49 biosphere reserves. India now has 54 National Parks covering about 21003 sq. km and 372 wild life Sanctuaries covering about 88649 sq. km, and a major part of these areas are the legacy of the tribal communities of India.<sup>98</sup>

In his 1990 letter to the President, the then Commissioner for Scheduled Castes and Scheduled Tribes drew the attention of the President and Parliament to the glaring injustice and patent illegalities (Annexure 2). He reported that, notwithstanding ground realities, a highly anomalous situation has arisen in the management of wildlife by ignoring certain basic facts such as that tribal people and wild animals have co-existed reasonably well from times immemorial, that wild life has not been destroyed by bows and arrows and that the real culprit is the outsider. Consequently unnecessary

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<sup>98</sup> Sihna Rajiv K., 'Tribal Heritage', op cit p 362

restrictions are being placed on the activities of the tribal people and in many cases they are being forced out of their homes. Their plea is that they have been living with the tigers through the ages and they can still live with them quite well. But nobody is prepared to listen to them. In many areas their economy has been greatly damaged through measures that are not legal. The closure of the forests as a source of food has already pushed the weak and malnourished to the brink of starvation while the majority linger on the brink of malnutrition. The tribal and rural folk depend more on a monotonous cereal diet, the nutritive balance being tilted as a result of the lack of the various wild foods in their diet.<sup>99</sup> There is open violation of their right to life, which is not in keeping with the spirit of the Constitution.<sup>100</sup> The first contentious reality is that the wilderness, bereft of sentient humans, is being celebrated but is being opened to esoteric 'environmental tourism'; survival of the tribals in these ecologically valuable zones is effectively de-legitimized.

The second contestation lies in the re-formulation of conservation, which de-legitimizes forest dwellers as part of the forest habitat, de-recognizes traditional rights, excludes and evicts tribal communities from dense forests as a means to revive plant and animal populations. At the same time the National Forest Policy of 1988 asserts the symbiotic relationship between tribals and forests, assures protection of customary rights and

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<sup>99</sup> Pingle U, 'Environmental Impact of Modernization on Tribal Societies' op cit p 311

<sup>100</sup> Sharma B. D., 'Letter to the President' op cit p xii

concessions and recommends that domestic requirements of fuelwood, fodder, minor forest produce and construction timber should be the first charge on forest produce. It also calls for re-establishment of symbiotic relations for protection, regeneration and development of the forest.<sup>101</sup> But the Indian Forest Act 1927 in reality ignores the right to life with dignity at the individual level and the human right of maintaining the identity at the community level in the case of the tribal people. Hence this law is not in consonance with the spirit of the Constitution. But since the state itself is a party to this deal, there was no change in it even after the Constitution was adopted and the situation remains as it was before it...The process of reservation of forests after independence was largely pursued in a routine fashion. In some cases the formality was observed just for the sake of it and even the fact that there were some people living in the forests was not even taken note of. Therefore the old arrangements became illegal in many areas just with the passage of the Forest Conservation Act of 1980 without any consideration and without any thought. And the tribal became a law breaker.<sup>102</sup> Wildlife and forest conservation has become a central concern for the Indian Government. In the draft of a new forest act called the "The Conservation of Forest and Natural Ecosystems Act" the Government has clearly shown to continue a century-old process of discrimination against the rural and

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<sup>101</sup> National Forest Policy 1988, Government of India, New Delhi

<sup>102</sup> Sharma B. D., 'Letter to the President' op cit p x.

specially the tribal poor.<sup>103</sup> *The age old rights of the tribals have not yet been recognized and recorded even a decade after the issuance of the guidelines by the Ministry of Environment and Forests on 18/9/1990.* Unfortunately, with their individual and collective rights discarded in the dustbin of history, the tribals are reduced to law breakers; their survival is effectively illegal.

The third contestation lies in the reaffirmation of adversarial relations between the state and the people in the conservation strategy.<sup>104</sup> State insistence on 'formal' conservation while negating popular 'stewardship' has accentuated the alienation of the tribal from the forest and the forest department. Undeniably dense forests and wildlife exist mostly in tribal areas, which are relatively undisturbed, such as Gond areas in Bastar and Madhya Pradesh. For the tribal people who depend on the forests for their basic minimum requirements, the existence and well being of forests and wild life is very much in their interests as they are directly affected by their depletion. A negative attitude towards the tribal people has prevented their involvement on a large scale, for forest development officials consider the tribal people to be unreliable workers. Most of the pilferage of timber is done by non-tribal contractors who carry logs to the urban areas to reap great profits. The forest department is not blind

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<sup>103</sup> Guha Ramchandra, 'Forestry Debate and the Draft Forest Act. Who Gains and Who Loses', Economic and Political Weekly, 20<sup>th</sup> August 1994

<sup>104</sup> Sharma B. D., 'Letter to the President' op cit p xi

to this but appears helpless to do anything about it except arrogate more and more magisterial powers to themselves to stop malpractices. Unfortunately there is the danger that weapons will conveniently be directed at the innocent and simple tribal people rather than at the more politically vociferous, resourceful and enterprising contractors.<sup>105</sup> Notwithstanding the fact that the National Forest Policy of 1988 calls for the re-establishment of the symbiotic relations for protection, regeneration and development of the forest<sup>106</sup>, there has been a deep-rooted mistrust, which is mutual among both forest officials and the tribal people, based on territorial rights over the natural forests.<sup>107</sup> The management of forests is unfortunately being done on a purely formal basis instead of seeking participation of the people. No doubt there is a reference about peoples' participation in the new Forest Policy, but even in the implementation of this idea, market forces and formal relations are being relied upon and accepted as the basis. Therefore the decision at the policy level becomes meaningless. Notwithstanding the clear instructions of the Ministry of Environment and Forests of 20.12.1990, stressing on the association of the tribals and the rural poor in afforestation, the situation everywhere has been deteriorating because no attention has

<sup>105</sup> Pingle Urmila, 'Environmental Impact of Modernization on Tribal Societies' op cit, p 312

<sup>106</sup> National Forest Policy 1988, Government of India, New Delhi

<sup>107</sup> Pingle Urmila, 'Environmental Impact of Modernization on Tribal Societies' op cit, p 311

been paid even to the fully justified demands of the people. Further, attempts have been made to impose the law unilaterally, and the behaviour of departmental officers has been repressive.<sup>108</sup>

To make things worse, the mandate of 'environmental conservation' has been given to a bureaucracy that has so far managed the forest for profit, both public and personal. It is now expected that forest officials, who so far only have been trained to measure diameter at breast height (DBH) and determine if a tree is ready for felling or not, will be competent judges of the ecological 'carrying capacity' of the forest. There has been no evidence so far that the forest department has the knowledge, skills or sympathies to manage the forests for conservation.<sup>109</sup> The adversarial relations between the state and its citizens effectively denies a future both for the forests and its stewards.

#### *Forests as Tribal Habitat*

We submit that tribals are forest dwellers; 90 percent of them still live in or in close proximity to the forests. Forests are not merely assemblages of economic resources, but are a complex of natural ecosystems exhibiting various equilibria in fixation and consumption of energy from the solar source.<sup>110</sup> The fact that

<sup>108</sup> Sharma B. D., 'Letter to the President' op cit p xi

<sup>109</sup> Baviskar A, 'Fate of the Forest: Conservation and Tribal Rights" Economic and Political Weekly, 17<sup>th</sup> September 1994

<sup>110</sup> Simmons I. G., Ecology of Natural Resources, SELBS and Edward Arnold, London, 1974, p 142

forests were the bases of a large number of self-sustaining economies exhibiting an equilibrium between energy gained and energy lost substantiates the argument that forests are not merely natural ecological systems but are concrete extensions of natural systems into human eco-systems. There is substantial uncontroverted direct and indirect evidence from both the distant and immediate past that judicious mixtures of farming, animal husbandry, hunting, gathering and crafts led to the development of sustainable forest-edge ecotones. These ecotones sustained themselves, withstanding even the external pressures brought upon them by the colonial emphasis on extraction and commercialization.<sup>111</sup> Unfortunately, however, the deterioration of the ecotones worsened post independence. Forests are the habitat of the tribal people and are considered the basis of their development.<sup>112</sup>The concept 'habitat' is

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<sup>111</sup> Sinha A. K., Krishna A.R. 'Wildlife Conservation – Essential for Tribal Survival', Gupta G. P., *Behavioural Dimensions of Tribal Landscapes*, Arihant Publications, Jaipur, 1992, p 124

<sup>112</sup> The Draft Tenth Five year Plan (2002-2007) Vol II Sectoral Policies and Programs, Planning Commission, GOI, New Delhi 2002 at para 4.2.55 on pg. 459 clearly states that Forests and Tribals share a symbiotic relationship. Tribals continue to live in the forest areas, though in isolation, yet in harmony with their environment...their development must be seen as closely associated with the conservation of the forests. This is also the underlying thinking in the orders of MoEF dated 20.12.1990 entitled Centrally Sponsored Scheme for Association of Scheduled Tribes and Rural Poor in Afforestation of Degraded Forests.

borrowed from biological ecology as a locale where organisms or a community of organisms live. It is used in a more concrete sense than 'environment', as it implies more than just a set of environmental conditions that sustain life processes. Plants and animals, as biological entities, are known from their habitat. Humans are also biological entities, but they are not reducible to other organisms because as reflexive beings, not only are they shaped and impacted by their habitat like other organisms but they also shape and impact their habitat. The concept of tribal habitat therefore includes not just a forest locale occupied by tribal people but also reflects the qualities of their life, their material and non-material culture, with the forest at the center having a significant locus in their life cycles. The forest habitat contextualizes tribal life.

We submit that tribal habitat is the land and land based resources supporting the people and their belonging. Habitat is also the medium and outcome of their action. As medium, people use habitat as a resource enabling them to sustain themselves in those locations. The habitat link is produced by human actions associated with their places of work, rest and mediation. In the process, a physical space, mediated by peoples' beliefs, is converted into socio-culturo-emotive space, so that habitat is also the place where action of the people is imprinted.<sup>113</sup> Thereby the forest, where the tribals live,

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<sup>113</sup> Mamatamayee C., 'Tribal Habitat in the Realist Conception' in Gupta G. P., *Socio-Cultural Environment of Tribal Landscapes*, Arihant Publications, Jaipur, 1992, p 31



becomes a human ecological niche and a resource base, which is to be perceived, used and preserved rationally by the human community in question.<sup>114</sup>

We submit that tribals have been synonymous with the forest since the very beginning. Their prehistoric association with forests through the ages has led them to be called the 'lord of the forest', and in the Indian context we have also coined the terms 'vanyajati' (forest dwelling communities), 'vanabasi' (inhabitants of the forests) or 'vanaputra' (forest dwellers) for them.<sup>115</sup> They are an integral part of the forest eco-system and like the other components of the eco-system, the herbivores and carnivores, they as the omnivores play a significant role in the operation of the eco-system and in the maintenance of ecological balance.<sup>116</sup> The tribe is an important component of the forest eco-system, in which they are in a multiplex relationship among populations of organisms for the means of exploitation (adaptation) within their habitat. The tribal communities as forest dwellers have

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<sup>114</sup> Sinha A. K Krishna A.R. 'Wildlife Conservation – Essential for Tribal Survival', Gupta G. P., Behavioural Dimensions of Tribal Landscapes, Arihant Publications, Jaipur, 1992, p 115

<sup>115</sup> Debashish D, 'Tribal-Forest Relationship', in Tribal Situation in India, Issues in Development, Joshi V. (Eds), Rawat, New Delhi, 1998 p 107

<sup>116</sup> Sinha Rajiv. K 'Tribals Ecology – The People and Their Problems' in Gupta G. P., Behavioural Dimensions of Tribal Landscapes, Arihant Publications, Jaipur, 1992, p 179

over the centuries evolved a way of living, thinking and relating which on the one hand is woven round the forest ecology and the forest resources and on the other hand ensures that the forest is protected against depredation by men and nature.<sup>117</sup> Hence forests and tribals are culturally and traditionally linked to each other. Tribals have been living in the forest ecology and that has shaped their life and determined the kind of society they presently have. The socio-economic life of the tribals is so intimately inter-related, inter-mingled with the forest that by now tribals and forests have become inseparable worlds. Forests being a permanent abode for the tribals, they think of it as their ancestral home and there exists an emotional attachment between the tribal and the forest landscape.<sup>118</sup>

#### *Tribal Survival and Forest Stewardship*

We submit that at the heart of the term 'symbiosis'<sup>119</sup> used repeatedly to describe

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<sup>117</sup> Roy Burman B. K., 1982, Report of the Committee on Forest and Tribals, Ministry of Home Affairs, Government of India, New Delhi. A good example is the nature stories of the Bhil and Warli tribes living in western India. The story of 'mother eagle'; 'the rats share' or the 'dog and cat' are philosophical postulates that re-locate nature in the ethos of the tribal community as it moves from food gathering to agriculture.

<sup>118</sup> Sinha A. K Krishna A.R. Wildlife Conservation....op cit, p 106.

<sup>119</sup> For the first time in independent India, we have a formal recognition

the relationship of tribals with the forest is their dependence on the forests for their physical, emotional and cultural survival. Tribal communities fall broadly in four categories of dependence on the forest for food security. Communities of hunter-gatherers in inaccessible areas, like the Bonda of Orissa, Birhor of Bihar, Cholanikan of Kerala, Chenchu of Andhra Pradesh, and the Onge, Jarawa and Sentilese of Andaman Islands, depend totally on the forest. Their numbers are small and dwindling. Next come communities practicing 'jhum' cultivation like the Khonds of Orissa and the Madia of Bastar who number 2.5 million. As their dependence on the forest is critical, any disruption makes survival precarious. These communities face the most severe threat. Finally, the overwhelming majority of tribal communities are subsistence cultivators depending significantly on the forest. Threats to food security increase alarmingly when their access to the forest is disrupted. Malnutrition and starvation deaths occur with unfailing regularity.<sup>120</sup> Pushed out of the forest and off their land, they live on the fringes of degraded forests and eke out a sub-human existence, often as encroachers in the absence of the forests as a survival mechanism. Their numbers are increasing and food security deteriorating.

We submit that for the tribal people, forest as food source is enmeshed in dependence on the forests for health and well-being. Traditional tribal medicine men and healers, such as the

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that the tribal people are an integral part of the forest environment in the National Forest Policy 1988.

'*amchis*' of Ladakh, the '*gaitas*' of Central India, the '*uche*' of Assam, the '*ojhas*' of Bihar, Bengal and Orissa, the '*bhagats*' of Maharashtra and Gujarat, the '*bhadwas*' of Madhya Pradesh and so on treat a wide variety of diseases and ailments, including rheumatism, paralysis, epilepsy, dropsy, leprosy, jaundice, diabetes, malaria, syphilis, dysentery, skin diseases, women's ailments and bone fractures, with medicinal herbs.<sup>121</sup> Plants, animals and birds form an intrinsic part of tribal medicine. A study conducted under the Man and Biosphere Programme of the Department of Environment<sup>122</sup> indicates that 156 applications of animal products, 32 of birds, 30 of reptiles, 10 of fish, 17 of molluscs, 9 of insects, 1 of arachnids, 9 of crabs and 5 of earthworms are prevalent among the tribals of Madhya Pradesh and Orissa. A study of tribal medicine in Kerala identified at least 39 species of

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<sup>120</sup> Reports of malnutrition deaths establish a direct cause effect relationship between alienation of the tribals from the forest habitat and malnutrition deaths, particularly of children. Sheela Barse has documented the same in detail in her study of malnutrition among Korku children in Melghat of Maharashtra. See Sheela Barse, *Our Children Have Gone*, Monograph, Neergaurav Research and Development Foundation, Mumbai 1997.

<sup>121</sup> Sihna Rajiv K., 'Tribal Heritage : Their Ecological Significance' in Gupta G. P., *Socio-Cultural Environment of Tribal Landscapes*, Arihant Publications, Jaipur, 1992, p365

<sup>122</sup> Man and Biosphere Programme of the Department of Environment (Government of India) by the Zoological Survey of India (1984)

roots, 15 types of fruits, 30 varieties of leaves, 12 species of barks and many kinds of latex and flowers and nine entire plants that were used by the people. Over 900 herbs and plants are used in West Bengal. What is critical is not merely issues of 'scientific value' but the fact that these are the only medicines available to these communities.

We submit that the tribal forest interface is dynamic and rooted in their nature-man-spirit complex as 'stewardship'. This duty symbolizing responsibility for the forest environment arises from an active understanding of access and management of a survival base and is rooted both in the recognition of mutual dependence and the matrix of mutuality of survival of sentient beings and their silent partners. What is unique is that the evolution of a legal frame of stewardship (realm of reciprocal rights and responsibilities), by a community (not individuals) to protect and preserve survival resources in trust for future generations (not commercial exploitation) was precisely stimulated by free access to the forest. This was enshrined in the unwritten 'legal code' (ethos, culture and spirituality) with a rule of law that was collectively ratified and enforced, an interface articulated as mutual dependence with mutual dignity. The unwritten law mediated a frame of access and use with conservation, a balance essential to ensure dependence and prevent overexploitation. Taboos and prohibitions gave stewardship a philosophical<sup>123</sup> and a religious basis

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<sup>123</sup> Prabhu P, 'Fables from the Forest', Dahanu 1996 explores how the philosophical grounding for

through myths. Myths of forest spirits, angered by the cutting of certain tree species, destroying a village as a whole and the offenders in particular abound. Animals, birds and trees are protected as clan and community totems. The *Hos* of Jharkhand revere the undergrowth of edible herbs, mushrooms, tubers and call it '*aand*'; they use the same word to denote 'food which sustains them in times of famine'.<sup>124</sup> In Kalahandi District the tiger is a brother and a dead tiger is honoured by the elaborate funeral rites observed when one's brother dies. The practice of stewardship by tribals, in its varied forms, is probably the last vestige of a system that managed access and sustainability through consensual normative cultural social fencing. One form was confining access to certain seasons, like the harvesting of *nakhdun* (a tuberous plant) in Tehri – Garhwal or the use of *bel* among the *Anpir Konds* of Ganjam. Another was restrictions based on hunting. Hunting was only for food or medicine and never to prove valour or virility. The *Phaseparadhis* of Maharashtra and tribals in Orissa do not kill fawns, pregnant does or black ducks even if snared. The third was the restrictions on cutting of 'sacred' species. While the banyan, peepal etc are protected throughout India, every tribal community protected several sacred tree species. In Orissa, *sal*, *mahua* and mango were sacred. The Khond tribals of

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conservation was made through fables and parables handed down from generation to generation.

<sup>124</sup> Deeney J, "What Tribals get from the Jungles", Unpublished Document, Chaibasa, 1983

Kalahandi protect the *salap* tree as they believe the salap gave them its juice and saved two children, the progenitors of the adivasi race, from starvation when the world was submerged in water. The *Ankiya Konda* of Ganjam district believe they are descendants of a couple whose bodies were made of *bel* fruit, *saraiwood*, *karela* (bitter gourd), mushrooms, oranges etc. A fourth form was the protection of entire ecosystems as sacred groves, called '*devovan*' or '*deorais*' or '*sholas*', forests dedicated to a deity or mother-goddess. Such highly bio-diverse sacred forests are found all over India in the tribal zones. There are over 400 groves each in Maharashtra and Madhya Pradesh, large numbers in Assam, Meghalaya, Rajasthan, Gujarat, and the Nilgiris.<sup>125</sup> A fifth form of stewardship was the sacred space; the *saran*, where the deity and the spirit of the tribe resided, symbolizing the identity of the tribe; the *sasan*, the resting place of the ancestors and the *akhra* where young men and women met for dancing. We submit *that dependence with dignity, survival with sustainability, reciprocal rights with responsibility as the core values of adivasi stewardship are perhaps the best examples in human history of an equitable relationship between sentient and silent beings.*

#### *Forests are the tribal's future*

We submit that forests are the tribal's future. The 1952 National Policy only re-asserted the premises and practices of colonial forestry and created the frame for the subordination of the forests to commerce and the alienation of the

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<sup>125</sup> Sihna Rajiv K., 'Tribal Heritage... op cit, 1992, (363)

tribals. In three and a half decades both the forests and the tribals were pushed to the brink. The alarm over the vastly depleted forest cover paved the way for the Forest Conservation Act in 1980, a harsh indictment of the forest bureaucracy and a further threat to tribal survival.

The threats to sheer survival manifested in malnutrition and starvation deaths triggered rethinking. Initially the traditional arguments were raised. Tribals as descendants of the aboriginal people of India have inherited a wealth of knowledge and valuable physical, biological and cultural legacies from their ancestors which, if preserved, can be of great ecological significance to modern human society. Their traditional beliefs and practices have helped them in the preservation of their age-old culture and with it the conservation of entire physical and biological assets which has come to mankind as a great heritage from the primitive tribal societies.<sup>126</sup> The Debar Commission in 1961 recommended that 'the Forest Department should be deemed to be charged as a branch of the government with the responsibility of participating in the betterment of tribals side by side with the development in the forest.'<sup>127</sup> The Hari Singh Committee in 1967 on the tribal economy in the forest areas suggested tribals be provided employment in major and minor produce

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<sup>126</sup> Sihna Rajiv K., 'Tribal Heritage ... op cit p 361

<sup>127</sup> Debar U. N., 1961, Report on the Scheduled Areas and the Scheduled Tribes Commission, Ministry of Home Affairs, Government of India, New Delhi

to save the forest from denudation. The Committee also emphasized the tribal interest in forest management and welfare of the inhabitants rather than revenue collections.<sup>128</sup> The anthropologist B K Burman argued that tribal people, who often live in forests close to nature, possess an “indigenous wisdom” of respect for all living creatures, a wisdom, among other things, that offers other communities in India a vision of future survival through a lifestyle in harmony with nature.<sup>129</sup> Other reputed anthropologists have argued that the notion of indigenous peoples’ “sustainability” or their superior ecological knowledge is part of a global discourse that is of great importance in struggles over forests, wildlife sanctuaries and other contested environments.<sup>130</sup> It

<sup>128</sup> Singh H, Inspector General of Forests, Report of the Committee on Tribal Economy in Forest Areas, Government of India, New Delhi. 1967

<sup>129</sup> Roy Burman, ‘Indigenous and Tribal People, Global Hegemonies and Government of India, Mainstream, 5<sup>th</sup> September 1992; Roy Burman, ‘Homage to Earth’ in G. Sen (eds) Indigenous Vision, People of India, Attitudes to Environment, Sage, New Delhi 1993, Roy Burman, “Tribal Populations, Interface of Historical Ecology and Political Economy “ in M Miri (Ed) Continuity and Change in Tribal Society, Indian Institute of Advanced Studies, Shimla, 1993.

<sup>130</sup> Karlsson B.G. ‘Contested Belonging’, Lund Monographs in Social Anthropology, Lund 1997. pg. 165

has been reflected in the tribal sub-plan strategy which was adopted during the Fifth Five Year Plan, and much emphasis was put on family oriented programs during the Sixth Five Year Plan with a view to bringing substantial portion of families above the poverty line by formulating suitable schemes in the forestry sector for the benefit of tribal families and assisting them to cross over the poverty line. It finally took shape in the National Forest Policy of 1988, which recognized adivasis’ symbiotic relationship with the forest and encouraged re-establishment of symbiotic relations for protection, regeneration and development of the forest, became a benchmark for the tribal-forest interface and opened up possibilities for the future of tribals in their forest habitat as the stewards of the forest, assuring protection of customary rights and concessions and affirmed that domestic requirements of fuel-wood, fodder, minor forest produce and construction timber should be the first charge on forest produce.

Forests as future for the tribals therefore hinges on three central themes: the recognition of rights and concessions; ownership of minor produce and majority share in forest income; and restoration of stewardship for the future of both the tribals and the forest.

1. The recognition of rights and concessions: The Commissioner for Scheduled Castes and Scheduled Tribes has argued that if the present confrontation between the tribal people and the administration has to end, complete clarity about the issue of land must be reached immediately (Annexure 3). The most important thing in this regard is that certain basic premises, which are

accepted without any thought, such as the notion that the boundaries of the reserved forests are unalterable and any tribal who is found inside the forest is a trespasser, must be abandoned. The habitations and agricultural lands in many cases predate the reservation of concerned forests and the process of reservation has been faulty in many cases. Moreover, whosoever is living in whatsoever manner in the forest cannot be just driven away like that, unless the government provides him with an alternative, which is within his capability of use. Until such an alternative is given, the tribal will do what he considers right according to his understanding. A beginning in this regard can be made with a sort of informal agreement between the people and the government accepting today's land position as it is. In this case, the government, on its part, should make a commitment that no action will be taken against the people in respect of land under cultivation until a final action plan has been prepared on the basis of mutual understanding.<sup>131</sup>

The restoration of traditional rights in the forest is central to the tribals in India,<sup>132</sup> and if such rights were re-established experts argue that both the forests and wildlife would have better chances for survival.<sup>133</sup> This principle has been recognized by the Ministry of

<sup>131</sup> Sharma B. D., 'Letter to the President' op cit pg xiii

<sup>132</sup> Mishra & Chaudhari, 'Voices of the Indigenous People' in Seminar December 1993:49.

<sup>133</sup> Basu S, Regional Movement, Politics of Language, Ethnicity and Identity, Indian Institute of Advanced Studies,

Environment and Forests in its guidelines of 18<sup>th</sup> September 1990 (see Annexure 3). Implementation of the guidelines would have ensured justice. Sadly, though not inadvertently, these guidelines still remain a dead letter. Justice delayed is justice denied.

## 2. The ownership of minor produce and majority share in forest income:

Ownership of minor forest produce (NTFP - non timber forest produce) is linked to sustained use of resources and strengthens the basis for stewardship. It is well established that NTFP is not MFP (minor forest produce) for the tribals as it provides substantial sustenance to the tribals living on the fringe of standing forests. It is estimated that 70 % of NTFP is collected in 5 states i.e. Maharashtra, Madhya Pradesh, Bihar, Orissa and Andhra Pradesh where 65 % of India's tribal population lives. NTFPs are important raw materials for cottage, small and village industries and contribute to the national income through export and import substitution. It has been observed that the annual collection of most of the NTFPs in the country is presently less than 5% of the estimated potential.<sup>134</sup> This strengthens the argument that ownership with stewardship will strengthen sustainability both of forest use and the tribal economy. Though this fact is recognized it has not been articulated in terms of clear policies and programs

Shimla, 1992:217-223.

<sup>134</sup> Debashish D, 'Tribal-Forest Relationship', in Tribal Situation in India, Issues in Development, Joshi V. (Eds), Rawat, New Delhi, 1998 p 113

resulting in adverse implications for all; the forests have suffered while the tribal economy has been shattered, and thus the national economy has lost doubly. The loss has adversely affected the weakest groups and the imbalance in the socio-economic structure has increased as MFP provides substantial sustenance and is the main source of cash income to meet non-subsistence needs like health and education. When commodities acquired commercial value, the forest department assigned collection of MFP to traders on payment of lump-sum royalty. As a result while traders filled their coffers, the tribals and the department remained lost and mal-practices increased. Nationalization of the trade has not improved the situation as it still did not result in a substantial improvement and collection is done informally through agents to solve the problems of quality, storage and finances. The goals of eliminating the middleman and ensuring that the tribal primary collectors got adequate returns for their labour was effectively subverted by the department. The policy of fixing prices through a reference to notional labour inputs in the collection has resulted in their remuneration being arbitrarily fixed on what the market is willing to pay in a distress sale. Thereby the primary collectors are defrauded and forest produce lies wasting and lost to the national economy. The low price of MFP given to the tribals is actually a hidden subsidy for industrial units; it is not in the interests of the national economy, let alone the interests of the tribal primary collectors. Fixation and enforcement of MSP on the real value of the NTFP being sold can be a starting point for both equity

and sustainable tribal development. Ownership of forest produce and maximization of return for the labour will preserve forest resources and the forest dwellers. NTFP cannot be treated a source of revenue but as a means to maximize return to the tribals so that an economic interest is created in the maintenance of the forests. The issue of ownership of NTFP has been resolved by the Panchayats (Extension to the Scheduled Areas) Act 1996, which legislates that, in Scheduled Areas, the ownership of NTFP is vested in the Gram Sabha, but the forest department has effectively scuttled this Act's implementation.

### 3. The restoration of stewardship for the future of both the tribals and the forest:

Most researchers dealing with the forest today argue that the forest can only be saved in collaboration with the local communities and by finding ways of combining conservation with sustainable uses of the forest by the forest dwellers.<sup>135</sup> Ramachandra Guha and his colleague Madhav Gadgil assert "the need for blending 'ecology with equity'", by bringing the power to control natural resources from 'corrupt bureaucracies' to people who depend on these resources.<sup>136</sup> The Working Group on Tribal Development (1980-85) recommended that the local tribal community, which has a symbiotic relationship with the forest, should be accepted as partners in the local

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<sup>135</sup> Kothari A et al (Eds) 'People and Protected Areas, Towards Participatory Conservation in India, Sage, New Delhi 1996.

<sup>136</sup> Also see Karlsson B.G. 'Contested Belonging, Lund Monographs in Social Anthropology, Lund 1997.

forestry development efforts in each area. The Working Group on Development of the Scheduled Tribes during the Seventh Five Year Plan has made 15 similar recommendations in its report.<sup>137</sup>

The National Forest Policy has put at rest the contestation of divergent claims and differing perceptions about the ownership of forest resources. In this conflict, the forest, which depends on the tribal people for its survival and on the forest department for its development, is the ultimate loser. Today the conflict arises because there are only two mutually exclusive situations. Either the department manages the forests in which even *nistar* rights become a burden or, in the alternative, the tribal somehow gets hold of forest land, clear fells it, sells the trees illegally to timber contractors and takes to cultivation, irrespective of the quality of the land, its yield or the sustainability of agriculture itself. It would be impossible to contain the conflicts arising out of pressure on the forest unless this conflict is resolved for the betterment of the forests and the forest dwellers. By no means can the use of tribal forest dwellers as casual labour in forestry operations be considered as a means of tribal development. The forest department can at best be seen as an agency that would ensure the betterment of both collectively. It is becoming clear that the final objective of forest management has to be a better and extensive tree cover

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<sup>137</sup> Narayanaswamy S, 1984, Report of the Working Group on Scheduled Tribes during Seventh Five year Plan (1985-1990), Ministry of Home Affairs, Government of India, New Delhi.

notwithstanding the fact that considerations of revenue are becoming dominant with commercialization of forestry operations. Conditions must be created where the tribals, in addition to foodgrains cultivation, can also accept extensive and better tree cover in his own interest. It is possible through afforestation operations by the tribals based on a new concept of limited ownership and the right to usufruct. Reforesting the degraded areas, essentially with fruit trees, by the tribals with limited ownership in the land but full usufructory ownership will create economic assets for the family, enhance tree cover and qualify as a tribal development program that creates common property assets for the nation and provides immediate economic betterment for concerned tribal families. The potential of tribal areas which have even moderate forest resources is so good that a mere linkage of the individual with the process of comprehensive development of the forests in the area can provide a satisfactory solution to the problem of economic development of the people. It is the tendency to disregard this important aspect in forestry programs as also in tribal development schemes which is resulting in conflicting situations and disharmony. The symbiosis between the tribal community and the forests should be re-established to ensure survival with dignity of both partners.

#### *Conclusion*

The campaign has put forward its arguments for why the tribals have the right to the forest. In the Jan Sunwai, while asserting this rightful claim, we have also consistently put on record the unbelievable abuse of human rights that is



taking place in the name of evictions. We hope that this Jan Sunwai will be the first step in the long journey of reassertion of our rights and reaffirmation of our rightful claim to be the inheritors of a long tradition of stewardship which has ensured survival with dignity for us forest dwellers and for the forest our mother and our home.

**Dr. B.D Sharma**

*Former Commissioner for Scheduled Castes and Scheduled Tribes, Government of India*

When the Central Government issued orders for eviction, in the capacity of Ex Commissioner for Scheduled Castes and Scheduled Tribes, I wrote a letter to the Chief Justice, that how can you decide to call people who have been living on these lands for generations, as 'encroachers'? These lands give us dignity. We have been living here from the beginning of time. But can we say that all the procedures under the provisions of the law of the land have been completed? They have no answers to this.

We are collectively putting forth our demands. Our struggle is not against the Supreme Court but to assist in this process initiated by the Court. The forest department says that the commercial lobbies who are clearing and felling forests are their targets. But the irony is that from the very place where the Godavarman Case emerged constant felling , cutting and clearing of the forests continues even today. And no orders have been passed regarding this. However, in the name of the Supreme Court, arbitrary orders are being passed to evict the advasis.

Firstly ,we state that the government needs to examine if these really are 'encroachments' or if there has been an administrative mistake. How can it be that we do not exist simply because we are not on government records and documents? If my name does not exist in government documents will you tell me I do not exist even if I am standing before you? The government needs to examine its faults and mistakes. They need to listen to the people, to the communities.

The situation of podu cultivation – shifting cultivation is a serious matter. In addition primitive groups i.e. communities like the Jenguruas in Karnataka, the Nadias of Madhya Pradesh, the Kamars, etc do not cultivate at all. They eat some fruits etc. from the forests and live. Now how will you evict them, how can they be encroachers?

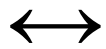
We say, god made this land, and we are the children of god. Where does the government come in between? People have a symbiotic relationship with the water, forests and land. This is not a right that was conferred by the constitution. This is a right we were born with. Taking this away is sin.

Even on the issue of khanij lands, the government has violated national and international conventions. We are signatories to the ILO convention according to which the adivasi gets his identity from the place he is associated with. The very definition of the tribal is that he is associated and bound to a particular area not to the land. The struggle is for the forests. In Bodhghat, Bastar, people will tell you that they have three ‘sahukars’, or those that feed them. Four months of the year agriculture is the ‘Sahukar’. Four months of the year, it is the waterbodies where we fish which is the ‘Sahukar’, and for four months it is the forest. If you have now taken away two of these ‘sahukars’/sources how will we survive ?

International conventions also agree that in tribal communities the issue is about area and not land. In the National Minerals Policy it is clearly stated that development is overriding the concerns of the adivasis. But nothing is done about this. Neither is anyone concerned about

the environment nor its social costs. We raised the issue that under the PESA Act no lease can be given without the permission of the Gram Sabha. But even this collective decision of the Gram Sabha has not been respected by the governments.

*CHAPTER IV*



*EPILOGUE*

## EPILOGUE

At the time of the Jan Sunwai, the major means for resolving disputed claims, pre-1980 encroachments, and other land and forest rights issues was seen to be the implementation of MoEF's September 1990 orders. The Ministry's clarification order of October 30, 2002 had reiterated that the 1990 orders remained in force and needed to be implemented by the state governments with due urgency. The CEC had also informally accepted that settling the rights of forest dwellers was a major issue and had initiated a dialogue with some representatives of the Campaign on developing mutually acceptable recommendations for the future course of action. Against this background, several representative organisations of the Campaign spent 2 days in Delhi in January 2004 to finalize their collective recommendations to the CEC.

Before the agreed recommendations could be handed over to the CEC for its consideration, however, a number of unanticipated events overtook the situation.

### 1. MoEF's February 2004 orders

Just before the early dissolution of Parliament by the NDA government, the MoEF issued two new orders in February 2004. The first one, "**Stepping up of process for conversion of forest villages into revenue villages**"<sup>138</sup>, directed State Governments to draw up a time bound programme for expeditiously converting all the forest villages in their respective states into revenue villages in the next six

months. Only those residents of forest villages who had been issued temporary pattas by forest departments before 1980, or pre-80 'encroachers', were to be eligible for this benefit, subject to the Supreme Court lifting its ban on regularisation of encroachments. Conversion of forest villages in protected areas was made conditional on approval by the Standing Committee of the National Board of Wildlife and the Hon'ble Supreme Court.

The second order, "**Regularisation of the rights of the tribals on the forest lands**"<sup>139</sup> has a much wider scope. This order admits that "while these (tribal) areas were being brought under the purview of relevant Forest Acts, their (tribals') traditional rights could not be settled due to a number of reasons, making them encroachers in the eyes of the law". Due to this, the order announces the following decisions of the central government (emphasis added):

*1. The State Governments/Union Territory Administrations should recognise the traditional rights of the tribal population on the forest lands, and these rights should be incorporated into the relevant acts, rules and regulations prevalent in the concerned States/Union Territories by following the prescribed procedure.*

*2. (i) In respect of these recognised rights of the tribal forest dwellers on the forest lands, the Central Government upon the receipt of complete proposals from the State Government/Union Territory Administration concerned, shall consider*

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<sup>138</sup> No. 11-70/202-FC-(Pt), dated 3.2.2004.

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<sup>139</sup> No.2-1/2003-FC(Pt), dated 5.2.04.

*the proposals for diversion of continuously occupied forest land under the Forest (Conservation) Act 1980, so that these tribals can get unfettered legal rights over such lands. The tribals shall have heritable but inalienable rights over such lands. This decision shall apply for those tribal dwellers who are **in continuous occupation of such forest land at least since 31.12.93.***

*(ii) The diversion proposals shall, however, be considered only if an integrated tribal rehabilitation scheme forms part of the proposal to be submitted by the State/UT, along with the financial commitments so that the tribal populations are retained at that particular land, and the problem is solved once and for all. In order to ensure in situ biodiversity conservation with the rehabilitation package, the programme should be implemented by the tribal rehabilitation wing of the forest department. Where such wings do not exist, these may be created. The model adopted by the Kerala Government for rehabilitation of tribals is a case in point and the State Governments may follow this pattern.*

*(iii) As the Hon'ble Supreme Court vide their order dated 23.11.2001 in W.P.202/95 had restrained the Central Government from regularisation of encroachments, the Central Government shall approach the Court for modification of their order so that the instant decision taken in this regard by the Central Government is implemented.*

Even as campaign members were debating the pros and cons of these two new orders, the Supreme Court stayed the implementation of both on the grounds that its prior permission for dereservation

of forest land for other uses, as per its order dated 13.11.2000, had not been obtained.

On 13.11.2000, the Supreme Court had ordered that "pending further orders, no dereservation of forests/national parks/sanctuaries shall be effected." At the time the government appealed that the word 'forest' be deleted from the above order, but the Court rejected this appeal on 9.2.2004. *Consequently, all the lands approved for conversion after 13.11.2000, including for purposes of conversion of forest villages to revenue villages and regularisation of pre-1980 encroachments, 'legally' remain forest land.*

## **2. The Tussle between CEC and MoEF**

The stay on implementation of the two February 2004 orders was obtained by Harish Salve, the amicus curiae to the Supreme Court, on the recommendation of the CEC. This effectively pitted the CEC against MoEF. In its turn, MoEF has filed an affidavit to the Court pleading for vacation of the above stay, on the grounds that settlement of rights in areas declared as forests has not been done in many States (see Annexure 17).

This has taken the matter out of the CEC's hands, as now the CEC and MoEF have become opposing parties on the issue in the ongoing proceedings in the Godavarman case. The Supreme Court may issue new orders on the matter, which even the CEC will be bound to honour.

## **3. Other recent orders issued by MoEF based on new Supreme Court rulings**

In the meantime, the Supreme Court has given a number of new rulings under the

ongoing proceedings which have serious implications for forest dwellers' ongoing struggles, including the outcome for claims filed under the 1990 orders. MoEF has issued additional orders based on these Court rulings. Some of these contradict and apparently override the 1990 orders. These are discussed below.

#### *Collection of Net Present Value (NPV) for diversion of forest land*

Through rulings dated 30.10.2002 and 1.8.2003, the Supreme Court has directed that the "net present value" (NPV) of forest land to be diverted for other uses should be collected from the user agency and deposited in a compensatory afforestation fund. The Court directed that, depending on forest density and other factors, the NPV *should be assessed at between Rs.5.80 lakhs to Rs.9.20 lakhs per hectare*. NPV has to be collected for ALL forest land given 'in principle approval' after 30.10.2002.

In March MoEF<sup>140</sup> clarified that depositing NPV is required even for the conversion of forest villages to revenue villages and for regularisation of pre-1980 encroachments for which central government approvals were granted after 30.10.2002. Although it has not clarified whether this will also apply for the resolution of disputed claims/pattas, leases, and so on, the general thrust of the Court's rulings indicates that even these may be brought under the NPV order's ambit.

When the 1990 orders were being drafted, the then Commissioner for SCs/STs had objected to the inclusion of a requirement for compensatory

afforestation, saying that it was contrary to his recommendations and would act as a hurdle in the early resolution of disputes related to forest lands, leases, pattas and so on. Informally, some MoEF officials had accepted that the requirement for compensatory afforestation would be waived while converting revenue villages into forest villages and settling disputed claims of tribals. The above ruling of the Supreme Court has taken the matter out of even the MoEF's hands. Now, State governments will have to raise money for both compensatory afforestation and the payment of net present value in order to be able to regularize lands on which effectively no forests exist.

Conservationists have lauded the NPV requirement insofar as all large commercial and development projects, such as mines and hydroelectric projects, will now have to pay huge sums for the forestlands and good forests they will submerge or destroy. In this respect, the order is definitely welcome, as it will indirectly benefit forest dwellers, who may be saved from displacement and destruction of their forests.

However, uniform application of the same provision to the settlement of disputed lands, lands where the rights of pre-existing occupants were never settled, and conversion of forest villages is totally unacceptable. It will further penalize millions of impoverished forest dwellers who have already been deprived of justice for decades. While powerful lobbies will be able to get exemptions through pressure at the highest levels of government, the forest dwellers will need to mobilize on a massive scale to get their voices heard.

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<sup>140</sup> F.No.2-1/2004-FC, dated 10.3.2004.

*Compensatory Afforestation Fund Management and Planning Authority (CAMPA)*

At the CEC's recommendation, the Court's ruling of 30.10.2002 also requires the setting up of a centralised body for management of the compensatory afforestation fund and the NPV collected for forest lands.

A gazetted order dated April 23, 2004 specifies the structure and mode of functioning of CAMPA. Both its governing body and the executive body are to consist almost exclusively of forest officers. Both have provision for one non-government professional ecologist. There is no representation for communities or for the Ministry of Tribal Affairs and the Commission for Scheduled Tribes.

Another MoEF order<sup>141</sup> contains '**Guidelines under the Forest (Conservation) Act, 1980 for stepping up the development projects in tribal areas**'. This requires that each 'user agency' in such areas shall earmark 5% of the total project cost for tribal development. However, even these funds shall be deposited with CAMPA and not with either local gram sabhas or other organisations of the adivasis themselves!

In the North Eastern states, it appears that, despite the fact that communities own their *jhum* (shifting) cultivation land, it is MoEF that grants permission for its diversion to other uses, since the same land is also classified as 'unclassed' forest. Ironically, in case of 'diversion', the NPV for the loss of this land goes to CAMPA for afforestation, and not to the community owners that have lost their livelihood resources.

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<sup>141</sup> F. No. 2-1/2003-FC, dated 20.10.2003.

*Notification of additional non-forest land as RFs or PFs*

There is also an MoEF order requiring that, before final clearance under the FCA is granted, non-forest lands used for compensatory afforestation should be mutated in favour of the state forest department and notified as reserve or protected forest. Due to the difficulty faced by user agencies in finding non-forest lands, MoEF has clarified.<sup>142</sup>

*Revenue lands/zudpi jungle/chhote/bade jhar ka jungle/jungle-jhari land/civil-soyam lands and all other such category of lands, on which the provisions of Forest (Conservation) Act, 1980 are applicable, shall be considered for the purpose of compensatory afforestation provided that such lands on which compensatory afforestation is proposed, shall be notified as RF [reserved forests] under the Indian Forest Act, 1927.*

In other words, even the limited lands still left for common community use and management are also to now be annexed as state forests! Indeed, in some of the North Eastern states, additional *jhum* land is also being brought under the protected area network to compensate for the dam-induced submergence of forests rich in biodiversity.

Forest communities thus become double losers: first they lose their lands through submergence, and then they lose even more land when 'protected areas' are constituted. And finally, we have a further irony: the NPV for the submerged or otherwise diverted lands is transferred to

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<sup>142</sup> F.No.8-84/2002-FC, dated 3rd February, 2004.

CAMPA, and not to the communities which owned them.

### *Ban on collection of NTFPs from Protected Areas*

The Supreme Court has also prohibited the removal of dead, dying, diseased trees, and so on from any national park or sanctuary (protected areas)<sup>143</sup>. Even the removal of grass etc. from national parks or sanctuaries has been prohibited. In view of the above order, any non-forestry activity, felling of trees/bamboo, removal of biomass (including all NTFPs), miscellaneous construction activities, etc. in the protected areas are not permissible without prior permission of the Hon'ble Supreme Court.

This is having a drastic impact on the livelihoods and food security of the approximately 3 million mostly adivasi people living within protected areas (and about the same number living in the areas surrounding them). While the land diversion requirements of a large number of mining, hydropower and other 'development' projects are being granted speedy clearance, the CEC is demanding strict enforcement of this particular order of the court. In a recent order<sup>144</sup> to the Chief Secretaries, Principal Chief Conservators of Forests and the Chief Wildlife Wardens of all States/Union Territories, the CEC has asked them to ensure strict compliance with the Hon'ble Supreme Court's order so that none of the above prohibited activities are allowed to be undertaken in the protected areas.

<sup>143</sup> Order 14.2.2000 in IA No. 548 in Civil Writ Petition No. 202/95 (the *Godavarman* case).

<sup>144</sup> No.1-26/CEC/2003 dated 2nd July, 2004

### *Relaxation of environmental clearance requirements*

Over the last few years, MoEF has considerably reduced the scope and weakened the provisions of various notifications and rules under the Environment Protection Act 1986. The dilutions (about 30 in all) include:

d) For Environmental Impact Assessments, public hearings have been dropped for projects such as the widening of highways, and for mining leases for major minerals under 25 ha in size. Indian Bureau of Mines data shows that almost 50% of the mining leases for major minerals are below 25 ha (and, needless to say, such projects overall result in tremendous environmental and social destruction).

e) A MoEF press release in June this year on "good practices" to be adopted to facilitate 'expeditious decision making' stated that no application (for clearance) will be rejected on procedural grounds alone. This could mean that applicants could get clearance even when they provide incomplete and inadequate information.

f) There are many shocking instances where MoEF has given clearance to dams, mining, roads, ports, industries, and other projects, without an adequate environmental impact assessment or without ensuring that environmental safeguards are built into the project. Further, a large number of development projects cleared by MoEF do not fulfil the conditions under which they were



cleared, yet there is hardly any instance of MoEF taking action against such projects.

This is perhaps the crowning irony of all. Large areas of land are being diverted for projects known for severe environmental damage, frequent disregard for the law and social and ecological upheaval, while the claims of adivasis and other forest dwellers are treated with contempt despite the fact that orders to resolve such claims have existed for more than 14 years. Those who destroy for commercial purposes are granted quick permission; those who live in the forests for their livelihoods are evicted in an arbitrary and ad hoc manner with the use of brute force. “Good practices” and “expeditious decision making” are apparently unnecessary when it comes to those who lack social clout.

#### **4. The Ground Situation Since the Jan Sunwai**

Since it has now been more than a year since the sunwai took place, many significant events have occurred in the interim. The Campaign continues to struggle for communities’ rights on the one hand and to resist moves by the forest department to evict them on the other. Below is a short update on the ground level situation in some representative states. Needless to say, the information is not comprehensive, and is only indicative of the situation in different parts of the country.

##### *Chattisgarh*

In Gadumuda villages of Dhamtari & Nagri block, the JFM Committee of

Markatola bulldozed the houses and fields of 300 households. Fifteen people, including women, were jailed for resisting the eviction. In Ranjandgaon, Dhamtari, Kanker and Mohala Tehsils of Rajnandgaon, communities are resisting department efforts to evict cultivators, destroy crops, and graze standing crops. Most of the forests in the area have not been surveyed or settled, yet the department is nevertheless putting up boundary pillars that include large areas of cultivation. Further, under the *Hareli-Saheli* program of the government, plantations have been undertaken on common grazing lands. Over 1500 cultivators have been issued ex parte eviction notices and 500 have received final eviction orders. An appeal has been filed with the State Government.

##### *Dadra & Nagar Haveli*

Approximately 28,000 people have filed claims. Across the Union Territory, there is resistance to the department’s efforts to evict cultivators or plant plantations on lands in the custody of the people.

##### *Gujarat*

Approximately 45,000 claims have been filed with the respective Collectors and the Forest Secretary. Repression is beginning in the state, and six companies of armed State Reserve Police have been sent to the tribal areas. The Forest Department has requested an additional seven companies.

In Dundunia village in the Dangs, the FD has begun fencing off adivasi lands with barbed wire. In Bakpal village, two seeding beds were destroyed by the department before the people could reach the plot. The department has also dug pits

in cultivated lands, but is not being allowed to plant trees. Efforts of forest personnel have been resisted by the villagers, and in return the department has been filing cases against the resisting villages under section 107 of the Criminal Procedure Code (preventive action of the state to avoid a breach of peace).

In Dharampur and Kaprada blocks of Valsad district, cases are being filed against adivasi cultivators. In Banaskanta, Panchmahals and Sabarkantha, land titles have been granted to individuals who are not actually cultivators, and a large number of disputes are taking place between the title holders and the actual cultivators. In Dabheli village, 40-50 forest cultivators' houses have been burnt. In Godhra District, adivasis resisted plantation work of the forest department on cultivated areas. In Richrota village, the department has undertaken plantation work with the protection of armed reserved police, and has threatened to bring more armed police and evict all 'encroachers'. In Pangaon village of Narmada district, twenty-eight people were detained by the department for resisting eviction. In every village, organizations affiliated to the Adivasi Mahasabha have formed forest committees to protect their lands and resist the department.

### *Kerala*

Over 500 hectares of tribal land spread across 28 tribal settlements in the Thiruvananthapuram forest territorial division has already been 'alienated', according to an unofficial survey conducted by conservation officials during the last couple of weeks. In the Vettikkavu settlement in the Peringamala area of this

territorial division, 61 Kani families in this settlement have now been evicted, despite having earlier been recognized and given assistance under a 1998 government scheme.

### *Madhya Pradesh*

In Badwani, Khargone and Burhanpur districts, 3000 claims have been filed. Large-scale evictions, destruction of homes and uprooting of crops has taken place in Nepa and Kakhnar Tehsils, and 350 families in 35 villages (particularly Chimnapur, Davali, Jhanjar, Bomiliaput, Jamunala and Hasanapura, all in Neapanagar Tehsil) have had their houses, livestock, and crops razed by the department. Local police stations have refused to register any complaint filed by the victims. The monsoon rains have further exacerbated the condition of these adivasis, who along with their children have been rendered shelterless. Three tribal youth of Mendhakhapuri village of Khakanar Tahsil, Burahanpur District, were seriously injured when police fired on protests.

In Harsud Tehsil of Harda district, evictions are still continuing with police protection. A public interest petition has been filed against evictions in 270 villages. After large demonstrations in Neapanagar on 12<sup>th</sup> June and at Khaknar on 3<sup>rd</sup> July, the FD has slowed down its eviction drive.

Large scale evictions have also taken place in Betul district. Sixty persons were taken into custody by the FD, and were only located after a *habeas corpus* petition was filed in the High Court. In Bhandarpani village, tribal families have lost their belongings, food, clothes, meagre

savings and cattle. The administration claims that they have been rehabilitated (supposedly with Rs. 1000/- per family), but in reality these families are staying in makeshift polythene sheet tents with little food. They are getting paid a pittance for their daily labour in the fields. The condition of children and old is pathetic.

### *Maharashtra*

The implementation of the 10/10/2002 GR of the Government of Maharashtra has been very uneven (see Maharashtra State report and Section II), but there has been a fair measure of success in areas where the tribal claimants were organized. However, in areas where the tribals have not been organized, the rate of rejection is very high.

In Nandurbar District, Satya Shodhak Gramin Kashtakari Sabha has filed 2500 claims, of which 1249 have been accepted. In two villages (Dhanvardi and Borzar, Navapur Taluka) forest personnel were driven out by resisting villagers. In Umred taluka of Chandrapur district, in 2002-2003, large number of adivasis were evicted and plots planted with teak. The Jabran Zot Andolan has been resisting these evictions; the adivasis have repossessed the land and are planting crops. However, a large number of cases have been filed against the cultivators.

In Yavatmal district, only forty out of thousands of claimants were accepted, and in Nashik district as well a very large number of adivasi claimants have been rejected. In Chopda tehsil of Jalgaon district, encroachers were not permitted to cultivate lands. Officials rejected all representations that did not have documentary proof. In Raigad District, many claimants who were declared to be

inelegible were not given a chance to appeal before the Review committee. The government was forced to issue an order that provided such claimants with the opportunity to tender an appeal.

In Thane district, about 30,000 claims were filed, but the Tehsil Review Committee illegally rejected a large number of claims that had been accepted by the Village level Committee. Strong representations of organizations working in the district ensured that a good number of the rejected claims were revalidated. Finally, about 70% of the claims have been accepted and sent to the District Committee for finalization. In Mokhada block, the FD dug pits on cultivated plots, but backtracked after protests and has given a written assurance that none of the claimants who have been accepted by the Committee will be disturbed in future.

In Amravati District, approx 1500 claims out of 2000 were accepted by the district administration. Eligible claimants have all been given laminated certificates by the district administration and appropriate mutations have been in the revenue records after entering their names.

### *Orissa*

Approximately 8,700 claims have been filed in nine districts. In the meantime, even villages with records of possession and cultivation from 1800 onwards have been threatened with eviction. World Bank funds have been used to set up 6600 Van Suraksha Samithis (see state reports), and these Samithis are preparing to evict the local cultivators. Meanwhile, even as cultivators are being threatened with eviction, the DC of Kalahandi has announced that he is ready

to grant 15,000 hectares for bio-diesel plantations.

### *Rajasthan*

A total of 18,000 claims have been filed from 12 districts. However, some cultivators have received eviction notices ordering them to vacate their lands in 3 days. In Pali block, non adivasis are being used to evict adivasi cultivators, and have demolished two houses. Appeals against eviction have been filed with the ADM.

In Banswada District, houses have been demolished in remote villages near the border with Madhya Pradesh. However, local resistance is strong.

### *Tamil Nadu*

Approximately 600 claims have been filed in Kodaikanal Taluka, Dindigul District, and over a thousand in Gudalur Taluka, Nilgiris District. In Gudalur, at least 65 families were evicted in 2003 by teams of up to 200 forest and police officials armed with guns, axes and knives. The teams have met with stiff popular resistance. In Kalakkad-Mundanthurai sanctuary, houses were demolished by forest personnel.

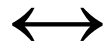
## **5. Conclusion**

Over the past year, tribals and other forest dwelling communities have been fighting for their rights through their own local organizations and the Campaign. At the same time, the forest departments and MoEF, with the assistance of the Supreme Court, continue to create a framework whereby their grip on “forests” is increased.

But no amount of legal definitions, guidelines, orders and rulings can negate

the fact that tribals and other forest dwellers have been cultivating forest lands for generations. The Campaign resolves to respond to the new challenges before it, whether it be through the courts, through the legislature or on the ground. The Campaign resolves to continue its struggle for Survival with Dignity.

# *CHAPTER V*



# *RECOMMENDATIONS*



I

**Stop all evictions of adivasis and other forest dwellers from forest areas**

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➤ The MoEF's orders of September 1990 and the clarificatory order of the IG of Forests of 30<sup>th</sup> October 2002 admit that forest areas are riddled with disputed claims and disputes related to pattas, leases, etc. which should be settled with due urgency.

➤ MoEF's order of February 5, 2004 further admits that at the time of bringing many tribal areas under forestry legislation, the rights of tribals were not settled, making them 'encroachers' in the eyes of the law and asks all state governments/UTs to undertake proper settlements within one year.

➤ The millions of adivasis who have been displaced for 'development projects' without rehabilitation have rehabilitated themselves in the forested area for a long time.

➤ Several lakh hectares of supposed 'forest' lands under occupation prior to 1980 and eligible for regularization under the FCA itself are yet to be regularized.

➤ The Common Minimum Programme of the UPA government states that "Eviction of tribal communities and other forest dwelling communities from forest areas will be discontinued. Cooperation of these communities will be sought for protecting forests and for undertaking social afforestation."

➤ Yet brutal evictions, without giving the evictee due notice or the opportunity to be heard (as required by

Supreme Court judgement in the *Pradip Prabhu* case), are being reported from many states, including Assam, Madhya Pradesh, Gujarat, Tamil Nadu, Rajasthan, Kerala, and Chhattisgarh.

➤ In its reply to a Parliamentary Question on 16.08.2004, MoEF admits that, since May 2002 alone, 'encroachers' have been evicted from 1,52,400 hectares.

➤ In the absence of resolution of long standing claims and regularization of pre-1980 encroachments, a situation of extreme insecurity and distress prevails among communities of forest dwellers. This is harmful both to the people and the forest.

*We strongly urge the Government of India to ensure that*

◆ *No subsistence cultivators and occupants of un-surveyed, disputed forest lands or deemed forests, should be treated as 'encroachers' and evicted till their rights, including CPR rights, have been inquired into through an open and transparent process and final notifications under sections 20 or 29 of the IFA have been issued.*

◆ *No forest dwellers who have filed their claims before the authorities under the Guidelines of MoEF dated 18<sup>th</sup> September 1990 should be evicted unless their claims have been inquired into and all relevant evidence has been examined in an open, unbiased and transparent process.*

- ◆ *An effective mechanism for preventing illegal evictions is put in place immediately by the Government of India.*



## II

### Compensate all those forcibly evicted following MoEF's May 2002 order

➤ Notwithstanding the fact that the problems currently experienced in the forest areas have their root cause in the failure of the forest administration to fulfil the requirements of the Indian Forest Act 1927 in a just and fair manner.

➤ And, further, pursuant to the XXIX Report of the Commissioner for Scheduled Castes and Scheduled Tribes, the Government of India constituted a Committee of Secretaries to evolve effective solutions to the problems faced by forest dwellers. This Committee prepared a detailed note, which was in turn accepted by the Cabinet and used by the MoEF to prepare its 1990 guidelines. Yet the forest administration has since ignored its own 1990 guidelines.

➤ And the Supreme Court in *Pradip Prabhu V/s State of Maharashtra* clearly indicated that claimants should not be evicted until a fair and just inquiry is conducted into their claims.

➤ MoEF admits that 'encroachments' have been evicted from 1,52,400 hectares since May 2002 alone.

➤ During the jan sunwai, a large number of cases of people being evicted despite having longstanding legal land titles were reported.

*destruction of all their moveable and immoveable property.*

- *Take punitive action against those forest officials who forcibly evicted forest dwellers from land whose ownership is disputed as per the MoEF's own admission, or for which the occupants had legal titles.*

*We earnestly urge the Government of India and the State Governments to*

- *Ensure that adivasis and other forest dwellers who have been victims of forced evictions in the wake of the May 3, 2002 letter of the IGF should be given back their land and compensated adequately for the*



### III

#### **Take action against powerful lobbies**

- In his directions of 3<sup>rd</sup> May, 2002 to all the Chief Secretaries, Principal Chief Conservators of Forests and Forest Secretaries of all the States and Union Territories, the IG of Forests clearly states that “Such encroachments are generally done by powerful lobbies and cause great harm to forest conservation, particularly when they are carried out in the remote areas in a honeycomb pattern.”
- Instead of targeting and taking stringent action against powerful real estate and other commercial/plantation lobbies that are grabbing forest land, MoEF and the State Forest Departments have taken action against impoverished forest dwellers who have encroached for subsistence on small clearings in degraded areas, as well as cultivators having longstanding legal land titles.

Given this scenario, where the rich and powerful go scot free, we urge the Government and the Forest Administration desiring to rid the forests of encroachments, to prove their bona fides by targeting and taking stringent action against powerful real estate and other commercial/plantation lobbies who are grabbing forest land.

#### IV

### Complete resolution of all conflicts within a fixed time frame

➤ Notwithstanding that the 1990 guidelines of the MoEF were issued in order to achieve speedy resolution of long-standing problems and conflicts. The forest administration has made no efforts to implement the same for the past 14 years, causing serious insecurity and disturbances in forest areas and hence resulting in political violence and conflict.

➤ The non-recording and recognition of the rights which were guaranteed by the 1990 guidelines also prevent persons with valid but unrecognized entitlements from accessing development schemes.

➤ Further, the Supreme Court has not placed any bar on the implementation of the 1990 guidelines and has only restrained the Central Government from regularizing encroachments without its consent, on the grounds that rich and powerful lobbies will get their encroachments regularized by the Central Government.

➤ The directions of the MoEF as issued by the I. G. of Forests on 30<sup>th</sup> October 2002 reiterate the Government's commitment to implement the 1990 MoEF guidelines in a time bound manner.

*This should be done within a frame for resolving tribal-forest conflict within a fixed but realistic timeframe. For this, a transparent and open process involving teams of officials from the tribal affairs, revenue and forest departments together with gram sabhas and respected local elders, CBOs and NGOs, must be ensured.*

- ◆ *The formulation of the process of Inquiry into all claims, laying down the procedure for verification of claims, elaborating on relevant evidence to be adduced in support of claims, providing the claimants the opportunity to adduce evidence, laying down the criteria for acceptance and rejection of claims and an opportunity for appeal. The Order of the Government of Maharashtra dated 10th October 2002 can be a good model.*

*We urge the Government of India to undertake with the utmost urgency,*

- ◆ *Resolution of all conflicts related to forest lands, leases/pattas etc and conversion of all forest villages into revenue villages, in accordance with the MoEF circulars of September 18, 1990.*

➤ It is recognized by both the forest administration and other competent authorities that encroachments of the poor on degraded lands in the forest are, with a few exceptions, for sheer subsistence in the absence of other livelihood alternatives.

➤ It has been observed that evictions of such encroachers result in hunger, starvation and malnutrition deaths on the one hand and fresh encroachments by the evicted encroachers in another forest area on the other; thus forest cover is lost in two locations rather than one.

➤ Accordingly, the first 1990 guideline (FP-1, Annexure 3.1) directs that “the State/ UT Governments may, however provide alternate economic base to such persons by associating them collectively in afforestation activities.”

➤ The IG of Forests in his May 2002 letter recommends that “the States may consider ‘in situ’ economic rehabilitation by involving the ineligible encroachers in forestry activities through Joint Forest Management.”

*Given that it will be counter-productive to evict encroachers who are cultivating for subsistence in the forest, we strongly urge the Government of India and the State Governments to*

◆ *Undertake in situ rehabilitation of post 1980 tribal and other poor forest land occupiers by granting them heritable but inalienable conditional pattas under a Community Managed Forest Conservation Program, controlled by gram sabhas as prescribed under the 1996 Panchayats (Extension to Scheduled Areas) Act, and permitting them to practice agro-silvi operations, pursuant to their protecting mutually demarcated forest areas.*

◆ *Make the Tribal Welfare Department responsible for involving peoples’ organisations and NGOs in training the tribals in appropriate agro-silvi practices that can provide adequate tree cover as well as sustainable livelihoods to the poor.*

## VI

### **Change the composition of the Central Empowered Committee (CEC), Compensatory Afforestation Fund Management and Planning Authority (CAMPA) and the Forest Advisory Committee**

➤ As most of the country's forest land is concentrated in adivasi and indigenous peoples' areas and much of it is covered by Schedule V or VI of the Constitution, it is imperative that the CEC and other bodies are sensitive to the special issues, problems and crisis in the Schedule V and VI areas and that their recommendations both reflect a deep understanding of the crisis and workable solutions to meet the crisis.

*Hence, we strongly urge the Government of India and the Supreme Court to ensure that*

- ◆ *The CEC includes members who have an understanding of the diversity of pre-existing tenures in these areas and the constitutional provisions for protecting the welfare and resource rights of adivasis and other forest dwellers.*
- ◆ *In addition to representatives of the Ministry of Tribal Affairs and the National Commission for Scheduled Castes and Scheduled Tribes, there should be at least one respected and credible representative of adivasis themselves and/or a non-government member known for her/his advocacy of the interests of forest dwelling communities.*
- ◆ *The composition of the Forest Advisory Committee constituted*

*under the Forest (Conservation) Amendment Rules, 2004, and the membership of the recently constituted CAMPA should also be changed on the pattern recommended above for the CEC.*



## SOCIO-POLITICAL AND GENERAL RECOMMENDATIONS

### VII

#### Restore forest law and policy making to the legislature

➤ It is noticeable that many orders of the Supreme Court under *T. N Godavarman Thirumulkpad Vs Union of India* (W.P. 202 of 1995) and W.P. 337 of 2000 transcend the judiciary's mandate of interpreting law and enter the realm of writing new law, thus effectively taking over the role of the legislature.

➤ The orders of the Court also extend the purview of the Forest Conservation Act even to those lands for which only preliminary notifications for conversion into state forests have been issued (in the *NTPC* case) as well as to lands coming under the 'dictionary definition' of forests, to which the forest laws were not previously applicable. Many of these lands have existing tenures and rights recognised by other laws.

➤ Given that most state 'forest' lands comprise the livelihood resource base of forest dwelling communities, the Court's blind faith in a discredited bureaucracy and colonial timber focussed 'scientific' forestry needs to be discarded.

➤ Similarly, the Supreme Court's interim order vesting exclusive management authority in forest departments over widely diverse 'forest' land categories, irrespective of ownership, overrules the possibility of community based forest management for meeting local livelihood needs, as

provided for by section 28 of the Indian Forest Act as well as by PESA.

➤ Further, the creation of the CEC has resulted in the executive branch now being effectively conferred with de facto judicial powers.

*While recognizing the incalculable service that the Supreme Court has performed by bringing the issue of conservation on the National Agenda, and the fact that the Court's orders have helped conserve the forest wealth of the nation and to ensure environmental balance, we humbly recommend that*

- ◆ *Both MoEF and the Ministry of Tribal Affairs should table a law before Parliament to restore democratic decentralization of forest governance in line with the constitutional mandate. Parliament should inform the Hon'ble Supreme Court that amending existing laws or promulgating new laws to protect or preserve the forest is the prerogative of the legislature and not the Supreme Court.*
- ◆ *The design of decentralized governance institutions needs to recognise the inter-linkages between tenurial security, livelihoods and environmental sustainability.*





## RECOMMENDATIONS FOR BROAD LEGISLATIVE CHANGES

### VIII

#### Remove grave contradictions in the Forest Conservation Act, 1980

➤ Recognizing the serious infirmities in the processes by which large areas have been declared state forests, Parliament should review rigid enforcement of the FCA on all such lands.

➤ Further rigid enforcement of this provision is leading to new displacements, not only through evictions but also through cancellation of existing land titles and elimination of extant entitlements on lands recorded as 'forest'.

*We strongly urge the Government of India to qualify the application of the Forest Conservation Act to ensure that*

- *No lands 'recorded' as forests in government records should be brought under the purview of the FCA without verification of their actual use and status on the ground.*
- *Purview of the FCA should be restricted to areas with real forest cover and only to lands which have been notified as reserved forest under the Indian Forest Act after completing the due legal process of settlement and clear demarcation of boundaries.*
- *The application of the FCA should be excluded from all areas that did not earlier come under the regime of the Forest Department but which were converted into forest lands by*

*virtue of the definition of the Supreme Court in the Godavarman Case.*

- *Community grazing and forest lands, even if recorded as 'forests,' should be left under local community management and control in accordance with existing rights instead of being transferred to forest departments for 'scientific forestry', thereby further undermining local livelihoods and food security.*
- *A category of "village forests" needs to be created so as to provide forest dwelling communities with areas for conservation and their livelihoods.*
- *Under no circumstances should additional tribal and other community lands, including jhum lands, be declared state forests on grounds of meeting the 33% forest cover objective or for 'compensatory afforestation', as such lands have been disproportionately appropriated in the past.*
- *In states with minimal forest cover, incentives for landowners and communities to increase forest cover on their lands should be developed.*



## IX

### Review the irrational target of 33 percent forest cover

- The '33% forest cover' objective was included in the 1952 forest policy on the ground that countries with high forest cover were more 'prosperous'.
  - But in sharp contrast with that notion, today the highest concentrations of poverty in India are in tribal-forest areas, since forest dwelling communities have been deprived of their customary resource rights – their very means of survival – through the declaration of such areas as state forests.
  - Further, isolated patches of 'compensatory afforestation' on other lands do not contribute in any ecologically meaningful way towards replacing the destruction of natural forests, which form parts of complex ecosystems and the habitats of diverse flora and fauna.
  - A highly contentious effect has been that compensatory afforestation has effectively become a mechanism for annexing additional non-forest community lands, lands which constitute those communities' livelihood resource base.
- ◆ *A detailed scientific assessment of the extent of forest cover that is required in India, and which would ensure both an ecological balance and the survival of the poorest with dignity.*
  - ◆ *A requirement that States with a lower percentage of forest cover than the national requirement should be required to pay the Net Present Value of the difference between the current forest cover and the desired norm. This amount should be deposited with a Fund to be utilized exclusively for economically sustainable and ecologically supportive livelihoods for forest dwellers in States with forest cover in excess of the norm.*

***We strongly urge the MoEF to place before Parliament, for the consideration of the law makers of***

### Compensatory afforestation and net present value

➤ It is an accepted fact that lands under cultivation have been bereft of tree cover for a long time, indeed ever since the land was brought under the plough.

➤ It is also clear that the poor have not cleared standing forests but have generally occupied degraded lands.

➤ The overwhelming majority of cultivations or occupations (termed encroachments) are for subsistence and not for commerce or profit.

➤ Disputed claims, pattas/leases in various forms generally existed before areas were declared to be reserved forests and became part of the forest regime.

➤ Recognizing that entitlements are presumed to have been legally recognized on the date that the government or the legislature has approved of the law, order or regulation.

➤ And by inference, lands covered under the entitlements have been legally dis-forested on the day that the entitlement was created in law.

➤ That the entitlement holder should not be punished for the failure of the authorities to recognize and record the entitlement.

➤ That the creation of such entitlements has been a welfare measure for the poor.

➤ That the requirement of

same logic compensatory afforestation and New Present Value will have to be obtained also from all other parties who may have been given contemporaneous entitlements.

*We place before the consideration of the competent authorities the following:*

◆ *Compensatory afforestation and recovery of Net Present Value should not be required for the lands to be regularised after the settlement of disputed claims, conversion of forest villages to revenue villages and the regularisation of pre-1980 encroachments because*

▪ *These lands did not have 'forests' on them at the time of the FCA enactment and were recorded as forest land only on paper. In any case, isolated patches of 'compensatory afforestation' on other lands do not contribute in an ecologically meaningful way towards replacing the destruction of natural forests comprising complex ecosystems and the habitats of diverse flora and fauna.*

▪ *Technically the forest land covered by legitimate claims was already "disforested" on the day the government order for regularization was passed and title was created in favour of the*

*that the land is 'forest till such time the Forest Department has disforested such land'.*

- ◆ *While industry and other 'development' projects should be made to pay for compensatory afforestation and the Net Present Value of the diverted forestland, the involvement of the poor in a conservation strategy in lieu of validation of their entitlements as envisaged in the guidelines of MoEF of 1990 should be accepted as payment of NPV*
- ◆ *Additional non-forest land should not be notified as reserved or protected as a replacement of the diverted land. Instead, compensatory afforestation should be done on the large degraded lands already notified as 'forests'.*
- ◆ *In the case of community owned jhum lands in the North East, instead of the MoEF granting clearance for their diversion to other uses due to their also being categorised as 'unclassed forests', the prior informed consent of the jhumming communities should be obtained. In the same vein the Net Present Value of such lands should be paid to the communities instead of to CAMPA.*

## XI

### **Implement holistic land reforms for both private and public/common lands**

➤ Post-Independence, land reforms were primarily focussed on redistribution of private land for cultivation with a particular emphasis on distribution of land to the tiller and the landless, though the implementation of land reform left much to be desired.

*'forests' to be managed exclusively by the FDs.*

➤ However, in clear contrast to the goals of a welfare state, huge areas of tribal and other common lands were declared state property, either as forests or revenue 'wastelands' without even recognizing the rights of the forest dwellers and other pre-existing users.

➤ In the above process, some of the poorest people were rendered landless and homeless or made illegal occupants of their customary lands. A wide diversity of livelihood systems based on use of common lands were simultaneously made unviable.

#### ***Hence we recommend that***

- ◆ *The government must implement both private and public land reform. While distribution of surplus private land to the landless should be speeded up, a comprehensive public lands reform must also be initiated*

## XII

### **Minimise displacement and rehabilitate the already displaced**

➤ The state's power of eminent domain through the Land Acquisition Act must be used with the utmost restraint to minimise involuntary displacement.

➤ According to the draft National Policy on Tribals prepared by the Ministry of Tribal Affairs, about 8.5 million tribals (about 12.6% of all tribals) had been displaced till 1990 on account of mega projects and the declaration of National Parks and Sanctuaries.

➤ Although tribals constitute only 8% of the population, they constitute at least 55% of the total of displaced populations.

➤ Particularly due to their land rights still not being settled in many areas, only 2.1 million of the displaced tribals were rehabilitated, and as many as 6.4 million left to fend for themselves.

➤ While many landed up in urban slums, the majority simply moved to other forest areas as 'encroachers'.

➤ They suffer the double disadvantage of lacking tenurial security, because of which they have to pay bribes on a regular basis, and being deprived of access to development benefits, as they are not recorded as revenue villages.

*prior and informed consent of the communities to be displaced.*

◆ *The rehabilitation backlog of the previously displaced must be successfully completed, before any further acquisition of tribal land for projects of any nature is undertaken.*

◆ *Excessive land taken from adivasis for industrial and similar purposes, which is still lying unutilised or going to be privatised (e.g. Balco, HPCL - Jharkhand, State Farms in Kerala and Maharashtra) should be released for redistribution and rehabilitation of those illegally displaced in the past.*

**We earnestly urge the Government of India and the States to ensure that**

◆ *All future land acquisition in tribal/forest areas must be with the*



### XIII

#### Replace bureaucratic forest management by community based common property resources/forest management & stop using JFM to evict legitimate claimants to forest land

- The present system of forest management of the country continues to pattern itself on the colonial system put in place by the British.
  - The goals of British forest management were to enhance revenue with no thought for environmental concerns.
  - The fact that forest cover has dwindled steadily ever since conservation responsibilities were given to the forest department is undisputed.
  - Involvement of the community, as an essential stakeholder, in the regeneration and conservation of the forest is recognized as a sine qua non.
  - The involvement of all stakeholders with secured interests and assured participation in decision making at all levels are essentials of sound management.
  - JFM and CFM programs have been evolved to involve the forest dwelling communities in conservation. But these programs have several inherent defects that render the the people unequal partners with the state.
  - JFM/CFM projects as currently practiced provide little space for people to manage their community forests in accordance with local priorities and livelihood needs.
  - With management control remaining with the forest department, JFM/CFM groups are being used to implement the department's management priorities, including evicting 'encroachments' of poor adivasis with the help of better off members of the community, even when the occupants have disputed claims over the land.
  - In such a scenario, the poor have been rendered landless through JFM/CFM programs, their lands have been analogously transferred to the "landed rich" and reclassified as state forest land.
  - In many states (AP, Karnataka, Orissa, UP, MP and Chhattisgarh) the FDs have used JFM for bringing disputed cultivated lands under tree plantations in order to convert them into state forest lands. In AP, adivasi cultivators have been forced off 37,000 hectares of their *podu* and other cultivated lands under phase I of the World Bank funded forestry project with the help of JFM and it is planned to similarly take away the podu land of another 8000 households under the current CFM project.
  - Such use of JFM is a violation of the required settlement of rights under the Forest Act and the 1990 MoEF orders.
- We therefore recommend that*
- ◆ *Section 28 of the IFA and PESA in Schedule V areas should be used for promoting a shift away from centralized, bureaucratic forest management towards community based forest and CPR management through devolution of management authority and responsibility, to local*

*community institutions based on clear common property rights.*

- ◆ *The government should stop using JFM/CFM to evict people in possession of forest lands. Abuse of one section of the community to deny the rights and entitlements of the poorer sections should be discontinued forthwith.*
- ◆ *Implementation of JFM/CFM in areas riddled with disputed claims should be restrained till the tenurial status of the land itself has been clarified through the settlement of rights and the forest dwellers' livelihoods protected.*
- ◆ *Village grazing lands and forests, traditionally used for meeting community needs, should be excluded from notification as 'national' forests during the settlement process and restored to community-based management, recognizing their livelihood and other functions.*

#### XIV

### **Harmonise Constitutional provisions for tribal welfare and forestry legislation**

- Any government intervention in tribal areas (both those designated under Schedules V and VI of the Constitution and otherwise) needs to be in harmony with the Constitutional provisions and other policy directives regarding the resource rights and livelihoods of tribals and the prevent land moving out of tribal hands, although these have been poorly enforced.
- Restoration of lands of tribals even when lawfully alienated has been upheld by the Supreme Court when such laws were challenged as unconstitutional.

continue to be used to hound forest dwellers even in Schedules V areas.

➤ The concept of “wilderness” to promote flora and fauna must be replaced with a concept of “stewardship” that recognises that both the forest and forest dwellers depend upon each other for their own survival.

➤ The government itself has been the biggest violator of the spirit of the constitutional provisions through indiscriminate notification of customary tribal lands as state forests or protected areas, often without even settling their rights, converting them into ‘encroachers’ on their ancestral lands.

➤ The poor recognition of communal tenures in India (except in the Schedule VI areas) has decimated communities' economies and livelihood security due to the loss of their communal lands.

*systems and which recognize the competency of the gram sabha to safeguard common property resources of the community, should be respected and implemented by the State governments and the administration.*

*We strongly recommend that*

*g) The President of India and State Governors should be asked to exercise their powers for withholding the application of forestry laws in scheduled areas with due modification to suit the specific conditions of the areas and the communities living therein.*

*h) The President of India and State Governors should ensure that laws like PESA, which recognize alternative self governance*



**Recognise the communal property rights of shifting cultivators and  
“Primitive Tribal Groups”**

➤ The present policy delegitimizes the rights of shifting cultivators, resulting in double jeopardy for these fragile communities. On the one hand their agricultural practices are considered to be ecologically harmful without adequate scientific validity, while on the other hand their areas have been systematically reduced making the practice unsustainable and making shifting cultivators effectively landless by declaring their lands as state forests without any settlement of their rights.

➤ Communities of shifting cultivators are also being wrongly categorized as people who do not have love for the land and only use it and desert it. The charge appears to be grounded on a belief that persons enjoying the right to private property have greater love for the land, not on the basis of any ecological arguments but presumably on the basis of the multiplicity of property disputes.

➤ The present Constitutional Frame does not recognize any legal regime of ownership other than private property by a legal person (whether an individual, company, corporation or the state), except in areas covered under the Sixth Schedule of the Constitution. This legal regime effectively denies rights to millions of people who have a different relationship to land, treating it not as property but as a basis for human and ecological survival.

*We recommend that*

◆ *A specific approach for recognizing and recording the communal*

*property rights of pre-agricultural ‘Primitive Tribal Groups’ and shifting cultivators, who under no circumstances should be treated as ‘encroachers’ on their ancestral lands, should be developed.*

◆ *Instead of classifying their customary lands as ‘forests’, the FAO’s practice of classifying shifting cultivation lands as ‘forest fallows’ should be adopted. A different governance system for these lands needs to be evolved, one which allows the combining of their livelihood uses with the maintenance of ecosystem integrity (as attempted in Nagaland).*

**Manoj  
Bhattacharya  
Mohini Giri**

**Prashant  
Bhushan  
Amarjit Kaur  
Usha  
Ramanathan**

**Sunit Chopra  
Miloon Kothari  
Nandini Sundar**

**Jean Dreze  
Sunita Narain**

*List of organisations that participated in the Jan Sunwai*

**Andhra Pradesh**

Adivasi Aikya Vedike, Hyderabad

**Assam**

Kinkrajuli Abedari Arafat

**Chattisgarh**

Lokshakti Samajsevi Sanstha

**Dadra and Nagar Haveli**

Adivasi Jangal Janjeevan Andolan

**Gujarat**

Adivasi Mahasabha, Gujarat

Pragati Prayas Kendra, Taluka Godhra, Dist. Panchmahals

Rajpipla Social Service Society , Dist. Narmada

Adivasi Sarwangi Vikas Sangh, Legal Aid and Human Right Center, Surat

Paryavaran Suraksha Samiti, Rajpipla, Dist- Narmada

Arch Vahini, Rajpipla, Dist Narmada

**Jharkhand**

Bharat Jan Andolan (Jharkhand)

**Kerala**

Adivasi Solidarity Council, Calicut

**Madhya Pradesh**

Jan Sangharsh Morcha

Adivasi Mukti Sanghatan, Sendhwa, Dist. Badwani

Baghelkhand Adivasi Evam Kisan Mazdoor Mukti Morcha, Dist. Satna

Malwa Adivasi Morcha, Dist. Dhar

Ekta Parishad

Adivasi Ekta Sanghatan

**Maharashtra**

Shoshit Jan Andolan

Kashtakari Sanghatna, Dist Thane

Jagrut Kashtakari Sanghatana, Karjat, Dist. Raigad

Satyashodak Gramin Kashtakari Sabha, Navapur, Dist. Nandurbar

Punarvasan Sangharsh Samiti, Taloda, Dist. Nandurbar

Narmada Bachao Andolan, Dhadgaon, Dist. Nandurbar

**Orissa**

Adivasi Kranti Sanghatan, Dist. Dhenkanal  
Vasundhara, Bhubhaneshwar

**Rajasthan**

Jangal Jameen Jan Andolan  
Astha Sansthan, Udaipur  
Adivasi Kastkar Sanghatan, Taluka Pratapgad, Dist. Chitodgad  
Vagad Mazdoor Kisan Sanghatan, Dist. Dungarpur,  
Adivasi Bhakhar, Bhitrod Adivasi Vikas Manch, Abu Road, Dist. Sirohi  
Jan Chetna Sansthan, Abu Road, Dist. Sirohi  
Adivasi Vikas Manch  
Adivasi Kashtakari Sanghatan

**Tamil Nadu**

People's Union for Civil Liberties (Tamilnadu & Pondicherry)  
Tamilaga Adivasikal Iyakkarn, Dist. Tiruchirappalli

**Uttaranchal**

Chetna Andolan

**West Bengal**

National Fishworkers Forum, West Bengal



## Panelists of the Jan Sunwai

**Manoj Bhattacharya** is a member of the Rajya Sabha and a former member of the Parliamentary Standing Committee on Environment and Forests.

**Prashant Bhushan** is an advocate in the Supreme Court.

**Sunit Chopra** is the Joint Secretary of the All India Agricultural Workers' Union and a member of the Central Committee of the Communist Party of India (Marxist).

**Jean Dreze** is a member of the National Advisory Council and a Professor of Economics at Delhi School of Economics.

**Mohini Giri** is a former chairperson of the National Commission for Women.

**Amarjit Kaur** is National Secretary of the All-India Trade Union Congress and a former General Secretary of the National Federation of Indian Women.

**Miloon Kothari** is the United Nations Special Rapporteur on the Right to Housing.

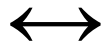
**Sunita Narain** is the Director of the Centre for Science and Environment.

**Usha Ramanathan** is a legal scholar.

**Nandini Sundar** is a professor at the Centre for Law and Governance, Jawaharlal Nehru University.

**Bhupinder Singh**, Commissioner for Scheduled Areas and Scheduled Tribes, was also a member of the panel. Due to unforeseen circumstances we were unable to contact him for his endorsement of the recommendations above.

# **PART II**



**DOCUMENTS ON INDIA'S  
FOREST POLICIES**

These documents are provided for information and use by movements, people's organizations and the general public. The Campaign has attempted to ensure that the reproduction of these documents is as accurate as possible, but these copies should not be treated as authoritative. They should be checked against the official versions available with the respective issuing authorities before use in any context that would require absolute accuracy.



## INTRODUCTION TO ANNEXURES

This compendium consists of a number of annexures. Each annexure contains a document, such as a court ruling, policy statement or official circular, that pertains to forests and the rights of forest communities. We have tried to include the most critical documents on this issue.

This collection of documents indicates that there has consistently been two notions of ‘conservation’ in government policy – one that includes respect for forest peoples’ rights and traditions, recognizing that both forests and communities will suffer if this ‘symbiotic relationship’ is ignored, and one that tramples on all community rights in the name of top-down ‘protection’ by forest officials. It is the latter that has always triumphed, particularly since the *Godavarman* case was filed in 1995. But the former remains a valuable resource for movements, concerned officials and other citizens who seek to ensure that forests and their communities do not simply become fodder for the machinations of India’s forest bureaucracy.

### SECTION - I

#### ***Document 1:***

The National Forest Policy 1988 is the first forest policy which recognizes the relationship between the forest and the adivasis. It clearly states in part 4.6 “Having regard to the symbiotic relationship between the tribal people and forests, a primary task of all agencies ...should be to associate the tribal people closely in the protection, regeneration and development of forests...While safeguarding the customary rights and interests of such people...” However in para 4.8.1, the Policy does not support regularization of encroachments.

#### ***Document 2:***

The Commissioner for Scheduled Castes and Scheduled Tribes, in his letter to the President while presenting his XXIXth Report, has examined the tribal-forest as well as the tribal-forest administration relationship in great detail. In para 31-32, he outlines the

transformation in the right over resources during the colonial and post independence period. The Commissioner then goes on to describe three kinds of conflicts that have arisen over tribal access to forest lands for cultivation. The first conflict (paras 33 to 34) that has arisen in the present day and time is '*unsettled claims*'. These have arisen from defective settlement of the forest (Sections 4 to 20 of the Indian Forest Act lays down a process of recording of rights prior to declaration of Reserved Forests) wherein the reservation of forests, particularly in the post independence period, was perfunctorily done and the rights of land holders were not recorded in the Settlement process. The second conflict described in paras 35-36 concerns the extinguishment of *leases, pattas* etc. by which land was legally transferred by erstwhile owners of private forests to cultivators as well as similar arrangements post independence. Many of these were not honoured in the process of reservation. The third conflict is encroachments which he has cursorily touched upon in paras 37-38. The excerpts of the letter are presented in this document to give a background to the issue. The Commissioner has dealt with these issues in greater detail in pages 92 to 126 of the Report, wherein he has also examined the issue of forest villages.

***Document 3:***

Documents 3.1 to 3.4 - Following the XXIX Report, a Committee of Secretaries was formed to work out solutions to the numerous issues raised by the Commissioner. After extensive discussions, the CoS prepared a note which was approved by the Cabinet. Based on the decisions of the CoS, though with some vital modifications, the Ministry of Environment and Forests (MoEF) issued Guidelines on 18<sup>th</sup> September 1990. These are covered in Document 3.1 to 3.4. These guidelines provided a frame for the conflict between the numerous guidelines issued before the Forest Conservation Act (FCA) and the ban on conversion of forest land for non- forest purposes imposed by the FCA.

Documents 3.5-3.6 are guidelines of MoEF which lay down important principles vis a vis the position taken in the Forest Policy concerning the participation of the tribal people in conservation of the forest.

Document 3.7 stipulates *inter alia* the pre-condition of compensatory afforestation prior to recognition of rights as provided for in the Guidelines of 18<sup>th</sup> September 1990. According to Mr. S. R. Sankaran, who was Secretary, Rural Development, and played a major role in the CoS, the pre-condition of compensatory afforestation was not part of the Cabinet Note and was introduced subsequently by MoEF. Mr. Sankaran has held that the rights to land covered under the Guidelines of 18<sup>th</sup> September were legally recognized on the day that the respective orders were passed by the state governments and the land in question was disforested on the same day. Hence the issue of compensatory afforestation does not arise because no new forest land is being released or claimed for the fulfillment of the right. The delay by the Forest Department in implementation of the order of the concerned state government cannot become a ground for negation of a right or creating new conditions for the exercise of a right.

Document 3.8 consists of a series of instructions of MoEF concerning diversion of forest land for non-forest purposes under FCA for development projects in the tribal areas. The guidelines also reiterate that the Guidelines issued by MoEF on 18<sup>th</sup> September 1990 should be implemented in a time bound manner.

Document 3.9 are directions of MoEF to step up the process of conversion of forest villages into revenue villages. The directions at (i) state “This is to reiterate that the Central Government is committed to the conversion of forest villages into revenue villages according to the guidelines approved by the Union Cabinet in 1990”. However due to other orders of the Supreme Court, the process of conversion has been indefinitely stayed.

Document 3.10 is the order issued by MoEF which once again states “ The question has also been raised in...various Standing and Consultative committees of Parliament attached to different Ministries, as also various State Governments that the tribals have been living in harmony with the forests since time immemorial, and their rights on such lands should be recognised. However, while these areas were being brought under the purview of relevant Forest Acts, their traditional rights could not be settled due to number of reasons making them encroachers in the eyes of the law. The Central Government in September 1990 vide No .13-1/90-F.P.(2)&(3) had requested the State Governments /UTs to settle the disputed claims, issue patta lease, etc of the tribal

population on the forest land , but so far ...proposals have been received only under the category of regularisation of eligible encroachments ... This has deprived the tribals of natural justice.”

***Document 4:***

PESA, the Panchayats (Extension to Scheduled Areas) Act, 1996, extended the 73rd Constitutional Amendment (which institutionalised and empowered India's panchayat raj system) to the Vth Schedule areas. PESA gave a concrete constitutional character to Gandhi's vision of self-governing village republics, created a frame for direct, participatory democratic self governance, recognized and conferred powers on the gram sabha (village assembly) in addition to the panchayat, and made the panchayat (the primary agent of development) accountable to the gram sabha. Under Section 4(d) of PESA the gram sabha is competent to safeguard and preserve community property resources (*commonly understood as jal, jungal, jameen*). Under the Act, the gram sabha is the owner of minor forest produce, has powers to regulate social and economic development plans, sanction mining grants and minor mineral leases, prevent land alienation and control money lending. This empowerment of gram sabhas is unprecedented and unique in Indian law. As such, the Act is a step forward both for the rights of adivasi communities and for democratic institutions more generally.

However, as panchayats are a state subject, most states have been tardy in making laws in conformity with PESA, resulting in a legal stalemate in tribal villages.

## **SECTION - II**

***Document 5:***

Document 5.1 - On 12<sup>th</sup> of December 1996, the Supreme Court defined 'forest' in an interim order in WP 2002/1996 (T.N. Godavarman Thirumalpad vs. State of Tamil Nadu). The Court directed that the term 'forest' in the Forest Conservation Act, 1980, "must be understood according to its dictionary meaning." Further, the term 'forest lands' in the Act was expanded by the Court to include both areas corresponding to such 'dictionary' forests and any area described as 'forest' in government records (whether or not it is



actually forest). Under this direction, local forest authorities now had the power to intervene, block or halt any activity in any 'forest land' – regardless of the ownership of this land - that could be considered 'non-forest' activity. 'Non-forest' activities can now only be carried out with the permission of the Central government. In one step, the powers of both the Forest Department and the Central government were thus greatly increased. We have seen since that such powers are more likely to be used against subsistence cultivators than against those who truly destroy forests, such as the timber mafia or industries.

Document 5.2 – 5.3 concern two orders of the Supreme Court which highlight the conflicting approach of the Supreme Court and the Forest Department with two sections of society at two ends of the economic spectrum. In Document 5.2, we find that the Supreme Court has taken away the Constitutional right granted by PESA in Sec 4(m)(i) wherein the Gram Sabha in the Scheduled (tribal) Areas is recognized as the owner of MFP. By its order in IA 548, the SC takes away this constitutional right of the tribals in protected areas. At the other end of the spectrum, are SC directions concerning use of bamboo, an important source of livelihood for the tribals as well as a raw material for the paper industry. Bamboo was classified as a tree when it came to recognizing MFP rights of tribal communities. However when the ban on tree cutting began to affect the paper industry, the SC clarified that its orders do not apply to the cutting of bamboo, which is now to be considered a member of the grass family.

***Document 6:***

Documents 6.1 – 6.2 contain Supreme Court directions issued in Interim Application 703 (in the *Godvarman* case). The main body of the IA concerns encroachments in the Andaman Islands. However, in the sixth paragraph, the Amicus alleges that “It appears that on account of the orders of this Hon’ble Court, the Central Government was not in a position to grant regularization of further encroachments and therefore the States have stopped seeking regularization – there has however been no change in their attitude towards encroachments. Further it appears that the States are not taking any steps whatsoever for removing the post 1980 encroachments nor are they taking any steps to keep an authentic record of such encroachments – possibly in the hope that some day the encroachment as found at present would be condoned as pre 1980 encroachment and regularization obtained.” The IA’s prayer included the following

clauses: a) Restrain the Union of India from permitting regularization of any encroachments whatsoever without leave of this Hon'ble Court and in d) Direct the aforesaid State Governments to take steps to clear the encroachments in forests which have taken place after 1980 in the aforesaid areas. Doc. 6.2 which reproduces the only orders passed in the IA clearly shows that only prayer a) banning regularization has been granted; the states have been asked to report on the steps they have taken to prevent further encroachments and the steps they have taken to clear previous encroachments.

***Document 7:***

In May 2002, following the Supreme Court's stay on regularisation of encroachments, the Inspector General of Forests in Delhi ordered all State Forest Departments to 'summarily evict' all 'encroachers' by September 30<sup>th</sup>. The letter cites the Court's order, but fails to note that the Court only asked for a report on encroachment – it did not actually order evictions of any kind. This lacuna led many forest officers to claim that eviction was required by the Court's orders, making the struggle to protect communities' rights all the more difficult.

Following widespread protests against the Inspector General of Forests' May letter requiring evictions, in October the IGF clarified that his letter did not supersede the Ministry's 1990 circulars (Document 3 above). The letter restates the procedures required by the 1990 circulars, but also states that eviction of ineligible encroachers should continue.

***Document 8:***

The provisions of Sections 4 to 20 of the Indian Forest Act 1927 are a legal precondition for declaring any area as Reserved Forest. These provisions mandate a Settlement process by which the rights, privileges and concessions of persons or communities residing in the area are recorded and registered. Document 8 gives us an insight into how state government circumvented the legal requirements, particularly of recording and registering rights, privileges and concessions of persons or communities residing in the area, and instead eliminating these rights and entitlements by creating a new concept of 'deemed Reserved Forests' by amending the IFA and introducing Sec. 20-A. This serious infringement was raised by the Commissioner in his XXIX Report and led to the Guidelines of 18.9.1990 on Disputed Claims following defective Settlements and Regularising Pattas, Leases etc.

***Document 9 :***

Given that the Central government has not yet appointed the statutory agency required under the Environment (Protection) Act, in 2002 the Court appointed a 'Central Empowered Committee' to assist it in the Godvarman case. This Committee has been given considerable powers, including to 'examine' pending applications in the case, to hear grievances and order relief in connection with the Court's orders, to call for documents, to summon witnesses, etc. In short, it has many of the powers of a court itself. It is notable that the Court directs the MoEF to nominate the Committee's Chair and one of its members, while its other members represent NGO's (so far, only environmental NGO's). No representation is provided to either forest communities' organisations or to other Ministries connected to these issues, such as the Ministry of Tribal Welfare.

On 5-8-02, the Central Empowered Committee gave its first set of recommendations to the Supreme Court. Describing encroachments as a 'spreading cancer', the Committee called for much stiffer measures for eviction of encroachers. Though it accepts that "socio-economic causes" may cause some encroachments, the Committee makes no mention of land settlement issues, the lack of demarcation of forest boundaries or the rights of communities. It makes no distinction between small

subsistence cultivators and large encroachers. Instead it simply demands blanket eviction of all encroachers who cannot show a Forest Offence Report stating that they were occupying the land prior to 1980.

***Document 10 :***

Documents 10.1 - 10.3 are reproductions of three orders of the Supreme Court which effectively negate any restoration of rights and entitlements of the tribals under the Guidelines of 18.9.1990. In these three orders, three specific obstacles are created. The first is the requirement of payment of the Net Present Value of land to be diverted following restoration of rights and entitlements or conversion of forest villages. Notwithstanding that these lands were already dis-forested prior to 1980 by virtue of the operation of state laws and orders, as well as the fact that the land has no tree cover and is under cultivation, a NPV value ranging from Rs. 5.8- 9.2 lacs per hectare is imposed on the state government prior to approval. The amount is ridiculously excessive, particularly in view of the fact that the Guidelines of 18.9.1990 are a facet of land reform. This new condition is in addition to 'compensatory afforestation', wherein twice the area to be de-reserved has to be provided by the state government for afforestation.

The second obstacle in 10.2 is the directions of the SC that the 'legal status' of the land will not be changed. Thereby the restoration of rights will not be in the form of 'title' though the SC has not clarified what the status of the rights/entitlement holder will be. Further the restoration of rights will dis-entitle the rights-holder from any developmental scheme or program of the state or central government as 'unencumbered title' is a pre-requisite for sanction of any development program or project.

The third obstacle in 10.3 is a fresh ban on the conversion of forest villages to revenue villages and the requirement that the state government must obtain the Court's prior permission before making a proposal to MoEF.

**SECTION - III**

***Document 11:***

Document 11 is a Kerala government order for rehabilitation of tribals through land distribution, with each beneficiary receiving not less than one acre and not more than five acres. The order was issued on November 9 2001, following the agreement reached by the Kerala government with the Adivasi-Dalit Samara Samithy. Sec 2(ii) of MoEF circular No.2-1/2003-FC (Pt), which concerns regularisation of tribals' land rights, mentions that other State Governments may follow this pattern.

***Document 12:***

In 1991, following a writ petition by adivasi activists from Maharashtra in the Supreme Court, the Court appointed an inquiry committee to survey encroachments on forest lands in Maharashtra and determine which ones qualified for regularisation under the Maharashtra government's orders in this matter. The inquiry committee

determined that documentary evidence was insufficient for deciding such claims, because most forest communities naturally lack any such evidence and cannot be faulted for the failures of government officials. They hence drew up a more complex method of enquiry that included spot examination and the testimony of village elders, panchayat members and local officials. These criteria found their way in a modified form into the 2002 Maharashtra government order (for which see below).

***Document 13:***

On receipt of the Interim Report of the Inquiry Committee providing for verification of claims even in the absence of documentary evidence, the SC while accepting the Interim Report reaffirmed the same in its direction that even claims not accompanied by documentary evidence must be inquired into. The Court empowers local officials to recognize and accept other relevant evidence in support of the claim, as mentioned in the Interim Report.

***Document 14:***

This document is the Supreme Court judgment in the case described above (WP 1778/1986). It recognizes the legal validity of the Guidelines of 18.9.1990 and the place of other relevant evidence in cases where claims are not accompanied by documentary evidence in the nature of receipts of fines or prison sentences following prosecution by the forest department.

***Document 15:***

Based on the various directions of the Supreme Court, the Government of Maharashtra passed an order on 10.10.2002 laying down an open, participatory, inclusive and transparent process for verification of claims through a primary inquiry before the gram sabha. The order also provided for the kinds of evidence, testamentary, documentary, physical and natural that the claimant could adduce in support of her/his claim. The order also provided for the criteria that were to be used for acceptance and rejection of the claim. The order required that the officials and others who would participate in the Inquiry into claims should be adequately trained in all the requirements so as to arrive at a lawful decision. The order of the Government of Maharashtra dated 10.10.2002 is the **only enactment in the country** that provides for an open, participatory and transparent process for verification of claims, indicates the nature of evidence that the claimant must adduce, and the criteria for validation of a claim.

***Document 16:***

This judgment of the Mumbai High Court in Vishwanath Jadhav's case clearly reiterates an important legal principle: rights are conferred on the day the enactment is promulgated and not on the day that the enactment is implemented. In the case of forest land, the judgment clearly states that the land in question is dis-forested on the day of the enactment itself and cannot be abrogated retrospectively because of failure of the concerned machinery to implement the order.

***Document 17:***

On 21.7.2004, MoEF filed a Affidavit in the SC in response to the stay of the Court on the Order of 5<sup>th</sup> February 2004, orders on shifting cultivation in addition to other orders. The affidavit, while arguing for regularization of tribal rights, for the first time places on record the historical wrongs committed against the tribal people by the forest administration both during the colonial period and the post independence period, that rights of the tribals could not be settled during the process of consolidation of forests during the British period as record of rights did not; an identical situation prevailed during the amalgamation of princely states post 1947 and lands of ex-princely states and the zamindari were proclaimed as Reserved Forests without settlement of tribal rights. Therefore, the rural people, especially tribals who have been living in the forests since time immemorial, were deprived of their traditional rights and livelihood and consequently, these tribals have become encroachers in the eyes of law. That the State/UT governments could not maintain a distinction between the guidelines of regularization of encroachments and the settlement of disputed claims of tribals over forest lands and have mixed up the whole issue. The affidavit also touches on a number of other issues related to tribals and forests.

# SECTION 1



*A FRAME FOR RESOLUTION*





No. 3-1/86-FP  
Ministry of Environment and Forests  
(Department of Environment, Forests & Wildlife)

Paryavaran Bhavan, CGO Complex,  
Lodi Road, New Delhi - 110003.  
Dated the 7th December, 1988.

## **RESOLUTION**

### **National Forest Policy, 1988**

#### **1. PREAMBLE**

1.1. In Resolution No.13/52/F, dated the 12th May, 1952, the Government of India in the erstwhile Ministry of Food and Agriculture enunciated a Forest Policy to be followed in the management of State Forests in the country. However, over the years, forests in the country have suffered serious depletion. This is attributable to relentless pressures arising from ever-increasing demand for fuel-wood, fodder and timber; inadequacy of protection measures; diversion of forest lands to non-forest uses without ensuring compensatory afforestation and essential environmental safeguards; and the tendency to look upon forests as revenue earning resource. The need to review the situation and to evolve, for the future, a new strategy of forest conservation has become imperative. Conservation includes preservation, maintenance, sustainable utilisation, restoration, and enhancement of the natural environment. It has thus become necessary to review and revise the National Forest Policy.

#### **2. BASIC OBJECTIVES**

2.1 The basic objectives that should govern the National Forest Policy - are the following:

- Maintenance of environmental stability through preservation and, where necessary, restoration of the ecological balance that has been adversely disturbed by serious depletion of the forests of the country.
- Conserving the natural heritage of the country by preserving the remaining natural forests with the vast variety of flora and fauna, which represent the remarkable biological diversity and genetic resources of the country.
- Checking soil erosion and denudation in the catchment areas of rivers, lakes, reservoirs in the interest of soil and water conservation, for mitigating floods and droughts and for the retardation of siltation of reservoirs.

- Checking the extension of sand-dunes in the desert areas of Rajasthan and along the coastal tracts.
- Increasing substantially the forest/tree cover in the country through massive afforestation and social forestry programmes, especially on all denuded, degraded and unproductive lands.
- Meeting the requirements of fuel-wood, fodder, minor forest produce and small timber of the rural and tribal populations.
- Increasing the productivity of forests to meet essential national needs.
- Encouraging efficient utilisation of forest produce and maximising substitution of wood.
- Creating a massive people's movement with the involvement of women, for achieving these objectives and to minimise pressure on existing forests.

2.2 The principal aim of Forest Policy must be to ensure environmental stability and maintenance of ecological balance including atmospheric equilibrium which are vital for sustenance of all lifeforms, human, animal and plant. The derivation of direct economic benefit must be subordinated to this principal aim.

### **3. ESSENTIALS OF FOREST MANAGEMENT**

3.4 Provision of sufficient fodder, fuel and pasture, specially in areas adjoining forest, is necessary in order to prevent depletion of forests beyond the sustainable limit. Since fuelwood continues to be the predominant source of energy in rural areas, the programme of afforestation should be intensified with special emphasis on augmenting fuelwood production to meet the requirement of the rural people.

3.5 Minor forest produce provides sustenance to tribal population and to other communities residing in and around the forests. Such produce should be protected, improved and their production enhanced with due regard to generation of employment and income.

## **4. STRATEGY**

### **4.3.4 Rights and Concessions**

4.3.4.1 The rights and concessions, including grazing, should always remain related to the carrying capacity of forests. The capacity itself should be optimised by increased investment, silvicultural research and development of the area. Stall-feeding of cattle should be encouraged'. The requirements of the community, which cannot be met by the rights and concessions so determined, should be met by development of social forestry outside the reserved forests.

4.3.4.2 The holders of customary rights and concessions in forest areas should be motivated to identify themselves with the protection and development of forests from which they derive benefits. The rights and concessions from forests should primarily be for the bonafide use of the communities living within and around forest areas, specially the tribals.

4.3.4.3 The life of tribals and other poor living within and near forests revolves around forests. The rights and concessions enjoyed by them should be fully protected. Their domestic requirements of fuelwood, fodder, minor forest produce and construction timber should be the first charge on forest produce. These and substitute materials should be made available through conveniently located depots at reasonable prices.

#### ***4.6 Tribal People and Forests***

Having regard to the symbiotic relationship between the tribal people and forests, a primary task of all agencies responsible for forest management, including the forest development corporations should be to associate the tribal people closely in the protection, regeneration and development of forests as well as to provide gainful employment to people living in and around the forest. While safeguarding the customary rights and interests of such people, forestry programmes should pay special attention to the following:

- One of the major causes for degradation of forest is illegal cutting and removal by contractors and their labour. In order to put an end to this practice, contractors should be replaced by institutions such as tribal cooperatives, labour cooperatives, government corporations, etc. as early as possible;
- Protection, regeneration and optimum collection of minor forest produce along with institutional arrangements for the marketing of such produce;
- Development of forest villages on par with revenue villages;
- Family oriented schemes for improving the status of the tribal beneficiaries; and
- Undertaking integrated are a development programmes to meet the needs of the tribal, economy in and around the forest areas, including the provision of

alternative sources of domestic energy on a subsidised basis, to reduce pressure on the existing forest areas.

#### **4.7 Shifting Cultivation**

Shifting cultivation is affecting the environment and productivity of land adversely. Alternative avenues of income, suitably harmonised with the right land use practices, should be devised to discourage shifting cultivation. Efforts should be made to contain such cultivation within the area already affected, by propagating improved agricultural practices. Area already damaged by such cultivation should be rehabilitated through social forestry and energy plantations.

#### **4.8 Damage to Forests from Encroachments, Fires and Grazing**

4.8.1 Encroachment on forest lands has been on the increase. This trend has to be arrested and effective action taken to prevent its continuance. There should be no regularisation of existing encroachments.

**(K.P.Geethakrishnan)**

*Secretary to the Government of India*

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**DOCUMENT 2**

**D.O. NO. 1/Gen/90-RU iii**

Commissioner for Sch. Castes and Sch. Tribes,  
West Block 1, Wing 7, 1<sup>st</sup>. Floor,  
R. K. Puram, New Delhi 110066  
Date 28-5-1990

**THE PRESIDENT OF INDIA**

**NEW DELHI**

(THROUGH THE UNION MINISTER OF STATE FOR WELFARE)

I am presenting herewith the Twenty Ninth Report on the conditions of the Scheduled Castes and Scheduled Tribes under Article 338 of the Constitution for the year

1987-89.....The real partnership in the grand procession of development cannot remain confined only to reservations in services, but must extend to all segments of national life. Only then the system can truly be considered to imbibe the spirit of the Constitution implicit in the protective provisions and the right to equality.

### *Dissonance between Law and Constitution*

7. The present system is patently iniquitous. But unfortunately our legal structure has also proved to be its compeer. The warp and set of our legal system was broadly set during the British period. The basic premises of the system established by the British were those of their own society and its objective was to strengthen the foundations of their empire. The people were subject and the system was a symbol of the Raj. After independence we prepared and adopted a Constitution dedicated to the establishment of a socialistic society based on our own tradition and basic human values. But the structure of the system, over which this crown of Constitution was placed, was totally dissonant with its basic spirit. This dissonance not only continued in the coming years but the situation became still worse. Firstly, the nascent ruling elite came to relish the old system. Secondly, in the hurry for development the incongruities were first ignored and later on they were accepted even as necessary for the maintenance and advancement of the new system. There was yet another important reason for the continuance of the incongruous situation. The law and the rules are concrete and functional while values are abstract. The latter are generally a good subject of thought and discussion, which by itself can be a matter of satisfaction. Consequently big mountains of violation of Constitution and human rights could remain hidden behind the small straws of the legal frame.

### *Right to Life*

8. The most sacred and primary amongst all human rights is the right to life. The right to life does not only mean the right to bare animal-level subsistence; it really means right to live with human dignity. And two crucial elements for a life with dignity are personal liberty and adequate means of livelihood. The form of these elements in real situations can be quite different depending on the specific economic and social situation. For example, in the modern sector they comprise what are known as the fundamental rights. But when it comes to the tribal people, who are located on the other end of the spectrum in the traditional sector, these formal principles in the present context have no meaning. In their situation a self – governing system based on their own tradition and within the understanding of the ordinary people is essential for enjoyment of these rights in the real sense.

9. The situation in relation to appropriate means of livelihood is very complex. Moreover numerous anomalies have plagued the system. So far as the adequate means of livelihood in the organised sector is concerned the formal form is dominant. Every member of this sector has a specified position and whatever the role of that person, irrespective of its utility or non-utility for life he not only can claim due entitlement just by virtue of the membership of the organised sector but can also openly claim entitlements which are not really justified. But in the case of unorganised sector nobody is sure about what a member of that sector will finally get. And the situation of each member in the sector may be quite different. Nevertheless it can said that broadly command over resources, ownership of means of production and due entitlement for labour are three such elements which together determine the situation of an individual and also the community with regard to the appropriate means of livelihood.

10. Thus, there are five elements, which are necessary for life with dignity: self-management at the community level, command over resources by the community, ownership of means of production by the worker, equitable entitlement of labour and personal liberty. These are the basic rights for the human society. These are also the soul of a democratic system. These values have been enshrined in our Constitution in unequivocal terms.

### *And Its Denial*

11. Even though the position about the right to life in the Constitution is crystal clear, yet so far as the right to life of the common man is concerned, it is not only being ignored in practice but is being blatantly violated. The main reason for this situation is that during the British period the natural resources were accorded the status of property under the law rather than being recognised as the basis of life of the people. The irony is that even after the right of property was removed from the list of fundamental rights and in the face of clear enunciation by the Courts about the real intent of the right to life enshrined in the Constitution, the legal frame in that regard in practice remained unchanged in its original colonial form. That is why there is a direct clash at almost every step in the national life between the Constitutional and human right of right to life of the common people and the legal right of property of the more powerful groups. It can be said that in the iniquitous distribution of resources during the British period the state and a group of selected people along with the state become the owners of all natural resources including land. But by the same token the common man, who was using those resources for making a living through the ages was deprived of his natural right to make a living from them. This process unfortunately has become still more strong after independence.

12. In view of this denial of the basic right to life, a big question arises about the nature of responsibility of the state itself. After all in our Constitution the State has been given a special responsibility in relation to social justice. Then how is this all happening? To answer this question we will have to review the different roles of the State in the complex modern situation and the priorities adopted by the State in the regard. The State can broadly be said to have three primary responsibilities, viz., law and order, protection and development. In the anxiety to maintain order and in the hurry for development as also in the dazzle of its glitter, the dark lanes of the State's responsibility for protection of the poor, particularly the Scheduled Castes and Scheduled Tribes, have been often forgotten. Moreover there is no hesitation in supporting the vested interests entrenched in the old as well as the new structures under the cover of policies, principles

and laws and even in striking against those whom the State is expected to protect. In some areas, it appears as if law, Constitution, human rights and state's responsibility are all non-existent. This is the biggest irony of our national life which I have tried to present in this report.

13. This phenomenon is an integral part of the inhuman processes of deprivation and destitution, which has been continuing for ages. But its scope became much wider and its intensity much higher during the British period. A careful review of the present situation clearly brings out five levels of deprivation, viz., - (i) non-recognition of rights over resources and restrictions on their use, (ii) Alienation of worker from the means of production, (iii) denial of due entitlement of labour, (iv) bartering of personal liberty and finally (v) the psychological state of accepting deprivation and destitution as justified and proper and demise of self-respect and dignity. It is unfortunate that the processes of deprivation have not only continued at all these five levels throughout our national life, with the bare exception of the organised sector, but at many places it has become much more intense. It will be necessary to start our review with the last level.

14. The honour and dignity of a person is dependent on his work, his right over means of production and his right to manage the system. The condition of the members of the Scheduled Castes and Scheduled Tribes on all these counts was deplorable from the very beginning. Hard work fell in their share while command over resources was enjoyed by others. But after independence these people were rendered still more helpless and vulnerable in the face of unholy collusion between the system and the more powerful groups. Firstly, whatever means of production had remained in their hands are also gradually slipping through their fingers. ...

15. The biggest irony with regard to dignity and prestige of a people in our country is that the condition of the tribal communities, who are most conscious about self-respect and honour, is the worst. These communities have become completely helpless in the face of the omnipotent system on account of the 'criminalisation' of their social and economic system itself, denial of their rights over resources and non-



recognition of their traditional self-governing systems. The forests are the property of the State; therefore it is an offence for the tribal, who has been living in those very forests for the ages, to make a living from these forests. His very presence in the forest is against the law. If a tribal enters the forests with his bow and arrows, it is an offence. If his cattle as usual graze in the forest, they are taken to a kine house. If he takes his traditional brew after worshipping his Gods or in social functions according to his tradition he still becomes a law breaker. He is branded as an offender in all matters concerning his social and economic life only because the law is against him. The criminalisation of the entire communities in the tribal areas is the darkest blot on the liberal tradition of our country.

16. And the saddest thing is that all this has happened and is happening in the name of principles, claiming authority from the Constitution and the law. That is not all. This is being done by a system, which considers itself to be a symbol of justice, rationality and modernity. Those who have been given the responsibility under the Constitution for correcting this anomalous situation have almost no realisation about that responsibility. The first attempt of the System ordinarily is to assert its own position as right and to prove that the others are on the wrong. It is expected that the tribal society should change and adapt itself in accordance with the frame of the modern system. And finally, an attempt is made to convince the people that this is what development really is !

17. Thus, firstly no action has been taken to correct this basic anomaly and even if some action is initiated, one can never be sure as to where it might get stuck. The result is that today there is a state of confrontation in almost all the tribal areas. In this connection I have reviewed in some detail the Excise Policy in the tribal areas. There are clear policy guidelines of the Central Government in the matter. But where they have been adopted, something or the other gets incorporated at some stage of implementation or the other such that the basic spirit of those guidelines cannot be realised. Moreover when people demand implementation of the policy guidelines, they have to face the wrath of the system. ....

## Rights over Means of Production

23. Most of the members of the Scheduled Castes and Scheduled Tribes are dependent, in some way or the other, on agriculture. But their condition with regard to the rights over land everywhere is very regrettable. The biggest muddle in this regard has been in the tribal areas, which is continuing even now. Firstly, in many areas there are no authentic papers. Therefore, the position about land such as the size of holding, its precise location, is not properly recorded. Secondly, the laws are much too intricate which are beyond the understanding of the people. According to the present law, any land which is not recorded in the name of an individual is deemed to belong to the state. Therefore the government can do whatever it likes with regard to such lands. On the other hand the ownership, in a way, is bestowed automatically in the favour of a person the moment his name is entered in the records in an appropriate column. The outsiders have taken full advantage of these legal stipulations. Today not only the record is against the people, the entire system is against them. The correct information about cultivation, ownership, etc., concerning land is available only in the village, yet all disputes about land are decided in Courts outside. It is well-known that a simple person has no hope of getting justice there. But he cannot do anything, he is utterly helpless....

25. The most basic question about land concerns entitlement of the tiller of land. Even though the right of the tiller on the land he tills has been accepted in principle in our country, yet in reality his position is the weakest. In my previous report, I had made extensive recommendations with a view to give the principle of 'land to the tiller' a real form. In this context, unfortunately the position at the moment is that it is not even certain that the tiller of the land can continue to till the land, the question of bestowal of ownership right remains a far cry. In some states, it is almost impossible even to get the fact of cultivation by a tenant entered in government records. I have given two example in this regard-one from Bihar (Sole Daltanganj) and another from Andhra Pradesh (Pulimamidi). In both these cases the people, most of whom belong to Scheduled Castes, are cultivating the land but their names do not find a place in the record. They have

asked the government to provide protection for their cultivation about which the concerned governments have not taken a clear stand. Therefore, they have resolved to protect for themselves their basic right to till the land.

26. In these cases the issues concerning land record and cultivation appear to be very simple. But some of them involve basic questions. If a person is cultivating a piece of land, then should this fact be not recorded in government papers? Whatever is on the ground must get reflected in the record in some way or the other. If even this simple thing is not being done as a conscious policy in our system it has only one implication. An easy way has been found to ignore the due entitlement on land of the poor people. This position may be legal, but it cannot be said to be just and cannot be accepted as being in accordance with the spirit of our Constitution. Here lack of consonance between the law, justice and Constitution become glaring. And this is not the story of Sole or Pulimamidi alone. Bulk of agricultural land throughout the country is in the clutches of zamindars – absentee or otherwise. The person who tills that land and subsists on it has no relationship with it under the law.

27. All struggles concerning cultivation of land are basically a conflict between two rights. On the one side is the right to life and on the other the right to property. The right to life is basic and much higher than the right to property. Where a person is earning a living by cultivating the land, its ownership cannot be bestowed on him straightaway for some reasons, the minimum, which can be expected from the government is to ensure that he continues to remain in possession of that land and his right to make a living from it is effectively protected.

28. The first step for protecting the right to life related to land will have to be to ensure that, whatever may be the law, or even if the law is silent on this issue, the person who is cultivating a piece of land continues to be in possession of that land. This principle should be openly promulgated and the fact of possession through cultivation should be entered in government records. Moreover if a zamindar tries to evict a person ignoring this right, the government has the responsibility to provide full protection to the

victim. And if a government cannot protect this basic right, no one can take away the right of an individual for self-defence. This is the message of our Constitution.

### *Right over Resources*

31. The primary resources other than agriculture in the traditional economy are forests, pastures (waste, land and water) on which the ordinary people depend for their living. The wrong entitlements over resources of all description started getting established during the British period. It was in that period that the intimate relationship between the resources and the local community, which was like that between the mother and the child, was ended and the State acquired monopoly rights thereon. This Colonial process of centralization has unfortunately got further reinforced under the tutelage of the new paradigm of development which has been adopted in our country after independence. The full implications of this colonial developmental process are becoming clearer only now. Everywhere the life support system of the local community and the common man at the moment is being snatched away by the abstruse state institutions and big people without any qualms of conscience. In this situation, the people are engaged in a fierce struggle of their right to life. But the system is branding their current use of these resources as illegal and is driving them away taking undue advantage of its authority.

32. The first fundamental change, which was effected in this process related to forests. In the new frame, the symbiotic relationship between the forests and the forest dwellers was not recognised and the forests became property of the State. After the state acquired monopoly rights over the forests, a formal system was established for their management, which gradually become increasingly comprehensive and also strong. The biggest irony of this change was that the forest-dweller who has a life-long relationship with the forests-which are their very homes, their religion, their culture and their everything-was conspicuous by its absence in that frame. In this formal structure, which recognises only administrative and market relations, an all-out effort has been made to see that these life-long mother-child relationships are transformed into market relationships. How can this be possible? It is on account of this basic lack of

understanding, that there is state of confrontation and regime of destruction in almost all the tribal areas which in final analysis means great injustice to the tribal people.

33. The British enacted the Indian Forest Act with a view to acquire formal control over the forests. At the time of reservation of forests, legal formalities were no doubt complied with, but there was no question of people getting justice. Most of the tribal people were forcibly evicted from their homes. The memory of the forcible eviction now remains only in their folk tales. Whosoever could do, prepared agricultural land outside the forests. Even then their living relationship with the forests still continued. Those communities, which are totally dependent on forests have not been able to come over this great tragedy even now. The primitive tribal communities and the shifting cultivators in many areas are still engaged in a struggle of life and death. Similarly, the right to life of the nomadic communities has also been disregarded. Their problems have so far remained altogether unnoticed.

34. It is clear that the right to life at the individual level and the human right of maintaining the identity at the community level in the case of the tribal people have been ignored in the Indian Forest Act. Therefore, this law is not in consonance with the spirit of our Constitution. But since the state itself was one party in this deal, there was no change in it even after the Constitution was adopted and the situation remains as it was before it. In this way, the Constitutional provisions for protection of tribal people as also their human rights have been ignored in the system of management of forests adopted in our country. This is also the most sore spot for the tribal people; this is also the most pathetic tale about the condition of these communities.

35. All the tribal areas were incorporated after independence in larger state units. In this process, no special attention was paid to the existing administrative arrangements and everywhere the system of the larger unit as it is was gradually extended to the tribal areas. Wherever forests were not reserved, the process of reservation was started. The private forests were taken over by the State. In this way, all special features of the earlier management systems evolved in keeping with the local traditions stood derecognised in the new system. But people's life does not automatically

change simply because a new system may have been adopted. Therefore, numerous anomalies arose in the field and people really could not accept the new system from the core of their hearts. Consequently there is confrontation in many areas on this count.

36. The process of reservation of forests after independence was largely pursued in a routine fashion. In some cases, mere formality was observed just for the sake of it and even the fact that some people were living in the forests was not taken note of. In this way, the spirit of the law itself was violated. For example, in some cases of Jagirdari forests the original inhabitants were deemed to be encroachers with any enquiry as soon as these forests were taken over by the state. In some case, no lines were drawn on the spot at the time of reservation. So the people could not know as to which land was being reserved. In some cases, the officer did not visit the spot, yet recommended reservation of the area. Similarly, there were a variety of local practices in each area, like warkas in Thane, dali in Raigarh and green manure leases in Karnataka, etc., which were not even looked at. Therefore, the old legal arrangements became illegal in many areas just with the passage of new law without any consideration and without any thought. And the tribal became a law breaker.

37. This reservation of forests predictably failed to protect the forests. Firstly, the internal pressure on forests has been rising incessantly on account of growing population and increasing needs of the people. But the biggest devastation was caused by external pressures. Extensive plantations of mono-culture species after clearing the natural forests in the name of scientific management, establishment of tea, coffee and cardamom plantations, leases of forests produce at throw away prices in the name of promoting industries and establishment of industrial and mining complexes in the name of development, construction of highways, heavy influx of outsiders, eviction of tribals, supply of forest produce for meeting new demands, everything in the end proved to be a big burden on the forests. Consequently, there was ruthless destruction of the forests. The worst effect of this mindless destruction has been on the life on the tribal people. The very basis of their life is getting destroyed. But unfortunately no attention has been paid to this aspect of denudation of forests. For example, food production in our country

has increased manifold, but how much loss have the tribal communities sustained in terms of non-availability of food articles from the forests due to their destruction does not find a place in national accounting. In campaigns for the protection of forests the real culprit, who has destroyed them for quick gains and who continues to destroy them even now, is left out and the full wrath of the system falls on the tribal, who is already under tremendous pressure.

38. While discussing management of forests, besides the issues concerning the life of the people, those relating to environment and national development cannot be forgotten. But as a direct consequence of non-recognition of even the existence of the community and not associating it in the management of forests, the position of forests has become very vulnerable. They are like that public property which has no one to look after and, if at all there is one, he too is far away from the scene and has no significant role to play in its protection. It is true that the internal pressure on forests has increased. But the tribal after all brings only a pole or two for constructing his hut, a small branch for making his plough and dead wood for lighting the fire to protect him from worms and insects, wild animals as also from cold during the winter. Nowhere he has built grand mansions. When the tribal clears the forest and cultivates forest land it is under compulsion of his circumstance. If he can be provided an alternative, he will happily accept the same.

39. The main reason for the depletion of our resources is the growing inequality and the rising tide of consumerism. But unfortunately these facets are not even alluded to anywhere. Therefore, the greatest need today is to put stringent check on the consumerist lifestyle and ensure equitable entitlement in the use of natural resources. For achieving this, it will be necessary that all those vested interests, who have entered into forests for quick gains and establishing big jagirs, are ruthlessly suppressed. All plantations small and big, legal and illegal for example those which have mushroomed in Karnataka, should be taken over by the government and handed over to the labourers. If a poor person gets due entitlement over the natural resources, he will be relieved of the problems of the day; only then he will be in a position to think for tomorrow; in that

frame he will become the greatest friend of environment. There are some good experiments of partnership of the people in protection and development of forests from West Bengal which are worth emulating. In many areas, people are taking initiatives on their own, which deserves to be strongly supported.

#### *Minor Forest Produce*

40. The minor forest produce has an important place with regard to people's partnership in forestry. I had recommended in my previous report that the people should at least be given full rights over the minor forest produce. The rights presently claimed by the government on minor forest produce even with reference to the provisions of the Indian Forest Act, are not legal and royalty levied thereon is unethical. The declarations of the Governments of Madhya Pradesh and Bihar last year recognizing the tribal people as owners of minor forest produce instead of mere labourers engaged in collecting the same, was the first major step towards ending the historical injustice with regard to forest against the tribal people. It is, however, a matter of deep regret that regressive forces got active immediately after this declaration in Madhya Pradesh. And today the situation is that even this great decision is being denied. This regressive step is a mockery of the entire Constitutional ground plan in which the State has been given with great confidence the responsibility of protection of the interests of the tribal people. Will the Governor and the President, keeping aside all sorts of formalities in this regard, ensure that this just decision is not negated and that the subsequent regressive decision does not become a blot in the history of our social justice.

#### *Wild Life*

41. A highly anomalous situation has also arisen in the management of wild life on account of ignoring certain basic facts about the tribal scene such as that tribal people and the wild animals have co-existed reasonably well from times immemorial, that wild life has not been destroyed by bows and arrows and that the real culprit responsible for their destruction is the outsider. Consequently unnecessary restrictions are being placed on the activities of the tribal people and in many cases they are being forced to move out of their homes. Their plea is that they have been living with the tigers through the ages



and they can still live with them quite well. But nobody is prepared to listen to them. In many areas their economy has been greatly damaged through measures which are not legal. There is open violation of their right to life, which is not in keeping with the spirit of our Constitution. There is an urgent need for serious review in all these cases both at the level of law and also in terms of actual practice.

### *Need for a Permanent Solution*

42. The management of forests unfortunately is being done on a purely formal basis instead of seeking participation of the people. There is no doubt a reference about people's participation in management in the new forest policy. But even in respect of implementation of this idea, market forces and formal relations are being relied upon and accepted as the basis. Therefore that decision at the policy level in practice becomes meaningless. In this situation, the conflict between the government and the people has increased and is continuing to increase. There is a state of confrontation between the people and the state almost in the whole of middle India; many of these areas are outside the ambit of the authority of forest departments. The situation everywhere has been deteriorating only because (i) no attention has been paid even to the fully justified demands of the people, (ii) attempts have been made to superimpose the law unilaterally, and (iii) the behaviour of the departmental officers has been repressive. In the end, either the people themselves have risen in revolt against the administration or extremists have taken up the cudgels on their behalf. It is necessary that satisfactory answers are found to the basic questions of the people such as their assertion that the forests are their's and their very life depends on them. It is regretted that instead of attending to the basic questions, the state of confrontation is sought to be resolved by use of force treating the unrest merely as an expression of extremist activity. This will not do. It is necessary that the entire management of the forest is given a fresh look beginning with the first principles. Otherwise neither the forest will be saved, nor will there be a solution of the problems of the tribal people.

43. If the present confrontation between the tribal people and the administration has to end, complete clarity about the issue of land must be reached immediately. The most important thing in this regard is that certain basic premises, which are accepted without any thought, such as, the boundaries of the reserved forests are unalterable and any tribal who is found inside the forest is a trespasser, must be abandoned. The habitations and agricultural lands in many cases predate the reservation of concerned forests; the process of reservation has been faulty in many cases. Therefore people in such cases cannot be treated as trespassers and encroachers. Moreover, whosoever is living in whatsoever manner in the forest cannot be just driven away just like that, unless the government provides him an alternative, which is within his capability of use. Until such an alternative is given, the tribal will continue to do what he considers as right according to his understanding. This is his basic Constitutional right.

44. There is only one way to resolve this tangle. The present law and order approach must be abandoned for good and a clear plan of action should be formulated on the basis of mutual understanding and goodwill between the government and the people within the frame of a clear long term perspective. A beginning in this regard can be made with a sort of informal agreement between the people and the government accepting today's position as it is about the land with the people. In this case, the government on its part should make a commitment that no action will be taken against the people in respect of the land under cultivation unless and until a final action plan has been prepared on the basis of mutual understanding. The village community on its part should take the responsibility of ensuring that there will be no further extension of cultivation in the forest. With a view to create a climate of goodwill, all cases pending in the courts against the tribal people should be withdrawn. Moreover a final decision should be taken in respect of the land of each individual taking into account his specific situation. If this approach is adopted, the present confrontation between the people and the State about the land will end. A plan should be prepared for making this temporary state of peace a permanent one. Such a plan should, inter alia, provide for work to the

people in the immediate context, protection and improvement of environment and creation of a strong and permanent economic base for the tribal people.

#### *Waste Lands and Degraded Forests*

45. It is necessary to give special attention to the management of waste lands and degraded forests within the overall frame of equitable rights over resources. So far these resources were either unproductive or were located in remote regions. Therefore nobody had any objection if the poor were depending on and making a living from these resources. But now that there is a good possibility of huge profits being made from them, all eyes are fixed on them. But most of these resources are still the basis for making a living for many amongst the poor. This fact is hardly realised simply because unfortunately the people do not have formal rights over them. Therefore the government can do whatever it likes with these resources. The rich people are trying to acquire rights over them, taking advantage of this invidious situation in the name of development and under the cover of law. Any alternative use of resources ignoring the right of life of the people is against the spirit of our Constitution and therefore unconstitutional.

46. The plea to include industrial establishments and rich people in programmes of waste lands and degraded forest land is not only anti-people but is also detrimental to the national objective of environmental protection. The perception of the industrialists and rich people about the use of resources is purely commercial guided by profit and loss accounts. The cost of their programmes becomes very heavy because the design in their case intrinsically involves opposition to forces of nature and confrontation with the common man. Moreover these programmes are knowingly made so expensive so that the poor may not get included in them. In a way, this is a part of the big conspiracy of the rich people which aims at grabbing all these resources at the national level. Moreover the scope of such costly programmes is bound to be limited to only better lands. In contrast, the programmes of the poor, based on full use of their personal labour and nature's force, can be taken up on a very large scale without much

dependence on financial investment. This will serve the interests of both the poor and the environment best.

47. Thus an opportunity has arisen in the economic history of our country when the resources from which the poor people have been making a living, howsoever meagre and without formal recognition of their rights, can be put to a new use which can enable them to lead a good life. If their right for making a living from these resources is acknowledged, they can have something, which they can call their own. If this is to be achieved, industrialists and rich people must be strictly kept out from any programme of waste lands and depleted forest. All contracts and large leases such as the ones in Orissa and Karnataka should be annulled. Social equity must be given the highest place in the new agreements. Only those persons should be included in the new programme who are prepared to work with their own hands. It is only such a policy, that will help in improving the environment and will strengthen the foundations of national economic development.

48. The marginal resources comprising the waste lands and depleted forests are the last hope of the poor and also the only opportunity for them. If the open loot of these resources by a handful of persons, on the strength of their control over technology and money resources is not prevented, this last flicker of hope of the poor will get extinguished and perhaps their last opportunity for living with dignity and self-respect will also slip through, maybe forever. There is only one ray of hope in this grave crisis- perhaps the poor people will not accept this injustice!

#### *Water*

49. The right to life of the people in relation to the use of water as a resource has also been compromised in recent times on account of the process of centralisation in its management and entry of capital in its use. The water therefore, is becoming out of reach of the common man who so far was able to use it, employing his own labour and skills and common place technology. The stronger sections of the society are now using water indiscriminately for personal profit with the help of capital and technology at their command. Similarly on another front the State and other formal institutions have

acquired control over water in rivers and tanks ignoring the right of people making a living from it. There is great dissatisfaction amongst the fishermen and kevatns living on river banks. A number of movements have also been launched by them at a number of places.

50. Similarly the interests of formal institutions, and along with them those of contractors, in the rivers and tanks in tribal areas have become quite prominent. In this process the traditional rights of the local community have been completely ignored. A new structure should be evolved with regard to water resources as well, on the same lines discussed for other resources. The right to life of the people must be kept at the centre. The present trend of centralisation with regard to the rights over water resources must be checked in the interest of social equity. Otherwise, the right to life of the people will continue to be ignored and the Constitution will continue to be violated...

#### *Rights and Responsibilities*

87. Finally I, as the Commissioner for Scheduled Castes and Scheduled Tribes, myself have a responsibility that the people, for whom the Constitutional safeguards have been provided and the review of whose functioning has been entrusted to me, are made aware about the exact position in this regard. But the common man does not understand the abstract language of principles and policies; he is fully engrossed in the problems of the day. Unless the substance of all principles and policies is presented to him in the context of the day-to-day problems, they will have no meaning, they are of no significance. What I have said in this report will perhaps echo for a while in some assembly halls and then disappear in the void around. Only a dialogue concerning the struggle for life of the people themselves can be its real and lasting expression.

88. Today when the ploughman who makes a living by tilling the land has no right over it, when the tribal is a stranger in his own home, when the workers and the tribals in many areas are fighting their battles all alone, when the state has no hesitation in using force against people struggling for establishing their right to life oblivious of the fact that it has not only been entrusted the full responsibility of their protection but whose very existence as a people depends on its good will, a highly anomalous situation

has been created. Today these people may get some real relief, even though quite meagre, only from the extremists and thereafter they are unwittingly caught in the holocaust of a crossfire. In this situation, if a dialogue has to be established with them for discharging, even though symbolic, the obligation as a part of the system and also in relation to the constitutional responsibility there is no other alternative but to get directly linked with their life struggle. It is within this frame of affection and obligation that it is now obligatory for me to get associated with the struggles of the common man, particularly the members of the Scheduled Castes and Scheduled Tribes, for the establishment of their right to life. I am presenting this report to you with this solemn resolve. It is also with a fond hope that there will be a serious discussion at the national level on the fundamental questions concerning human rights democratic values and constitutional scheme raised in this report which may contribute in making a decisive turn in the national life and building up of our nation in the image of the dreams of the founding fathers of our Constitution.

With regards,

Yours faithfully,

(B.D. SHARMA)

COMMISSIONER FOR

SCHEDULED CASTES & SCHEDULED TRIBES

No. 13-1/90/-FP (I)  
Government of India  
Ministry of Environment & Forests  
Department of Environment, Forests & Wildlife

Paryavaran Bhavan  
CGO Complex,  
Lodi Road, New Delhi  
Dated the 18 Sept. 1990

To

The Secretary  
Forest Department  
(All states / UTs).

**Sub:- Encroachment on Forest Land - a Review Thereof And Measures for Containment.**

Sir,

Encroachment of forest land for cultivation and other purposes continues to be most pernicious practice endangering forest resources throughout the country. Statistical information compiled by the then Ministry of Agriculture during early 1980s revealed that nearly 7 lakh hectares of forest land was under encroachment in the country about a decade back. This is despite the fact that prior to 1980, a number of States had regularised such encroachments periodically and approximately 43 lakh hectares of forest land was diverted for various purposes between 1951 and 1980, more than half of it for agriculture. The decisions of the State Governments to regularise encroachments from time to time seem to have acted as strong a inducement for further encroachments in forest areas and the problem remained as elusive as ever for want of an effective and concerted drive against this evil practice.

2. The National Forest policy 1988 has also observed the increasing trend in encroachments to forest land and stated that these should not be regularised. Implementation of this pronouncement has been examined by this Ministry keeping in view the constraints of various State Governments, some of whom have expressed that they stand committed to regularise encroachments of a period prior to 1980. The issue figured prominently in the Conference of the Forest Ministers held in May, 1989 and was later examined by an Inter-Ministerial Committee, set up by this Ministry in consultation with the representatives of some of the States. Keeping in view the recommendations of the competent authority, the following measures are suggested for review of the old encroachments and effective implementation of the pronouncement made in this regard in the National Forest Policy, 1988.

2.1 All the cases of subsisting encroachments where the State Governments stand committed to regularise on account of past commitments may be submitted to this Ministry for seeking prior approval under the Forest (Conservation) Act, 1980. Such proposals should invariably conform to the criteria given below:-

**Pre- 1980 Encroachments where the state government has taken a decision before enactment of the Forest (Conservation) Act, 1980, to regulate 'Eligible' category of encroachments.**

1.1 Such cases are those where the State Governments had evolved certain eligibility criteria in accordance with local needs and conditions and had taken a decision to regularize such encroachments but could not implement either wholly or partially before the enactment of the Forest (Conservation) Act on 25.10.80.

1.2 All such cases should be individually reviewed. For this purpose the State Govt. may appoint a joint team of the Revenue, Forest and Tribal Welfare Departments for this work and complete it as a time bound programme.



1.3 In cases where proposals are yet to be formulated, the final picture after taking into consideration all the stipulations specified here may be placed before the concerned *Gaon Sabha* with a view to avoid disputes in future.

1.4 All encroached lands proposed for regularization should be properly surveyed.

1.5 Encroachments proposed to be regularised must have taken place before 25.10.80. This must be ascertained from the First Offence Report issued under the relevant Forest Act at that point of time.

1.6 Encroachments must subsist on the field and the encroached lands must be under continuous possession of the encroacher.

1.7 The encroacher must be eligible to avail the benefits of regularization as per the eligibility criteria already fixed by the State.

1.8 As far as possible scattered encroachments proposed to be regularised should be consolidated / relocated near the outer boundaries of the forests.

1.9 The outer boundaries of the areas to be de-notified for regularisation of encroachments should be demarcated on the ground with permanent boundary marks.

1.10 All the cases proposed to be regularized under this category should be covered in one proposal and it should give district wise details.

1.11 All cases of proposed regularization of encroachment should be accompanied by a proposal for compensatory afforestation as per existing guideline.

1.12 No agricultural practices should be allowed on certain specified slopes.

**2. Ineligible category of pre-1980 encroachments where the state governments had taken a decision prior to the enactment of the Forest (Conservation) Act, 1980**

2.1 Such cases should be treated at par with post 1980 encroachments and should not be regularised.

**3. Encroachments that took place after 24.10.80.**

3.1 In no case encroachments, which have taken place after 24.10.1980 should be regularized. Immediate action should be taken to evict the encroachers. The State / UTs Government may, however, provide alternate economic base to such persons by associating them collectively in afforestation activities in the manner suggested in this Ministry's letter No. 6-21/89-FP dated 1.6.90, but such benefits should not extend to fresh encroachers.

This Ministry may kindly be apprised of the action taken/ proposed to be taken in this regard.

Yours faithfully,

(K.M.Chadha)

Joint Secretary,

Government of India

No. 13-1/90-FP (2)  
Government of India  
Ministry of Environment & Forest  
Department of Environment, Forests & Wildlife

Parayavaran Bhavan  
CGO Complex,  
Lodi Road, New Delhi  
Dated the 18 Sept. 1990

To

The Secretary  
Forest Department  
(All States / UTs).

**Sub:- Review of Disputed Claims over Forest Land arising out of Forest Settlement**

Sir,

It has been brought to the notice of this Ministry that local inhabitant, living in and around forest areas, have preferred claims on certain notified forest lands contending that they were in occupation of such areas prior to the initiation of forest settlements and / or their rights were not enquired and / or commuted before notifying these lands as forests under respective laws. The claimants are requesting that title of such lands should be conferred on them. It is being felt that even *bona fide* claims are persistently overlooked causing widespread discontentment among the aggrieved persons. Such instances ultimately erode the credibility of the Forest Administration and sanctity of the forest laws, especially in the tracts inhabited by tribals.

2. Seized of its complexities, the issue regarding disputed claims over forest lands was got critically examined by this Ministry through an inter-Ministerial Committee. The Committee, after prolonged deliberations and due consultations with representatives of some of the States, stressed the need to resolve such disputes with utmost urgency any suggested the feasible course of action to redress genuine grievances without jeopardizing protection of forests and forest land. Keeping in view the recommendations of the said committee and with due approval of the competent authority, the following course of action is suggested for amicably resolving disputed claims on forest land.

2.1 The States / UTs administration should review the cases of disputed claims over forest land and identify the following three categories of claims.

(a) Claims in respect of forest areas notified as 'deemed Reserved Forests' without observing the due process of settlement as provided in Forests Acts provided that these pertain to:

- (i) tribal areas, or affect a whole cross section of rural / poor in non-tribal areas; and
- (ii) the claimants are in possession of the 'disputed land'.

( b ) Claims in tribal areas wherever there is *prima facie* evidence that the process of forest settlement has been vitiated by incomplete or incorrect records / maps or lack of information to the affected persons, as prescribed by law, provided that.

- (i) Such forest settlement pertains to period after 1947; and
- (ii) The claimants are in possession of the 'disputed land'.

( c ) Claims in tribal areas wherever the process of settlement is over but notification under Section 20 of the Indian Forest Act, 1927 (or corresponding section of the relevant Act) is yet to be issued, particularly where considerable delay has occurred in the issue of

final notification under Section 20, provided that the claimants are still in possession of 'disputed land.'

2.2. After identifying the above three categories of the claims, the State Government / UT Administration should get these enquired through a Committee which should consist of atleast the concerned Divisional Forest Officer, Sub-Divisional Officer (Revenue Department) and a representative of the Tribal Welfare Department. The Committee should determine genuineness of the claims after examining all available evidence to establish that.

- (i) in case of category 2.1 (a) the claimant was in possession of the disputed land when the notification declaring 'deemed reserved forests' was issued; and
- (ii) in case of categories 2.1 (b) and 2.1 (c) the claimant was in possession of the disputed land when the notification showing Government intention to declare reserved forest was issued under Section 4 of the Indian Forest Act, 1927 (or corresponding section of the relevant Act) and his rights were not commuted or extinguished in accordance with due process of law.

2.3 In no case either the Government or the above Committee shall entertain any claim in which the claimant has not been in possession of the disputed land throughout.

2.4 Once the *bona fides* of the claims are established through proper enquiry, the State / UT Government may consider restoration of titles to the claimants. While deciding to restore titles to the claimants the following aspects should be duly considered:

- (i) As far as possible, restoration of claims should not result in honey-combing of forest land. In such cases possibility of exchange of land near periphery or else where (e.g. non-forest Government land) should be exhausted.
- (ii) The land to be restored to the claimants should be properly demarcated on the ground with permanent boundary marks.

2.5 After the State Government / UT Administration has decided in principle to restore titles to the claimants proposals may be formulated suitable and submitted for seeking prior approval of this Ministry under the provision of the Forest (Conservation) Act, 1980, along with proposals for compensatory afforestation.

3. Progress of the action taken / proposed to be taken under the above guidelines may kindly be conveyed to the Ministry.

Yours faithfully

(K. M. Chadha)

No. 13-1/90-FP (3)  
Government of India  
Ministry of Environment & Forests  
Department of Environment, Forests & Wildlife

Parayavaran Bhavan  
CGO Complex,  
Lodi Road, New Delhi  
Dated the 18 Sept. 1990

To

The Secretary  
Forest Department  
(All States / UTs).

**Sub:- Disputes Regarding *pattas* / leases / grants Involving Forest Land.**

Sir,

An inter-Ministerial Committee, which was set up by this Ministry to look into various aspects of *tribal*- forest-interface has pointed out that a number of cases of *pattas* / leases / grants involving forest land in one way or the other, have become contentious issues between different departments of the State / UT Government Such *patta*/ leases / grants are said to have been issued under the proper authority and orders of the respective State / UT Govt. and the land in question continues in the possession of the allottees or under their authorised use but its status is under dispute between different departments. Some of such cases are listed below for illustration:

**1.1** Protected forests in Madhya Pradesh, termed as Orange Areas which according to the State Government's decision were to be transferred to Revenue Department after demarcation for issuing *pattas* to the beneficiaries. It is observed that *pattas* were issued to the individuals but transfer of the land from Forest to Revenue Department, which should have preceded allotment of *pattas*, was not effected.

**1.2** '*Dali*' lands in Maharashtra which are said to have been leased to the entire village community in the past by the State Government. The assignees continue to make use of these lands for various purposes as per original terms and conditions and, sometimes, in accordance with the decision of the village community wherever such leases are for collective use of the community as a whole. But the formal status of these '*dali*' lands is not clear.

**1.3** Cases in which land was assigned by the Revenue Department supposedly from revenue lands. But eventually these were found to be notified forest land even though the assignees were not dispossessed of their holdings.

**1.4** Leases granted by the State Government for cultivation, agro-forestry or tree plantation. The lessees continue to possess the land though these have not been renewed since enactment of the Forest (Conservation) Act, 1980.

**2.** Any ambiguity about the status of the land involved in the type of cases cited above, particularly when the forest land continues under the possession of the assignees, is likely to adversely affect forest protection in these and the neighboring areas, apart from forcing the lawful assignees to live in a state of uncertainty. Keeping these and similar other aspects in view and after careful consideration of the recommendations of the Inter-Ministerial Committee, it has been decided that inter departmental issues related to *pattas* / leases / grants involving forest land should be settled at the earliest. The following steps are suggested in this regard.

**2.1** All the cases of *pattas*, leases, grants involving forest land whether by intent, omission, oversight or accident should be reviewed by the State / UT Govt. Such review should enable the State / UT Govt. to identify those cases in which the *pattas* /



leases/grants were awarded under proper authority, the assignees continue to be in possession of the land and term of the *pattas* / leases/ grant is yet to expires.

**2.2** In all those cases, where *pattas* / leases / grants where given by the Government departments to Scheduled Tribes or rural poor either individually or collectively, such *pattas* / leases / grants should be honored and inter departmental disputes should not affect the rights of the *lessees* provided they are in physical possession of the land, and term of the *patta* / lease / grant has not yet expired. These cases should be examined by district level committees consisting of D.F.O., S.D.O. (Revenue Department), a representative of Tribal Welfare Department. The disputes should be resolved at the district level wherever it is possible, or after obtaining suitable orders of the State / UT Govt. or the Government of India (If the provisions of the Forests (Conservation) Act, 1980 are attracted), as the case may be.

**2.3** Leases of a period prior to 25.10.1980 which were granted to the Scheduled Tribes or to other rural poor for agro-forestry, tree plantation or alike a but could not be renewed, despite the State / UT government's intention to do so, on account of enactment of the Forest (Conservation) Act, 1980 should be examined expeditiously. Where the State / UT Governments desire to continue the leases proposals should be submitted to this Ministry, in the prescribed manner, for seeding prior approval under the Forest (Conservation) Act, 1980. Pending final decision, that lessees should not be dispossessed of the land.

**2a.** In cases where Forest (Conservation) Act is attracted proposals for de-notification of forest land should be accompanied by proposals for compensatory afforestation. This Ministry may be kept informed of the action taken / proposed to be taken in this connection.

Yours faithfully,

(K. M. Chadha)

Joint Secretary to the Govt. of India

No. 13-1/90/-FP (5)  
Government of India  
Ministry of Environment of & Forests  
Department of Environment, Forests & Wildlife

Parayavaran Bhavan  
CGO Complex,  
Lodi Road, New Delhi  
Dated the 18 Sept. 1990

**Sub: Conversion of Forest Villages into Revenue Villages and Settlement of Other Old Habitations.**

Forest villages were set up in remote and inaccessible forest areas with a view to provide uninterrupted manpower for forestry operations. Of late, they have lost much of their significance owing to improved accessibility of such areas, expansion of human habitations and similar other reasons. Accordingly, some of the States converted forest villages into revenue villages well before 1980. Nevertheless, there still exist between 2500 to 3000 forest villages in the country. Besides, some cases of other types of habitations e.g., unauthorised houses/ homesteads, dwellings of tribals who have been living in them in virtually pre agrarian life styles, are suspected to exist in forest lands even though these may not have been recognised either as revenue villages or forest villages.

2. In March, 1984, the then Ministry of Agriculture suggested to the state / UT Govts. that they may confer heritable and inalienable rights on forest villagers if they were in occupation of land for more than 20 years. But this suggestion does not seem to have been fully implemented. Development of forest villages has also been endorsed in the National Forest Policy, 1986 which states that these should be developed on par with revenue villages. This issue was again examined by an Inter-Ministerial Committee, set up by this Ministry to look into various aspects of tribal-forest-interface, in consultation with representatives of some of the States.

3. Although the forest villages have lived in harmony with their surrounding forests and the concept of forest villages proved an effective arrangement for sustained supply of manpower, yet it would not be appropriate to deny them legitimate rights over such land which were allotted to them decades ago for settlement and have been continuously under their occupation since then. Keeping this aspect and the recommendations of the Inter - Ministerial Committee, the following measures are suggested to resolve the outstanding issues of forest villages and other types of habitations existing in forest lands'.

### **3.1 Forest villages**

Forest villages may be converted into revenue villages after de-notifying requisite land as forest. Proposals seeking prior approval of Government of India for this purpose under the Forest (Conservation) Act, 1980 may be submitted expeditiously. While converting these villages into Revenue Villages, the following principles may be adhered to:

- (i) the villagers are conferred heritable but inalienable rights;
- (ii) administration of these and other Revenue Villages enclaved in forest areas should preferably be entrusted to the State Forest Department.

### **3.2 Other habitations**

(a) Habitations other than Forest Villages may be grouped into the following categories:

- (i) Cases where dwellings belong to persons who have encroached on forest land for cultivation.
- (ii) Dwelling of other persons who have been living therein since past without encroaching on forest land for cultivation but their habitations are neither recognised as revenue villages nor as forest villages.

(b) Each case may be examined on its merits. Suggestions for resolving the cases are given below.

- (i) In case of category (a) (i) above, wherever encroachments for agricultural cultivation are regularised, the house sites and homesteads too may be regularised

either *in situ* or as near the agricultural field as possible subject to certain safeguards in the interest of forest protection and eligibility criteria as may be evolved by the State government.

- (ii) In case of category (a) (ii) above, certain specific habitations more than 25 years old, involving sizable group of families, may be examined, case by case, on merits for their amicable settlement.
- (iii) Scheduled Tribes and rural poor not covered under (i) and (ii) above should be resettled in non-forest government land.
- (iv) All other unauthorised habitations must be evicted.
- (v) Wherever provisions of the Forest (Conservation) Act, 1980 are attracted, comprehensive proposals may please be submitted for seeding prior approval of this Ministry. It may kindly be noted that such proposals will be considered only when the State / UT Govt ensure that all the measures are taken simultaneously and effectively and are accompanied with proposals for compensatory afforestation.

4. This Ministry may kindly be kept informed of the action taken / proposed to be taken in this regard.

Yours faithfully,

(K. M. Chadha)

Joint Secretary the Govt. Of India

No. 6-21 / 89-FP  
Government of India  
Ministry of Environment of & Forests  
Department of Environment, Forests & Wildlife

Parayavaran Bhavan  
CGO Complex,  
Lodi Road, New Delhi  
Dated: 1st June. 1990

To

The Forest Secretaries  
(All States / UTs)

**Subject: Involvement of Village Communities and Voluntary Agencies for regeneration of Degraded Forest Lands.**

Sir,

The National Forest Policy, 1988 envisages people's involvement in the development and protection of forests.

The requirements of fuel wood, fodder and small timber such living in and near the forest, are to be treated as first charge on forest produce. The Policy document envisages it as one of the essentials of forest management that the forest communities should be motivated to identify themselves with the development and protection of forests from which they derive benefits.

2. In a D.O. letter No, 1/1/88-TMA dated 13th January, 1989 to the Chief Secretary of your State, the need for working out the modalities for giving to the village communities, living close to the forest land, usufructory benefits to ensure their participation in the afforestation programme, was emphasized by Shri K.P. Geethakrishnan, the then Secretary (Environment and Forests).

3. Committed voluntary agencies / NGOs, with proven track record, may prove particularly well suited for motivating and organising village communities for protection afforestation and development of degraded forest land, especially in the vicinity of

habitations. The State Forest Departments / Social Forestry Organisations ought to take full advantage of their expertise and experience in this respect for building up meaningful people's participation in protection and development of degraded forest lands. The voluntary agencies / NGOs may be associated as interface between State Forest Department and the local village communities for revival, restoration and development of degraded forests in the manner suggested below:-

- (i) The programme should be implemented under an arrangement between the Voluntary Agency / NGO, the village community. (beneficiaries) and the State Forest Department.
- (ii) No ownership or lease rights over the forest land should be given to the beneficiaries or to the Voluntary Agency / NGO. Nor should the forest land be assigned in contravention of the provisions contained in the Forest (Conservation) Act, 1980.
- (iii) The beneficiaries should be entitled to a share in usufructs to the extent and subject to the conditions prescribed by the State government in this behalf. The Voluntary Agency / NGO should not be entitled to usufructory benefits.
- (iv) Access to forest land and usufructory benefits should be only to the beneficiaries who get organised into a village institution, specifically for forest regeneration and protection. This could be the Panchayat or the Cooperative, or could also be a Village Forest Committee. In no case should any access or tree *pattas* be given to individuals.
- (v) The beneficiaries should be given usufructs like grasses, lops and tops of braches, and minor forest produce. If they successfully protect the forests, they may be given a portion of the proceeds from the sale of trees when they mature. (The government of West Bengal has issued orders to give 25% of the sale proceeds to the Village Forest Protection Committees. Similar norms may be adopted by other States).
- (vi) Areas to be selected for the programme should be free from the claims (including exiting rights, privileges, concession) of any person who is not a beneficiary under the scheme. Alternatively for a given site the selection of beneficiaries should be

done in such a way that any one who has a claim to any forest produce from the selected site is not left out without being given full opportunity of joining.

(vii) The selected site should be worked in accordance with a Working Scheme, duly approved by the State Government. Such a Scheme may remain in operation for a period of 10 years and revised / renewed after that. The Working Scheme should be prepared in consultation with the beneficiaries. Apart from protection of the site, the said Scheme may prescribe requisite operations, e.g. inducement to natural regeneration of existing root stock, seeding, gap filling and wherever necessary, intensive planting, soil-moisture conservation measures, etc.

The working Scheme should also prescribe other operations, e.g., fire-protection, maintenance of boundaries, weeding, tending, cleaning, thinning etc.

(viii) For raising nurseries, preparing land for planting and protecting the trees after planting, the beneficiaries should be paid by the Forest Department from the funds under the social forestry programme. However, the village community may obtain funds from other Government agencies and sources for undertaking these activities.

(ix) It should be ensured that there is no grazing at all in the forest land protected by the village community. Permission to cut and carry grass free of cost should be given so that stall feeding is promoted.

(x) No agriculture should be permitted on the forest land.

(xi) Along with trees for fuel, fodder and timber, the village community may be permitted to plant such fruit trees as would fit in with the overall scheme of afforestation, such as *aonla*, *Imli*, *mango*, *mahua*, etc, as well as shrubs, legumes and grasses which would meet local needs, help soil and water conservation, and enrich the degraded soils / land. Even indigenous medicinal plants may be grown according to the requirements and preference of beneficiaries.

(xii) Cutting of trees should not be permitted before they are ripe for harvesting. The forest department also should not cut the trees on the forest land being protected by the village communities except in the manner prescribed in the Working Scheme. In case of emergency needs, the village communities should be taken into confidence.

(xiii) The benefit of people's participation should go to the village communities and not to commercial or other interests which may try to derive benefit in their name. The selection of beneficiaries should, therefore, be done from only those families which are willing to participate through their personal efforts.

(xiv) The Forest Department should closely supervise the works. If the beneficiaries and / or the Voluntary Agency / NGO fail or neglect to protect the areas from grazing, encroachment or do not perform the operations prescribed in the Working Scheme in a satisfactory manner, the usufructory benefits should be withdrawn without paying compensation to anyone for any work that might have been done prior to it. Suitable provisions in the Memorandum of Understanding (MOU) for this purpose should be incorporated

Yours faithfully

Secretary to the Govt. of India



No. 13-1 /90-FP  
Government of India  
Ministry of Environment of & Forests  
Department of Environment, Forests & Wildlife

Parayavaran Bhavan  
'B' Block, Phase-II, CGO Complex,  
Lodi Road, New Delhi  
Dated: 20th Dec. 1990

To

The Forest Secretaries  
(All States / UTs)

*Sub: Centrally Sponsored Scheme for Association of Scheduled Tribes and Rural  
Poor in*

**Afforestation of Degraded Forests.**

I am directed to say that during the 8th Five Plan an aforesaid 100 percent Centrally Sponsored Scheme has been proposed for implementation during the current financial year for welfare of tribals with a view to involve local tribals and rural poor on community basis for regeneration of degraded forests. A copy of the scheme giving objective in details in enclosed.

You are requested to kindly formulate proposals of the State Government in accordance with the provisions of the scheme and forward the same to this Ministry for consideration and release of amount.

Yours faithfully  
Secretary to the Govt. of India

**ASSOCIATION OF SCHEDULED TRIBES AND RURAL POOR IN AFFORESTATION OF DEGRADED  
FORESTS**

## **Nature and Scope**

Out of a total of 75 million hectares (mha) of forest area in the country, at least 30 mha have become degraded with little or no vegetation. The main causes of degradation are excessive biotic pressure, especially grazing and removal of firewood and timber. Much of the degraded lands are on the fringes of forests, close to habitations.

There is growing experience that cooperative action between forest department and the local communities can effectively protect degraded forest lands allowing them to regenerate and facilitate revegetation of such areas through artificial techniques.

This scheme has been designed taking into account the experience of various past and on-going schemes of similar nature. It will be implemented, primarily, in degraded forest lands. The State Forest Departments will arrange to identify potentially useful sites for this scheme. A list of such sites, their area and other necessary details will be made available in the offices of the concerned Beat Guard, Forester and the Divisional Officer.

### **Objectives:**

- (i) To improve forest based biomass resources base in degraded forest land and to manage it on a sustained basis for the domestic needs of the identified communities.
- (ii) To involve local scheduled tribes and other rural poor in protection and development of degraded forests.
- (iii) To provide gainful employment and a sustainable economic base to scheduled tribes and other rural poor in the vicinity of their habitations.

### **Beneficiaries:**

- (i) The beneficiaries will be primarily scheduled tribes. Non-tribal rural poor beneficiaries will also be selected if they belong to an economically homogeneous group not inimical to tribal interests.
- (ii) The beneficiaries should reside for most part of the year in the village within convenient reach from the area earmarked for afforestation.

- (iii) Each family will be taken as 1 unit of beneficiary. Only those families will be eligible who have at least one member as wage earner. Participation will be only through personal labour of the family members.
- (iv) Priority will be given to landless, small and marginal farmers, in this order.
- (v) The beneficiaries will be selected primarily by the tribal community through their customary tribal institutions / gaon sabha of the habitation / an assembly of the adult members of the tribal hamlet / habitation, as the case may be. The selection of the beneficiaries will be verified by the concerned Range Forest Officer in consultation with the officials of the Tribal Welfare Department to ensure that they have been correctly identified. The list of the beneficiaries will be sent by him to the DFO concerned.

#### **Selection of Sites for Afforestation:-**

The area to be arranged for afforestation will be the nearest available potentially suitable site, identified for this purpose by the Forest Department. Usually, it should be: -

- (i) Potentially productive degraded forest land;
- (ii) Relatively free from customary rights / privileges of non-beneficiary families.
- (iii) Preferably a compact block surrounded by natural boundaries;
- (iv) A viable unit sufficient to provide year round employment to identified beneficiaries, but usually less than 500 ha for natural regeneration and 300 ha for plantation to ensure effective protection and management.
- (v) Limited to 5 hectares pre household for natural regeneration and 2 ha, for intensive planting.

#### **Preparation of Afforestation Projects**

For some selected sites, a separate project will be prepared in advance. Whenever the area is covered under existing Working Plans / Working Schemes prescriptions contained therein will be modified in accordance with this Projects. The Project will be prepared by the Forest Department in consultation with the representatives of the

beneficiaries. The Project Report will contain complete details of the site, the beneficiaries, the activities to be undertaken, soil-moisture, conservation measures, estimated costs and benefits, project period, details of working arrangements, mechanism for sharing of produce and related matter.

### **Plantation Models and Choice of Species**

- (i) Whenever there is adequate root stock of utilizable species, efforts will be made to revegetate the area by giving it complete protection.
- (ii) Choice of species will be left to the beneficiaries but their suitability to the *edapho-climatic* region will be ascertained by the Forest Department. Short duration crops will be preferred to ensure early return.
- (iii) Minor forest produce and multi-purpose species will be given preference.
- (iv) Wherever suitable sites are available, activities like *tasar* cultivation, bamboo cultivation will be undertaken with a view to provide full time employment to beneficiaries and village artisans. If the beneficiaries themselves are artisans, efforts will be made to improve availability of forest based raw material required by them.

### **Sharing of Produce**

- (i) The beneficiaries will be entitled to MFP, dead and fallen wood, branch cuttings, and fodder in full.
- (ii) Beneficiaries will be entitled in full to produce received from mechanical thinnings and tending operations.
- (iii) Out of the harvest from silvicultural thinnings and main fellings, beneficiaries will be entitled to the produce for their *bona fide* domestic needs. The surplus will be sold by the Forest Department out of which 75% of the net receipts from silvicultural thinnings and 50% from main fellings will be distributed to the beneficiaries.
- (iv) Each family will be taken as unit for sharing of forest produce and sale proceeds.

### **Institutional and Working Arrangements**

The beneficiaries will form a small Committee of about 3 to 5 persons who will represent them in all matters related to this scheme. A collective undertaking to this effect will be given by the beneficiaries to the local forest official.

The Committee will be responsible for successful implementation of the works as per the approved project. All the transactions, e. g., payment of work advance, wages, to be made by the Forest Department in respect of the scheme will be done with this Committee. The Committee will also be responsible for protection and maintenance of the plantation, natural regeneration, if any, forest land and silvicultural thinnings will be done by the Forest Department in accordance with the prescriptions of the Project. Surplus produce from these harvests will also be disposed of by the Forest Department. Removal of minor forest produce, dead and fallen wood, branch wood from coppices and such other incidental produce will be regulated by the Committee.

A list of beneficiaries, duly verified by the Committee members, will be maintained in the office of the concerned DFO as a permanent record, copies of which will be made available to the beneficiaries, and the concerned forest officials, viz, RFO, Forester, Beat Guard. A memorandum of understating will also be signed by the representatives of the Forest Department and the Committee members clearly stating the acts of omission/ commission, the remedial / consequential measures therefore, details of the usufructory rights admissible to the beneficiaries and all other provisions as may be considered essential for ensuring successful implementation of the scheme.

**Financial Implication :**

Estimated costs of different models given in the Annexure vary from Rs. 4,500 to Rs. 22, 000 per hectare computed at wage rate of Rs. 15 per man-day. Apparently these cost estimates are for intensive cultivation of intended species. A substantial portion of this is earmarked for protection. With the involvement of the local communities, protection costs are likely to be much less. Further, the Projects will include mainly labour intensive works and outlays for material, stores, etc., which do not provide direct employment to unskilled workers, will be kept at minimum. It will, therefore, be possible to economise on these cost estimates. Roughly, the cost per hectare would vary from Rs.

3,500 to 10,000. The lower limit is for such sites where future crop is to depend predominantly on natural regeneration and the upper limit refers to intensive planting of species. In certain isolated cases like *tasar* cultivation, the cost may exceed the upper limit considerably. For working out financial forecast and budgetary requirements, Rs 8000 per hectare could be taken as a safe estimate.

The Scheme will be fully financed by the Government of India. The possible sources of finance are the TSP of Ministry of Welfare, JRY and IRDP of the Department of Rural Development and the afforestation schemes of the Ministry of Environment and Forests.

It is intended to cover 2 lakh families in a period of 6 years beginning from 1990-91. The areas coverage will be 4 lakh hectares of plantation in the country on an average of 8,000 hectares per year. The estimated cost at a rate of Rs. 8,000/ ha works out to Rs. 320 crores.

Establishment of plantation will require about 4 years. The outlay of Rs. 8,000 per ha. will, thus, be spread over 4 years of which nearly half the amount will be spent during the first year. Based on these estimates, financial requirement for the year 1990-91 works out to Rs. 32 crores.

F. No. 2-1/2003-FC  
Government of India  
MoEF (F.C. Division)

Paryavaran Bhawan,  
CGO Complex, Lodhi Road,  
New Delhi 110003  
Dated 20.10.2003

To  
The Chief Secretary/Administrator,  
(All States/UTs)

**Sub: Guidelines for Diversion of forest land for non-forest purposes under FCA  
1980**

Sir,

Detailed guidelines for submission of proposals for diversion of forest land for non-forestry purposes under the Forest (Conservation) Act 1980 were circulated to all the State Governments/Union territories on 25.10.1992. Based on Experience, a constant review of these guidelines has been done from time to time to maintain a logical balance between environmental conservation and the development process.

After a recent review, MoEF (GOI) has approved certain modifications in specific paras of the existing guidelines. The important guidelines are as follows:

1. **Para 1.1(i)** defines 'forests' as understood in the dictionary sense in view of the Hon'ble SC's orders dated 12/12/1996 in WP(C) 202/1995. Now *all proposals for diversion of such forest areas to any non-forest purpose, irrespective of its ownership, would require the prior approval of the Central Govt. However the term forest shall not be applicable to the plantations raised on private lands, except notified private forests. Felling of trees in these private plantations shall be governed*

*by the relevant provisions of various State Acts and Rules. Felling of trees in notified private forests will be as per the working plan/management plan duly approved by the GOI.*

2. **Para 1.2 (iii)** now clarifies *that rights and concessions cannot be enjoyed in the Protected Areas (PAs) in view of the orders of the SC dated 14/02/2000, restraining removal of dead, diseased or wind-fallen trees, drift wood, grasses etc. from any National Park or Sanctuary.*
  
8. **Para 3.2(i)** deals with **Compensatory afforestation** of non-forest lands and takes into account the difficulties of states/UTs in finding non-forest land for the purpose of Compensatory afforestation. The para now clarifies that *the revenue lands/zudpi jungle/chote/bade hgar ka jungle/jungle-jhari/ civil-soyam lands and all other such category of lands, on which the provisions of the F(C)A 1980 are applicable, shall be considered for the purpose of compensatory afforestation provided such lands on which compensatory is proposed shall be notified as RF under the Indian Forest Act, 1927.*
  
9. **Para 3.5(ii)** gives details of orders of the Hon'ble SC dated 30/10/2002 in IA 566 in WP (C) 202 of 1995 regarding creation of a body for management of compensatory afforestation fund and collection of Net Present Value of forest lands, i.e. *"Compensatory Afforestation & Planning Agency (CAMPA)"*

Yours Faithfully,

Dr. V. K. Bahuguna,  
Inspector General of Forests

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***DOCUMENT 3.8***

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F.No.2-1/2003-FC  
MoEF (GOI) F.C. Division

Paryavaran Bhavan, CGO Complex,  
Lodi Road, New Delhi 110003  
Dated 20.10.2003

To,  
Chief Secretaries/Administrator,  
(All States/UTs)

**Sub: Guidelines for diversion of forest land for non-forest purposes under the FCA 1980 for development projects in tribal areas**

Sir,

As you aware, the National Forest Policy, 1988 recognizes the symbiotic relationship between tribal people and forests. It emphasizes that the primary task of all agencies responsible for forest management, including the forest development corporations should be to associate the tribal people closely in the protection, regeneration and development of forests as well as to provide meaningful employment to people living in an around the forests. While safeguarding the customary rights and interests of such people, forestry programs should pay special attention to development co-operatives, protection, regeneration and optimum collection of MFP, development of forest villages on par with revenue villages, family oriented schemes and integrated area development programme to meet the needs of tribal economy.

Further, MoEF has noticed that the conflict between the forest Administration and the tribals in various states/UTs exists, which is certainly not in the interest of forest conservation. GoI recognizes that development of tribals is an integral part of conservation efforts. It has become relevant to issue separate guidelines to execute the developmental projects in tribal areas consistent with the provisions of FCA 1980, which is a tribal friendly act.

Accordingly in conformity with the National Forest Policy 1988 and considering the fact that there is requirement of equitable development all over the country including tribal areas, after a recent review, MoEF (GoI) has approved certain specific **‘Guidelines under the Forest (Conservation) Act 1980, for stepping up the development projects in tribal areas’** . We hope your state/UT will take full advantage of these guidelines for the development of tribal areas.

*The guidelines are as follows:*

1. It must be recognized by all that the maintenance of good forest cover is essential for sustaining the livelihood of the tribal population. Therefore, only infrastructure development projects (other than commercial) should be encouraged in tribal areas.

2. For the purpose of implementation of these guidelines, tribal areas will be those areas which are recognized in the Schedule V and VI of the Constitution of India. With all the proposals the latest census clearly indicating size of tribal population shall be enclosed by the state/UT governments.
3. In the tribal areas, there shall be general approval under Section-2 of the Forest (Conservation) Act, 1980 for underground laying of electricity cables wires to individual households, drinking water supply/ water pipelines, telephone lines, which involve felling of trees not exceeding 50 number per project (should be below 60 cm.girth class) and are outside national Parks or Wildlife Sanctuary and are laid along the roads and within the existing right of way. This general approval shall be subject to the condition that the Nodal Officer shall certify compliance. Records of such works undertaken shall be maintained by the Nodal Officer and the Territorial DFO. Nodal Officer shall send quarterly report to concerned chief Conservator of Forests (Regional Office) for monitoring purpose. In lieu of felling of trees, five times if the number of felled trees shall be planted by the User Agency at or near the site. Any deviation, shall require permission from the Central Government under the Forest (Conservation) Act, 1980.
4. Infrastructure development projects like power, roads, railways, telephone line/cables, irrigation, drinking water facility, schools, hospitals etc. designed for tribal areas , should be given priority and forwarded by the State/UT Governments in the prescribed time frame to the concerned Regional Office or Central Governments as the case may be, for consideration.
5. During the execution of the project, the State Government/ User Agency shall ensure maximum employment for the local tribals
6. While formulating a project in a tribal area, the User agency shall earmark 5%, the total project cost for the development of indigenous skill of tribals, basic amenities, education, health, sports facilities for children/youth etc in the area. The detailed plan should be enclosed along with the proposal. The funds for these components shall be

deposited with Compensatory Afforestation Management and Planning Agency (CAMPA) to be created by Government of India.

7. All the project proposals involving diversion of 40 ha. or more forest area in tribal areas, should have an important component of providing the alternative source of domestic energy on subsidized basis like distribution of LPG etc, to reduce pressure on the existing forests. The funds for these components shall be deposited with CAMPA.
8. For regularization of encroachments, detailed guidelines issued in this regard vide this Ministry's letter No.13.1/90-F.P(1) dated 18.9.1990 shall be strictly followed in a time bound manner.
9. For review of disputed claims over forest land, arising out of Forest Settlement, detailed guidelines issued in this regard vide this Ministry's letter No.13.1/90-F.P(2) dated 18.9.1990 shall be strictly followed in a time bound manner.
10. For disputed regarding Pattas/Leases/Grants involving Forest Land – Settlement thereof, detailed guidelines issued in this regard vide this Ministry's letter No.13.1/90-FP (3) dated 18.9.90 shall be strictly followed in a time bound manner.
11. For conversion of forest villages into revenue villages, detailed guidelines issued in this regard vide this Ministry's letter No.13.1/90-F.P(5) dated 18.9.90 shall be strictly followed. Proposal for conversion of all forest villages into revenue villages should be submitted to Government of India in a time bound manner.
12. If the tribals are residing inside a National Park/Sanctuaries/Protected Area/Reserve, para 2.7(ii) of the guidelines shall remain applicable.

Yours faithfully,

Sd/-

(Dr. V.K Bahuguna)

Inspector General of Forests

*DOCUMENT 3.9*

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GOVERNMENT OF INDIA  
MINISTRY OF ENVIRONMENT & FORESTS  
No. 11-70/2002-FC (Pt)

To

The Chief Secretary, The Principal Secretary, The Principal Chief Conservator of  
Forests,  
All the States / UTs

**Subject : Stepping up of process for conversion of forest villages into revenue  
villages.**

Sir,

As you are aware that the National Forest Policy of 1988 envisages that development of forest villages should be on par with the revenue villages. In order to ensure this, the Ministry had issued guideline on 18<sup>th</sup> September, 1990 vide this Ministry letter No.30-1/90-FP (5) for conversion of these forest villages into revenue villages. But so far, very few proposals have been received from the State Governments, and even the proposals received, many are either incomplete and/or also include encroachments in adjoining forests, as also the balance forest land in the compartment. So far only 384 forest villages have been converted into revenue villages (311 in Madhya Pradesh and 73 in Maharashtra) during the last one year. From rest of the States, proposals are yet to be received.

The matter was received last year in September 2003, by the Ministry on the basis of information furnished by 13 States (Assam, Chhattisgarh, Gujarat, Jharkhand, Maharashtra, Meghalaya, Madhya Pradesh, Mizoram, Orissa, Tripura, Uttaranchal, Uttar Pradesh and West Bengal), a total of 2690 forest villages have been enumerated as existing in the country. It has been decided that the state governments may be requested to immediately expedite the process of conversion of these forest villages into revenue villages.

The following procedure may be followed while preparing the proposal so that the complete proposals are sent within a fixed time limit for taking a decision under the provision of the Forest (Conservation) Act, 1980.

- (i) This is to reiterate that the Central Government is committed to the conversion of forest villages into revenue villages in accordance with the guidelines approved by the Union Cabinet in 1990.
- (ii) Central Government would consider all land on which pattas have been issued prior to 25.10. 1980 by the concerned Divisional Forest Officers or the authorized officers and pattas holders and the land is in their or legal successors' continuous possession. These lands will include lands under habitation, existing buildings, gochar lands, health center, community center,

cremation ground, road etc. for diversion. Isolated patches of settlement should be brought to the periphery of forests by the State Government and proposals sent for the areas in which the resettlement will take place.

For purposes of converting forest villages into revenue villages, the State Government shall submit a map delineating the external boundaries of the areas where pattas have been issued pre 1980. It should not be necessary for them to submit details of individual pattas.

- (iii) The balance forest areas in the forest compartment shall be demarcated and retained as reserve forests and managed by the State Forest Department. These areas shall also be demarcated in the field by the State Forest Department.
- (iv) Forest lands which have been encroached shall be dealt with in accordance with the guidelines issued by the Ministry for the regularization of the encroachment and the State Governments shall ensure that all ineligible pre 1980 and post-1980 encroachments are evicted in tune with the Hon'ble Supreme Court orders. Only eligible category of pre-1980 encroachment shall be considered for regularization if and when the ban on regularization is lifted by the Supreme Court. The State Government shall also approach the Supreme Court in this regard.
- (v) If any of the forest village falls in a National Park and Sanctuary, the State Government shall submit the proposal for conversion to the revenue villages only after obtaining the approval of the Standing Committee of the National Board of Wildlife and Hon'ble Supreme Court.
- (vi) Regarding traditional rights of inhabitants of forest villages on forest lands outside the village boundaries, the State government may document these rights and notify them under the provisions of relevant Acts or Rules as applicable, furnishing the details of specific rights so granted, the villages where individuals are entitled and the specific forest lands on which such rights may be exercised.

It is therefore, requested that a time bound programme may be drawn up by the State Government for expeditiously converting forest village into revenue villages in the next six months so that the people living in these villages can enjoy the fruits of development and also their dependency on forest is reduced.

Yours faithfully,  
Sd/-  
(Dr. V.K Bahuguna)  
Inspector General of Forests

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***DOCUMENT 3.10***

GOVERNMENT OF INDIA  
Ministry of Environment & Forests  
No.2-1/2003-FC(Pt)

Dated 5.2.2004

To

- 1.The Chief Secretary, All the States/UTs
- 2.The Principal Secretary, All the States /UTs
- 3.The Principal Chief Conservator of Forests. All the States/UTs

**Subject : Regularisation of the rights of the tribals on the forest lands**

Sir

The Government of India have been receiving a number of representations for regularisation of rights of tribal forest dwellers on forest lands in different parts of the country . The question has also been raised in various public discussions including meetings of various Standing and Consultative committees of Parliament attached to different Ministries, as also various State Governments that the tribals have been living in harmony with the forests since time immemorial, and their rights on such lands should be recognised..However, while these areas were being brought under the purview of relevant Forest Acts, their traditional rights could not be settled due to number of reasons making them encroachers in the eyes of the law. The Central Government in September 1990 vide No .13-1/90-F.P.(2)&(3) had requested the State Governments /UTs to settle the disputed claims, issue patta lease, etc of the tribal population on the forest land , but so far no such proposal has been received. Proposals have been received only under the category of regularisation of eligible encroachments only from a couple of states. This has deprived the tribals of natural justice as guidelines for regularisation of encroachments are different from the guidelines for settling disputed settlement claims.

The issue has been examined in its entirety in considerable depth by the Central Government and after careful consideration, the Central Government hereby takes the following decisions with a request to the State Governments/UT Administrations to take necessary follow up action as under

1. State Governments /UT Administration should recognize the traditional rights of the tribal population on forest lands, and these rights should be incorporated into the relevant acts, rules and regulations prevalent in the concerned States/UTs by following the prescribed procedure



2. (i) In respect of these recognised rights of the tribal forest dwellers on the forest lands, the Central Government upon the receipt of complete proposals from the State Governments / UT Administration concerned, shall consider the proposals for diversion of continuously occupied forest land under the Forest (Conservation) Act 1980, so that these tribals can get unfettered legal rights over such lands. The tribals shall have heritable but inalienable rights over such lands. This decision shall apply for those tribal dwellers who are in continuous occupation of such forest land at least since 31.12.93  
(ii) The diversion proposals shall, however, be considered only if an integrated tribal rehabilitation scheme forms part of the proposal to be submitted by the State /UT , along with the financial commitments so that the tribal population are retained at that particular land, and the problem is solved once and for all .In order to ensure in situ biodiversity conservation with the rehabilitation package , the programme should be implemented by the tribal rehabilitation wing of the forest department .Where such wings do not exist , these may be created .The model adopted by the Kerala Government for rehabilitation of tribals is a case in point and the State Governments may follow this pattern  
(iii) As the Hon'ble Supreme Court vide their order dated 13.11.2001 in W.P.202/95 had restrained the Central Government from regularisation of encroachments , the Central Government shall approach the Court for modification of their order so that the instant decision taken in this regard by the Central Government is implemented.
3. In respect of any fresh occupation of forest land by tribals and non-tribals in forest area henceforth, the State Governments /UT Administration shall hold the concerned District Magistrate and Collector, Superintendent of Police and the Divisional Forest Officer personally responsible for such encroachment and they will be liable for disciplinary action in respect of any such encroachment.
4. Attention of the State Government /UT Administration is invited to this office letter No 7/16/2002-FC dated 3rd May , 2002 in which the constitution of state level and circle level encroachment monitoring committees have been suggested . Apart from this , a district level committee consisting of District Magistrate & Collector , Superintendent of Police and the Divisional Forest Officer should be constituted immediately for eviction of encroachment and monitoring the same should be done at the State level , the Circle level and the District level Committees at quarterly intervals. The notification constituting the committees and action taken by them shall also be part of the diversion proposal.
5. The State Government and UTs should make sincere efforts for making available an equivalent area of non- forest land wherever feasible for inclusion of such lands as reserved forests or protected forests.
6. It is also clarified that in respect of pre-1980 eligible encroachers, the Central Governments has already approached the Supreme Court in October 2002 to permit it to regularise such eligible encroachments as per the guidelines and policy of the government.
7. The consideration of the proposals from the State Governments/UTs shall depend on the progress achieved by the concerned State/UT Administration in eviction of all pre -1980 and post 1980 ineligible non-tribal encroachers and all encroachers post 31.12.1993.
8. It may please be noted that this issue of tribal rights must be settled in a fixed time period of one year from the date of issue of this letter and no proposals shall be entertained thereafter.
9. The State level committee headed by the Chief Secretary mentioned under Para 3 above shall monitor the implementation of the above decisions

Yours faithfully

(Dr.V.K.Bahuguna)  
Inspector General of Forests

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***DOCUMENT 4***

**THE PANCHAYATS (EXTENSION TO SCHEDULED AREAS) ACT, 1996**

**No. 40 of 1996**

[24<sup>th</sup> December 1996]

An Act to provide for the extension of the provisions of Part IX of the Constitution relating to the Panchayats to the Scheduled Areas.

Be it enacted by the Parliament in the Forty-seventh Year of the Republic of India as follows:-

1. This Act may be called the Provision of the Panchayats (Extension of the Scheduled Areas) Act 1996

2. In this Act unless the context otherwise requires. “Scheduled Areas” means the Scheduled Areas as referred to in clause (1) of article 244 of the Constitution.
3. The provision of Part IX of the Constitution relating to the Panchayats are hereby extended to the Scheduled Areas subject to such exceptions and modifications as are provided in section 4.
4. Notwithstanding anything contained under Part IX of the Constitution, the Legislature of the State shall not make any law under the Part which is inconsistent with any of the following features, namely:-
  - (a) a State legislation on the Panchayats that may be made shall be in consonance with the customary law, social and religious practices and traditional management practices of community resources;
  - (b) a village shall ordinarily consist of a habitation or a group of habitations or a hamlet or a group of hamlets comprising a community and managing its affairs in accordance with traditions and customs;
  - (c) every village shall have a Gram Sabha consisting of persons whose names are included in the electoral rolls for the Panchayat at the village level;
  - (d) every Gram Sabha shall be competent to safeguard and preserve the traditions and customs of the people, their cultural identity, community resources and the customary mode of dispute resolution;
  - (e) every Gram Sabha shall –
    - (i) approve the plans, programmes and projects for social and economic developments before such plan, programmes and projects are taken up for implementation by the Panchayat at the village level;

- (ii) be responsible for the identification of selection of persons as beneficiaries under the poverty alleviation and other programmes;
- (f) every Panchayat at the village level shall be required to obtain from the Gram Sabha a certification of utilization of funds by the Panchayat for the plans, programmes and projects referred to in clause (e);
- (g) the reservation of seats in the Scheduled Areas at every Panchayat shall be in proportion to the population of the communities in the panchayat for whom reservation is sought to be given under Part IX of the Constitution:  
Provided that the reservation for the Scheduled Tribes shall not be less than one-half of the total number of seats:  
Provided further that all seats of Chairpersons of Panchayats at all levels shall be reserved for the Scheduled Tribes;
- (h) That State Governments may nominate persons belonging to such Scheduled Tribes as have no representation in the Panchayat at the intermediate level or the Panchayat at the District level;  
Provided that such nomination shall not exceed one-tenth of the total members to be elected in the Panchayat;
- (i) The Gram Sabha or the Panchayats at the appropriate level shall be consulted before making the acquisition of land in the Scheduled Areas for development projects and before resettling or rehabilitation persons affected by such projects in the Scheduled Areas; the actual planning and implementation of the projects in the Scheduled Areas shall be coordinated at the State level;
- (j) Planning and management of minor water bodies in the Scheduled Areas shall be entrusted to Panchayats at the appropriate level;
- (k) The recommendations of the Gram Sabha or Gram Panchayat at the appropriate level shall be made mandatory prior to grant of prospecting license or mining lease for minor minerals in the Scheduled Areas;
- (l) The prior recommendations of the Gram Sabha or the Panchayats at the appropriate level shall be made mandatory for grant of concession for the exploitation of major minerals by auction;

- (m) While endowing Panchayats in the Scheduled Areas with such powers and authority as may be necessary to enable them to function as institutions of self-government a State Legislature shall ensure that the Panchayats at the appropriate level and the Gram Sabha are endowed specifically with-
- (i) the power to enforce prohibition or to regulate or restrict the sale and consumption of any intoxicant;
  - (ii) the ownership of manor forest produce;
  - (iii) the powers to prevent alienation of land in the Scheduled Areas and to take appropriate action to restore any unlawfully alienated land of a Scheduled Tribe;
  - (iv) the power to manage village markets by whatever name called;
  - (v) the power to exercise control over money lending to the Scheduled Tribes;
  - (vi) the power to exercise control over institutions and functionaries in all social sectors;
  - (vii) the power to control over local plans and resources for such plans including tribal sub-plans;
- (n) the State legislations that may endow Panchayats with powers and authority as may be necessary to enable them to function an institutions of self-government shall contain safeguards to ensure that Panchayats at the higher level do not assume the powers and authority of any Panchayat at the lower level or of the Gram Sabha;
- (o) the State Legislature shall endeavor to follow the pattern of the Sixth Schedule to the Constitution while designing the administrative arrangements in the Panchayats at district levels in the Scheduled Areas.

5. Notwithstanding anything in Part IX of the Constitution with exceptions and modifications made by this Act, any provision of any law relating to Panchayats in force in the Scheduled Areas immediately before the date on which this Act receives the assent of the President which is inconsistent with

the provisions of Part IX with such exceptions and modifications shall continue to be in force until amended or repealed by a competent Legislature or other competent authority or until the expiration of one year from the date on which this Act receives the assent of the President;

Provided that all the Panchayats existing immediately before such date shall continue till the expiration of their duration unless sooner dissolved by a resolution passed to that effect by the Legislative Assembly of that State or, in the case of a State having Legislative Council, by each House of the Legislature of that State.

K.L. Mohanpuria,  
Secretary to the Government of India.

*SECTION 2*



***THE THREAT OF EVICTIONS***





IN THE SUPREME COURT OF INDIA  
CIVIL ORIGINAL JURISDICTION

IN  
T. N. GODAVARMAN THIRUMALPAD Vs. UNION OF INDIA & OTHERS  
WRIT PETITION (CIVIL) 202/1995  
&  
JAMMU & KASHMIR ENVIRONMENT FORUM  
WRIT PETITION (CIVIL) NO. 171 /1996

ORDER  
(Dated: 12-12-1996)

*(A landmark order defining 'forest', which is to be understood according to its dictionary meaning for the purposes of F.C. Act, ban imposed on all non-forest activities on forest lands without prior approval of the Central Government under the F.C. Act, ban imposed on felling and transportation of timber in the North Eastern States, ban on felling of trees in forests in hill areas, Janmam areas, HP, and J & K. Directions issued to constitute expert committees in each state to identify forests, report on sustainable capacity of forests qua saw mills etc.)*

In view of the great significance of the points involved in these matters, relating to the protection and conservation of the forests throughout the country, it was considered necessary that the Central Government as well as the Governments of all the States are heard. Accordingly, notice was issued to all of them. We have heard the learned Attorney General for the Union of India, learned counsel appearing for the States and the parties/applicants and in addition, the learned Amicus Curiae, Shri. H. N. Salve, assisted by Sarvashri U. U. Lalit, Mahendra Vyas, and P.K. Manohar. After hearing all the learned counsel, who have rendered very able assistance to the Court, we have formed the opinion that the matters require a further in-depth hearing to examine all the aspects

relating to the National Forest Policy. For this purpose, several points which emerged during the course of the hearing require further study by the learned counsel and, therefore, we defer the continuation of this hearing for some time to enable the learned counsel to further study these points.

However, we are of the opinion that certain interim directions are necessary at this stage in respect of some aspects. We have heard the Learned Attorney General and the other learned counsel on these aspects.

It has emerged at the hearing, that there is a misconception in certain quarters about the true scope of the Forest Conservation Act, 1980 (for short the 'Act') and the meaning of the word "forest" used therein. There is also a resulting misconception about the need of prior approval of the Central Government, as required by Section 2 of the Act, in respect of certain activities in the forest area which are more often of a commercial nature. It is necessary to clarify that position.

The Forest Conservation Act, 1980 was enacted with a view to check further deforestation which ultimately results in ecological imbalance; and therefore, the provisions made therein for the conservation of forests and for matters connected therewith, must apply to all forests irrespective of the nature of ownership or classification thereof. The word "forest" must be understood according to its dictionary meaning. This description covers all statutorily recognised forests, whether designated as reserved, protected or otherwise for the purpose of Section 2(i) of the Forest Conservation Act. The term "forest land", occurring in Section 2, will not only include "forest" as understood in the dictionary sense, but also any area recorded as forest in the Government record irrespective of the ownership. This is how it has to be understood for the purpose of Section 2 of the Act. The provisions enacted in the Forest Conservation Act, 1980 for the conservation of forests and the matters connected therewith must apply clearly to all forests so understood irrespective of the ownership or classification thereof. This aspect has been made abundantly clear in the decisions of this Court in *Ambica Quarry Works and Ors. Versus State of Gujarat and Ors.* (1987 (1) SCC 213), *Rural Litigation and Entitlement Kendra -Versus – State of U.P.* (1989 Suppl. (1) SCC 504), and

recently in the order dated 29<sup>th</sup> November, 1996 in W.P. (C) No. 749/95 (Supreme Court Monitoring Committee Vs. Mussorie Dehradun Development Authority & Ors.). The earlier decision of this court in State of Bihar Vs. Banshi Ram Modi and Ors. (1985 (3) SCC 643) has, therefore, to be understood in the light of these subsequent decisions. We consider it necessary to reiterate this settled position emerging from the decisions of this Court to dispel the doubt, if any, in the perception of any State Government or authority. This has become necessary also because of the stand taken on behalf of the State of Rajasthan, even at this late stage, relating to permissions granted for mining in such area which is clearly contrary to the decisions of this court. It is reasonable to assume that any State Government which has failed to appreciate the correct position in law so far, will forthwith correct its stance and take the necessary remedial measures without any further delay.

We further direct as under;

□ GENERAL

In view of the meaning of the word “forest” in the Act, it is obvious that prior approval of the Central Government is required for any non-forest activity within the area of any “forest”. In accordance with Section 2 of the Act, all on-going activity within any forest in any State throughout the country, without the prior approval of the Central Government, must cease forthwith. It is therefore, clear that the running of saw mills of any kind including veneer or ply-wood mills, and mining of any mineral are non-forest purposes and are, therefore, not permissible without prior approval of the Central Government. Accordingly, any such activity is prima facie violation of the provisions of the Forest Conservation Act, 1980. Every State Government must promptly ensure total cessation of all such activities forthwith.

□ In addition to the above, in the tropical wet evergreen forests of Tirap and Changlang in the State of Arunachal Pradesh, there would be a complete ban on felling of any kind of trees therein because of the particular significance to maintain ecological balance needed to preserve bio-diversity. All saw mills, Veneer mills and ply-

wood mills in Tirap and Changlang in Arunachal Pradesh and within a distance of 100 Kms. from its border, in Assam, should be closed immediately. The State Governments of Arunachal Pradesh and Assam must ensure compliance of this direction.

- The felling of trees in all forests is to remain suspended except in accordance with the working Plans of the State Governments, as approved by the Central Government. In the absence of any working plan in any particular State, such as Arunachal Pradesh, where the permit system exists, the felling under the permits can be done only by the Forest Department of the State Government or the State Forest Corporation.
- There shall be a complete ban on the movement of cut trees and timber from any of the seven North-Eastern States to any other State of the country either by rail, road or water-ways. The Indian Railways and the State Governments are directed to take all measures necessary to ensure strict compliance of this direction. This ban will not apply to the movement of certified timber required for defence or other Government purposes. This ban will also not affect felling in any private plantation comprising of trees planted in any area which is not a forest.
- Each State Government should constitute within one month an Expert Committee to:
  - (i) identify areas which are “forests”, irrespective of whether they are so notified, recognised or classified under any law, and irrespective of the ownership of the land of such forest;
  - (ii) identify areas which were earlier forests but stand degraded, denuded or cleared, and
  - (iii) identify areas covered by plantation trees belonging to the Government and those belonging to private persons.
- Each State Government should within two months, file a report regarding:-
  - (i) The number of saw mills, Veneer and ply-wood mills actually operating within the State, with particulars of their real ownership,
  - (ii) The licensed and actual capacity of these mills for stock and sawing,
  - (iii) Their proximity to the nearest forest,
  - (iv) Their source of timber.

- Each State Government should constitute within one month, an Expert Committee to assess.
  - (i) The sustainable capacity of the forests of the State qua saw mills and timber based industry,
  - (ii) The number of existing saw mills which can safely be sustained in the State,
  - (iii) The optimum distance from the forest, qua that State, at which the saw mill should be located.
- The Expert Committees so constituted should be requested to give its report within one month of being constituted.
- Each State Government would constitute a Committee comprising of the Principal Chief Conservator of Forests and senior another Officer to oversee the compliance of this order and file status reports.

## II. FOR THE STATE OF JAMMU & KASHMIR

1. There will be no felling of trees permitted in any “forest”, public or private. This ban will not affect felling in any private plantations comprising of trees planted by private persons or the Social Forestry Department of the State of Jammu & Kashmir and in such plantations, felling will be strictly in accordance with law.
2. In ‘forests’ the State Government may either departmentally or through the State Forest Corporation remove fallen trees or fell and remove diseased or dry standing timber, and that only from areas other than those notified under the Jammu & Kashmir Wild Life Protection Act. 1978 or any other law banning such felling or removal of trees.
3. For this purpose, the State Government will constitute an Expert Committee comprising of a representative being an IFS Officer posted in the State of Jammu & Kashmir, a representative of the State Government, and two private experts of eminence and the Managing Director of the State Forest Corporation as member Secretary and will fix the qualitative and quantitative norms for the felling of

fallen trees, diseased and dry standing trees. The State shall ensure that the trees so felled and removed by it are strictly in accordance with these norms.

4. Any felling of trees in forest or otherwise or any clearance of land for execution of projects, shall be in strict compliance with the Jammu & Kashmir Forest Conservation Act, 1990 and any other laws applying thereto, any trees so felled, and the disposal of such trees shall be done exclusively by the State Forest Corporation and no private agency will be permitted deal with this aspect. This direction will cover the submerged areas of the Thein Dam.
5. All timber obtained, as aforesaid or otherwise, shall be utilised within the State, preferably to meet the timber and fuel wood requirements of the local institutions.
6. The movement of trees or timber (sawn or otherwise) from the State shall, for the present, stand suspended, except for the use of DGS & D, Railways and Defence. Any such movement for such use will -
  - be effected after due certification, consignment-wise made by the Managing Director of the State Corporation which will include certification that the timber has come from State Forest Corporation sources; and
  - be undertaken by either the Corporation itself, the Jammu & Kashmir forest Department or the receiving agency.
7. The State of J & K will file, preferably within one month from today, a detailed affidavit specifying the quantity of timber held by private persons purchased from State Forest Corporation Depots for transport outside the State (other than for consumption by the DGS & D, Railways and Defence). Further directions in this regard may be considered after the affidavit is filed.
8. No saw mill, veneer or plywood mill would be permitted to operate in this State at a distance of less than 8 Kms. From the boundary of any demarcated forest areas. Any existing mill falling in this belt should be relocated forthwith.

III. FOR THE STATE OF HIMACHAL PRADESH AND THE HILL REGIONS OF THE STATES OF UTTAR PRADESH AND WEST BENGAL:

1. There will be no felling of trees permitted in any forest, public or private. This ban will not affect felling in any private plantation comprising of trees planted in any area which is not a 'forest' and which has not been converted from an earlier 'forest'. This ban will not apply to permits granted to the right-holders for their bonafide personal use in Himachal Pradesh.
2. In a 'forest', the State Government may either departmentally or through the State Forest Corporation remove fallen trees or fell and remove diseased or dry standing timber from areas other than those notified under Section 18 or Section 35 of the Wild Life Protection Act, 1972 or any other Act banning such felling or removal of trees.
3. For this purpose, the State Government is to constitute an Expert Committee comprising a representative from MOEF, a representative of the State Government, two private experts of eminence and the MD of the State Forest Corporation (as Member Secretary), who will fix the qualitative and quantitative norms for the felling of fallen trees and diseased and standing timber. The State shall ensure that the trees so felled and removed are in accordance with these norms.
4. Felling of trees in any forest or any clearance of forest land in execution of projects shall be in strict conformity with the Forest Conservation Act, 1980 and any other laws applying thereto. Moreover, any trees so felled, and the disposal of such trees shall be done exclusively by the State Forest Corporation and no private agency is to be involved in any aspect thereof.

IV. FOR THE STATE OF TAMIL NADU

1. There will be complete ban on felling of trees in all 'forest areas'. This will however not apply to:

- (a) trees which have been planted and grown, and are not of spontaneous growth, and
- (b) are in areas which were not forests earlier, but were cleared for any reason.

2. The State Government, within four weeks from to day, is to constitute a committee for indentifying all 'forests'.

3. Those tribals who are part of the social forestry programme in respect of patta lands, other than forest may continue to grow and cut according to the Government Scheme provided that they grow and cut trees in accordance with the law applicable.

4. In so far as the plantations (tea, coffee, cardamom etc.) are concerned, it is directed as under:

- (a) The felling of shade trees in these plantations will be"
  - limited to trees which have been planted, and not those which have grown spontaneously;
  - limited to the species identified in the TANTEA report;
  - in accordance with the recommendations of (including to the extent recommended by) TANTEA; and
  - under the supervision of the statutory committee constituted by the state Government.

(b) In so far as the fuel trees planted by the plantations for fuel wood outside the forest area are concerned, the State Government is directed to obtain within four weeks, a report from TANTEA as was done in the case of Shade trees, and the further action for felling them will be as per that report. Meanwhile; eucalyptus and wattle trees in such area may be felled by them for their own use as permitted by the statutory committee.

(c) The State Government is directed to ascertain and identify those areas of the plantation which are a 'forest' and are not in active use as a plantation. No



felling of any trees is however to be permitted in these areas, and sub-paras (b) and (c) above will not apply to such areas.

- (d) There will be no further expansion of the plantations in a manner so as to involve encroachment upon (by way of clearing or otherwise) of 'forests'.
5. As far as the trees already cut, prior to the interim orders of this court dated December 11, 1995 are concerned, the same may be permitted to be removed provided they were not so felled from Janmam land. The State Government would verify these trees and mark them suitably to ensure that this order is duly complied with. For the present, this is being permitted as a one time measure
6. In so far as felling of any trees in Janmam lands is concerned (whether in plantations or otherwise), the ban on felling will operate subject to any order made in the Civil Appeal Nos. 367 to 375 of 1977 in C.A. Nos. 1344-45 of 1976. After the order is made in those Civil Appeals on the I.As. pending therein, if necessary, this aspect may be re-examined.
7. This order is to operate and to be implemented, notwithstanding any order at variance, made or which may be made by any Government or any authority, tribunal or court, including the High Court.

The earlier orders made in these matters shall be read, modified wherever necessary to this extent. This order is to continue, until further orders. This order will operate and be complied with by all concerned, notwithstanding any order at variance, made or which may be made hereafter, by any authority, including the Central or any State Government or any Court (including High Court) or Tribunal.

6. We also direct that notwithstanding the closure of any saw mills or other wood-based industry pursuant to this order, the workers employed in such units will continue to be paid their full emoluments due and shall not be retrenched or removed from service for this reason.
7. We are informed that the Railway authorities are still using woken sleepers for laying tracks. The Ministry of Railways will file an affidavit giving full particulars

in this regard including the extent of wood consumed by them, the source of supply of wood, and the steps taken by them to find alternatives to the use of wood.

8. I.A. Nos. 7,9,10,11,12,13, and 14 in Writ Petition (Civil) No. 202 of 1995 and I.A. Nos. 1,3,4,5,6,7,8 and 10 in Writ Petition (Civil) No. 171 of 1996 are disposed of accordingly.
9. List the matter on February 25, 1997 as part-heard for further hearing.

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*DOCUMENT 5.2*

**ORDER**

**I.A. No.548**

**(Dated :14.2.2000)**

**(Order prohibiting removal of dead, dying, diseased, drift wood and grasses from National Park and Sanctuaries)**

Upon hearing the counsel, the Court made the following

I.A No. 548 (filed by Mr. P.K Manohar, Adv.): An application has been filed through the Amicus Curiae in Court, inter-alia, praying for clarification that the order dated 12<sup>th</sup> December, 1996 contained a ban against the removal of any fallen trees or removal of any diseased or dry standing tree from the areas notified under Section 18 or 35 of the Wildlife Protection Act, 1972. Let the same be taken on record.

Issue notice to all the respondents. In the meantime, we restrain respondents Nos. 2 to 32 from ordering the removal of dead, dying or wind fallen trees, drift wood and grasses etc. from any National Park or Game Sanctuary or Forest. If any order to this effect has already been passed by any of the respondent States, the operation of the same shall stand immediately stayed.

Reply be filed within three weeks. The Union of India will also indicate in its reply affidavit as to what safeguards or steps should be taken in relation to such trees.

The Registry should communicate this order of stay to the Chief Secretaries of all the States immediately without payment of process fee.

*(Note : Subsequently the word "forest" was deleted)*

*ORDER*

**I.A No. 707**

**(Dated : 18.2.2002)**

(Order in respect of collection of minor forest produce except from areas declared as national parks and sanctuaries)

It is clarified that the order of this Court prohibiting cutting of trees does not apply to bamboos including cane, which really belongs to the grass family, other than those in the national parks and sanctuaries. In other words, no bamboos including cane in national parks and sanctuaries can be cut but the same may be cut elsewhere.

The I.A stands disposed of.

**IN THE SUPREME COURT OF INDIA  
CIVIL ORIGINAL JURISDICTION  
I.A NO. 703 OF 2001  
IN WRIT PETITION 202 OF 1995**

IN THE MATTER OF

T.N GODAVARMAN THIRUMULPAD

PETITIONER

VERSUS

UNION OF INDIA AND OTHERS  
(STATES OF ORISSA, WB, KARNATAKA, TN, ASSAM,  
MAHARASHTRA, MP, CHHATTISGARH, A & N ISLANDS,  
KERALA, ARUNACHAL PRADESH)

APPLICATION BY AMICUS CURIAE FOR DIRECTIONS AGAINST  
ILLEGAL ENCROACHMENT OF FOREST.

TO

THE HON'BLE CHIEF JUSTICE  
AND HIS COMPANION JUDGES OF THE SUPREME COURT OF INDIA

The humble application of the applicant above named

MOST RESPECTFULLY SHEWETH:

1. The Petitioner submits that one of the major reasons for decimation of the forest is the growing extent of the encroachments, including in the forest located in eco-sensitive areas, sanctuaries, national parks, etc.
2. The information available suggests that in the Andaman & Nicobar Islands, there have been considerable extent of encroachment. It further appears that an application was made to the Central Government by the Administration of the Union Territory of Andaman and Nicobar Islands for permission to regularize these encroachments under Section 2 of the Forest (Conservation) Act, 1980 and to convert the lands in question from forest use to non-forest use. This application has been for the present declined on technical grounds – it has not been rejected on merits. It is respectfully submitted that the application is in the teeth of the Forest Policy which requires evergreen forests to be conserved absolutely.
3. It is further submitted that it appears that the encroachments in the eco-sensitive areas of Andaman and Nicobar Islands is being allowed to grow with necessary pressure on the land resources – which are evergreen forests. The indifference, bordering on encouragement, of the Administration has virtually obviated the need for regularization under Section 4, since encroachment becomes increasingly difficult to remedy with distance in time. Further decimation of such evergreen forest has adverse consequences on the ecology of not just the whole country but of the planet itself.
4. Apart from the eco-fragile region of Andaman and Nicobar it appears that encroachments have been tolerated by the State Governments of West Bengal (in Sunderbans Area), Karnataka (in Western Ghat region), Madhya Pradesh and Chhatisgarh (in the Aravalli and Satpura region), and Tamil Nadu (in the Nilgiris). Similar encroachments are also being tolerated throughout the State of Assam. It is submitted that even if some degree of encroachment on account of growing
5. It is respectfully submitted that the State Governments have permitted further encroachments even after this Hon'ble Court on 12.12.1996 restrained the State

Governments from permitting use of any forest land for non-forest activity/purposes without prior clearance from the Central Government. It appears that on account of the order of this Hon'ble Court, the Central Government was not in a position to grant regularization of further encroachments and therefore the States have stopped seeking regularization – there has however been no change in their attitude towards encroachments.

6. Further it appears that the States are not taking any steps whatsoever for removing the post 1980 encroachments nor are they taking any steps to keep an authentic record of such encroachments – possibly in the hope that some day the encroachment as found at present would be condoned as pre 1980 encroachment and regularization obtained. This, it is submitted would make a complete mockery both of the Forest (Conservation) Act, 1980 and the Forest Policy.
7. It is therefore, submitted that it is necessary to injunct the Union of India, the Administration of Andaman & Nicobar Islands as well as the State of West Bengal, State of Orissa, State of Karnataka, State of Tamil Nadu, State of Madhya Pradesh & Chattisgarh ( i.e. States of the Eastern and Western Ghats as well as Aravalli areas) from permitting any encroachments in the forest land whatsoever. It is submitted, it is also necessary to set in place a Committee or authority, which should comprise of representatives of the Central Government, State Governments and NGOs to inspect the extent of encroachments, so that authentic figures to the extent of encroachment could be placed before this Hon'ble Court.
8. It is further submitted that it is also necessary for this Hon'ble Court to issue appropriate directions to the aforesaid States to take appropriate steps to evict in phases those who have occupied forest lands which fall in the Western Ghat or Eastern Ghat areas, Nilgiri Hills or Aravalli areas and/or which fall in the evergreen forest, the Satpura region as well as national parks and sanctuaries.

## **PRAYER**

It is therefore respectfully prayed that this Hon'ble Court may be please to :

- a) Restrain the Union of India from permitting regularization of any encroachments whatsoever without leave of this Hon'ble Court.
- b) Direct the Administration of the Union Territory of Andaman & Nicobar Islands to forthwith take such steps as are necessary to prevent further encroachment of the forests.
- c) Direct the State of Orissa, State of West Bengal, State of Karnataka, State of Tamil Nadu, State of Assam, State of Maharashtra, State of Madhya Pradesh and State of Chattisgarh to immediately take steps to prevent further encroachment of forest lands, particularly
  - i) in the forests situated in the Eastern Ghat Regions,
  - ii) in the forests situated in the Western Ghat Regions,
  - iii) in the forests situated in the Aravalli & Satpura Ghat Regions,
  - iv) in the forests situated in the National Parks and Sanctuaries,
- d) Direct the aforesaid State Governments to take steps to clear the encroachments in forests which have taken place after 1980 in the aforesaid areas
- e) Direct the Union of India to set up in respect of each of the aforesaid States, a committee comprising of representatives of the Union of India, the State Governments and NGOs to file a report in the Hon'ble Court as to
  - i) the extent of encroachment in the aforesaid state
  - ii) the steps taken by the aforesaid states to prevent further encroachments
  - iii) the steps taken in the aforesaid states to remove encroachments which have occurred after 1980; and
- f) Pass any further orders as this Hon'ble Court may deem fit.

Filed by Amicus Curiae



**ORDER**

**I.A. 502**

**(dated 23.11.2001)**

*(for Listing Intervention Application 703)*

An application has been filed by the Learned Amicus Curiae in Court against the illegal encroachments of forest land in various States and Union Territories is taken on board. Let the same be registered and numbered. Issue notice to the respondents returnable after six weeks. There will be an interim order in terms of prayer (a).

**Order**

**IA 703**

*(date unclear)*

(Orders/ directions on encroachments in I.A. No. 703 filed by Amicus Curiae Mr. Harish Salve, Senior Advocate Supreme Court and ban imposed the concerned states on regularisation of encroachments till further orders)

## **Order**

The Chief Secretaries of Orissa, West Bengal, Karnataka, Tamilnadu, Assam, Maharashtra, Madhya Pradesh, Chattisgarh and Kerala are directed to file a reply to this I.A., in so far as it concerns the said States in relation to the steps required to be taken by them to prevent further encroachment of forest land and in particular land in the hilly terrains, national parks and sanctuaries, etc. It should also be indicated as to what steps have been taken to clear encroachments from the forest which have taken place at an earlier point of time. Affidavits be filed by the said States and the Union of India within four weeks.

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***DOCUMENT 7.1***

Ministry of Environment and Forests,  
Government of India,  
Tel/Fax: 4360379  
*Dated: 03.05.2002*

The Chief Secretary, Secretary (Forests), Principal Chief Conservator of Forests  
(All States/UT's)

***Subject: Eviction of Illegal encroachment of forest lands in various States/UT's***  
**time bound action plan.**

I am directed to draw your attention to the problem of encroachments of forest lands which is assuming a serious proportion in the country. These encroachments have been attracting the attention of Central Government and States Governments have been requested from time to time to take prompt action against the encroachers under various Acts and Rules. Such encroachments are generally done by the powerful lobbies and cause great harm to forest conservation particularly, when these are carried out in the remote areas in a honey comb pattern. These encroachments are also seriously threatening the continuity of the Wild Life corridors between the various National Parks and Sanctuaries. Somehow, timely action is not being taken by the frontline staff for the eviction of the encroachers which further emboldens other also for similar actions. As per the information received from various States approximately 12.50 laksh hectares of forest land is under encroachment. There may be many more unrecorded instances which will add to the over all tally.

Hon'ble Supreme Court has also been greatly concerned with this pernicious practice and in their order of 23.11.2001 in IA No. 703 in WP No. 202/95 have restrained the Central Government from regularization of encroachments in the country. There is now a need to frame a time bound programme for eviction of the encroachers from the forest lands for which following steps are suggested:

- i) AF encroachments which are not eligible for regularization as per guidelines issued by the Ministry vide No. 13.1/90-F.P. (1) dated 18.9.90 should be summarily evicted in a time bound manner and in any case under that 30<sup>th</sup> September 2002.
- ii) A cell should be constituted in the PCCF office headed by the CCT level officer to plan and monitor eviction of encroachments on forest land on a continuous basis.
- iii) Forest officers should be delegated powers under relevant acts for trials of encroachers and adequate steps should be taken for the completion of the eviction process through summary trials in a time bound manner.

- iv) At the State level, a monitoring committee may be constituted under the Chairmanship of the Chief Secretary, which may meet biannually to take stock of the situation. The Committee while monitoring forest encroachments should also fix responsibility of the situation. The Committee while monitoring forest encroachments should also fix responsibility of the field formulations including the revenue officials for their failures to prevent/evict encroachments on the forest lands.
- v) At the forest Circle level, a Committee should be constituted under the Chairmanship of Conservator of Forests with District Collector and Superintendent of Police as member which may meet every quarter and take effective steps to assist the Divisional Forest Officers or the Territorial Division/Wildlife Warden/National Park and Sanctuary Director for the eviction of the encroachers.
- vi) A comprehensive list of encroachments in your State with current status of eviction process etc. may please be prepared as the base line information and a copy of the same be also sent to this Ministry preferably by June 30<sup>th</sup>, 2002. Principal Chief Conservator of Forests may be bound to give detail progress report of the action taken, area evicted and area reclaimed/ planted etc. every quarter commencing from July 2002.
- vii) It may please be noted that the Ministry may be constrained to link processing of requests for clearance under Forest (Conservation) Act 1980, approval of relevant working plan and, furling under Centrally Sponsored Schemes as well as the progress shown in eviction of the encroachers as per the instant guidelines.

Yours faithfully,

Sd/

**(Dr. V.K. Bahuguna)**

**Inspector General of Forests**

**03.05.02**

Copy for information and necessary action to:

All Chief Conservator of Forests/Conservator of Forests (Central), Ministry of Environment and Forests, Government of India. They are requested to fix a meeting with the concerned senior functionary of the State Government to sensitise them about the urgency of the implementing these guidelines and monitor action taken by the State regularly. While giving approval of the working plans they may also insist for a detailed status report on encroachment and vacation there of in that particular division.

Sd/

**(Dr. V.K. Bahuguna)**

**03.05.02**

GOVERNMENT OF INDIA  
MINISTRY OF ENVIRONMENT & FORESTS  
No. IGF/FC/2002

Dated: 30.10.2002

To  
The Chief Secretary, All States / UTs.  
The Secretary(Forests), All States / UTs.  
The Principal Chief Conservator of Forests, All States / UTs.

**Sub: Eviction of all illegal encroachments on forest land in various States  
/UTs-**

**Time Bound Action Plan Clarification thereof.**

Sir,

I would like to draw your attention to this Ministry's letter of even number dated 03.05.2002 on the above mentioned subject. This Ministry has received several communications from various individuals and organizations requesting us to stop the eviction of encroachments in various States. There is an apprehension in some quarters that the present communication supersedes the guidelines issued vide this Ministry No. 30-1/90-FP dated 18.09.1990 relating to regularisation of encroachments on forest lands.

This is to clarify that there is no change in the policy of the Ministry with regard to regularisation of pre-1980 eligible encroachments and the commitment with reference to forest tribal interface on the disputed settlement claims. In respect of disputed claims of eligible encroachments of the tribals for want of First Offence Report / non-settlement of rights, etc., the States may consider setting up Commission / Committees at the level of Districts involving Revenue, Forest and Tribal Welfare Department for their settlement provided other conditions are fulfilled. A copy of the guidelines issued by the Ministry in 1990 is enclosed. In such identified cases the States should submit their proposals to the Central Government so that final decision can be taken within a time-bound manner.

The State should simultaneously show progress on the eviction of ineligible encroachments. The States may rehabilitate these encroachers on non-forest land as per their policies. However, States may consider 'in situ' economic rehabilitation by involving these ineligible encroachers in forestry activities through Joint Forest Management . But forests land encroached for agriculture, building etc. will have to be vacated and put to forests use in the interest of Tribal Communities.

Yours faithfully,

Sd/ V.K.B 30.10.2002

(Dr. V.K. Bahuguna )

Inspector General of Forests

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***DOCUMENT 8***

*M. P. Amendment of Indian Forest Act, 1927*

20-A. Forest land or waste land deemed to be reserved forests-

(1) Notwithstanding anything contained in this Act or any other law for the time being in force, any forest land or waste land in the territory comprised within an Indian State immediately before the date of its merger in any of the integrating States now forming part of this State (hereinafter in this section referred to as the "merged territories"),-

1) Which has been recognized by the ruler of any such state immediately before the date of merger as a reserved forest in pursuance of any law, custom, rule, regulation, order or notification for the time being in force, or

2) Which had been dealt with as such in any administration report or in accordance with any working plan Or register maintained or act upon immediately before the said date and has been continued to so dealt with thereafter.

Shall be deemed to be reserved forests for the purpose of this Act.

(2). In the absence of any rule, order or notification under this Act, applicable to the area in question, any law, rule, regulation, order or notification in sub-section (1) shall, anything in any law to the contrary, notwithstanding, be deemed to be validly in force, as if the same had the force and effect of rules, order and notifications, made under the provision of this Act and shall continue to so remain in force until superseded or modified in accordance therewith.

(3) No report, working plan, or register as aforesaid or any entry therein shall be questioned in any Court of law: provided that the State Government have duly certified that such report, work plan, or register had been prepared under the authority of the said Ruler before the date of the merger and has been under the authority of the State Government continued to be recognised, maintained or acted upon thereafter.

(4) Forest recognized in the merged territories as village forests or protected forests, or forests other than reserved forests, by whatever name designated or locally known, shall be deemed to be protected forests within the meaning of this Act and provisions of sub-section (2) and (3) shall mutatis mutand is apply.

*Explanation I-* “ Working Plan” includes any plan, scheme & project maps, drawings and layouts prepared for the purpose of carrying out the operations in course of the working and management of forest.



*Explanation II-* “ Ruler” includes the Darbar administration prior to the date of the merger and “State Government” includes the successor Governments after the said date.

*Explanation III-* the expression “Indian State” shall have the meaning assigned to the expression in the clause (15) of Article 366 of the Constitution of India.

*Explanation IV-* “ Integrating State” means the States of Madhya Pradesh, Madhya Bharat, Rajasthan, Vindhya Pradesh and Bhopal as existing before the 1st day of November, 1956.

(The provisions in Orissa and U.P. are more or less similar, hence not reproduced.)

## Central Empowered Committee

*(Constituted by Supreme Court of India by order dated 9.5.2002 in Writ Petitions (Civil) Nos. 202/95 & 171 / 96)]*

Room No 106, Paryawaran Bhawan  
CGO Complex, Lodhi Road  
New Delhi 110003  
Tele Fax : 4363940

File No. 1-1/CEC/SC/2002

Dated 8.6.2002

### **Notification**

The Central Empowered Committee (hereinafter referred to as the Committee) has been constituted by the Hon'ble Supreme Court by its order dated 9.5.2002 in Writ Petitions (Civil) No 202/95&171/96 copy enclosed. In pursuance to para 2 of the said order the following are nominated to the Central Empowered Committee with the approval of Ministry of Environment & Forests (MOEF) and concurrence of the Solicitor General for India / Amicus Curiae in the said cases.

(i) Shri P.V. Jayakrishnan, presently Secretary of the GoI, MoEF  
Chairman

(ii) Shri N. K. Joshi, Additional Director General of Forest, MOEF

Member

(iii) Shri Valmik Thapar, Ranthambor

Member

- |   |        |
|---|--------|
| (iv) Shri Mahendra Vyas, Advocate Supreme Court | Member |
| (v) Shri M. K. Jiwrajka presently IGF (MoEF)    | Member |

2.0 Shri M. K. Jiwrajka presently Inspector General of Forests Ministry of Environment and Forest shall be the Member Secretary of the Committee

3.0 The powers and functions of the Committee as per the orders of the Hon'ble Supreme Court of India are as under:

**(3)** Pending interlocutory applications in these two writ petitions as well as the reports and affidavits filed by the States in response to the order made by the Court shall be examined by the Committee and their recommendations will be placed before Hon'ble Court for orders.

**(4)** Any individual having any grievance against any steps taken by the Government or any other authority in purported compliance with the orders passed by this Hon'ble court will be at liberty to move the Committee for seeking suitable relief. The Committee may dispose of such applications in conformity with the orders passed by the Hon'ble Court. Any application, which cannot be appropriately disposed of by the Committee, may be referred by it to this Hon'ble Court.

**(5)** The Committee shall have the power to

- (a) Call for any document from any person or the Government of the Union or the State or any other official.
- (b) Summon any person and receive evidence from such person on oath either on affidavit or otherwise.
- (c) Seek assistance / presence of any persons (s) / official (s) required by it in relation to its work.

**(6)** The Committee may decide its own procedure for dealing with applications and other issues. Union of India shall provide suitable and adequate office accommodation for the Committee. The expenditure incurred on the working of the Committee including salary / remuneration (to the extent not payable by the Government) to the members and supporting staff may be met out of income accruing to the Special Investigation Team (SIT). Necessary procedure for this may be formulated by the Committee in consultation with the SIT.

**(7)** The Committee is empowered to co-opt one or more persons as its members or as special invitees for dealing with specific issues. While dealing with issues pertaining to a particular State, wherever feasible, the Chief Secretary and Principal Chief Conservator of Forests of the State shall be co-opted as special invitees.

**(8)** The Committee shall quarterly report to the Hon'ble Court. It will be at liberty to seek clarifications / modifications needed by it from the Hon'ble Court.

(M. K. Jiwrajka)

Member Secretary

**RECOMMENDATIONS  
OF  
THE CENTRAL EMPOWERED COMMITTEE  
In  
I.A. No. 703 of 2001  
(Dated: 5.8.2002)**

(The I.A. was filed by Amicus Curiae Mr. Harish N. Salve, Senior Advocate, Supreme Court highlighting the serious problem of encroachments on forest lands).

Notices for fixing the hearing of the above mentioned Interlocutory Application (I.A.) were served upon all the concerned parties through their Advocates and the present I.A. filed by the learned Amicus Curiae raises an important issue of decimation of forest taking place on account of large scale encroachments forest land particularly in the states of Orissa, West Bengal, Karnataka, Tamil Nadu, Assam, Maharashtra, Madhya Pradesh, Chattisgarh, Kerala and the Union Territory of Andaman & Nicobar Islands (A & N).

2. The Committee had co-opted the Chief Secretaries of all the Respondent States as Special Invitees, however, due to some reason or the other, only Chief Secretary, A & N attended the hearing.
3. The application points out that encroachments are still continuing even in national parks and sanctuaries and also in ecologically sensitive areas such as the Andaman & Nicobar Islands, evergreen forests in the North East and the Western Ghats regions. This is so even after the Hon'ble Supreme Court's order dated 12-12-1996 prohibiting any non-forest activity on forest land without obtaining prior approval of the Central Government under the Forest (Conservation) Act, 1980.

4. It is further stated in the application that the States are not taking adequate steps to removal post 1980 encroachments - possibly in the hope that these would be regularised by treating them as pre 1980 encroachments. This would make a complete mockery of the Forest (Conservation) Act, 1980 and the National Forest Policy, 1988.
5. The relief's claimed in the I.A. are that no encroachments should be regularised by the Union of India, further encroachments should be prevented, all post 1980 encroachments should be evicted, and state-wise committee's should be constituted to deal with this issue and report to the Hon'ble Supreme Court.
  - i) In the beginning of the hearing Shri A.D.N. Rao, Advocate representing the Ministry of Environment & Forests (MoEF) circulated a copy of the letter dated 3<sup>rd</sup> May, 2002 issued by the MoEF regarding removal of encroachments from forest land, a copy of the same is annexed hereto as ANNEXURE-A. The Ministry in the said letter estimated the forest area under encroachment to be around 12.5 Lakh ha. and has asked the States to :
    - j. remove all encroachments, which are ineligible for regularisation in a time bound manner by 30<sup>th</sup> Sept. 2002;
    - k. prepare comprehensive list of encroachments with current status of eviction process;
    - l. constitute a cell in office of the Principal Chief Conservator of Forests (PCCF) to prepare plans and monitor eviction of encroachments on continuous basis;
    - m. delegate powers to the Forest Officers to hear encroachment cases and take adequate steps through summary trails; and
    - n. constitute a Committee under the Chairmanship of Chief Secretary for monitoring and fixing responsibility in case of failure to implement eviction plans and similar to set up committees at Circle level.
6. During the course of hearing the representatives of the States, Amicus Curiae and the Ministry of Environment & Forests expressed their views about the extent of

encroachments, its main causes, difficulties faced by them, steps being taken for eviction, and also gave suggestions for effective and speedy removal.

7. The state-wise estimates of forest land under encroachments, as provided by the respondent States, are as under:

<b>S.No.</b>	<b>Name of the State</b>	<b>Area under encroachment (in ha.)</b>
1.	Orissa	47,300
2.	West Bengal	16,940
3.	Karnataka	91,000
4.	Tamil Nadu	18,600
5.	Assam *	2,54,711
5.	Maharashtra	73,000
6.	Madhya Pradesh	1,52,000
7.	Chattisgarh	62,270
8.	Kerala	10,040
	<b>Total</b>	<b>7, 25, 861</b>

\* As per records of the Ministry of Environment & Forests

8. The Committee is of the view that the actual area under encroachment is much higher as:

- (i) the above table does not show the encroachments which continue to be treated by the concerned State Governments as pre 1980 encroachments, inspite of these being not eligible for regularisation under the Forest (Conservation) Act, 1980.
- (ii) there is a general tendency to under report the extent of encroachment at the field level.
- (iii) the encroachment figures in terms of the area are not regularly being updated.

9. The environmental value of one hectare of fully stocked forest of 1.0 density is Rs. 126.74 lakhs over a period of 50 years as per the assessments made by the Ministry of Environment & Forests. The environmental loss due to encroachments on forest land is estimated a mind boggling figure of Rs. 4,59,978 crores. This has been worked out by taking average density of such area as 0.5 and by accepting figures of area under encroachment as provided by the States to be correct.
10. The Committee is of the considered view that although individual encroachments may appear to be on small areas scattered here and there but cumulatively they have a devastating effect on the environment, destroying the bio-diversity, the hydrology, food security and threatening the ecological security of the country also the food security. The encroachments act like cancer in the forests spreading without pausing and eating into the vitals of the of the life supporting systems of nature destroying all upon which the life, including the human life itself depends. Unless and until an effective drive to remove of existing encroachments and prevent further encroachments is under-taken, it will be come impossible to save the forests for posterity.
12. The main reasons identified by the States and others for continuing encroachments on forest land and extremely slow pace of their removals, are as under:
  - (i) Lack of political will : This has been identified by almost all the States as one of the most important reason for the inability of the States to take effective steps for the removal of encroachments. Influential persons with political affiliations not only promote encroachment but also abet in the entire process. Encroachment removal drive invariably results in strong leads to backlash which hamper eviction. This coupled with the tendency of most of the officials to follow the path of the least resistance is not helping in removal of encroachments.
  - (ii) Victimisation of officials: The officers initiating encroachment removal drives earn the wrath of their political masters and suffer harassment, humiliation, threats and transfers. This completely demoralises the entire staff and officials.



- (iii) Expectation of regularisations: Regularisation of encroachments has been a regular feature in the past, occurring at regular intervals. A large scale encroachments take place with the hope that some time in future, these would also be regularised, as has happened in the past. The promises made by the politicians to regularise encroachments cutting across the party lines further strengthen the hopes of such encroachers and the process continues unabated.
- (iv) Totally inadequate punishments: The punishment meted out to the offenders is insignificant compared to the gravity of the offence committed. In most of the case, punishment for offence of encroachment varies from Rs. 5/- to a maximum of Rs. 500/-. Most of the encroachers feel rewarded by such convictions as it provides irrefutable proof of their occupation of the land which is then used to claim their eligibility for regularisation in future.
- (v) Inadequate Provisions of Law : The existing provisions for removal of encroachments are time consuming and grossly ineffective. In respect of deemed forest area, unclassified forest and areas recorded as forest in Government records, which are not legally constituted forests, the provisions under which an offence can be booked are not clear. Thousands of cases remain pending in the Court's for years without any decision. Influential persons continue to prolong litigation for years and enjoy the illegal occupation and use the illegally occupied land for commercial gains and profits.
- (vi) No punishment for abettors : There is no provision or mechanism to book and punish the abettors of encroachments. This encourages the highly organised land mafia, politicians and influential sections of the society to actively support and encourage large scale encroachments as they derive financial, political and social benefits from such activities.
- (vii) Poor boundary demarcations : The forest boundaries are not properly demarcated either on the ground or in the maps. This helps the encroachers and the abettors to exploit the situation to their advantage. Many encroachment cases are lost in the Courts on this account alone.

- (viii) Mutation in revenue records : In a very large number of cases the notified forest areas have not been recorded properly in the land records maintained by the revenue department and continue to be shown as non forest area. This gives an opportunity for unauthorised allotment by treating it as non forest land in violation of the Forest (Conservation) Act, 1980, this also encourages further encroachments.
- (ix) No compensation for environmental losses : There is no provision for recovering environmental losses from the encroacher caused due to the damage to flora and fauna and for the loss of productivity of the forest land. This emboldens them to encroach more forest land.
- (x) Poor infrastructural facilities :
- Inadequate staff : The sanctioned staff strength is grossly inadequate for effective protection of forests.
  - Vacancies : Large number of posts in the front line staff i.e. from Range Forest Officers down to the forest guards are lying vacant since last many years in view of ban imposed on recruitment, on account of poor financial position of most of the states. This is adversely effecting the protection work and provides opportunity to the encroachers to sneak in and encroach forest land.
  - Old age of the front lines staff : In view of the ban imposed on recruitment of the front line staff since last many years, the average age of the forest guards is around 45 years. The rigors of field duty requires young and energetic staff without which the protection work suffers.
  - Public Prosecutor: The services of able and effective public prosecutor is not available to prosecute encroachers. This is one of the reasons for poor rate of conviction against the encroachers.
  - Lack of communication, transport facility etc. : Vehicles, wireless, network, telephones, arms etc. are grossly inadequate for effective patrolling and protection over large tracts of land.
- (xi) Diversion for miscellaneous activities : The forest staff is being routinely diverted for miscellaneous activities such as polio drive, election, census etc. at the cost of forest

protection. They also spend considerable time in attending meetings not directly concerned with forestry related work. This results in low priority given to the forest protection, which hampers effective protection work. The situation is rather critical in Madhya Pradesh where the system of Zila Sarkar is in vogue and the officials upto Assistant Conservator of Forests level work under administrative control of Zila Sarkar through revenue officials.

- (xii) Law and order problem linked with encroachment removal : Large scale encroachment removals result in serious law and order problem requiring a strong contingent of police force and presence of a magistrate. These are not made available to the forest department whenever needed, which results in abandoning such drives.
- (xiii) Immunity under Section 197 of Cr.PC. : There is general reluctance on the part of the staff to participate in encroachment removal drives as it invariably leads to confrontation with the encroachers. Use of arms even in self defense in such situations results in immediate arrest of the concerned staff / officials, as unlike police force there is no immunity from immediate arrest under Section 197 of Cr.PC is available to the forest officials except in the states of Karnataka and Tamil Nadu. The arrest of the officials using fire arms in self defense during discharge of their official duty and subsequent personal harassment for years together causes tremendous trauma and demoralisation of the staff. In most cases, they are required to defend themselves in Courts by spending out of their own salaries without any help from the State Government. This is also used as an effective way to harass dedicated officials by influential encroachers through misuse of state machinery.
- (xiv) Misuse of the SC/ST Atrocities Act : This Act is used in some cases to harass the forest staff, which is involved in removing encroachments. Since the offence under this Act is non bailable, any complaint made under this Act immediately invites arrest of the concerned staff. The officers and the staff are mortally scared of retaliatory and false complaints filed against them by the encroaching offenders.
- (xv) No administrative control over notified, deemed forest etc. :- In many states the forest department has no administrative control over large tracts of excellent forest

areas, including Reserved Forests. Bade Jhad Ka Jungle, Chote Jhad Ka Jungle in Madhya Pradesh and Chattisgarh, Jhudpi Jungle and unclassed forest in Maharashtra and protected forest in Orissa are some of the examples. This leads to ineffective control of the Forest Department over such areas.

(xvi) Socio-economic causes : Due to population pressure, poverty, lack of alternative livelihood opportunities, land hunger, social status attached with land ownership are some of the causes which lead to large scale encroachment on forest land by poor tribals and other weaker sections of the society.

(xvii) Alienation of regularised lands : The present system of allowing sale of encroached lands after they have been regularised has become a thriving commercial activity for many influential persons. If such lands are allowed to be transferred only by testamentary succession and not by alienation, then it would curb illegal real estate business in regularised lands.

13. In view of the enormity and seriousness of the problem and severe operational constraints, the Committee is of the view that unless strong and effective mechanism is immediately set up for speedy removal of encroachments, vast tracts of forest land would be irretrievably lost and it may become impossible to manage and protect this valuable national resource. Based on the suggestions made by the State Governments through affidavits as well as by their representatives during the course of hearing, and considering the issue in its entirety, the following recommendations are being unanimously made by the Committee :

- a) further regularisation of encroachments on forest land in any form including by issue of pattas, ownership certificate, certificate of possession, lease, renewal of lease, eligibility certificate or allotment / use for agricultural, horticultural or for plantation purposes, is strictly prohibited except encroachments which are eligible for regularisation in conformity with the guidelines dated 18-9-1990 issued by the Ministry of Environment & Forests;
- b) the first offence report issued under the relevant Forest Act shall be the basis to decide whether the encroachment has taken place before 25.10.80;

- c) all encroachment other than those eligible for regularisation shall be evicted forthwith from the forest land;
- d) the Chief Secretary of the concerned state shall be personally responsible to ensure effective and timely compliance of this order;
- e) a Committee shall be constituted under the Chairmanship of the Chief Secretary with Director General of Police, Principal Chief Conservator of Forests and Forest Secretary as its members in each State/ Union Territory for supervising and coordinating the removal of encroachments. The Chief Secretary shall be at liberty to co-opt any other State official and /or NGO's as member or special invitee in the Committee and also to constitute similar committees at Division, Circle and / or District level. The Chief Secretary shall file an affidavit before the Central Empowered Committee within one month and thereafter every month giving details of the action plan being implemented for removal of encroachments, progress of removal of encroachments, time frame for removals and other relevant details.
- f) a notice shall be published in the local / vernacular newspapers at least seven days before the actual removal of encroachment is undertaken specifying, to the extent feasible, the compartment number/survey no., the Forest Range, Forest Division and the district from where the encroachments are being removed in compliance of this order. Whether an area is a forest or not shall be determined on the basis of the Forest Department records and in its absence from the other relevant Government records;
- g) in case of failure of the State Government to expeditiously remove the encroachments, it shall be liable to pay compensation for environmental losses caused by the continuing encroachments at the rate of Rs. 1000/- per ha. per month which shall be deposited in a separate Bank Account. The amount of compensation shall be determined by the Central Empowered Committee after considering the total forest area under encroachments, progress of removals, efforts being made and other relevant factors;

- h) the Central Empowered Committee may in appropriate cases, impose a token fine of Rs. 100/- per month from the defaulting officer(s) if it is of the opinion that such official (s) is / are not taking adequate steps for speedy removal of encroachments. The fine shall continue to be recovered from the salary of such official till the Central Empowered Committee modifies its orders;
- i) the performance of the revenue, police and forest officials in removing encroachments shall be recorded in their Annual Confidential Reports;
- j) any person or authority aggrieved by any action taken during the course of removal of encroachments in compliance of the orders of this Court, including in respect of alleged excessive use of force, unprovoked firing, atrocities punishable under the SC/ST Atrocities Act, will be at liberty to approach this Court through the Central Empowered Committee for redressal of their grievances. The Committee after examining such complaints shall place its recommendations before this Court for passing appropriate orders;
- k) any forest land on which encroachments have taken regularised at any time, shall be eligible for transfer hereinafter only by testamentary succession and not by alienation;
- l) the concerned state Governments shall be at liberty to provide suitable rehabilitation package to the encroachers, particularly to the tribals;
- m) the State-wise Committees constituted under the Chairmanship of the Chief Secretary shall review the infrastructure available for protection of forest and prepare an action plan for making available the necessary infrastructure including filling up of the vacancies in the front line protection staff in a time bound manner. Necessary funds for the purpose shall be made available on priority by the State Government;
- n) compensation for environmental loss due to destruction of habitat and flora and fauna shall be recovered by the State Government from the encroachers involved in commercial gains;

- o) this order is to operate and to be implemented notwithstanding any order at variance, made or which may be made by any Government or any authority, Tribunal or Court, including the High Court ; and
- p) the earlier orders made in this matter shall be read, modified wherever necessary to this extent.
14. The Hon'ble Court may please consider the above recommendations and pass appropriate orders in the matter except for the Andaman & Nicobar Islands for which detailed orders have already been passed by the Hon'ble Court on 7.5.2000.
15. In view of the similar situation prevailing in other states, the committee is making a recommendation that the Hon'ble Court may also consider passing similar directions in respect of the remaining States / Union Territory, which are not arrayed as respondents in this application.

**Dated 5.8.2002**

**Sd/-**

**(M.K. Jiwrajka)**

**Member Secretary**

**Note :**

1. The Hon'ble Supreme Court has prohibited any Regulations of encroachment on forest land in any form till further orders.
2. The recommendations are under examination of the Hon'ble Court.

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***DOCUMENT 10.1***

F.No.5-1/98-FC (Pt II)  
Ministry of Environment & Forests  
Government of India (FC Division)

Paryavaran Bhavan,  
C.G.O. Complex, Lodi Road,  
New Delhi, the 17th/18th September, 2003

To,  
The Secretary (Forests),  
All States and Union Territories.

**Subject: Guidelines for diversion of forest land for non forest purposes under the  
Forest (Conservation) Act, 1980 - Guidelines for collection of Net Present  
Value.**

Sir,

I am directed to invite your attention to the orders of the Hon'ble Supreme Court of India dated 30/10/2002 and 01/08/2003 in I.A. No. 566 in Writ Petition (Civil) No.202 of 1995 in the matter of Compensatory Afforestation Fund regarding collection of Net



Present Value (NPV) from the User Agencies, which have already been circulated by this Ministry's letters of even number dated 10/07/2003 and 11/08/2003.

In this regard this Ministry has received correspondences from some States/UTs and Regional Offices requesting to issue the guidelines. Considering the request of the State/UT Governments and the Regional Offices, the Ministry of Environment and Forests issues following guidelines for the recovery / collection of Net Present value of the forest land being diverted for non forest purposes under Forest (Conservation) Act, 1980:

1. NPV shall be charged in all those cases which have been granted in-principle approval after 30-10-2002.
2. NPV shall be realized before Stage-II (Final) approval.
3. Hon'ble Court has given a range for the rates i.e. Rs 5.80 lakhs per hectare to Rs. 9.20 lakhs per hectare for Net Present Value depending upon the quantity and density of land in question, converted for non-forestry use. Therefore, the State/UT Governments should charge NPV within the given rates depending upon the quality of forest, density and the type of species in the area.

The State/UT Governments shall transfer these funds to Compensatory Afforestation Management and Planning Agency (CAMPA), as and when created.

F.No.5-1/98-FC (Pt II)

New Delhi, the 19th/22nd September, 2003

To:

The Secretary (Forests),  
All States and Union Territories.

**Subject: Guidelines for diversion of forest land for non forest purposes under the Forest (Conservation) Act, 1980 - Guidelines for collection of Net Present Value.**

Sir,

In continuation of this Ministry's letter of even number dated 17.9.2003 regarding guidelines for collection of Net Present Value in compliance to the orders of the Hon'ble Supreme Court of India dated 30/10/2002 and 01/08/2003 in LA. No. 566 in Writ Petition (Civil) No. 202 of 1995, I am directed to clarify that NPV will be charged in all those cases which have been granted in-principle approval after 30-10-2002, NPV will be realized before Stage-II (Final) approval.

NPV will also be charged in all those cases, where Stage-I approval has been granted after 30-10-2002 and final approval has also been granted.

All the States/UTs shall comply with the orders of the Hon'ble Court and complete the collection process of NPV for the cases approved under Forest (Conservation) Act, 1980 after 30.10.2002, within a period of two months and submit a compliance report through their respective Regional Offices of this Ministry. Regional Offices shall submit the compliance report to the Ministry after due verification.

Yours faithfully,

Sd/-

(ANURAG BAJPAI)

Asst. Inspector General of Forests

F.No.2-1/2004-FC  
Ministry of Environment and Forests  
Government of India  
(FC Division)

Paryavaran Bhavan,  
C.G.O. Complex,  
Lodi Road,  
New Delhi - 110 003.  
Date: 10th March, 2004.

To,  
The Secretary (Forests),  
All States and Union Territories.

**Subject: Supreme Court Orders that 13/11/2000 & 09/02/2004 in Writ Petition (C) No. 337 of 1995 and orders dated 30/10/2002 & 01/08/2003 in IA No. 566 in Writ Petition (C) No. 202 of 1995.**

Sir,

With reference to the subject mentioned above, the Hon'ble Supreme Court of India had passed the following order on 13/11/2000:-

*“Pending further orders, no de-reservation of forests/ National Parks / Sanctuaries shall be effected.”*

Further, on 09/02/2004, the Hon'ble Court rejected the appeal of the Government of India praying for deletion of the word "forests" from the above mentioned order. Therefore, the order of the Hon'ble Supreme Court dated 13/11/2000, as mentioned above, is still operative.

In view of the above mentioned orders, all the approvals, including conversion of forest villages into revenue villages and regularisation of encroachments, issued by the Central Government after 13/11/2000 under Forest (Conservation) Act 1980, stand modified to the extent that the legal status of the diverted forest land shall remain unchanged.

Further, in view of the Hon'ble Supreme Court's order dated 30/10/2002 and 01/08/2003, in IA No. 566 in Writ Petition (C) No. 202 of 1995, the User Agency shall deposit the Net Present Value of the diverted forest land in all the approvals (Stage – I) including conversion of forest villages into revenue village and regularisation of encroachments, issued by the Central Government after 30/10/2002 under Forest (Conservation) Act, 1980.

This issued with the approval of the competent authority.

Yours faithfully,

Sd/-

(ANURAG BAJPAI)

Asst. Inspector General of Forests

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***DOCUMENT10.3***

F.No.8-31/2004-FC

MoEF (GOI) F.C. Division

Paryavaran Bhavan,  
CGO Complex,  
Lodi Road, New Delhi 110003  
Dated 16.8.2004

To,

Chief Secretaries/Administrator,  
(All States/UTs)

**Subject: Proposals related with conversion of forest villages into revenue villages and deletion of Sec – 4 area pertaining to various State/UT Governments.**

Sir,

I am directed to bring to your kind notice that the Hon'ble Supreme Court vide its order dated 13-11-2000 in Writ Petition (C) No. 337 of 1995, has banned de-reservation of forests/national parks/sanctuaries. The same order has been reiterated by the Apex Court on 9-2-2004. In view of the orders of the Court, the matter was placed before the Forest Advisory Committee on 26-7-2004. Taking the fact into account that the Ministry of Environment and Forests has already filed an affidavit for the vacation of the order, the Committee decided that all such proposals shall be closed temporarily and the respective State/UT Governments would be advised to approach the Supreme Court first and seek the vacation of the order banning de-reservation. All such proposals for conversion of forest villages into revenue villages and deletion of Section 4 area shall be processed by the Central Government only after the concerned State/UT Government obtains the permission of the Supreme Court or after final decision in the case.

Yours Faithfully,

Sd/-

(Anurag Bajpai)

Asst. Inspector General of Forests

# SECTION 3



*POSSIBILITIES FOR A NEW  
DIRECTION...*







**THE KERALA REHABILITATION MODEL**

[REFERRED TO IN THE ORDER OF MoEF, DATED 5/2/2004]

In 2(ii) of MoEF circular No.2-1/2003-FC (Pt) on "Regularisation of the rights of the tribals on the forest lands" mentions that "The model adopted by the Kerala Government for rehabilitation of tribals is a case in point and the State Governments may follow this pattern." While it is not clear which order this refers to, one of the most recent orders

on this matter was issued on 09 Nov 2001 following the agreement reached by the Kerala government with the Adivasi-Dalit Samara Samithy on 16 October 2001. An English version of the original order in Malayalam is given below.

**GOVERNMENT OF KERALA**

**SC/ST Development Department**

Order issued on establishment of Tribal Rehabilitation-Development Mission  
SC/ST Development Department G.O (P) No.63/2001/SC.ST.D.D Thiruvananthapuram

Dated 09.11.2001

**ORDER**

Order issued by the Government as below forming the Tribal Rehabilitation-Development Mission to distribute not below 1 acre and where there are lands, upto 5 acres to the landless and small land holding tribals and to rehabilitate them through comprehensive welfare activities.

High Level Mission Committee A high level committee is constituted with Chief Secretary as the Chairman, Principal Secretary of SC/ST Development Department as Vice Chairman & Convener; Principal Secretary/Secretary of Forests, Revenue, Planning, Rural Development, Food and Public Distribution, SC/ST Development, Local Self Government, Health & Family Welfare, Social Welfare, Law, Public Education, Agriculture and Irrigation; Land Revenue Commissioner; Custodian of Vested Forests; and Director of ST Development for policy matters related to Tribal Rehabilitation-Development Mission, to approve projects, and to recommend solutions to the problems encountered at the field level with regard to the activities of the Mission.

This Committee shall meet as frequently as possible to assess the availability of land and take decision on tribal rehabilitation, employment, economic educational/social development and all other such development programmes, ensure their efficient establishment and implementation. The committee shall have the responsibility to assist the Planning Board to develop the master plan for tribal welfare and to implement them. Each member of the committee shall have specific responsibility.

In case of problems, the High level committees shall meet to collectively discuss the matter to come to a resolution and further action plan.

A Mission shall function to ensure that the decisions of the High level committee are implemented and for control over the smooth conduct of field activities. The preliminary structure of the State level Mission:

1. Sri P.K Shivanandan, Principal Secretary, SC/ST Development Department-Mission Chief
2. Sri V.S Varghese, Principal Secretary (Protection) – Member (Forest)
3. Sri P.C John, I.G Registration – Member (Land Administration)
4. Sri K. Abdul Asseez, Joint Secretary, Finance Department – Member (Finance)
5. Dr. Surendran, Joint Director, P.P.M Cell, Agricultural Department – Member (Agriculture)
6. Sri George James, Joint Secretary, Law Department – Member (Law)

The services of the officials of 2 to 6 above have been granted on a working arrangement to the State Mission.

In addition, a Joint Secretary of Public Administration Secretariat shall be the Secretary of the High Level Committee and the State Mission.

A District Mission shall function consisting of District Collector as the Chairman and Divisional Forest Officers, Project Officer DRDA, District Agricultural Officer, Project Officer ITDP and Officers of the ST Development Department.

The required space for the functioning of the Mission shall be made available from the first floor, A Block of the new Public Office building with the requisite electricity and water facilities.

The Mission shall until then function temporarily from two vacant rooms of the Legislature Complex with the permission of the Honorable Speaker.

The vehicles, computers, furniture, telephone etc returned by Ombudsman, Administrative Reforms Committee, Public Sector Undertakings and Principal Secretaries would be made available to the Mission as required.

It is hereby ordered that a suitable mechanism to unify the activities of the government pleaders be established in consultation with the Kerala Advocate General to successfully handle litigations arising out of acquisition of land consequent to the activities of the Mission and to remove obstacles, if any.

Matters related to the appointment of the experts in the State Mission, office set up, the structure of the District Missions, objectives, members, methodology for functioning etc have been provided as an annexure to this order.

Rs.50 lakhs from the nucleus fund of the ST Development Department may be utilized for the preliminary activities of the Mission provided that the said expenditure shall be recouped from the TSP Funds. Further expenditure may be met from the TSP Funds.

The travel expenditure of the concerned officials may be met from the funds of the Mission.

The requisite expenditure for the activities of the Tribal Rehabilitation-Development Mission can be incurred as per the New Service Rules. Therefore, it is ordered that Rs.1000 be incurred as token provision.

The control of the Treasury for expenses incurred (other than administrative expenditure) shall not be applicable for tribal development activities.

By the Order of the Governor

V. Krishnamurthy

Chief Secretary

SUPREME COURT OF INDIA

Writ Petition No 1778/86

Pradip D. Prabhu

Petitioner(s)

Versus

State of Maharashtra & Ors.

Respondent(s)

*[EXCERPTS FROM INTERIM REPORT OF THE WORKING OF THE INQUIRY COMMITTEE APPOINTED TO INVESTIGATE INTO CLAIMS]*

*FIXATION OF CRITERIA TO ESTABLISH THE PERIOD OF ENCROACHMENT:*

6. The committee faced several difficulties in arriving at relevant criteria for assessing the fact of encroachment in a particular place and for a definite period i.e the period from 1.4.72 to 31.3.78. The major difficulty was the problem of establishing criteria relevant to a tribal region with high rates of illiteracy and economic deprivation and a relatively general absence of documentary evidence to establish time and place of encroachment. Recognizing the limitations of recorded evidence for a particular time, the committee sought to identify other sources of written and oral evidence in the present and pertaining to the specified period. In instances of the lack of documentary evidence for the period, either with the government or with the co-petitioner tribal, the committee has given weightage to the latter sources of written evidence, such as the statements of the encroacher, the statement of the respected persons in the local community such as the Sarpanch, the Police Patil, members of the Gram Panchayat and Village

elders constituting Panchas of the Panchnama; and the statements of the local revenue and forest officials. These were all based on their past and/or present observations of the physical evidence of the subsisting plots.

7. The committee considered it, its responsibility to identify and seek out these alternate sources of evidence, especially in the light of its locally based constitution by the Supreme Court to verify time and place of encroachments. This approach was recommended by the Instructions that accompanied the Government of Maharashtra Resolution dated December 27, 1978, relating to regularization of encroachments (app 7-8) “In deciding the factum of encroachments as on 31<sup>st</sup> March, 1978, and its subsistence; all evidence (of every relevant sort) on record as also the evidence which the encroacher may be in a position to produce should be relied upon and recorded. The encroacher should be given an opportunity to produce his evidence for the purpose. Normally entries in the ‘Pik Pahani Patrak’ would form the basic evidence of encroachment. However, in those cases where other sufficient evidence is available to establish the fact of encroachment, absence of entry in ‘Pik Pahani Patrak’ need not disqualify the encroacher for getting his encroachment regularized under this scheme”.

Recognizing the problem of going by records for establishing possession and its duration as regards disputed claim and encroachments, the document of the Commissioner Scheduled Castes and scheduled Tribes, New Delhi ,dated January 1990 and captioned as “Resolution of Conflicts concerning forest lands – Adoption of a Frame by Government of India”, states “-A major point which crops up in all disputes concerning land is about evidence acceptable to establish the fact of possession and its duration. The departmental authorities go by the record which in the case of the encroachments, is the “preliminary offence report” (POR). A major cause for the people’s claims not being entertained by the authorities is the inability of the tribal people to produce any evidence of that description.

Infact, in some cases even the record of other departments such as the 'Pattas'/Leases or census papers may not be entertained by the Forest Department. If the claims of the tribal people are to be determined on the basis of the record of the Forest Department or at best the record of other government departments, his claims may be as good as lost. It is the fact of possession, cultivation and actual reclamation of land, in some cases by his ancestors, which is of common knowledge in the village, is the basis of his claim. These facts may or may not have been brought on record. The reasons for this dissonance can be many. For instance, the official may not have visited the area or may have preferred not to take note of the cultivation and such like. They are of concern to the tribal people. They cannot be expected to know what is on record. In these circumstances if the records were to be insisted the disputes about land can never be expected to be resolved”.

8. The 28<sup>th</sup> Report of the Commissioner for Scheduled Castes and Scheduled Tribes, for 1986-87 (p.22) had stated, “Ironically, previous prosecution is the most acceptable and sometimes the only basis of establishing possession. It presumes a regular visit of officials even to the remote areas and their earnestness and honesty in dealing with encroachments. It is hardly appreciated that with the acceptance of this premise the tribal stands condemned for the acts of omission or of commission of Government officials”.

9. Going by the above mentioned statements of authoritative Government sources and based on its own independent experience and observations, the Committee came to the following conclusion as regards the rationale for the criteria to be adopted for establishing the spacial and temporal frames of reference for the encroachments: The subsisting encroachment in the present provides the physical evidence. It opens up the possibility for observation of the spot by responsible and concerned persons. It also creates the possibility of

eliciting oral testimonies that may be created in the present and in relation to the past, specific period of encroachment. It establishes the basis of the claim of the encroacher and gives the concerned tribal the benefit of the doubt which, while not conclusively establishing the fact of encroachment during the period of 1972-78 gives the responsibility of the committee to identify and assess evidence pertaining to that period. Documentary records directly relating to the specified period provide conclusive evidence for the eligibility to regularization of the encroachments. However, in the absence of such records, documentary evidence in the present and pertaining to that period, whether written or oral, of the encroacher, the community, the local revenue officials and forest officials, gain major significance. The evidence of the members of the local community who might have been present at the time of the encroachment during 1972-78 gains even greater importance.

In the eventuality of equally conflicting statements from these relevant persons, the assessment of the independently constituted committee by the Supreme Court gains all the more significance. The assessment of these last doubtful cases would be done if necessary by on the spot verification of the committee and the available corroborative evidence.

10. According to the Government Resolution dated 12/9/1979, all forest lands which were encroached upon during the period from 1/4/72 to 31/3/78, irrespective of the period for which they were encroached, were to be released for distribution with some conditions and expectations. It was, therefore, necessary for the committee to fix up the period of encroachment of each claimant before his claim is finalized. A meeting of the enquiry committee was therefore held in Dahanu on 24<sup>th</sup> June, 1991 to fix up the criteria in order to establish the period of encroachment. There was a difference of opinion with regard to the assessment of claims wherein there is no documentary evidence to prove that the encroachment existed either prior to 1972 or between 1.4.72 to 31.3.78 and where there is a



documentary evidence to prove that there is a continuity of encroachment from 1978 onwards. In the opinion of Chairman and the 2<sup>nd</sup> Member of the Committee, all such encroachments need to be treated as post 78 encroachments. In their opinion, the very fact of continuity of encroachments from 1978 onwards provides sufficient ground to establish that claimants in this category have trespassed into forest areas in post 78 period. Granting benefit of doubt to such claimant would be unjust besides being out of the scope of the inquiry. He was against putting such claims directly in post 78 category. In his opinion by putting them directly in the post 78 category, the committee shall be depriving them of their claim to consideration. With due regards to his views, the Committee decided to put all such claims in doubtful category instead of post 78 category directly as assess them on merit.

After detailed discussions, the committee decided to adopt the following norms/criteria to establish in the fair manner the period of encroachment to finalise the claims of the co-petitioners.

- (i) All such claims should be accepted wherein the claimant has documentary evidence to prove that his encroachment existed during the period from 1.4.72 to 31.3.78 provided the claimant also satisfies all other conditions stipulated in Government resolution dated 27.12.78 and 12.9.79, but not before the say of the Forest Department, if given, in the matter is taken into consideration.
- (ii) In claims where the claimant has no documentary evidence to prove that his encroachment existed during the period from 1.4.72 and after 31.3.78 but at the same time has documentary evidence to prove that his encroachment did exist prior to 1.4.72 and after 31.3.78 and the claimant is still in the possession of the said encroached forest land, such claims should be accepted giving benefit of doubt, in view of the continuity of the encroachment from 1972 till today, provided that the claimant also satisfies all other conditions stipulated in the Government Resolution dated 27.12.78 and 12.9.79. the say of the Forest

Department, if given, in the matter should also be taken into consideration before finalizing the claims as above.

- (iii) In claims where the claimant has no documentary evidence to prove that his encroachment existed during the period from 1.4.72 to 31.3.78 and if in the opinion of the 'Panchas' and local inquiry officer the encroachment is of pre-78 period, all such claims should be carefully examined and finalized in favour of the claimant, giving him benefit of doubt, if there is strong and just reason to support the opinion of the 'Panchas' and local inquiry officer, provided the claimant also satisfies all other conditions stipulated in the Government Resolution dated 27.12.78 and 12.9.79 and the say of the Forest Department, if given, in the matter is taken into consideration. I
- (iv) In cases, where the claimant has no documentary evidence to prove that his encroachment existed during the period from 1.4.72 to 31.3.78 and where the 'Panchas' and the local inquiry officer diverge in opinion about the period of encroachment all such claims should be carefully examined and finalized on merit after spot-verification if found necessary.
- (v) All such claims should be rejected where no documentary evidence is adduced by the claimant to prove that his encroachment existed during the period from 1.4.72 to 31.3 78 and wherein the opinion of the 'Panchas' and local inquiry officer encroachment is of post 78 period.
- (vi) All claims, where there is no documentary evidence to prove that the encroachment existed either prior to 1972 or between 1.4.72 to 31.3.78 and where there is no documentary evidence to prove that there is a continuity of encroachment from 1978 onwards should be treated as doubtful and should be seen in the light of the opinion of the panchas and local inquiry officers and finalized on merit after spot verification if necessary. However, in cases where there is documentary evidence to prove that encroachment is of the period between 1978-1980 i.e close to the period of 1972-78 and wherein the opinion of the 'Panchas' and local inquiry officer is of pre-78 period, all such claims should

be accepted giving benefit of doubt after taking into consideration the say of the Forest Department, in any, provided that all other conditions stipulated in the Government Resolution dated 27.12.78 and 12.9.79 are also satisfied.

11. Taking above norms into consideration, the committee has started examining and scrutinizing the data and evidence collected in 2895 cases so far inquired into. The findings of the committee shall be made known only at the end of the inquiry in its final report.

ITEM No 22

COURT No. 1

SECTION PIL

**SUPREME COURT OF INDIA  
RECORD OF PROCEEDINGS  
(For Prel. Hearing)**

Writ Petition No 1778/86

**Pradip D. Prabhu**

Petitioner(s)

Versus

**State of Maharashtra & Ors.  
(Letter with Interim Report with Office Report)**

Respondent(s)

Date: **28.10.1991** This/these petition (s) was/were called on for hearing today

CORAM:

*Hon'ble the Chief Justice of India*  
Hon'ble Mr. Justice **P.B.Sawant**  
Hon'ble Mr. Justice  
Hon'ble Mr. Justice

For the Petitioner(s): Mr. R. Venkatramani, Adv.

For the Respondent(s): Mr. A.S. Bhasme, Adv.  
Mr. R. B. Misra, Adv.  
Ms. A Subhashini, Adv. (NP)

**UPON hearing counsel the Court made the following  
ORDER**

The only variation which we would like to indicate in regard to the report is that the competent authority may even in cases where the claim is not supported by documents made an appropriate inquiry, receive evidence and then come to accept the claim.

Seen the letter from the Tata Institute of Social Sciences. The amount in the Registry may be transmitted to the Institute

(Virender K Sharma)  
Court Master

(I.L. Dhingra)  
Court Master

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***DOCUMENT 14***

IN THE SUPREME COURT OF INDIA  
CIVIL ORIGINAL JURISDICTION  
WRIT PETITION (C) NOS. 1778 OF 1986

Pradip D. Prabhu etc. etc.                      ...Petitioners

versus

State of Maharashtra and Ors.                      ...Respondents

**ORDER**

We have heard learned counsels for the parties. There is almost consensus between the learned counsels that these matters be referred back to the Government of Maharashtra for fresh decision keeping in view the merit of each case. These petitions

being Public Interest Litigation have been filed on behalf of landless Adivasis occupying various lands in various districts of Maharashtra. It is not disputed that the Adivasis have encroached upon the land and further that the land under their possession is the forest land. It is alleged in the petitions that the Adivasis have been in possession of the land since prior to 1978. The claim of the petitioners is that the Government of Maharashtra have issued instructions from time to time where under it has been provided that the persons who are in possession of lands for a particular period of years, their possession may be regularised in terms of the Government instructions. Apart from that, it is not denied that the Government of India have also issued instructions dated September 18, 1990 laying down guidelines in this respect. The petitioners only claim is that their cases for regularisation be considered in terms of the instructions issued by the State of Maharashtra from time to time and also the above-mentioned instructions of the Government of India. We see considerable force in the contention of the learned counsel for the petitioners.

We direct the State of Maharashtra to appoint responsible officers in different districts to examine the claims of Adivasis who are in possession of land and decide their claims for regularisation in accordance with law and the above-mentioned instructions.

Needless to say that while determining the rights of the Adivasis for regularisation, they shall be given an opportunity to be heard by the officers concerned and also to adduce evidence in support of their claims. We further direct that till the cases of Adivasis concerned are finally disposed of, they shall not be dispossessed from the lands which are in their possession. The writ petitions are disposed of in the above terms. No costs.

WRIT PETITION (C) NOS. 13696-700-83

We have heard learned counsel for the State of Madhya Pradesh. These petitions being public interest litigation have been filed on behalf of landless Adivasis occupying various lands in various districts of the State of Madhya Pradesh.

We direct the State of Madhya Pradesh to appoint responsible officers in different districts to examine the claims of the Adivasis who are in possession of the various lands and decide their claims for regularisation in accordance with the instructions of the Government of India.

Needless to say that while determining the rights of the Adivasis for regularisation, they shall be given an opportunity to be heard by the officers concerned. We further direct that till the cases of Adivasis concerned are finally disposed of, they shall not be dispossessed from the lands which are in their possession. The writ petitions are disposed of. No costs.

(KULDIP SINGH)

(N. VENKRATCHALA)

(S. SAGHIR AHMAD)

New Delhi

March 7, 1995

Formation of Village and Taluka Level  
Committees to Examine Eligibility of  
Encroachers on Forest Land.

Government of Maharashtra  
Revenue and Forests  
*Government Decision No. Sankirn 2002/ 372/J-1*  
Mantralaya, Mumbai, 400 032  
Dated 10<sup>th</sup> October 2002

- Read:** 1) Govt. Decision, Revenue and Forests Dept, LEN 1078/3483/G-1, dt. 27/12/1978  
2) Govt. Decision, Revenue and Forests Dept, LEN 1095/2325/96/J-1, dt. 20/12/1995

**Introduction**

Government of Maharashtra has issued directions to regularize encroachments for subsistence made on wastelands, grazing and forests lands between 12/12/1978 and 31/3/1978 vide Govt. Decision, Revenue and Forests Dept, LEN 1078/3483/G-1, dated 27/12/1978. Subsequently Writ Petitions were filed in the Supreme Court to determine the criteria for regularization. Subsequent to the directions of the Supreme Court, the Government of Maharashtra appointed a Committee for each district under the supervision of the District Collector, constituted by a Dy. Collector, an Asst. Divisional Forest Officer and an Asst. Project Officer (2<sup>nd</sup> Class) nominated by the Tribal Commissioner. These Committees were to examine the claims of the tribal encroachers after giving them an opportunity to adduce evidence in support of their claim, vide Govt. Decision, Revenue and Forests Dept, LEN 1095/2325/96/J-1, dated 20/12/1995. Accordingly, in a meeting called by the Chief Minister on 18/9/2002, a decision was made by



Government to appoint village and taluka level committees to assist the District Committee in all districts, in line with the pattern followed in Amravati district with a view to hasten the process and ensure accuracy.

### **Government Order**

1. A **Local Committee** shall be established to verify the claims for regularization of encroachments on forestlands constituted by the following members.

1. Sarpanch/Dy. Sarpanch/ member of Panchayat Samiti/ Member of Zilla Parishad (in the case of a Group Gram Panchayat, for villages other than the main village, a member of the Gram Panchayat of the respective village)
2. Kotwal/Police Patil
3. Talathi
4. Respected Citizen/NGO working in the village/ Self Help Group etc.
5. Forester/Beat Guard.

2. In cases where the decision of the committee is not acceptable, such encroacher/claimant will have the opportunity to present his views to a **Review Committee** established for the purpose, consisting of

- Naib Tehsildar
- Circle Office
- Range Forest Office

### **3. Procedure to be followed by Committee**

- It is necessary to examine subsisting encroachments from the period 1/4/72 to 31/3/78. But the same should be done within the purview of the guidelines of the Government of India of 18/9/1990. Similarly there is merit in examining subsisting encroachments prior to 1972.
- With a view to
  - a) Ensure that all concerned are informed
    - All encroachers have the opportunity to make their claims in their language.

- The weaker sections of the community are spared time and expense of travel
- All encroachers are covered and no person is not given an opportunity

An assembly of the village should be held to ensure participation of the community.

- A timetable giving the dates and time of such meetings should be prepared and publicized in advance. A village assembly should be held in every village to verify all claims of encroachments between 1/11/2002 and 31/12/2002. An inspector and an Area Officer be appointed to ensure that the program is conducted in a disciplined and regulated manner to enhance peoples' participation.
- Traditional methods of publicity in the local language must be used to inform the people about the program of deciding the eligibility of claims. Information of the task of the committee, its aims, objectives and procedure should be made available in the village square, gram panchayat office of all villages, panchayat samiti and tehsil office.
- After publicizing the advance program, a village assembly should be conducted by the village committee. In such assemblies, on receipt of the complete application of the concerned encroacher, all claims should be verified in the presence of the assembly. This program should be done during the period between 1/11/2002 and 31/12/2002.

#### **4. Procedure to Examine the Criteria for Regularization**

- a. It is necessary to clarify the criteria used to decide the period of the encroachment: Primarily an assessment of the ground realities as they existed at the relevant time is necessary and is possible by a verification of natural and situational evidence of the subsisting encroachment. Hence a

responsible local committee conversant with ground realities has the opportunity to verify the same and can record the evidence of cultivators about the event of encroachment, which has taken place in the past. Benefit of doubt should be given to the concerned encroacher and his claim can be accepted. Documentary evidence of the relevant period can be regarded as proof of encroachment, but there is no objection to recording the evidence of residents of the village.

- b. As lands already encroached between 1/4/1972 and 31/3/1978 are available for release with a few exceptions and disputes, vide Government Decision of 12<sup>th</sup> September 1979, it is important that the committee definitively decides the period of the encroachment. While deciding eligible cases the following two points be kept in mind.
  - i. the claimant should fulfill all the other conditions of Government Decisions of 27/12/1978 and 12/9/1979.
  - ii. While deciding the exact period of encroachment, the village level committee should pay attention to the following guidelines
    1. All claims where the claimant has documentary evidence of the period between 1/4/1972 and 31/3/1978 should be accepted.
    2. In a claimant does not have documentary evidence for the period between 1/4/1972 and 31/3/1978, but has documentary evidence for the period prior to 1/4/1972 and post 31/3/1978 and the encroachment is still subsisting and in the possession of the claimants, such claimants be given the benefit of doubt.
    3. If the claimant has no documentary evidence for the relevant period but the Gram Sabha on the basis of other relevant evidence is of the opinion that the encroachment is pre 1978, such claims should be carefully examined and the benefit of doubt should be given to the claimant.

4. If the claimant does not have documentary evidence for the relevant period prior to 1972 or between 1/4/1972 and 31/3/1978 and the Gram Sabha has also rejected his claim, then the veracity of such claims should be carefully examined by the committee. In particular such claims should be specifically referred to the Review Committee
5. If the claimant does not have any documentary evidence and the Gram Sabha has is of the opinion that the encroachment is post 1978, such claims should be rejected.
6. If the claimant does not have documentary evidence of the period prior to 1972 or between 1/4/1972 and 31/3/1978 and the encroachment has been subsisting continuously after 1978 such claims should be considered to be doubtful. If the claimant has documentary evidence for the period of 1978 to 1980 and the opinion of the Gram Sabha is that the encroachment is pre 1978, such claims should be accepted.

The Format given in Annexure to Govt. Decision, Revenue and Forests Dept, LEN 1078/3483/G-1, dated 27/12/1978 be utilized for the above task.

*In case of claims that are upheld for regularization within the purview of the guidelines laid down by the Government India in its orders dated 18/9/1990 then appropriate action be taken. In cases where claims for regularization are rejected, necessary steps should be taken to evict the encroacher as per the directions of the Supreme Court.*

#### **5. Training and Publicity Workshop at Taluka Level**

The following process be adopted with a view to expedite the process and keep it simple.

- c. A pre-planned publicity and training workshop be organized, at the taluka level for Sarpanchas, Dy. Sarpanchas, Kotwals, Police Patils, Forest Officers and Functionaries, Senior Citizens, Journalists, Revenue Officials and Functionaries, Talathis and members of the Taluka/Village level

Committees, between 15<sup>th</sup> October 2002 and 1<sup>st</sup>. November 2002 after due prior publicity.

- d. All officials be invited to this workshop and be given the information of the procedures and processes of the village level inquiry.
- e. A separate session be held for NGOs and Journalists
- f. The Village Assemblies be held after the program is planned and announced.

In the name and on the order of the Governor of Maharashtra

**Sd/- Ramakant Asmar**

**Jt. Secretary, Revenue and Forest Dept.**

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***DOCUMENT 16***

IN THE HIGH COURT OF JUDICATURE OF BOMBAY

WRIT PETITION No. 503 OF 1984

Vishwanath Kisan Jadhav, )  
Agriculturist, residing at ) Petitioner  
Pothare, Tal. Karmala, Dist. Solapur )

V/s

1. The State of Maharashtra )  
notice to be served on the Addl. )  
Govt. Pleader, High Court, Bombay )

2. Collector of Solapur, Solapur )
3. Tahasildar of Karmala, Karmala )  
Dist. Solapur )
4. The Union of India )  
notice to be served on the Central )  
Govt. Advocate, Ministry of Law, )  
Justice and Company Affairs, )  
Ayakar Bhavan, Queen's Road, Bombay. )

Shri M.A.Rane for the petitioners

Shri V.A. Gangel, A G P for respondents 1 to 3

Shri R.V. Desai for respondent No.4

CORAM : PENDSE & SUGLA JJ.

FRIDAY, FEBRUARY 13, 1987

ORAL JUDGEMENT (PER PENDSE,J.)

1. The Petitioner is resident of village Pothare in Karmala Taluka of Solapur District, and belongs to Scheduled Caste and falls within the category of economically backward. The Petitioner was given Government land bearing Survey No. 68 subsequently numbered as Gat No. 154 admeasuring 21 acres 22 Gunthas from village Pothare on a lease and the first lease was executed on October 12,1958. The initial lease in favor of the petitioner is known as eksali lease under provisions of the Land Revenue Code. These eksali leases are granted to the landless people for cultivation of land in accordance with the policy set out by Government Resolution dated August 20, 1954 and July 21, 1958. These eksali leases are renewed from year to year. On March 22, 1969 the Government of Maharashtra

published Government Resolution setting out the decision taken in respect of permanent release of the lands which were forest lands. It is required to be stated at this juncture that though the lands were described in revenue records as 'forest land' it is not in dispute that no forest was standing on these lands at any juncture, and the lands were open lands and were therefore allotted to the landless laborers like the petitioner. The resolution inter alia prescribes that (1) all forest lands given on Eksali basis should be released permanently for cultivation to the respective eksali lease holders; (2) the lands on the border of forest should be disforested and transferred to the Revenue Department for release to respective eksali land holders; (3) the land should be given to the existing eksali holders on permanent and unalienable tenure as occupants class II and (4) the land should be granted to eksali holder upto the extent of economic holding. The policy decision taken by the State Government and contained in the Government resolution dated March 22, 1969 was widely published and circulated and the Tahasildar, Karmala invited the eksali lease holders to come forward for securing permanent transfer. Accordingly, the petitioner sought alienation of the land in his favor, but as usual there is a wide gap between the declaration of the policy and the implementation of the same. Though several years had lapsed, the Government did not take any steps to transfer the land on a permanent tenure in favor of the petitioner and other landless laborers and that gave rise to the filing of present petition on February 7, 1983 under Article 226 of the Constitution of India. The relief sought by the petitioner is that respondents be directed to grant the land held by the petitioner on permanent occupancy basis and to adjust record of rights accordingly as deleting the word 'forest' from the Revenue Records.

2. In answer to the petition, Mr. V.N.Karandikar, Collector of Solapur, has filed return sworn on July 21, 1984 and this return was filed prior to the admission of the petition. Paragraph 2 of the return sets out that the claim of the petitioner is

justified and the State Government is bound to enforce the policy decision taken under the Resolution dated March 22, 1969. The State Government expressed its inability to do so on the basis that the concurrent list under VIIth Schedule of the Constitution was amended by 42<sup>nd</sup> Constitutional Amendment, 1976 and by Item No. 17 A the entry 'forest' was removed from the State list and inserted in the concurrent list. The Collector claims that in view of insertion of the item of 'forest' in the concurrent list, any proposal of deforestation required concurrence of the Union Government. The Collector further claims that list of 122 villages from nine talukas in Solapur District, including the forest land in village Pothare, which was proposed to be deforested, was forwarded to the Central Government, but the Union Government has not yet given its concurrence to the proposal. In view of this return, the petitioner joined Union of India as party respondent and thereafter the Court admitted the petition in December 1984. The Union of India has not cared to file any return in answer to the petition, nor has given any reason why Union of India has not acted on the recommendations of the State Government.

3. Shri Rane, learned counsel appearing on behalf of the petitioner, submitted that the stand taken by the State Government that the concurrence of Union Government is required for deforestation of land is totally unsustainable and we find considerable merit in the submission of the learned counsel. It is not in dispute that the item of forest was included in the concurrent list after removal from the State list only in the year 1976 and we do not see any reason why the State Government did not act in the matter from the year 1969 to 1976. Nothing prevented the State Government to deforest the land in Pothare village in the year 1969 itself. In our judgment, it is specious claim of the State Government to claim in the year 1984 that the land cannot be deforested because subject of forest is included in the concurrent list. It will have to be held that the State Government has infact deforested the land in the year 1969 itself when Government Resolution



was published and the landless laborers were invited to take the land on permanent tenure. It is necessary to proceed on the basis that the lands were in fact deforested in the year 1969 itself, and once that conclusion is reached there is no obstacle whatsoever in the way of the State Government from transferring lands on permanent tenure in favor of the petitioner in accordance with the conditions set out in the Government Resolution. It is necessary to direct the State Government to do so by issuance of a writ of mandamus.

4. Shri Desai, learned counsel appearing on behalf of Union of India, invited our attention to provisions of Section 2 of Forest (Conservation) Act, 1980. The Section inter-alia prescribes that notwithstanding anything contained in any other law in force in the State, no State Government shall make, except with the prior approval of the Central Government any order directing that any reserved forest or any portion thereof shall cease to be reserved. Shri Desai submitted that after the enactment of this Act, which came into force on October 25, 1980, it is not permissible for the State Government to deserve any forest land till the Union of India gives its approval. We fail to see any merit in the submission of the learned counsel, because in our judgment the State Government is deemed to have de-reserved the land in the year 1969 itself and therefore the insertion of the subject of forest in the concurrent list and passing of the Forest (Conservation) Act will have no bearing on the result of the petition. The State Government cannot be permitted to take shield behind the subsequent events which have occurred more than twelve years after publication of the Government Resolution. We also find that Government of India has not taken any steps in the matter for last over seven years when the Government was published by the State Government in the year 1969 for assisting the landless laborers. In our judgment the view which we are taking will assist the landless laborers for whom all are declaring their sympathy.

5. Accordingly, petition succeeds and it is declared that the land which was given on eksali lease to the petitioner and situated at village Pothare in Karmala Taluka of Solapur District was released from the forest in the year 1969 itself. The State Government is directed to transfer this land on permanent tenure in favor of the petitioner but in accordance with the terms and conditions mentioned in the Government Resolution dated March 22, 1969. The respondents shall pay the costs of the petitioner.

In the Supreme Court of India  
Civil Original Jurisdiction  
I.A. No. 1126

In

I.A.No. 703 of 2000

In

Writ Petition (Civil) No. 202 of 1995

**IN THE MATTER OF**

**T.N. Godavarman Thirumalpad**

.....

**Petitioners**

**Versus**

**Union of India and Others**

.....

**Respondents**

**AFFIDAVIT ON BEHALF OF MINISTRY OF ENVIRONMENT AND FORESTS,  
GOVERNMENT OF INDIA**

I, Anurag Bajpai, Assistant Inspector General of Forests, Ministry of Environment and Forests, Government of India, do hereby solemnly affirm and state as under

1. That, in the official capacity mentioned above, I am well conversant with the facts of the case from records maintained in the office, therefore I am competent to swear this affidavit on behalf of the Ministry of Environment and Forests, Government of India.
2. That, the aforesaid writ petition was listed before the Hon'ble Court on 23.02.2004 when the Hon'ble Supreme Court were pleased to pass the following order in IA No 1126 in IA No. 703 filed in Court by the learned Amicus Curiae:-

“ .....Union of India ..... is allowed four weeks time to file a reply. In the meantime, Annexure P-1, P-2, P-3,P-4 and P-5 dated 05/02/2004, ...03/02/2004, 07/10/2003, 06/02/2004 and 13/01/2004 respectively to the IA, shall not be implemented”

3. That, in compliance with the above order, the Ministry of Environment & Forests Submits the following points along with relevant historical details for perusal of the Hon'ble Court which make clear the intentions of the **Central Government behind issuing the guidelines dated 05/02/2004 (Annexure P-1 of the IA) for “Regularization of Rights of Tribals on the forest lands.”**
4. That, all over the world, forestry, as land use, survived on the concept of sustained yield which was ensured by creating compatible legal systems.
5. That, in India, consolidation of forest laws started during the British period with the inception of Indian Forest Department in 1864 and scientific management of forests was introduced in the country to initiate planned and systematic management of the forests. The British Government enacted the first Indian Forest Act in 1865 to consolidate Government forest lands. The Indian Forest Act went through various amendments and consolidation and the final shape of the Indian Forest Act emerged in 1927.
6. That, according to the Indian Forest Act, 1927, the Government could proclaim any piece of land to be “forest” by issuing a notification to this effect and declare it to be government land.
7. That, for most areas in India, especially the tribal areas, record of rights did not exist due to which rights of the tribals could not be settled during the process of consolidation of forests in the country. Therefore, the rural people, especially tribals who have been living in the forests since time immemorial, were deprived of their traditional rights and livelihood and consequently, these tribals have become encroachers in the eyes of law.
8. That, after independence in 1947, during the formation of Union of India by amalgamation of princely states, the State Governments/UT administrations

continued with the consolidation process and the lands of ex-princely states and the zamindari – lands have been proclaimed as Reserved Forests on many occasions without settlement of tribal rights as the records of rights never existed for tribals.

9. That, most of the provisions of National Forest Policy, 1952 could not be implemented mainly due to increasing pressure of human and livestock population on the forest land and chronic food shortage and consequent poor investment in forestry sector.
10. That, prior to 1980, there was indiscriminate diversion of pristine forest land for non-forestry purposes by the State/UT Governments, out of which most of the forest land was diverted for agricultural practices.
11. That, most of the land diverted for agricultural practices was under encroachments. This practice of diversion of forest land under encroachments induced further encroachments in forest areas. Under local pull and pressures, the State/UT Governments could not do away with this pernicious practice.
12. That, even this benefit of indiscriminate diversion made by State/UT Governments remained in the hands of few powerful lobbies. Tribals again were at loss, they could not harness this benefit also as their rights were not recorded and have never been recognized.
13. That, Central Government took note of unabated diversion of forest land by various State/UT Governments for non-forestry purposes and took up a proactive role. Forests were brought under “ Concurrent list” after 42nd Constitutional amendment in 1977 and in 1980, an Ordinance was brought for judicious regulation of diversion/de-reservation of forest land for non – forestry purposes. This Ordinance was later converted into Forest(Conservation) Act 1980 w.e.f. 25.10.1980.
14. That, Forest (Conservation) Act, 1980 is a regulatory Act, not prohibitory.

15. That, Forest (Conservation) Act, 1980 paved a way for legal solutions to long pending settlement of rights of the tribals living on the forest lands since time immemorial.

16. That, to achieve the maximum advantage of the changed scenario brought about by the application of the Forest (Conservation) Act, 1980 and to strengthen the concept of sustainable forest management through participatory approach, new **National Forest Policy, 1988** was formulated. Its salient features in respect of tribal rights are as follows:

- (i) The National Forest Policy, 1988 gives due regard to the traditional rights of the tribal people on forest land. It recognizes symbiotic relationship between the tribal people and forests. It envisages that all agencies responsible for forest management, including the Forest Development Corporations, should associate tribal people closely in protection, regeneration and development of forests as well as to provide gainful employment to the people living in and around the forests.
- (ii) It safeguards the customary rights and interests of the tribal people on forest lands.
- (iii) It also emphasizes the need for undertaking integrated area development programs to strengthen tribal economy in and around forest areas, including making provisions for alternative sources of domestic energy on subsidized basis, to reduce pressure on the existing forest areas.
- (iv) The policy also envisages development of forests villages at par with revenue villages.

17. That, to fulfill the commitments as enshrined in the National Forest Policy, 1988, in respect of settlement of people's rights, especially tribals' rights, over the forest lands in a regulated manner, the Central Government on 18<sup>th</sup> September, 1990 had issued following guidelines after obtaining the approval of the Union Cabinet for one time settlement of the people's rights under Forest (Conservation) Act, 1980:

- (i) Guidelines for regularization of encroachments on forest lands.

- (ii) Guidelines for review of disputed claims over forest land arising out of forest settlement.
  - (iii) Guidelines for settlement of disputes regarding pattas/leases/grants involving forest land.
  - (iv) Guidelines for conversion of forest villages into revenue villages and settlements of other old habitations on forest land.
18. That, the Central Government requested the State Governments/UT Administrations to follow these guidelines to settle the disputed claims, patta/leases, etc. of the tribal population on the forest lands. But, the State/UT Governments have failed to give any response.
19. That, the State/UT governments could not maintain a distinction between the guidelines of regularization of encroachments and the settlement of disputed claims of tribals over forest lands. Rather, the state/UT Governments have mixed up the whole issue.
20. That, proposals have been received only under the category of regularization of eligible encroachments from a couple of States. This has deprived the tribals of natural justice as the Central Government's guidelines for regularization of encroachment are different from the guidelines for settling disputed settlement claims.
21. That, the Central Government is committed to the recognition of the tribal rights in forest areas.
22. That, the Central Government reiterated the guidelines on 30-10-2002 and reminded the State Governments/UT Administrations to consider the settlement of disputed claims of tribals over forest land and were requested by the Central Government to set up Commission/Committees at the districts level involving Revenue, Forest and Tribal Welfare Department for the settlement of disputed claims of tribals provided other conditions mentioned in the guidelines are fulfilled. The State Governments/UT Administrations were also requested to

submit the proposals in this regard so that final decision can be taken by the Central Government in a time bound manner.

23. That, the State Government/UT Administration have shown no progress in this regard.
24. That, the Central Government has received several representations from tribal leaders, reputed NGOs and the matter has also been raised in various public discussions including meetings of various standing and Consultative Committees of Parliament attached to different Ministries, as also various State Governments, that the tribals have been living in harmony with the forests since time immemorial and their rights on such lands should be recognized.
25. That, in conformity with the National Forest Policy, 1988 and in continuation of the guidelines issued earlier, the issue has been under consideration of the Central Government since 30/10/2002. Since, no progress has been shown by the State/UT Governments, the issue has been examined in its entirety by the Central Government. To achieve the objectives which have been set in the 1990s and to strengthen the Guidelines issued earlier, the Central Government found it necessary to issue fresh Guidelines on 5-2-2004 to encourage the State Government/UT Administrations to take up the matter of settlement of Tribal Rights in their right earnest and perspective.
26. That, these Guidelines dated 5-2-2004 are based on the recognition that the historical injustice done to the tribal forest dwellers through non-recognition of their traditional rights must be finally rectified. It should be understood clearly that the lands occupied by the tribals in forest areas do not have any forest vegetation. Further, that because of the absence of legal recognition of their traditional rights, the adjoining forests have become “ open access” resource as such for the dispossessed tribals, leading to forest degradation in a classic manifestation of the tragedy of commons.
27. That, these fresh Guidelines do not relate to encroachers, but to remedy a serious historical injustice. It will also significantly lead to better forest conservation.



28. That, the Central Government is also of the firm conviction that the issue of Tribal Rights must be settled in a fixed time period of one year and no proposals of the State Governments/UT Administration shall be entertained thereafter.
29. That, the Central Government reiterate that the guidelines for regularization of encroachments have not been changed at all and these remain the same as issued on 18/09/1990.
30. That, the Central Government wish to consolidate the forest lands keeping the requirements of the people in mind so that the principle of sustainable forest management could be followed in its real spirit. In order to ensure this, each proposal shall be considered separately on its merit under the Forest (Conservation) Act, 1980 provided a proper rehabilitation plan has been prepared clubbed with financial commitment. To achieve the tenets envisaged in forest-tribal interface and to ensure that efforts put in towards forest conservation are not relegated to the background, the rehabilitation schemes are to be implemented by a tribal-wing under the Forest Department.
31. That, Central Government's intention and commitment towards the consolidation of forest lands is clearly reflected in point No. 5 of fresh guidelines issued on 05-02-2004 (Annexure P-1), which states that ***'the State Governments and UTs should make sincere efforts for making available an equivalent area of non-forest land wherever feasible for inclusion of such lands as reserved forests or protected forests'***.
32. That, in view of the above mentioned points, the apprehension raised by learned Amicus Curiae does not stand merit and the Hon'ble Court, in the interest of tribal development and long term forest conservation, may be pleased tom pass an order as deemed fit in this regard and revoke the stay on the implementation of the Ministry of Environment & Forests letter dated 05/02/2004 (Annexure P-1 of the IA).

**Order of Hon'ble Supreme Court dated 23-2-2004 staying the implementation of Central Government's Notification of rules dated: 3-2-2004 & 9-2-2004 in IA No. 1126 in IA No. 703 in Writ Petition (C) No. 202 of 1995.**

33. That, in the IA it has been questioned that delegation of powers through amendment of Forest (Conservation) Rules (Annexure P-2) of the IA, will dilute the Forest (Conservation) Act, 1980. In this context, Ministry of Environment & Forests would like to submit that the rules have been amended to bring in simplification of the procedure.
34. That, under Section 4 (1), the Central Government is empowered to make rules for carrying out the provisions of the Forest (Conservation) Act, 1980, by notification in the official gazette.
35. That, the forest Advisory Committee or any other committee constituted by the Central Government under section -3 of Forest (Conservation) Act, 1980 is a statutory body. This Committee involves the Experts of forestry, mining, engineering, soil conservation etc.
36. That, the section – 3 of the Forest (Conservation) Act, 1980 provides that the Central Government may constitute a committee consisting of such number of persons as it may deem fit to advise the Government.
37. That, a Regional Empowered Committee has been proposed at the Regional Office level which shall involve Regional Principal Chief Conservator of Forests (Central) as Chairperson, the Conservator of Forests or the Deputy Conservator of Forests in the Regional Office as Member Secretary and 3 Non-official members who shall be experts one each in mining, Civil engineering and Development Economics.
38. Regional Empowered Committee shall be delegated the powers to decide the cases upto 40ha other than proposals relating to mining and encroachments.
39. That, as of now, the Regional Office is empowered to decide the cases upto 5 ha excluding those of mining and regularization of encroachments. They also process all the proposals upto 40 ha.

40. That, the intention of the Central Government behind creation of a Regional Empowered Committee, is to curtail unnecessary delay in granting approvals under the Forest (Conservation) Act, 1980. At present, this Act is getting a bad name on account of delay which occurs in deciding and forwarding the proposals to the Central Government.
41. That, in view of the above – mentioned points, there is no dilution of the Forest (Conservation) Act, 1980 as conveyed by the learned Amicus Curiae through his apprehension in the IA, which has no substance.
42. That, the Hon'ble Court may be pleased to pass an order in this regard and revoke the stay on the implementation of Forest (Conservation) Rules notified on 3-2-2004 & 9-2-2004 (Annexure P-2 of the IA).

**Orders passed by the Hon'ble Supreme Court and Compliance by the Ministry of Environment & Forests regarding the dereservation and regularization of encroachments.**

43. i) That in Writ Petition (C) No. 337 of 1995, Hon'ble Court passed order on 13-11-2000:
- “ This Court while directing to list the above application after 5 weeks ORDER THAT pending further orders, no dereservation of forests /sanctuaries/national Parks shall be effected.”*
- ii) That, in IA No. 548, Hon'ble Supreme Court passed order on 14-2-2000
- prohibiting removal of dead, dying, diseased trees and grasses from the national parks/sanctuaries/forests.*
- iii) That, subsequently the Hon'ble Court *deleted word 'forests' from the order of 14-2-2004* as mentioned above. This deletion of word has created a confusion and
- it has been understood as the deletion of the word 'forests' from the order dated 13-11-2000.
- iv) That, the Hon'ble Supreme Court in their order dated 23/11/2001 in IA No.703

Writ Petition (C) No. 202 of 1995 have *restrained the Central Government from Regularization of encroachments.*

44. That, learned Amicus Curiae has conveyed that the Ministry of Environment & Forests did not follow the above – mentioned directions of the Hon'ble Court.
45. That, in this context, it is submitted that Central Government has not regularized any encroachments on forest lands after 23/11/2001 in compliance with the orders of the Hon'ble Supreme Court.
46. That, the Central Government neither regularized nor intend to regularize encroachments in National Parks and Sanctuaries complying with the orders of the Hon'ble Supreme Court dated 14/02/2000.
47. That, the Ministry of Environment & Forests has permitted the State of Madhya Pradesh to change the legal status of already regularized forest land under encroachments to the extent of 168840.291 ha on 7.10.2003. In this regard, it may be mentioned that out of this area 103873.658 ha was regularized long back in July, 1990 and the balance 64966.633 ha was regularized on 28-5-2001. Therefore, for the area regularized in July, 1990, the orders of the Hon'ble Court dated 13-11-2000 banning de-reservation of forests/National Parks/Sanctuaries shall not be applicable. Further, for the balance area, regularized in 2001, the Ministry of Environment & Forests shall take suitable measures and withheld the order till the Hon'ble Court vacates their orders dated 13.11.2000 in Writ Petition (C) No 337 of 1995. It may be mentioned that though the land is under non-forest use, people are not getting the benefits of development (like Bank Loans etc.) making them further dependent on the adjoining forests which is leading to destruction of forests.
48. That, in view of the above –mentioned points, the Hon'ble Court may be pleased to pass an order as deemed fit and revoke the stay on the Ministry of Environment & Forests letter dated 07.10.2003 (Annexure P-3 of the IA).

**Orders of the Central Government dated 06/02/2004 regarding the diversion of forest land for relocation of tribals in Tripura (Annexure P-4 of the IA).**

49. That according to the Minutes of the meeting held on 08/04/2003 during the visit of the Director General of Forests & Special Secretary and Inspector General of Forests, Government of India to Tripura, and the discussion held with the State Government officials during their recent visit to the State in the month of January, 2004, a large number of the tribals and other poor communities are living in the forest areas of the State since time immemorial. They have been traditionally following the system of shifting cultivation drawing their livelihood needs from the forests. About 70,000 to 80,000 ha of forest area has been honeycombed by the tribals and the poor communities for their livelihood.
50. That, these tribal Jhumias have been living in the forest areas as part of the forest ecosystem and whose rights have been unjustifiably ignored during the process of settlement due to one reason or the other.
51. That, the Central Government, on the request of the State Government, has given a road map vide their letter dated 06.02.2004 (Annexure P-4 of the IA) to permit the relocation of the tribals from the forest areas where they are engaging themselves in jhum cultivation leading to rampant destruction of the forest all over the area. The Central Government is confident that regrouping the tribal Jhumias in compact areas will put them in the mainstream of development at par with the general populace of the country.
52. For this, the Central Government has put stringent conditions to be fulfilled before granting the in-principle approval. The Ministry of Environment & Forests has conveyed that the process of shifting of the tribals shall be done first on a pilot basis in the Dhalai district in a phased manner to ensure troubleshooting, if required. The State Government is required to prepare a detailed project for rehabilitation of the tribals under the said project proposal with assured fund separately earmarked for this purpose. The project shall be implemented by the

Tribal Rehabilitation Wing of the Forest Department in order to ensure that issues relating to environment and conservation of forest biodiversity are integrated with the settlement and rehabilitation of tribals. Other agencies like Directorate of Tribal Rehabilitation in Plantation & Primitive Group Programme (PGP) involved in rehabilitation of tribals on forest land, shall be brought within the purview of Tribal Rehabilitation Commissioner so that coordinated and systematic rehabilitation of the tribal families can be ensured as well as consolidating the gains of forest conservation, as a significant proportion of PGP population is proposed for shifting. One of the conditions shall be to declare the Unclassified Government Forest (erstwhile Protected Forests) land with tree cover as Reserved Forest under the provisions of the Indian Forest Act, 1927. The State Government have already declared about 15,000 ha of Unclassified Government Forest as Proposed Reserved Forest under Section – 4 of the Indian Forest Act, 1927 as a commitment of the proposal.

53. That, the road map vide this Ministry's order dated 06.02.2004 (Annexure P-4 of the IA) is only a pilot project aimed at testing the outcome of such policy measures of the Central Government for upliftment of the tribals in consonance with conservation and consolidation of the forests of the country, which may be replicated in other similar cases in other States.
54. That by doing so in the test case, it is intended to get about 30,000.00 ha of forest land vacated while allowing only about 14,500.00 ha for resettlement of tribals, provided all the conditions are fulfilled by the State Government before seeking the in-principal approval, thereby saving about 16,000 ha which will be available for consolidation/increase in forest cover.
55. That, the forest area proposed to be diverted under this proposal supports only scanty vegetation having a forest cover of only 0.1 – 0.3.
56. That, the order of the Central Government dated 06/02/2004 (Annexure P-4 of the IA) clearly says that no encroachers, as identified according to the Guidelines issued by the Ministry of Environment & Forests in this regard, shall be

rehabilitated under the project. It is further mentioned in the order that the State Government shall make serious attempts to evict all non-tribals in eligible encroachments from the forest land.

57. That, the essence of letter dated 06/02/2004 (Annexure P-4 of the IA) of the Central Government is in condition No.8 of the letter, that reads as:

*“ In the interest of Forest Conservation, the State Government shall ensure that maximum number of such families is relocated so that forest is no longer honeycombed for shifting cultivation.”*

58. That in view of the above- mentioned points, the apprehension raised by the learned

Amicus Curiae in his IA does not stand merit and the Hon’ble court may be pleased to pass an order and revoke stay on implementation of the letter dated 06-02-2004 (Annexure P-4 of the IA) of the Ministry of Environment & Forests in this regard.

**Orders passed by the Hon’ble Supreme Court and Compliance by the Ministry of Environment & Forests regarding dereservation and regularization of encroachments**

59. i) That in Writ Petition ( C ) No. 337 of 1995, Hon’ble Court passed order on 13-11-2000:

*“This Court while directing to list the above application after 5 weeks DOTH ORDER THAT pending further orders, no dereservation of forest/sanctuaries/ national parks shall be effected.”*

- That in IA No 548, Hon’ble Supreme Court passed order on 14-2-2000 prohibiting *removal of dead, dying, diseased trees and grasses from the national parks/sanctuaries/forests.*
- That, subsequently the Hon’ble Court *deleted word ‘forests’ from the order of 14-2-2000* as mentioned above. This deletion of the word has created a confusion and it has been understood as the deletion of the word ‘forests’ from the order dated 13-11-2000.

- That, the Hon'ble Supreme Court in their order dated 23/11/2001 in IA No. 703 in Writ Petition ( C ) No. 202 of 1995 have *restrained the Central Government from regularization of encroachments.*

60. That, Central Government has not regularized any encroachments after 23/11/2001 in compliance with the orders of the Hon'ble Supreme Court.

61. That, the Central Government neither regularizes nor intend to regularize encroachments in National Parks and Sanctuaries complying with the orders of the Hon'ble Supreme Court dated 14/02/2000.

62. That, Ministry of Environment & Forests would like to submit that Ministry of Environment & Forests has issued approvals for conversion of forest villages into revenue villages. While converting the forest village into revenue village, only those areas are considered, which are already under non-forestry use and where the people have been granted patta/lease prior to 1980, residing there and doing agriculture. Besides this, the land under already constructed public buildings like schools, panchayat Bhawan, community halls, roads etc are also considered.

63. That, the forest land in the forest village are already under non-forest use and people have been given patta/lease, therefore there is only a technical change in the nomenclature. So that the people could avail the development facilities, loans etc.

64. That, the encroachments are not considered at all the under the category of conversion of forest villages into revenue villages. Encroachments are considered as per the guidelines issued by this Ministry on 18/09/1990 and the orders of the Hon'ble Supreme Court dated 23/11/2001 in Writ Petition ( C ) No. 202 of 1995.

65. That even in the case of conversion of forest villages into revenue villages, the areas of National Parks and Sanctuaries are not considered by the Central Government.

66. That, it is further submitted that the people have been living since long time in these identified forest areas and these patta land generally do not have any forest vegetation.



67. That, the remaining forests in the compartments over which pattas have been granted, shall be demarcated.
68. That, the basic objectives behind the conversion of forest villages into revenue villages into revenue villages is, to bring the tribal people in the main stream and develop them at par with the revenue villages and provide them all those facilities which are being enjoyed by the villagers of revenue villages. Therefore, the conversion of forest villages into revenue villages is just a technical modification.
69. That, it is further submitted that our Constitution also provides the Article of Fundamental Right of Equality and therefore the Central Government is of firm conviction to bring the tribal population mostly living in forest villages, at par with the population of revenue villages.
70. That, in such cases, the Central Government had taken a policy decision not to insist Compensatory Afforestation because there is no involvement of felling of trees or there is no change in land use as such.
71. That, the Central Government is of the view that the Net Present Value of diverted forests land shall not be charged in such cases as there are no felling of trees, no change of land use and also such conversions help in reducing the biotic pressure on forests.
72. That, the Central Government is committed to follow the directions of the Hon'ble Supreme Court in its letter and spirit. It has been observed by the Central Government that some sections are trying to stretch the orders of the Hon'ble Supreme Court to the extent that it is causing resentment among the society and trying to tarnish the image of the Central Government.
73. That, in view of the points mentioned in para 60 to 72, Hon'ble Court may be pleased to pass modification in the order dated: 13.11.2000 in IA No 337 of 1995 and delete 'forest' word and revoke stay on implementation of the letter dated 13/01/2004 (Annexure P-5 of the IA) of the Ministry of Environment & forests and also the Hon'ble Supreme Court may exempt the collection of Net Present Value of diverted forest land in such cases.

**Order of the Hon'ble Supreme Court dated 30/10/2002 and 01/08/2003  
regarding the collection of Net Present Value of diverted forest land in IA 566  
in Writ Petition ( C ) No. 202 of 1995.**

74. That, Hon'ble Supreme Court were pleased to pass following order for the collection of Net Present Value of diverted forest land on 30/10/2002 in IA No. 566 in Writ Petition ( C ) No. 202 of 1995.

*“ ..... While according, transfer under Forest Conservation Act, 1980 for change in User Agency shall also pay into the said fund the Net Present Value of the forest land for non – forest purposes. The present value is to be recovered at the rate of Rs 5.80 lakhs per hectare to Rs 9.20 lakhs per hectare of forest land depending upon the quantity and density of land in question converted for non – forest use. ....”*

75. That, Hon'ble Supreme Court has re-iterated the same order on 01/08/2003.

76. That, in compliance with orders of the Hon'ble Supreme Court, this Ministry has already issued directions on 18-9-2003 & 22-9-2003 to all the State/UT Government to collect the Net Present Value (NPV) of the diverted forest land in all the in-principle approvals issued by the Central Government under Forest (Conservation) Act, 1980 after 310/10/2002.

77. That, the Central Government has several representations from various departments of Central Government, Central Government Undertakings, State Government, PSUs, User agencies etc. questioning the rates of Net Present Value, which are making most of the projects economically unviable.

78. That considering the representations, the Central Government has filed an affidavit before the Hon'ble Supreme Court seeking modification in the order for the collection of Net Present Value on 10/11/2003 and in December, 2003. On the request of the Central Government, the decision of the Supreme Court is still awaited.

79. That, the Central Government finds it necessary to submit to the Hon'ble Supreme Court that the basic objective behind the collection of Net Present Value of the diverted forest land is to offset the environmental loss incurred due to non –

forestry activity in financial terms and to utilize the funds of Net Present Value for the purpose of afforestation, protection and environmental conservation.

80. That, the Central Government agrees with the spirit of the order of the Hon'ble Supreme Court in this regard and therefore submits the following points for the perusal and consideration of the Hon'ble Court:

- a. Public utility development projects, which are for the benefit of the rural people, should be exempted from levying of NPV. Government of India would take a decision regarding the definition of public utility projects in consultation with the State/UT Governments.
- b. For the projects like construction of roads, railways, removal of sand etc. from the rivers located in notified forest areas like Protected forests/Reserved forests where the land belongs to the concerned Department/User Agency, NPV should not be charged.
- c. The works ancillary to forest conservation, including conversion of forest villages into revenue villages/resettlement/rehabilitation/relocation etc. undertaken by the State Forest Department/State Forest Corporations should be exempted from NPV. However it would not include the works like construction of roads etc. on the forest land which shall be utilized commercially for plying of vehicles in the forest area.
- d. For all other developmental projects, the concerned State/UT Governments should be authorised to assess the actual value of land, standing crops etc. within the *technical/ bio-metrical parameters* and charge the NPV of forest land accordingly, which shall be deposited in CAMPA by the State/UT Governments.
- e. For mining projects, there has to be a difference in approach for mineral of high volume and low value and minerals of high value and low volume. The levying of flat rates of NPV on per ha. basis will therefore, not be rational. In case of mining NPV, should be calculated @ 10% for the major minerals and 5% for the minor minerals to be levied on the annual royalty and as per the

parameters mentioned in the para 82. This should be charged and paid in advance for a period of 3 years as royalty is revised after every 3 years. The calculation for this should be based on annual production, projections on a prevalent rate.

- f. In case of mining, Net Present Value should not be charged on already broken up area. It should apply to the lease granted for fresh area after 30.10.2002.
  - g. In case of under ground mining, Net Present Value should not be charged as it does not break the forest area on surface and forest vegetation is not lost.
81. That, it is pertinent to mention here that the Central Government has diverted about 7,693 ha. of degraded forest land in Kerala for resettlement of landless tribals only after a thorough enquiry done on the spot by the members of the forest Advisory Committee. In return, the State Government has acquired 13,223 ha. of ecologically fragile land, densely wooded area, mangrove forest etc., from private individuals. Therefore, this is a case of consolidation of forest vegetation consistent with rehabilitation and development of tribals in which there is a net gain of about 5,500.00 ha. The forest land diverted for resettlement of tribals are mostly under non-forestry use (mostly coffee plantation)s and are generally, devoid of tree growth and other ground vegetation. Therefore, in such cases of consolidation of forests, the Central Government is of firm opinion that NPV should not be charged for this project and other similar projects for rehabilitation of tribals.
82. That, the Central Government would also like to inform the Hon'ble Court that following the spirit of the orders of the Hon'ble Supreme Court towards the cause of environment conservation, it has taken following decisions to generate funds through lease rent and cess in consultation with the user agencies and State/ UT Governments:

- a. Lease rent shall not be collected in case of public utility projects, irrigation projects, defence projects, roads and railways, transmission line etc. as it will have a direct bearing on the public.
- b. A nominal amount of One paise per unit of power generation as a lease rent for the forest land, in case of hydro-power projects, thermal power projects and gas power plants shall be charged from the User Agencies. The funds for these components shall be deposited with compensatory Afforestation Management and Planning Agency (CAMPA) to be created by Government of India. These funds shall be exclusively utilized for the development and conservation of forests and wildlife and to provide gas connections and other such facilities to villagers through Joint Forest Management (JFM hereinafter) in that particular area.
- c. In case of mining projects, it will be proposed to the Ministry of Mines that the notional amount deposited with the Indian Bureau of Mines (IBM) for reclamation of mined out areas may be deposited with the State Forest Department, who is the nodal agency for reclamation. In addition, a cess of Rs.2/- per unit tonne of coal/ ores (including limestone & soapstone) may also be collected from the User Agency. In case of granite, marble and other similar sheet deposits, ten paise per sq. metre of production shall be charged. The funds for these components shall be deposited with compensatory Afforestation Management of Planning Agency (CAMPA) to be created by Government of India. These funds shall be exclusively utilized for the development and conservation of forests in that particular area for the restoration of original forest vegetation and to provide gas connection and other such facilities to villagers through JFM.
- d. In all other cases of diversion of forest lands for non-forestry purposes, an annual lease rent of Rs.1,000/- per hectare of diverted forest land may be collected from User Agencies, other than Government bodies. These funds shall be deposited with Compensatory Afforestation Management and

Planning Agency (CAMPA) to be created by Government of India. These funds shall be exclusively utilized for the development and conservation of forests in that particular area for the restoration of original forest vegetation and to provide gas connection and other such facilities to villagers through JFM.

83. That, the Central Government would like to submit that the decisions taken by the Central Government as mentioned above in para 82(a) to (d), meet the essence of the Net Present Value of the diverted forest land.
84. That, in view of the above mentioned points, there is need to rationalize the rates of Net Present Value and also it is needed to decide on which type of projects the Net Present Value should be charged, so that it does not hamper the developmental activities in the country.
85. That, in view of the points mentioned in paras 73 to 84, the Central Government seeks modification in the orders of the Hon'ble Court to the extent that the Net Present Value should not be charged in those categories of projects as suggested above in paras 80 to 82 and wherever it has to be charged, it shall be done as per the economic norms. As a first step, the format standardized by the World Bank shall be the basis of calculation of the NPV.

#### **PRAYER**

It is respectfully prayed that the Hon'ble Court may be pleased to pass the orders as requested in para 32, 42, 48, 58, 73 and 85 and revoke the stay on the implementation of the orders dated 5.2.2004, 3.2.2004, 9.2.2004, 7.10.2003, 6.2.2004, 13.1.2004 of the Ministry of Environment & Forests.

I state that what is stated here and above is true and correct.

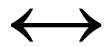
Sd/-

DEPONENT

Sd/-

VERIFICATION

Verified at New Delhi on this 21<sup>st</sup> day of July, 2004 that the contents of the aforesaid affidavit are true and correct.



*“What we are doing to the forests of the world is but a mirror reflection of what we are doing to ourselves and to one another.”*

-Gandhi

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## Campaign for Survival and Dignity

The widespread evictions that followed the letter of the IGF Forests of 3<sup>rd</sup> May 2002 directing eviction of all encroachers on forestlands by 30<sup>th</sup> September 2002 triggered a wave of protests across the adivasi areas of the country. People kept asking how and why the rights of over 1.5 million forest dwelling, predominantly adivasi, families had been extinguished overnight and how the rightful inheritors of the forest had been transformed into encroachers, fit to be evicted. The search for answers, and more importantly, solutions, brought organisations and federations working on issues of forests and forest rights together in 2002 to form the Campaign for Survival and Dignity (CSD). The Campaign began with a single point programme: Stop evictions of subsistence based adivasis and other forest dwellers from their homes in the forest. That challenge was met to a large extent by the letter of the IGF on 30<sup>th</sup> October 2002 and the Common Minimum Program (CMP) of the United Progressive Alliance (UPA) government at the Centre. The second challenge of the Campaign is to ensure that lakhs of forest dwellers with legitimate entitlements stake their claims. The third challenge is to force the State to recognize these rights and entitlements, which are now caught in a bewildering maze of court orders, ministry directives and ground realities. The fourth and perhaps the most challenging is: how can CSD restore the faith of forest communities that their rights will be protected, and that the forest which holds their being and becoming will also continue to survive. The dignity of the adivasi people is rooted not simply in the recognition of their rights, but more importantly in the survival of the forest without which *they* cannot survive. The Campaign firmly believes that Forests and Forest Peoples survive together.

The constituent state federations in the Campaign are Bharat Jan Andolan, National Front for Tribal Self Rule, Adivasi Mahasabha (Gujarat), Jungal Jamin Jan Andolan (Rajasthan), Shoshit Jan Andolan (Maharashtra), Jan Sangharsh Morcha (Madhya Pradesh), Peoples' Alliance for Livelihood Rights (Chhattisgarh), Lok Shakti Sanghatan (Chattisgarh), Campaign for Survival & Dignity (Orissa), Orissa Jan Sangarsh Morcha, Bodikattu Krishikara Sangha (Karnataka), Peoples' Union for Civil Liberties (Tamil Nadu), Adivasi Aikya Vedike (Andhra Pradesh), Adivasi Jungle Janjeevan Andolan (Dadra & Nagar Haveli), National Forum for Forest People and Forest Workers. A number of other organizations and individuals are part of and/or support CSD (see list of jan sunwai participants on page 153).

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CAMPAIGN FOR SURVIVAL AND DIGNITY