

## **CAMPAIGN FOR SURVIVAL AND DIGNITY**

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### **State of Implementation of the Forest Rights Act**

*Policies in Violation of the Act by the Centre, and Areas of Forest Department Interference in Implementation*

#### *Central Government Policy Issues*

#### **Continued Failure to Recognise Forest Rights as Part of Forestry Policy**

The existence of forest rights, especially community rights to minor forest produce, grazing rights, and the right to conserve, protect, and manage community forest resources, is not acknowledged by the Ministry in any of its recent positions. Positions have been taken in court – for instance, in the ongoing *T.N. Godavarman* case in the Supreme Court – where policy on these issues is articulated as if the Forest Rights Act does not exist. Similarly, as detailed below, plantation programs, Joint Forest Management schemes, international negotiations on REDD, etc. are all proceeding on the basis of policy documents that ignore the existence of forest dwelling communities and their legal rights. Unless this is remedied, many of the Ministry's actions will continue to be illegal.

#### **Promotion of Compensatory Afforestation and Plantations Without Regard for Forest Rights**

The National Afforestation Program – as well as plantations funded by the Compensatory Afforestation and Management Planning Authority (CAMPA), whose funds were released by the Supreme Court in July 2009 – continue to promote plantations on lands without any regard for people's individual and community rights over these lands. These plantations often deprive people of access to community grazing lands and village forests. Plantations are also often done on people's individual lands, including those where rights have been claimed. In October 2008 the Standing Committee on Environment and Forests pointed out that, **“afforestation ... deprives forest dwellers and tribals / adivasis of some or all of their lands and adversely impact their livelihoods and basic needs – for which they are neither informed, nor consulted, nor compensated.”** Compensatory afforestation is similarly being done mostly on people's lands, over which they have unrecorded rights, or in common lands; after which these lands are being illegally converted into reserved or protected forests without following due process of law.

The same practices are being followed in many of the externally aided forestry projects in the country. The same will also be followed by private companies if the international REDD-plus agreement comes through in its present form; and all the Ministry's position papers on REDD refer only to JFM (see below). People's rights in forests, and the statutory powers of the community to protect and manage forests, will be directly threatened by the agreement; but the Ministry makes no reference to this fact.

Since the passage of the Forest Rights Act in 2006, plantations have resulted in evictions in Koraput and Bolangir Districts, Orissa; Khammam District, Andhra Pradesh; Rajnandgaon, Kanker and other districts of Chhattisgarh; Dangs District, Gujarat. These are just a few examples.

#### **Promotion of Joint Forest Management Instead of Respect for Community Rights**

Even as plantation and forestry management policies ignore the existence of forest dwellers' community rights to conserve, manage and protect their forests, the Ministry continues to promote Joint Forest Management. JFM Committees, though nominally “participatory”, are in fact controlled by the Forest Department, as the forest guard is the member-secretary cum joint account holder. The result is

that these Committees are controlled by contractors and others who are close to the Forest Department, and in practice sometimes function as proxy troops, engaging in plantations, evictions etc. in place of the Department itself. Several of the illegal evictions that have taken place since 2006 have involved JFM Committee members alongside Forest Department staff.

### **Illegal Relocation from Tiger Reserves**

The 2006 amendment to the Wild Life (Protection) Act provided that critical tiger habitats shall be inviolate areas (i.e. free of human presence) that must be identified on the basis of scientific and objective criteria, in consultation with an Expert Committee (section 38V(4)). Section 38V(5)(ii) of the Act goes on to require that, prior to the relocation of any person from a tiger reserve, it must be established - with the community's consent, and in consultation with an ecological and a social scientist familiar with the area - that continuing human presence shall cause irreversible damage to tiger populations and habitats. In sum, a scientific process together with public consent is required to prove that a critical tiger habitat is required. Section 4(2) of the Forest Rights Act lays down similar conditions.

However, in November 2007, an instruction from the National Tiger Conservation Authority granted all State governments ten days' time to identify and demarcate critical tiger habitats. Unsurprisingly, in almost all cases the entirety of the existing tiger reserves (including both core and buffer zones in the original plan) was demarcated as a critical tiger habitat, and in some cases more area was added. No separate studies were done to support these declarations and no scientific data is available till date on human impact. The NTCA has still not stated what its "scientific and objective criteria" for identification are, other than that the CTH's should be larger than 800 – 1000 sq. km in size.

When questioned on this, the NTCA has defended itself by stating that this is only a provisional "identification" exercise, not one of finally notifying the critical tiger habitat, which will be done in accordance with the law. But if this is the case, why have funds been released for relocation of people from these areas? Further, why has the NTCA till date not issued any guidelines or instructions for public consultation?

Moreover, under section 38V(5) of the Wild Life (Protection) Act and section 4(2) of the Forest Rights Act, no such relocation is permissible unless the recognition of rights process under the Forest Rights Act is complete in the proposed critical tiger habitat, the affected forest dwellers consent to relocation, and a secure livelihood is provided upon relocation.

All of these conditions have been violated, yet relocation is proceeding. In none of the tiger reserves is the process of implementation of the FR Act anywhere near complete (in most cases it is not being permitted); no case by case studies appear to have been done regarding human impact on tiger populations (mere mapping of tiger habitats without study of human impacts is insufficient); the consent of forest dwellers has either not been taken or no information provided; and no secure livelihood has been provided in the relocation sites, with only Rs. 10 lakh compensation being promised to each family.

There have been illegal evictions in Nagarhole Tiger Reserve in Karnataka as well as recent illegal forced relocation of Baiga adivasis (at the height of winter) in Achanakmar Tiger Reserve in Chhattisgarh. Eviction notices and/or harassment has taken place in Kalakkad Mundanthurai and Anamalai Tiger Reserves in Tamil Nadu. Forced relocation has taken place or been attempted in violation of the above requirements in Panna Tiger Reserve, Ranthambore Tiger Reserve, Tadoba-Andheri Tiger Reserve, Nagarhole Tiger Reserve and others.

### Major Issues Arising in Implementation As a Result of Forest Department Interference

The law lays down a clear three stage process for recognition of people's rights. It also defines what constitutes admissible evidence. The Forest Department has a role at the district and sub-divisional levels, but only as one of the parties involved. But the Department has made every effort to give itself illegal veto powers to deny rights:

- In most States the Department is refusing to be present at the time of verification by the Forest Rights Committee, and then demanding that the claim be rejected at the screening stage as they did not attend (whereas the Rules only require that notice be given to the Department, after which its absence is irrelevant).
- In Madhya Pradesh, Chhattisgarh, Rajasthan, Gujarat and other States, the Department attempted to impose requirements stating that only those on their lists of "pre-1980 encroachers" should have their rights recognised. In most cases in Chhattisgarh it appears that only such claimants were accepted.
- The Department has also illegally imposed requirements that people produce fine receipts. Examples of this nature are extremely widespread; to choose just one example, in one block of Satna District, Madhya Pradesh, practically all claims were rejected because they were not accompanied by fine receipts. The Act clearly requires that any two types of evidence are sufficient; imposing outdated and arbitrarily drawn up Forest Department lists is completely in violation of the law.
- Finally, in all States where individual land rights have been recognised, there are uniform complaints that the area of land for which rights have been granted is generally a small fraction of the area under occupation - usually at the insistence of the Forest Department representatives in the Sub Divisional Level Committees.

### **Denial of Community Rights**

The law is not only about individual lands – it also says Gram Sabhas have a right and power to protect forests, as well as recognising forest dwellers' rights of ownership over minor forest produce, right of use of grazing areas, and other such community rights. Both Central and State governments are neither framing clear procedures for these rights nor allowing such claims to be filed and recognised. This is true across all the States where the Act is being implemented. In Chhattisgarh, even forms for claiming community rights were not distributed; where people attempted to submit these on their own, these have not been accepted.

Meanwhile, the Forest Department is expanding its Joint Forest Management programme, which consists of "community" conservation by Committees controlled by the Forest Department. In some States, Forest Department staff have been discouraging claims for community rights by invoking inapplicable Supreme Court orders and furthermore saying that claims for community forest resources will result in denial of the funds accessible under JFM. The very fact that only two villages in the entire country have had their rights to community forest resources recognised - out of thousands that have filed claims and tens of thousands that are eligible - is a clear indicator of what is occurring.