

**National Consultation on  
the Draft Forest Rights Bill, 2005**  
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**In Defense of Draft Forest Rights Bill:  
DE –CONSTRUCTING URBAN VIEW OF THE JUNGLE**

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## 1. Why the Draft Forest Rights Bill?

Had the Supreme Court not extinguished the rights of the tribals by staying the regularization of their villages as provided under the Forest Conservation Act of 1980, there would not have been the Draft Scheduled Tribes (Recognition of Forest Rights) Bill, 2005.

By introducing the Forest Conservation Act, the government of India made hundreds of thousands of tribals who have been living in the forest areas for generations as encroachers on the midnight of 24 October 1980. The National Commission on Scheduled Castes and Scheduled Tribe noted that in Madhya Pradesh alone, 1.48 lakh persons, mainly tribals, occupying 1.81 lakh hectares of lands in forest areas suddenly became encroachers from 25 October 1980, and thus liable for eviction.<sup>1</sup>

Yet, the Forest Conservation Act rightly provided the mechanisms to regularise tribal villages in the forest under certain strict guidelines. The State governments and Central government sat over the regularisation processes until the Supreme Court stayed the same on 23 November 2001 in the case of *Godavarman Thirumalpad vs Union of India* in Interlocutory Application No.703 in Writ Petition No. 202/95. After the Supreme Court order even those tribal people whose rights were recognised under the Forest Conservation Act also effectively became encroachers.

In both the processes – whether drafting the Forest Conservation Act or filing of the public interest litigation, the victims – the tribal peoples and other forest dwellers being the effected groups were not heard.

Substantively, the Draft Forest Rights Bill offers nothing new. The cut off date for recognising land rights is still 25 October 1980. The only new elements in the Bill are the role of the tribals or communities in the conservation of forest which basically reflect the National Forest Policy of 1988 and international standards on conservation of forest and environment like the Agenda 21 of the Rio Declaration of the United Nations Convention on Environment and Development (UNCED) which urges the Governments to “promote and provide opportunities for the participation of interested parties, including local communities and indigenous people, industries, labour, non-governmental organizations and individuals, forest dwellers and women, in the development, implementation and planning of national forest policies”.<sup>2</sup>

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<sup>1</sup> . People's Democracy, Weekly Organ of the Communist Party of India (Marxist), Vol. XXVII, No. 01, January 05, 2003

<sup>2</sup> . REPORT OF THE UNITED NATIONS CONFERENCE ON ENVIRONMENT AND DEVELOPMENT (Rio de Janeiro, 3–14 June 1992), Annex III “NON-LEGALLY BINDING AUTHORITATIVE STATEMENT OF PRINCIPLES FOR A GLOBAL CONSENSUS ON THE MANAGEMENT, CONSERVATION AND SUSTAINABLE DEVELOPMENT OF ALL TYPES OF FORESTS”

Since the UNCED, significant progress has been made especially with the adoption of the United Nations Convention on Biological Diversity (CBD) and establishment of United Nations Forum on Forest in 2000.

In all the decisions taken by the Conference of Parties of the CBD and United Nations Forum on Forest, the role of indigenous and tribal peoples, local communities etc in the management, conservation and sustainable development of all types of forest and biological diversity has been recognised.

Yet, in India, many environmentalists still advocate management of forest, wildlife and other bio-diversity with complete exclusion of tribal people, local communities or forest dwellers as if the Conference of Parties of the CBD and United Nations Forum on Forest – which are intergovernmental bodies - are out to destroy the forest and biological diversity by strongly recommending full and effective participation of these people! It is ironically clear that many Indian conservationists are lagging behind the government in terms of ensuring respect for international agreements on conservation of nature.

The Draft Forest Rights Bill is being demonised, especially with regard to the vesting of 2.5 hectares of land to each nuclear tribal family. Some demonise it purposely to mislead, some having not read the Draft Bill. Both are equally dangerous as the Bill unequivocally states that it will benefit only *“those forest dwelling Scheduled Tribes who are living in the areas in which they are scheduled and in occupation of land since before October 25, 1980”*.

Those who oppose the Bill on the ground that giving 2.5 hectares of land for “bonafide livelihood means” will destroy the forest do not take into account one fact – had the government of India was responsive to its citizens, most importantly the vulnerable groups and was serious about implementation of the Forest Conservation Act of 1980, all these tribal people would have been allotted the lands in any case. The tribals are being forced to struggle which is already accorded under the Forest Conservation Act.

The differentiation between the pre-1980 and post-1980 encroachments is quite immaterial at the ground level. For the Adivasis, the Adivasi activists or their support groups, to accept the 25 October 1980 as the cut-off date is quite challenging – having questioned the arbitrariness of the Forest Conservation Act. And the question of arbitrariness is not without any basis.

As the National Commissioner for Scheduled Castes (SCs) and Scheduled Tribes (STs) in his foreword note to *"Resolution of conflicts Concerning Forests Lands - Adoption of a Frame by the Government of India"* at para 39 on page 9 lucidly explained: "If the claims of the tribal people are to be determined on the basis of the record of the forest department or at best, record of other government departments, his claim is as good as lost. It is the fact of possession, of law, its cultivation and actual reclamation, in some

cases by his ancestors which is the common knowledge of the village which is the basis of his claim. These facts may or may not have been brought on record. The reasons for this dissonance are many. For example, the official may not have visited the area or may have preferred not to take note of the cultivation, or may not have bothered to bring it on record and such like. They are of no concern of the tribal people. They cannot be expected to know what is there in government records. In these circumstances if the records are to be insisted upon, the disputes about land can never be expected to be resolved".<sup>3</sup>

It is more difficult to accept the cut-off date when the Ministry of Environment and Forest, which is reportedly opposing the Draft Forest Rights Bill now, in its circular in February 2004 titled "*Regularisation of the rights of the tribals on the forest lands*" extended the date for regularisation of alleged "encroachments" by tribals to December 1993 (instead of October 1980 under the FCA).

Even if the Draft Forest Rights Bill means eviction of millions of tribal people under the 25 October 1980 cut off date, there is a need to adopt the law for two reasons:

First, the rights of those tribal people who have been living in the forest areas and have the documentary evidence, despite the tradition of oral history, to meet the criteria as given under the Forest Conservation Act must be recognised. There is a need for a law to exercise the rights – to stop forcible evictions and other human rights violations in the process.

Second, the harassment of the tribals by forest officials under the Forest Conservation Act must be addressed. If one were to go by the reports of the Ministry of Environment and Forest, the forest officials are the most honest in the country. When parliamentary questions are raised as to the violations of the Forest Conservation Act, the Ministry submits only violations by major projects. The Ministry of Environment and Forest never reports about the arrest of tribal people.

On 11 October 2004, the State government of Orissa reportedly directed the Forest Department to withdraw all 11,424 minor cases involving forest produce of less than Rs 100. In a country infamous for judicial delay and Forester Raj, the implications of thousands of cases filed under the Forest Conservation Act are imaginable. Tribals are often harassed in petty forest offences while the timber mafia continues its business with virtual impunity.<sup>4</sup> If Forest Department prepares a report similar to the one prepared by National Crime Record Bureau and desegregates the data, the intensity and patterns of violations of the rights of tribals will come up.

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<sup>3</sup> . *ibid.*

<sup>4</sup> . Govt to withdraw 11,424 cases against tribals, *The Pragativadi*, 12 October 2004

It is also essential to clear some of the mis-conceptions about the Forest Rights Bill.

The Draft Forest Rights Bill is not about holding pristine tribal culture where poor and semi-clad tribals will continue with *their way of life* with no access to basic amenities. The mainstream society must not look from the narrow prism of Yanomamis in Amazon or Jarwas in Andaman and Nicobar. If some tribals want to live the way they are at present whatever the circumstances, they have the right to do so – it is their land over which they have the right. It is accepted under customary international law. The United Nations Human Rights Committee in its General Comment on Article 27 of the International Covenant on Civil and Political Rights relating to minorities observed that “culture manifests itself in many forms, including a particular way of life associated with the use of land resources, especially in the case of indigenous peoples. That right may include such traditional activities as fishing or hunting and the right to live in reserves protected by law. The enjoyment of those rights may require positive legal measures of protection and measures to ensure the effective participation of members of minority communities in decisions which affect them”.<sup>5</sup>

Overwhelming majority of the tribal populations simply do not have other avenues but will continue to remain where they are despite the harassment and repression by the forest officials. Every year thousands of indigenous peoples from Orissa reportedly migrate to other parts of the country especially Mumbai, Hyderabad, Surat and Assam in search of livelihood. Between March-May 2004, more than 8,000 indigenous peoples from Paralakhemundi district, 2500 tribals from Gumma block of Orissa reportedly left for Mumbai.<sup>6</sup> But, not every tribal is going to migrate and those who live in their forest areas must have their rights which are recognized under the laws of the country.

The Draft Forest Rights Bill 2005 is about the entitlement of about 8.1 percent of the total population of the country who in 1991 constituted about 55.16% of total displaced people. Many of those have been displaced to create “protected areas” but never properly rehabilitated or compensated.

## **2. Dwindling forest cover: Diversion of forest land and the failure of afforestation programmes**

Are the tribals who have been living in the forest, albeit without legal rights as their villages have not been regularised, responsible for dwindling forest cover in the country?

In the *State of Forests Report, 2001*, the MoEF stated, “... forests are very significant to the tribal economy, as they are a source of subsistence and livelihood for the tribal

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<sup>5</sup> . Contained in document HRI/GEN/1/Rev.6, 12 May 2003.

<sup>6</sup> . Exodus of tribals reaches climax, The Pragativadi, 7 May 2004

communities. It is commonly believed that the tribal communities live in harmony with nature and protect forests. Out of 593 districts in the country, 187 districts have been identified as tribal districts. The report also revealed that the total forest cover in these tribal districts is 404,087 km<sup>2</sup>. It constitutes 36.62 percent of the total geographic area of the tribal districts. The forest cover in the tribal districts constitutes 59.8 percent of the total forest cover of the country whereas the geographic area of 187 tribal districts forms only 33.6 percent of the total geographic area of the country. It demonstrates that tribal districts are generally rich in forest cover, and hence forest resources. Enhanced investments in forestry activities can be used as an instrument for rapid economic development of tribal communities...<sup>7</sup>

In its circulars in February 2004 - *“Regularisation of the rights of the tribals on the forest lands”* and *“Stepping up of process for conversion of forest villages into revenue villages”*, the Ministry of Environment and Forest asserted that the circulars *“do not relate to encroachers, but to remedy a serious historical injustice”* and that *“(this) will also significantly lead to better forest conservation”*.

The 2003 Forest Report reported increase of forest cover in States in the North East and tribal areas in Jharkhand, Orissa, Tamil Nadu, Himachal Pradesh, West Bengal and Sikkim, while Chattisgarh and Madhya Pradesh showed decline.

The key problem is diversion of forest land for non-forest activities.

Over 10,000 hectares of forest land are being diverted for non-forest use annually in India.<sup>8</sup> Since 1980, 11,282 developmental projects involving 9.81 lakh hectares of forestland have been approved<sup>9</sup> which is about 73% of the total encroached area. Proposals for various other projects (not just developmental) are pending that will affect a total of 7713.9 ha of forest area.<sup>10</sup>

Why is there silence from those environmental groups who are opposing the Forest Rights Bill on the ground that it will destroy the forest when the government diverts tens of thousands of hectares of lands for non-forest activities such as for various development projects like power, irrigation, construction of roads, railway lines, drinking water supply, mining, nuclear mining etc? These activities are defined as “public interest”. It appears that “public” does not include the tribal people.

Or is it because the governments are fulfilling the conditions of the Forest (Conservation) Act, 1980 of raising compensatory afforestation over equivalent non-forest land

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<sup>7</sup> . <http://envfor.nic.in/nfc/s-chap-2.pdf>

<sup>8</sup> . LOK SABHA STARRED QUESTION NO 662, 13.05.2002

<sup>9</sup> Answer by MoS MoEF to Lok Sabha Unstarred Question No. 855, 06.12.2004.

<sup>10</sup> Answer by MoS MoEF to Lok Sabha Unstarred Question No. 1595, 14.03.2005.

(transferred to Forest Department) or double degraded forest land, as the case may be? Unfortunately, the case is not the same.

Of the 9,54,839.026 ha of lands which was diverted from 1980 to 31.03.2004 for development projects, only 7.3% of the legally required compensatory afforestation for these diversions has been done. Of the 31 States/UT's, 21 States/Union Territories have done no compensatory afforestation at all.<sup>11</sup>

During the period 1999-2000 and 2001-20002, funds to be realised from States and Union territories was Rs 809.72 crores out of which funds actually realised was Rs 671.49 crores, out of which only Rs 391.15 crores were utilised.<sup>12</sup> Only 48% of the funds to be realised were actually utilised.<sup>13</sup>

Does the afforestation programmes restore the bio-diversity? What about the gestation period? Or do we go beyond notified forests (whether deemed, preliminary or final) and all lands 'recorded' as forests in government records to even all lands conforming to the "dictionary definition of forest", irrespective of ownership" (Interim order of 26.12.1996). Then you will have interpretational corrections – crops like cotton or Sugarcane were showing as dense forest.<sup>14</sup>

Some of the replies given in the parliament on diversion of forest land for non-forest activities are given below:

### **a. Mining**

There are mining and mining in this country – legal mining, illegal mining, nuclear mining etc.

Up to 1994, 90,695 hectares of forest had been leased to mining companies, of which 58.7% still has forest cover.<sup>15</sup> After 1995, 73,915 hectares of forest land have been diverted for mining companies<sup>16</sup>, of which 297 proposals for 20,295 hectares were cleared in the last three years.<sup>17</sup> This makes for a total of 16,4,610 hectares leased/diverted for mines.

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<sup>11</sup> *Forests and Wildlife Statistics 2004*, MoEF, September 2004.

<sup>12</sup> . Lok Sabha Unstarred Question No. 2047, 29-07-2002

<sup>13</sup> . Ibid

<sup>14</sup> . Forest Survey: Cover Up, but density down, The Times of India, New Delhi, 21 July 2005

<sup>15</sup> State of Forests Report, 1999, FSI.

<sup>16</sup> Answer by MoS MoEF to Lok Sabha Unstarred Question No. 2770, 21.03.2005.

<sup>17</sup> Answer by MoS MoEF to Lok Sabha Unstarred Question No. 3158, 20.12.2004.

Between 2001-2004, 26 proposals covering 2,482 hectares of forest were diverted for mines in Orissa<sup>18</sup>.

During 1997-1999, 5164.05 hectares of forest land have been approved for mining purposes in Andhra Pradesh where 625.84 hectare is for fresh mining and 4538.21 hectare (including 4147 hectare for renewal of underground mining of coal) is for renewal of mining lease.<sup>19</sup>

Between 1996 and 2000, total 296 number of proposals for diversion of forest land for mining purposes were received under section-2 of Forest (Conservation) Act, 1980 from the State Government of Rajasthan. Out of these 296, 172 have been approved, 28 have been rejected, 15 have been returned /withdrawn/closed for want of information, 65 are pending with State Government for furnishing essential information/reports and 16 proposals are under consideration of the Ministry.<sup>20</sup>

### **b. Industrial projects**

Clearances for 482 industrial projects have been granted between 01.01.02 and 31.05.05.<sup>21</sup> In January 2004, the Orissa High Court reportedly stayed the acquisition of tribal lands by Jindal Steel Company in Deojhar village of Keonjhar district. The court also served show cause notice on the state government. A writ petition filed by 77 Adivasi people including one Phutakar Munda alleged that the company illegally acquired lands in tribal populated Sialijoda and Ketabeda villages of Deojhar. Large portion of about 244.68 acres of lands already acquired by the company include cultivable lands, grazing field and forestlands. At the end of the year, the dispute continued.<sup>22</sup>

STATEMENT IN RESPECT OF PARTS (a) to (e) OF THE LOK SABHA UNSTARRED QUESTION NO. 7543 ON 'DIVERSION OF FOREST LAND' FOR 15.5.2000.<sup>23</sup>

Sl. No.	Name	State	Status
1	Allain Duhangan HEP, Kullu	Himachal Pradesh	Site Inspection Report from Regional Office is awaited.
2	Laying of 66 KV	Himachal	Under submission for decision.

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<sup>18</sup> Answer by MoS MoEF to Lok Sabha Unstarred Question No. 3158, 20.12.2004.

<sup>19</sup> . LOK SABHA UNSTARRED QUESTION NO 105 TO, 20.11.2000

<sup>20</sup> . LOK SABHA UNSTARRED QUESTION NO 4324, 21.08.2000

<sup>21</sup> Answer by MoS MoEF to Lok Sabha Starred Question No. 324, 18.04.2005.

<sup>22</sup>. HC imposes stay on acquisition of land by Jindal Steels, Govt. served show cause notice, The Dharitri, 16 January 2004

<sup>23</sup> LOK SABHA UNSTARRED QUESTION NO 7543, 15.05.2000

	transmission line in Kinnaur distt.	Pradesh	
3	132 KV T/line Rewa-Sidhi	Madhya Pradesh	Under submission for decision.
4	BORL oil pipeline Jhabua-Vidisha	Madhya Pradesh	Under submission for decision.
5	Rahbeda dam by MPEB	Madhya Pradesh	Under submission for decision.
6	Const. of power plant, Chandrapur	Maharashtra	Under submission for decision.
7	Malsej ghat pumped storage scheme in Thane	Maharashtra	Under submission for decision.
8	Amravati-Narkhed BG line	Maharashtra	Under submission for decision.
9	Panvel-Karjat Railway line	Maharashtra	Under submission for decision.
10	233 KV Etappalli-Dhamregad line	Maharashtra	Under process.
11	Construction of Jhansinagar lift irrigation scheme in Bhandra	Maharashtra	Additional information received from State Government and under process.
12	Ukai left bank canal	Gujarat	Under submission for decision.
13	Const. of Nimmavagu project, Khammam	Andhra Pradesh	Under submission for decision.
14	220 KV line from IB Thermal- Budhipadar, Sambalpur	Orissa	Under process. To be discussed in next SAG meeting.
15	Siyatigad-Ram Mandir Chakbora Road	Uttar Pradesh	Under submission for decision.
16	Kalsi-Kahanahra road	Uttar Pradesh	Under process. To be discussed in next SAG meeting.
17	Qwansi Damta road	Uttar Pradesh	Under submission for decision.
18	Tuivai Hydro Electric Project	Mizoram	Under submission for decision.

### c. Hydroelectric projects

The State Government of Andhra Pradesh reported that during 2001-02, violation of Forest (Conservation) Act, 1980 has taken place in construction of Karka Reservoir Irrigation Tank in Vishakhapatnam and dumping of overburden in Karimnagar district by M/s Singareni Collieries Company Ltd.<sup>24</sup>

<sup>24</sup> . LOK SABHA STARRED QUESTION NO 401, 22.04.2002

The list of the pending cases for 2001-02 where violations have been reported in the project proposals is given below:

ANNEXURE REFERRED TO IN REPLY TO PART (a) OF THE STATEMENT OF THE LOK SABHA STARRED QUESTION NO. 401 BY SHRI N.T. SHANMUGAM REGARDING `VIOLATION OF FOREST (CONSERVATION) ACT, 1980` DUE FOR REPLY ON 22.04.2002.

#### PROPOSAL

Diversion of 571.30 hectares forest land for construction of Subansiri Lower Hydroelectric Project, Assam

Diversion of 24.98 hectares forest land for construction of Dalwel-II percolation tank, Maharashtra

Diversion of 569.72 hectares forest land for construction of Karwaffa Nalla Medium Irrigation Project, Maharashtra

Diversion of 45.148 hectares forest land for renewal of fireclay mines of Shri B.C. Sahu, Orissa

Diversion of 34.00 hectares forest land for establishment of industrial estate at Namsai, Arunachal Pradesh

Diversion of 25.93 hectares forest land for establishment of industrial estate at Bogapani, Arunachal Pradesh

Diversion of 1.816 hectares of forest land in favour of Army, Rajasthan

Diversion of 4.077 hectares of forest land for mining of masonry stone by Nawab Ali, Rajasthan

Diversion of 0.0098 hectares of forest land for renewal of 9 leases, Uttaranchal

Diversion of 4.8718 hectares of forest land for lease of Rampur Jagir, Uttar Pradesh

Diversion of 7.05 hectares of forest land for Tembju Lift irrigation project, Maharashtra

Diversion of 0.21 hectares of forest land for road, Dadra & Nagar Haveli

Diversion of 1.30 hectares of forest land for road, Dadra & Nagar Haveli

Diversion of 18.2296 hectares of forest land for renewal of asbestos mine by Shri B.L. Newatia, Orissa.

Stone quarry by Shri Anil Kumar, Jharkhand

Diversion of 2.02 hectares of forest land for renewal of mining lease of B. Tiwari, Jharkhand

Diversion of 0.90 hectares of forest land for renewal of mining lease of Bajrang Stone Works, Jharkhand

Diversion of 0.0154 hectares of forest land for approach road on Nabha-Malerkotla road, Punjab

Diversion of 0.084 hectares of forest land for Engineering College owned by M/s Saptagiri Education Trust, Kanceepuram, Tamilnadu

Diversion of 6.4752 hectares of forest land for construction of Yeluru Right Bank Canal, Andhra Pradesh

Diversion of 11.84 hectares of forest land in favour of Tamilnadu Mineral Development Corp. (TAMIN), Tamilnadu

Karnataka Government had sought permission under Forest (Conservation) Act, 1980 for diversion of forest land in respect of Kaiga Nuclear Power Plant and this proposal was approved on 6.8.1987<sup>25</sup>

#### **d. Nuclear Mining**

ANNEXURE REFERRED TO IN THE STATEMENT IN REPLY TO PARTS (c) AND (d) OF THE LOK SABHA STARRED QUESTION NO. 408 BY SHRI AMBAREESHA REGARDING "RELEASE OF FOREST LAND FOR NUCLEAR POWER PLANTS" DUE FOR REPLY ON 12.08.2002.<sup>26</sup>

S. No.	State	No. of proposals received	Approved	Rejected	Rejected for want of information	Returned/with drawn by the State Govt.	Under process by	Pending with States for
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<sup>25</sup> . LOK SABHA STARRED QUESTION NO 408, 12.08.2002

<sup>26</sup> . Ibid.

							Ministry	additional information
1.	Assam	40	32	4	0	2	1	1
2.	Arunachal Pradesh	50	41	1	2	0	1	5
3.	Andhra Pradesh	80	47	10	1	5	9	8
4.	A & N Island	24	21	0	0	1	0	2
5.	Bihar	12	7	0	1	3	1	0
6.	Chandigarh	13	11	0	0	0	2	0
7.	Chhattisgarh	58	24	2	0	2	5	25
8.	D&N Haveli	113	62	17	1	1	13	19
9.	D & Diu	1	0	0	0	0	0	1
10.	Delhi	6	2	0	1	1	0	2
11.	Goa	25	7	1	0	0	1	16
12.	Gujarat	346	253	23	15	18	4	33
13.	Haryana	167	139	1	6	0	4	17
14.	Himachal Pr.	238	135	10	27	6	4	56
15.	Jharkhand	40	11	1	6	1	3	8
16.	Karnataka	141	75	17	11	6	2	30
17.	Kerala	31	19	1	2	2	2	5
18.	Manipur	3	2	0	0	1	0	0
19.	Meghalaya	42	39	2	0	0	1	0
20.	Madhya Pra.	125	65	11	4	8	20	17
21.	Mizoram	12	10	0	0	0	0	2
22.	Maharashtra	371	207	49	6	13	43	53
23.	Punjab	433	305	5	23	7	1	92
24.	Orissa	91	49	2	11	9	6	14
25.	Sikkim	36	36	0	0	0	0	0
26.	Rajasthan	94	58	6	9	9	0	12
27.	Tamil Nadu	61	50	3	2	0	4	2
28.	Tripura	107	100	2	2	1	1	1
29.	West Bengal	9	5	0	0	2	0	2
30.	Uttar Pradesh	103	84	7	3	5	2	2
31.	Uttaranchal	917	753	43	12	49	10	50
	<b>TOTAL</b>	<b>3789</b>	<b>2649</b>	<b>218</b>	<b>145</b>	<b>152</b>	<b>140</b>	<b>475</b>

### e. Compensatory afforestation - How serious is it?

As stated above, of the 9,54,839.026 ha of lands which was diverted from 1980 to 31.03.2004 for development projects, only 7.3% of the legally required compensatory afforestation for these diversions has been done. Of the 31 States/UT's, 21 States/Union Territories have done no compensatory afforestation at all.<sup>27</sup>

<sup>27</sup> *Forests and Wildlife Statistics 2004*, MoEF, September 2004.

During the period 1999-2000 and 2001-20002, funds to be realised from States and Union territories was Rs 809.72 crores out of which funds actually realised was Rs 671.49 crores, out of which only Rs 391.15 crores were utilised.<sup>28</sup> Only 48% of the funds to be realised were actually utilised.<sup>29</sup>

Statewise position of utilization of funds deposited by user agency for compensatory afforestation against diversion of forest land during the years 1999-2000, 2000-01 and 2001-2002(Rs. In lakhs):<sup>30</sup>

S. No.	Name of State/Uts	Funds to be realised from user agency	Funds actually realised	Money spent	Percentage of realized money spent
1	Andhra Pradesh	7034	7165	3421	47.74
2	Arunachal Pradesh	1156	897	230	26.64
3	Assam	566	566	136	24.02
4	Bihar	175	38	3	7.89
5	Goa	367	365	261	71.5
6	Gujarat	10034	9679	7119	73.55
7	Haryana	939	820	134	16.34
8	Himachal Pradesh	1960	1875	1046	55.78
9	Jammu & Kashmir	954	90	0	0
10	Karnataka	5346	5248	4691	89.38
11	Kerala	11623	6077	5287	87
12	Madhya Pradesh	7045	6106	2100	34.39
13	Maharashtra	16452	12918	8223	63.66
14	Manipur	0.05	0.05	0	0
15	Meghalaya	96	0	0	
16	Mizoram	1338	607	267	43.99
17	Orissa	4130	3853	1296	33.63
18	Punjab	1820	1703	1018	59.77
19	Rajasthan	2269	1994	750	37.61
20	Sikkim	612	612	342	55.88
21	Tamilnadu	528	482	103	21.36
22	Tripura	177	177	33	18.64
23	Uttar Pradesh	2091	1723	928	53.85
24	Uttaranchal	3308	3229	1158	35.86
25	West Bengal	744	739	554	74.96
26	A&N Island	90	84	15	17.85
27	D&N Haveli	118	102	0	0
	<b>Total</b>	<b>80972.05</b>	<b>67149</b>	<b>39115</b>	

<sup>28</sup> . Lok Sabha Unstarred Question No. 2047, 29-07-2002

<sup>29</sup> . Ibid

<sup>30</sup> . Lok Sabha Unstarred Question No. 2047 for answer on 29-07-2002

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### 3. Conservation of wildlife: Does one blame the victims of trafficking or the traffickers?

After the recent reports of the reduction of tiger population in Sariska wild life area, a red herring has been raised to state that the Draft Forest Bill will further reduce the tiger population in the country.

This notion is akin to blaming the victims of trafficking and not the organized criminal groups who force hundreds of thousands of women and children across the world into contemporary forms of slavery.

It is only in India that some conservationists still question the role of the tribal people/local communities in the conservation of forest, protected areas and biological diversity and advocate the idea of protected areas without any human beings.

The United Nations Convention on the Biological Diversity should be instructive. Article 8 (j) and other related provisions of the CBD make it legally binding for the States that “the establishment, management and monitoring of protected areas should take place with the full and effective participation of, and full respect for the rights of, indigenous and local communities consistent with national law and applicable international obligations”.

In fact one of the decisions taken by 7<sup>th</sup> Conference of Parties of the Convention on Biological Diversity held from the 9 to 20 February 2004 in Kuala Lumpur is to ensure “full and effective participation by 2008, of indigenous and local communities, in full respect of their rights and recognition of their responsibilities, consistent with national law and applicable international obligations, and the participation of relevant stakeholders, in the management of existing, and the establishment and management of new protected areas”.

A cursory scrutiny of the decision taken by 7<sup>th</sup> Conference of Parties on Protected Areas illustrates the role of the indigenous tribal peoples, local communities and other forest dwellers:

<b>COP7 - Decision VII/28 on Protected Areas<sup>31</sup></b>	<b>Reference</b>	<b>Language on</b>
<i>Recalls</i> the obligations of the Parties towards indigenous and local communities in accordance with Article 8(j) and related provisions and <i>notes</i> that the establishment, management and monitoring of protected areas should take place with the full and	VII/28 Decision 22 (p 12622)	Rights

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<sup>31</sup>. Indigenous Peoples & the Decisions of the Convention on Biological Diversity: a Guide – comprehensive compilation by Forest Peoples Programme of the relevant decisions, Forest Peoples Programme, United Kingdom

effective participation of, and full respect for the rights of, indigenous and local communities consistent with national law and applicable international obligations		
Full and effective participation by 2008, of indigenous and local communities, in full respect of their rights and recognition of their responsibilities, consistent with national law and applicable international obligations, and the participation of relevant stakeholders, in the management of existing, and the establishment and management of new protected areas.	VII/28 PoW, Programme Element (PE) 2, Target of Goal 2.2 (p 1273)	- Rights - Participation in PA mgmt & establishment
Implement specific plans and initiatives to effectively involve indigenous and local communities, with respect for their rights consistent with national legislation and applicable international obligations, and stakeholders at all levels of protected areas planning, establishment, governance and management, with particular emphasis on identifying and removing barriers preventing adequate participation	VII/28 PoW, PE 2, Goal 2.2, activity 2.2.2 (p 1273)	- Rights - Participation in planning, establishment, governance, mgmt
Promote an enabling environment (legislation, policies, capacities and resources) for the involvement of indigenous and local communities and relevant stakeholders in the decision making, and the development of their capacities and opportunities to establish and manage protected areas, including community-conserved and private protected areas.	VII/28 PoW, PE 2, Goal 2.2, activity 2.2.4 (p 1273)	- Participation in decision-making - Capacity development
Ensure that the resettlement of indigenous communities as a consequence of the establishment or management of protected areas will only take place with their prior informed consent that may be given according to national legislation and applicable international obligations.	VII/28 PoW, PE 2, Goal 2.2, activity 2.2.5 (p 1273) - PIC	- PIC
By 2006, conduct, with the full and effective participation of indigenous and local communities and relevant stakeholders, national-level reviews of existing and potential forms of conservation, and their suitability for achieving biodiversity conservation goals, including innovative types of governance for protected areas that need to be recognised and promoted through	VII/28 PoW, PE 1, Goal 1.1. activity 1.1.4 (p 1267)	- Participation in national PA reviews - CCAs

legal, policy, financial, institutional and community mechanisms, such as protected areas run by government agencies at various levels, co-managed protected areas, private protected areas, indigenous and local community conserved areas.		
Encourage the establishment of protected areas that benefit indigenous and local communities, including by respecting, preserving and maintaining their traditional knowledge in accordance with article 8(j) and related provisions	VII/28 PoW, PE 1, Goal 1.1, activity 1.1.7 (p 1268)	- PA for the benefit of indigenous & local communities - TK in PA mgmt
Create a highly participatory process, involving indigenous and local communities and relevant stakeholders, as part of site-based planning in accordance with the ecosystem approach, and use relevant ecological and socio-economic data required to develop effective planning processes.	VII/28 PoW, PE 1, Goal 1.4, activity 1.4.1 (p 1270)	- Participation in site based planning
Develop policies, improve governance, and ensure enforcement of urgent measures that can halt the illegal exploitation of resources from protected areas, and strengthen international and regional cooperation to eliminate illegal trade in such resources taking into account sustainable customary resource use of indigenous and local communities in accordance with article 10c of the Convention	VII/28 PoW, PE 1, Goal 1.5, activity 1.5.6 (p 1271)	- Customary resource use (art. 10c)
Assess the economic and socio-cultural costs, benefits and impacts arising from the establishment and maintenance of protected areas, particularly for indigenous and local communities, and adjust policies to avoid and mitigate negative impacts, and where appropriate compensate costs and equitably share benefits in accordance with national legislation.	VII/28 PoW, PE 2, Goal 2.1, activity 2.1.1 (p 1272)	- Mitigation of negative impacts of PAs on indigenous & local communities
Recognise and promote a broad set of protected area governance types related to their potential for achieving biodiversity conservation goals in accordance with the Convention, which may include areas conserved by indigenous and local communities and private nature reserves. The	VII/28 PoW, PE 2, Goal 2.1, activity 2.1.2 (p 1272)	- CCAs

promotion of these areas should be by legal and/or policy, financial and community mechanisms		
Establish policies and institutional mechanisms with the full participation of indigenous and local communities, to facilitate the legal recognition and effective management of indigenous and local community conserved areas in a manner consistent with the goals of conserving both biodiversity and the knowledge, innovations and practices of indigenous and local communities	VII/28 PoW, PE 2 , Goal 2.1, activity 2.1.3 (p 1272)	- Participation in mgmt of PAs - TK in PA mgmt
Engage indigenous and local communities and relevant stakeholders in participatory planning and governance, recalling the principles of the ecosystem approach	VII/28 PoW, PE 2 , Goal 2.1, activity 2.1.5 (p 1272)	- Participation in planning & governance of PAs
Identify and establish positive incentives that support the integrity and maintenance of protected areas and the involvement of indigenous and local communities and stakeholders in conservation	VII/28 PoW, PE 3, Goal 3.1, activity 3.1.6 (p 1274)	- Participation
Encourage development and use of appropriate technology, including technologies of indigenous and local communities with their participation, approval and involvement in accordance with Article 8j and Related Provisions, for habitat rehabilitation and restoration, resource mapping, biological inventory, and rapid assessment of biodiversity, monitoring, <i>in situ</i> and <i>ex situ</i> conservation, sustainable use, etc	VII/28 PoW, PE 3 , Goal 3.3, activity 3.3.3 (p 1276)	- Participation - TK in PA mgmt

### 3.1. Poaching and failure of law enforcement: The main problem

Are the poor tribals who are dispossessed but never properly rehabilitated or compensated to be blamed for the failure of the State to enforce the Wildlife Protection Act of 1972?

“An independent agency was commissioned to compile and analyse available country-level tiger poaching data over a period of five years (1999 to 2003). The data collected records of 411 cases during the five years out of which 184 records relate to mortality and

238 records relate to seizures<sup>32</sup>, stated the affidavit of the government of India before the Supreme Court of India.<sup>32</sup>

It is believed that in the past 10 years 1,500 tigers have been killed and Rs 900 crore earned by poachers. A tiger skin is worth Rs 10 to 12 lakh and the value of each poached tiger is Rs 60 lakh.<sup>33</sup>

Poaching by organised networks of smugglers remains the most serious and major cause of decrease in the population of the endangered species including the tiger throughout the country. Statistics available with the Wildlife Protection Society of India<sup>34</sup> (WPSI) revealed that 95 tigers have been killed in 1994, 121 tigers in 1995, 52 tigers in 1996, 88 tigers in 1997, 44 tigers in 1998, 81 tigers in 1999, 53 tigers in 2000, 72 tigers in 2001, 43 tigers in 2002, and 35 tigers in 2003.<sup>35</sup> At the Kaziranga National Park in Assam, about 41 rhinoceros were killed by poachers in 1986, 27 in 1987, 26 rhinoceros killed in 1996.

In October 2003, custom officers in the Tibet Autonomous Region of China reportedly intercepted a record haul of 31 tiger skins and 581 leopard skins being trucked to the capital Lhasa.<sup>36</sup> A report of the Centre for Environment and Science after visiting scores of villages inside the Sariska Tiger Reserve in March 2003 blamed the forest officials for the loss of the tigers. It found that concerned forest officials were complacent and negligent in their duty and that enabled the poachers to kill the endangered species.<sup>37</sup>

According to the WPSI, 42 persons have been arrested in 1994,<sup>38</sup> 153 in 1995,<sup>39</sup> 38 in 1996,<sup>40</sup> 66 in 1997,<sup>41</sup> 12 in 1998,<sup>42</sup> 34 in 1999,<sup>43</sup> 47 in 2000,<sup>44</sup> 104 in 2001,<sup>45</sup> 93 in 2002,<sup>46</sup> 46 in 2003,<sup>47</sup> throughout India in connection either with poaching or smuggling of wildlife products including tigers. An average of 9-12 poachers are shot by staff every year<sup>48</sup> at the Kaziranga National Park in Assam, 60 were killed during the 1990s.<sup>49</sup>

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<sup>32</sup> . Cases linked to tiger deaths total 411 in 5 yrs: Centre, The Indian Express, 18 May 2005

<sup>33</sup> . Tiger, tiger, losing fight, The Tribune, 29 May 2005

<sup>34</sup> . <http://www.wpsi-india.org/statistics/index.php>

<sup>35</sup> . <http://www.wpsi-india.org/statistics/index.php>

<sup>36</sup> . Tibet is hub in tiger trade' The Deccan Herald, 30 April 2005

<sup>37</sup> . Sariska tigers missing or dead? The Hindu, 12 March 2005

<sup>38</sup> . [http://www.wpsi-india.org/statistics/1994\\_statistics.php](http://www.wpsi-india.org/statistics/1994_statistics.php)

<sup>39</sup> . [http://www.wpsi-india.org/statistics/1995\\_statistics.php](http://www.wpsi-india.org/statistics/1995_statistics.php)

<sup>40</sup> . [http://www.wpsi-india.org/statistics/1996\\_statistics.php](http://www.wpsi-india.org/statistics/1996_statistics.php)

<sup>41</sup> . [http://www.wpsi-india.org/statistics/1997\\_statistics.php](http://www.wpsi-india.org/statistics/1997_statistics.php)

<sup>42</sup> . [http://www.wpsi-india.org/statistics/1998\\_statistics.php](http://www.wpsi-india.org/statistics/1998_statistics.php)

<sup>43</sup> . [http://www.wpsi-india.org/statistics/1999\\_statistics.php](http://www.wpsi-india.org/statistics/1999_statistics.php)

<sup>44</sup> . [http://www.wpsi-india.org/statistics/2000\\_statistics.php](http://www.wpsi-india.org/statistics/2000_statistics.php)

<sup>45</sup> . [http://www.wpsi-india.org/statistics/2001\\_statistics.php](http://www.wpsi-india.org/statistics/2001_statistics.php)

<sup>46</sup> . [http://www.wpsi-india.org/statistics/2002\\_statistics.php](http://www.wpsi-india.org/statistics/2002_statistics.php)

<sup>47</sup> . [http://www.wpsi-india.org/statistics/2003\\_statistics.php](http://www.wpsi-india.org/statistics/2003_statistics.php)

<sup>48</sup> . [http://www.unep-wcmc.org/igcmc/s\\_sheets/worldh/kazirang.htm](http://www.unep-wcmc.org/igcmc/s_sheets/worldh/kazirang.htm)

Between 1997-2000, as per information available in the Ministry of Environment and Forest, 145 incidents of poaching have occurred in the State of Rajasthan and in all the incidents cases have been registered.<sup>50</sup>

According to the information given by the Ministry of Environment and Forest, the following statistics of arrests and detention have been given:

“(i) Seizure of three Tigers skins, 50 Leopard skins and 5 otter skins at Sahibabad, Uttar Pradesh border on 18.12.1999.

(ii) Seizure of 4 Tigers skins, 70n Leopard skins, 18,000 Leopard claws, 132 Tiger claws and 221 Black buck skins at Khaga on 12.1.2000.

(iii) Seizure of 50 Leopard skins at Haldwani on 6.5.2000.

(iv) Seizure of 30 Leopard skins at Haldwani on 21.5.2000.

(v) Central Bureau of Investigation seized 70 shawls in Delhi on 2.2.2001. Of these 26 were pure Shahtoosh shawls and 44 were suspected.

(vi) Central Bureau of Investigation has seized 1 tiger skin, 5 tiger skulls, 10 tiger claws, 23 kgs of tiger bones, 3 tiger teeth and 4 leopard skins at Nagpur on 21.3.2001.<sup>51</sup>

In 2000, poachers killed 1 tiger in Assam, 1 in Kerala, 2 in Madhya Pradesh, 10 in Uttar Pradesh, 9 in West Bengal, 3 in Andhra Pradesh.<sup>52</sup>

### **3.2 How serious are the authorities on prosecution?**

According to the Ministry of Environment and Forest, between 1996 and 1999 the government detected 22,671 cases of violations of the Wild Life Protection Act in 16 States. Out of 22,671 cases detected the government filed cases before the court in 5297 cases (23.36%) and the rest (17726 cases) were pending investigation. About 658 cases were compounded. About 1049 cases i.e. 22.61% cases were determined by the court but the government failed to indicate as to how many cases resulted in conviction.

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<sup>49</sup> . *ibid*

<sup>50</sup> . LOK SABHA UNSTARRED QUESTION NO 3325 TO BE ANSWERED ON 13.08.2001

<sup>51</sup> . LOK SABHA UNSTARRED QUESTION NO 2219 TO BE ANSWERED ON 03.12.2001

<sup>52</sup> . LOK SABHA UNSTARRED QUESTION NO 148 TO BE ANSWERED ON 20.11.2000

The maximum number of cases were detected in Maharashtra (19,986) followed by Uttar Pradesh (1977), Punjab (664), Haryana (657), Madhya Pradesh (556), Tamilnadu (175), Orissa (171), Gujarat (117) and Delhi (92). Out of the 3740 cases filed before the courts in Maharashtra, only 38 cases were concluded. Karnataka failed to file any complaint before the courts.<sup>53</sup>

A large number of cases have been pending in Delhi. But, the post for the public prosecutor which is required to expedite cases registered under the Wild Life Protection Act in the courts has been lying vacant for the last ten years. Presently over 200 cases are pending in the court of Additional Chief Metropolitan Magistrate in Tees Hazari court. But because of absence of qualified public prosecutor, most of the cases are still in nascent stage. Cases as old as that of 1980s are pending in the court. For instance, a case relating to smuggler of wildlife items against Sansar Chand who was booked in 1988 is still in nascent stage. The trial is also yet to begin in a 1993 case, where in one of its biggest major haul, Delhi police had recovered two bags containing six tiger skins, 162 kilograms of tiger bones and 43 leopard skins from Civil Lines area.<sup>54</sup>

### 3.3 The lack of protection

Apart from the need for financial resources for making conservation work against the poachers, there is a need for personnel to man the forest. The Tiger Task Force of the government of India in its latest report, “Joining the Dots”, of 5 August 2005, states, “almost one-fifth or 18.2 per cent of the posts for field staff (forest guards, foresters and rangers) remain vacant across 28 tiger reserves. The sanctioned total staff strength for all reserves is 4,353 personnel. Of these, 792 posts are lying vacant. Vacancies were marginally higher, at 19.24 per cent, in the case of the forest guard who forms the frontline of protection as compared to the forester (14.24 per cent)”. Most importantly, “the bottom-rung (the crucial foot soldiers) have higher vacancies. In fact, there are 108 sanctioned positions for senior officers (chief conservator-assistant chief conservator). Of these, 96 are filled — which means 11 per cent vacancy in this category.”

Whether the sanctioned posts are adequate is the most critical issue. However, when the government itself does not fill up the sanctioned post, the question of examining adequacy of the sanctioned post does not arise

Therefore, it is easy for the cynics to blame the tribals for the systemic and institutionalised failure for protection of the endangered species. The participation of the local communities by employing them in security duties of protecting the forest and wildlife, which has been found effective in Periyar Tiger Reserve in Kerela, can be dismissed as the policy documents issued by the COP of the Convention on Biological Diversity.

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<sup>53</sup> . LOK SABHA UNSTARRED QUESTION NO 1702 TO BE ANSWERED ON 06.03.2000

<sup>54</sup> . Wildlife prosecutor’s post empty for 10 yrs, The Asian Age, 10 June 2005

Details of total number of cases of violation of Wildlife Protection Act  
registered/reported during this period, state-wise and number of cases pending as  
on December 31, 1999<sup>55</sup>

S. No.	Name of the State	Year	Cases detected	Cases filed in court	Cases under investigation	Cases compounded	Cases where final decision has been taken / closed
1	Andhra Pradesh	1997-98 1998-99	6	5	1	-	-
2	Bihar	1996-97 1997-98 1998-99	4 7 1	- - -	- - -	- - -	4 7 1
3	Delhi	1996-97 1997-98 1998-99	35 26 31	20 10 13	3 10 12	4 2 -	8 4 6
4	Goa	1996-97 1997-98	8 14	- -	4 5	- -	4 9
5	Gujarat	1996-97 1997-98 1998-99	38 36 43	14 6 14	3 3 6	21 27 23	- - -
6	Haryana	1996-97 1997-98	307 350	72 112	81 117	154 121	- -
7	Karnataka	1996-97 1997-98 1998-99	58 81 22	- - -	58 81 22	- - -	- - -
8	Madhya Pradesh	1996-97 1997-98 1998-99	312 109 135	234 130 83	- - -	- - -	78 60 52
9	Maharashtra	1996-97 1997-98 1998-99	7430 8578 3978	1347 1648 745	5950 6815 3168	120 101 54	13 14 11
10	Meghalaya	1996-97 1997-98 1998-99	6 10 6	6 10 4	- - -	- - -	1 - 2
11	Mizoram	1996-97 1997-98 1998-99	8 4 8	- - -	- 2 3	4 - 5	4 2 -
12	Orissa	1996-97 1997-98 1998-99	53 35 83	22 12 35	- - -	- - -	31 23 48
13	Punjab	1996-97 1997-98 1998-99	215 235 214	174 199 194	28 31 20	13 5 -	- - -
14	Uttar Pradesh	1996-97 1997-98 1998-99	407 861 709	31 50 61	231 599 457	- - -	145 212 191
15	Sikkim	1996-97 1997-98 1998-99	3 3 4	- - -	- - 1	1 2 1	2 1 2
16	Tamilnadu	1996-97 1997-98 1998-99	86 51 38	17 17 12	9 5 1	- - -	60 29 25

<sup>55</sup> . LOK SABHA UNSTARRED QUESTION NO 1702, 06.03.2000

#### **4. Displacement and non-rehabilitation**

“Displacement of people from traditional habitations causes much trauma to the affected people. Compulsory acquisition of land for construction of dams and roads, quarrying and mining operations, location of industries and reservation of forests for National Parks and environmental reasons forces tribal people to leave their traditional abodes and land – their chief means of livelihood.

Nearly 85.39 lakh tribals had been displaced until 1990 on account of some mega project or the other, reservation of forests as National Parks etc. Tribals constitute at least 55.16 percent of the total displaced people in the country. Cash payment does not really compensate the tribals for the difficulties they experience in their living style and ethos.

Displacement of tribals from their land amounts to violation of the Fifth Schedule of the Constitution as it deprives them of control and ownership of natural resources and land essential for their way of life”. – Draft National Policy on Tribals of the Government of India

According to 1991 census, the population of the Scheduled Tribes in India was 67.8 million, about 8.1 percent of the total population of the country. The fact that 8.1% of the total population of India constitutes 55.16% of total displaced people is indicative of the massive victimisation of indigenous and tribal peoples.

The Tenth Plan of the government of India, succinctly summarises forced evictions of indigenous and tribal peoples of India:

“Displacement or forced/voluntary eviction of tribals from their land and their natural habitats and subsequent rehabilitation has been a serious problem that remains to be addressed by the Government. As per the information readily available, a population of 21.3 million have been displaced between 1951 and 1990 in the states of Andhra Pradesh, Bihar, Gujarat, Maharashtra, Madhya Pradesh, Rajasthan and Orissa. Of whom, 8.54 million (40 per cent) are tribals and of those only 2.12 million (24.8 per cent) tribals could be resettled, so far. Displacement took place mainly on account of development projects, which include – large irrigation dams, hydro-electric projects, opencast and underground coal mines, super-thermal power plants and mineral-based industrial units. In large mining projects, tribals lose their land not only to the project authorities, but even to non-tribal outsiders who converge into these areas and corner both land and the new economic opportunities in commerce and petty industry. The incomplete rehabilitation of the displaced tribals has further compounded their woes as they are pushed into a vortex of increasing assetlessness, unemployment,

debt bondage and destitution. Women and children as ever are the worst affected.”

### **Displacement or forced evictions?**

Displacement is a legally inappropriate and vogue term to describe what is essentially “forced or illegal evictions”. Displacement is a generic term which does not contain the right to question the legality and application of due process of law against “the permanent or temporary removal against the will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection”.

### **International Standards**

International community has long recognised that the issue of forced evictions is a serious one. In 1976, the United Nations Conference on Human Settlements noted that special attention should be paid to “undertaking major clearance operations should take place only when conservation and rehabilitation are not feasible and relocation measures are made”.<sup>56</sup> In 1988, in the Global Strategy for Shelter to the Year 2000, adopted by the General Assembly in its resolution 43/181, the “fundamental obligation [of Governments] to protect and improve houses and neighbourhoods, rather than damage or destroy them” was recognised.<sup>57</sup> Agenda 21 of the Rio Declaration stated that “people should be protected by law against unfair eviction from their homes or land”.<sup>58</sup> In the Habitat Agenda Governments committed themselves to “protecting all people from, and providing legal protection and redress for, forced evictions that are contrary to the law, taking human rights into consideration; [and] when evictions are unavoidable, ensuring, as appropriate, that alternative suitable solutions are provided”.<sup>59</sup> The United Nations Commission on Human Rights has also indicated that “forced evictions are a gross violation of human rights”.<sup>60</sup> However, although these statements are important, they leave open one of the most critical issues, namely that of determining the circumstances under which forced evictions are permissible and of spelling out the types of protection required to ensure respect for the relevant provisions of the Covenant.

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<sup>56</sup> . Report of Habitat: United Nations Conference on Human Settlements, Vancouver, 31 May–11 June 1976 (A/CONF.70/15), chap. II, recommendation B.8, paragraph C (ii).

<sup>57</sup> . Report of the Commission on Human Settlements on the work of its eleventh session, Addendum (A/43/8/Add.1), paragraph 13.

<sup>58</sup> . Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3–14 June 1992, volume I (A/CONF.151/26/Rev.1 (vol. I), annex II, Agenda 21, chapter 7.9 (b)).

<sup>59</sup> . Report of the United Nations Conference on Settlements (Habitat II) (A/CONF.165/14), annex II, The Habitat Agenda, paragraph 40 (n).

<sup>60</sup> . Commission on Human Rights resolution 1993/77, paragraph 1.

Article 2.1 of the International Covenant on Economic, Social and Cultural Rights requires States parties to use “all appropriate means”, including the adoption of legislative measures, to promote all the rights protected under the Covenant. The Committee on Economic, Social and Cultural Rights has indicated in its general comment No. 3 (1990) that such measures may not be indispensable in relation to all rights, it is clear that legislation against forced evictions is an essential basis upon which to build a system of effective protection. “Such legislation should include measures which (a) provide the greatest possible security of tenure to occupiers of houses and land, (b) conform to the Covenant and (c) are designed to control strictly the circumstances under which evictions may be carried out. The legislation must also apply to all agents acting under the authority of the State or who are accountable to it. Moreover, in view of the increasing trend in some States towards the Government greatly reducing its responsibilities in the housing sector, States parties must ensure that legislative and other measures are adequate to prevent and, if appropriate, punish forced evictions carried out, without appropriate safeguards, by private persons or bodies. State parties should therefore review relevant legislation and policies to ensure that they are compatible with the obligations arising from the right to adequate housing and repeal or amend any legislation or policies that are inconsistent with the requirements of the Covenant”.<sup>61</sup>

The UN Committee on the Economic, Social and Cultural Rights further stated, in cases where eviction is considered to be justified, it should be carried out in strict compliance with the relevant provisions of international human rights law and in accordance with general principles of reasonableness and proportionality. In this regard it is especially pertinent to recall general comment No.16 of the Human Rights Committee, relating to article 17 of the International Covenant on Civil and Political Rights, which states that interference with a person’s home can only take place “in cases envisaged by the law”... The law should be in accordance with the provisions, aims and objectives of the Covenant and should be, in any event, reasonable in the particular circumstances”. The relevant legislation must specify in detail the precise circumstances in which such interferences may be permitted”.<sup>62</sup>

Appropriate procedural protection and due process are essential aspects of all human rights but are especially pertinent in relation to a matter such as forced evictions, which directly invokes a large number of the rights, recognised in the International Covenants on Human Rights. The UN Committee on Economic, Social and Cultural Rights identified the following procedural protections which should be applied in relation to forced evictions: (a) an opportunity for genuine consultation with those affected; (b) adequate and reasonable notice for all affected persons prior to the scheduled date of

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<sup>61</sup> . Please see General Comment No. 4 on the right to adequate housing (art. 11, para. 1) and the General Comment No 7 on forced evictions, and the right to adequate housing (art. 11, para. 1) [1997] of the UN Committee on Economic, Social and Cultural Rights.

<sup>62</sup> . *ibid.*

eviction; (c) information on the proposed evictions, and, where applicable, on the alternative purpose for which the land or housing is to be used, to be made available in reasonable time to all those affected; (d) especially where groups of people are involved, government officials or their representatives to be present during an eviction; (e) all persons carrying out the eviction to be properly identified; (f) evictions not to take place in particularly bad weather or at night unless the affected persons consent otherwise; (g) provision of legal remedies; and (h) provision, where possible, of legal aid to persons who are in need of it to seek redress from the courts.<sup>63</sup>

The UN Committee on Economic, Social and Cultural Rights held that evictions should not result in individuals being rendered 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>64</sup>

### **National Standards**

In India, there is no law to provide protection against “forced evictions”. If State wishes to take away land for undefined “public interest” under the Forest Conservation Act of 1980, Wild Life (Protection) Act of 1972, the Land Acquisition Act of 1894 or any other legislations, forced evictions must take place *according to the procedure established by law and not necessarily due process of law*. The government has the sovereign right to evict people for public interest or “larger interest” as provided under the Draft National Policy but the affected people do not have the right to question the decision of the government on forcible evictions. What might be questioned is the process of evictions and not the decision to evict people itself.

The Land Acquisition Act, 1894, which has been instrumental for evictions of indigenous and tribal peoples, for over a century is a classic example. Section 9 of the Land Acquisition Act, 1894 provides:

“9. Notice to persons interested:- (1) The Collector shall then cause public notice to be given at convenient places on or near the land to be taken, stating that the Government intends to take possession of the land, and that claims to compensation for all interest in such land may be made to him.

(2) Such notice shall state the particulars of the land so needed, and shall require all persons interested in the land to appear personally or by agency before the Collector at a time and place therein mentioned (such time not being earlier than

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<sup>63</sup> . *ibid.*

<sup>64</sup> . *ibid.*

fifteen days after the date of publication of the notice), and to state the nature of their respective interest in the land and the amount and particulars of their claims to compensation for such interests, and their objections (if any) to the measurements made under section 8. The Collector may in any case require such statement to be made in writing and signed by the party or his agent.

(3) The Collector shall also serve notice to the same effect on the occupier (If any) of such land and on all such persons known or believed to be entitled to act for persons so interested as reside or have agents authorised to receive service on their behalf, within the revenue-district in which the land is situated.

(4) In case any person so interested resides elsewhere, and has no such agent, the notice shall be sent to him by post in a letter addressed to him at his last known residence, address or place of business and registered under Part III of the {See now the Indian Post Office Act, 1898 (6 of 1898).”

Under the Act, the District Collector is the last word. S/he is judge and jury in the initial phase of eviction. Often lands are forcibly taken without giving any notice. Most indigenous villages are not covered by post offices. Even if the land is taken in a fraudulent way without following the procedures laid down in the Act, the only recourse is judiciary. Indigenous peoples do not have resources to approach court. In addition, court cases are long and tedious and do not provide easy solutions. In the meantime, the State uses coercion and violence.

The Land Acquisition Act is a procedure established by the colonial government that fails to ensure the due process of law and does not guarantee the right to free, prior and informed consent. The Government of India has proposed amendments to the Land Acquisition Act, 1894 but it has been shelved.<sup>65</sup>

If the Land Acquisition Act which requires to issue notification, what about the Forest Conservation Act which did not require inviting objections from those likely to be adversely affected. The FCA was silent about “the early completion of forest survey and settlement processes and clear demarcation of notified forest land on the ground. A subsequent Supreme Court judgement extended the FCA’s ambit even to lands for which only preliminary notifications had yet been issued, without requiring a time bound settlement of rights in them. On the contrary, the FCA brought even the slow and inefficient settlement processes in different states to a halt. Designed to restrain clearance of natural forests for other uses, the FCA failed to recognise the dismal status of

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<sup>65</sup>. RAJYA SABHA, UNSTARRED QUESTION NO 2051 TO BE ANSWERED ON 14.03.2001

government land records or the inconsistencies in the earlier processes by which large areas had been declared forests”.<sup>66</sup>

## **5. Conclusions and recommendations: Step in the rights direction**

The colonial Forest Act of 1927 and Forest Conservation Act of 1980 did not recognise the rights and role of the forest dwellers. Consequently, the tribals and forest communities are considered as trespassers - guilty of encroachment in their own habitats. Their presence in the forest have been challenged, their relationship with the forest has been questioned and their existence made synonymous to criminality by declaring them encroachers of the forests that they have lived in and cared for centuries.

There is a need to take rights based approaches to conservation of forest and biodiversity.

### **Afforestation:**

The dwindling forest cover cannot be addressed by not recognising the rights of scheduled tribes and forest dwellers when 73% of the encroached areas have been diverted for developmental purposes. The government must take its afforestation programmes seriously, especially given the gestation period required.

The National Forest Policy, 1988 emphasises on creating massive people’s movement through participation of village communities living close to the forest in protection and development of forests. Pursuant to this policy, the Government of India issued a notification in June 1990 requesting the State Governments to involve local communities in the management of forests. It is envisaged that the communities, in lieu of their participation in protection and development of forest areas, will be entitled to sharing of usufructs in a manner specified by the concerned State Forest Departments. This has led to the development of Joint Forest Management (JFM) programme. About 36,130 Forest Protection Committees are managing a total of 10.25 million ha of forest area.<sup>67</sup>

Agenda 21 of the Rio Declaration states, “5(a). National forest policies should recognize and duly support the identity, culture and the rights of indigenous people, their communities and other communities and forest dwellers. Appropriate conditions should be promoted for these groups to enable them to have an economic stake in forest use, perform economic activities, and achieve and maintain cultural identity and social organization, as well as adequate levels of livelihood and well-being, through, inter alia,

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<sup>66</sup>. Madhu Sarin, The Scheduled Tribes (Recognition of Forest Rights) Bill 2005 – Undoing historical injustice to tribals, From the Lawyers Collective, Vol. 20 – No6, June 2005

<sup>67</sup> . <http://envfor.nic.in/fsi/sfr99/sfr.html>

those land tenure arrangements which serve as incentives for the sustainable management of forests.”<sup>68</sup> Since then many international standards have been developed.

International conservation organisations have gradually been recognising the role of the indigenous peoples for protection of bio-diversity. In 1994, the World Conservation Union adopted revised categories of protected areas, which accept that indigenous peoples may own and manage protected areas. To accommodate the economic activities of resident peoples, the IUCN gives particular emphasis to the need to increase the number of protected areas in its Categories V and VI, 'Protected Landscapes/Seascapes' and 'Managed Resource Protected Areas'.<sup>69</sup>

In May 1996, the World Wide Fund for Nature (International) adopted a new policy on indigenous peoples and conservation. It recognises the rights of indigenous peoples to the use, owner-ship and control of their traditional territories, approves the current draft of the United Nations Declaration on the Rights of Indigenous Peoples and emphasises the principle of free and informed consent in all inter-actions between indigenous peoples and conservation organizations.<sup>70</sup> The 5th World Parks Conference in September 2003 made commitment to involve local communities, indigenous and mobile peoples in the creation, proclamation and management of protected areas.

Unless the National Forest Policy, 1988 is given the effect of the law, it will not be implemented.

### **Preserving endangered species:**

Equal attention must be paid to all endangered species for preserving the bio-diversity.

Poaching and smuggling of the endangered species persists because of the systematic failure of the law enforcement and judicial institutions to implement the Wild Life Protection Act of 1971, not because tribal villages are being regularised.

Few poachers are apprehended, let alone be prosecuted. Police collusion and bribery are the main problems. In the last week of August 2005, the forest staff of Assam's tiger-rich Sonai Rupai Sanctuary intercepted a police team and recovered a tiger skin and at least 10 kg of tiger bones. A local villager, Mohammed Zilani, who was travelling with the police personnel, was arrested but the Assistant sub-inspector Dilip Kakaty and three other

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<sup>68</sup> . REPORT OF THE UNITED NATIONS CONFERENCE ON ENVIRONMENT AND DEVELOPMENT (Rio de Janeiro, 3–14 June 1992), Annex III “NON–LEGALLY BINDING AUTHORITATIVE STATEMENT OF PRINCIPLES FOR A GLOBAL CONSENSUS ON THE MANAGEMENT, CONSERVATION AND SUSTAINABLE DEVELOPMENT OF ALL TYPES OF FORESTS”

<sup>69</sup> . International Work Group for Indigenous Affairs Document No. 97, Indigenous Peoples and Protected Areas in South and South East Asia – from Principles to Practice, Copenhagen, November 1999

<sup>70</sup> . Ibid

police personnel escorting Zilani were only suspended and put under police observation.<sup>71</sup>

There is a lack of international legal framework for combating poaching of endangered species which hampers the authorities in countries of origin as well as destination to undertake the intensive investigatory and prosecutorial work necessary to have a significant impact on traffickers of endangered species. The lack of sufficient cross-border cooperation compounds the enforcement problem.

The onus is clearly on States to take effective administrative, judicial and legislative measures to enforce the Wild Life Protection Act.

### **Rights based approaches:**

Any law, policy or programmes that effect people must take rights based approaches.

The United Nations Human Rights Committee in its General Comment on Article 27 of the International Covenant on Civil and Political Rights relating to minorities observed that “culture manifests itself in many forms, including a particular way of life associated with the use of land resources, especially in the case of indigenous peoples. That right may include such traditional activities as fishing or hunting and the right to live in reserves protected by law. The enjoyment of those rights may require positive legal measures of protection and measures to ensure the effective participation of members of minority communities in decisions which affect them”.<sup>72</sup>

The UN Committee on Elimination of Racial Discrimination (CERD Committee) in its General Recommendation XXIII on the rights of indigenous peoples adopted in 1997 recognises that “members of indigenous peoples have equal rights in respect of effective participation in public life and that no decisions directly relating to their rights and interests are taken without their informed consent.” The CERD Committee also called “upon States parties to recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources and, where they have been deprived of their lands and territories traditionally owned or otherwise inhabited or used without their free and informed consent, to take steps to return those lands and territories. Only when this is for factual reasons not possible, the right to restitution should be substituted by the right to just, fair and prompt compensation. Such compensation should as far as possible take the form of lands and territories”.<sup>73</sup>

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<sup>71</sup> . Tiger poaching slur on police, The Telegraph, 4 August 2005

<sup>72</sup> . Contained in document HRI/GEN/1/Rev.6, 12 May 2003.

<sup>73</sup> . Contained in document A/52/18, annex V.

What the UN CERD Committee adopted 1997 on land for land rehabilitation was included under the Vth Schedule of the Constitution of India. But its non-implementation requires little introduction.

The Forest Rights Bill is not a charity, it is a right which was recognised even under the draconian Forest Conservation Act but now stands extinguished. Tribals have as much right on their lands like any body else. Demanding exclusion of tribals from the forest to save endangered species tantamount to declaring them criminals for the failure of the State to enforce the Wild Life Protection Act of 1972.

Any rational, liberal and democratic minded person will recognise the rights of the marginalised and dispossessed. It is only those who believe in exclusion of the marginalised or absolutism – for whatever reasons or belief – can oppose the Forest Rights Bill, more so when existing international standards such as Convention on Biological Diversity and international environmental groups such IUCN advocate full and effective participation of tribal or indigenous and local communities in the management of protected areas, forest and other bio-diversity. Any extremism whether based on ethnicity, religion or belief such as ONLY expulsion of tribals from the forest can save the endangered species, must be rejected with the contempt it deserves as they are contemptuous of the rights of the tribal peoples!

Neither giving free hand to the tribals or any other forest dwellers nor clearing the protected areas of all peoples can lead to sustainable conservation of nature or endangered species. The Forest Rights Bill does not give any *carte blanche* to the tribals and it strikes a fine balance between rights and responsibility. What is required is the effective enforcement of all the other laws such as the Wild Life Protection Act and creating effective executive and judicial mechanisms to monitor the enforcement of the law.

If State fails to enforce its laws or take measures, the problems cannot be resolved by criminalising and penalising all the tribals.

The thrust of conservationists' efforts needs to be on pressuring the government of India to take action effective legislative, executive and judicial measures for enforcement of the Wild Life Protection Act in cooperation with the forest dwellers and not by denying the rights of the tribals. If there is no enforcement of the Wild Life Protection Act, 1972, which is the case now, all the tribals and forest dwellers can be forcibly evicted as has been done in the past 58 years but poachers will continue to poach.