

# **Keepers of Forests: Foresters or Forest Dwellers?**

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On May 3, 2002, the Ministry of Environment and Forests (MoEF) issued a circular to all the states and union territories to summarily evict all forest dwellers and users—the "encroachers." In the 1865 Forest Act, the British government had obliterated centuries old customary rights of the local communities and established exclusive state control over forest resources. Legally minded as the British were, they rationalised that under the Indian custom all property held in common belonged to the king, and since they were the conquerors, that property now belonged to them.

Has much changed for the communities that live inside or depend on forests? The Indian state, like its British predecessor, views them as encroachers, inherently unfit to take care of forest resources. The British wrested control in the name of scientific management and the Indian state continues in that tradition under the name of sustainable management, wilderness conservation, or biodiversity preservation. Who will really keep our forests? Will they be the foresters—agents of the state in its executive, legislative, or judiciary branch or the forest dwellers—communities that have the traditional knowledge and have kept them all these centuries?

### **The Conflict of Visions**

The genesis of the problems of encroachment, deforestation, and degradation lies in the process of state control over forests and alienation of forest dwelling communities from the forests, initiated by the British and continued with added vigour by independent India. There is a mindset, shared not only by the forest administration and the preservationist environmentalists, but also by many who have the interests of native communities foremost on their minds, that sees the well-being of the forests and that of the forest dwellers as two different and mutually exclusive options. This is based on a premise that the forests are well protected only if the local communities are excluded. And that the needs of the forest dependent communities can be met only if the society is ready to suffer the loss of forests. One must choose between these two alternatives. This thinking has dominated the discourse, suggesting that the local communities are the enemies of the forests and the forests have to be protected from them and the best protection could be ensured by tight control of the state.

There is a conflict of two visions. One is a vision of wilderness and the other of wise use. One views humans as outsiders in the natural ecosystem and the other as integral to the ecosystem.

We argue in this paper that the wilderness vision does not mesh with the ground reality. It creates a false dichotomy, with far-reaching consequences for the people as well as for the forests. The problem of encroachment is inherently linked with the basic issue of forest (mis)management. Encroachment is the result and not the cause of degradation. And degradation is the result of the state-dominated forest management, which has caused alienation of forest dwellers from their social and economic base.

We contend that mass eviction of millions of tribals from their natural habitat is not a solution to the problem of deforestation and degradation. The focus instead should be on devolving rights to the forest dwellers, who only can become the good stewards of forest resources.

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\* The opinions expressed in this briefing paper are those of Centre for Civil Society and ARCH and do not necessarily reflect the views of the John Templeton Foundation.

The guns-and-guards approach will not work, whether it is practised by the machinery of the ministry or the judiciary. In fact it will not work even if it were enforced by the ever efficient corporation. Both corporatisation and collectivisation are premised on the wilderness vision; they are two sides of the same coin. Forest dwellers are integral to the forest ecology; they are no encroachers.

Demands for forest and species protection are made by the urban educated class but the costs of protection are imposed on forest dwellers since they are compelled to vacate the area that is declared as a national park or sanctuary. Their displacement however is rarely highlighted. Have you ever seen NGOs and celebrities standing up against their evacuation? Or even demanding full R & R before the area is declared off limit to native communities? Green oustees get little sympathy or support. Brown oustees—those displaced by development projects—get all of it. Could we be any more hypocritical?

### **The Supreme Court and the "Encroachers"**

The Supreme Court (SC), in WP No. 202/1995, which has come to be known as the "forest conservation case," while dealing with the problem of deforestation and its causes, reviewed the issue of forest encroachment, that is, illegal or unauthorised occupation or cultivation of the forestlands. The issue came to the notice of the SC, when the amicus curie in IA 703/2001 mentioned that one of the major reasons for decimation of forests is the growing extent of encroachments. The problem of encroachment was highlighted with reference to some of the eco-fragile regions in Andaman and Nicobar, West Bengal, Karnataka, Madhya Pradesh, Chhattisgarh, Tamil Nadu, and Assam. The SC instructed the Chief Secretaries of these states to indicate the steps to be taken by them. Taking a cue from this, the MoEF immediately sent a circular of May 3, 2002 to all states and union territories to evict all encroachers by September 30, 2002, even though the SC had not ordered eviction of encroachers. Naturally, the country and the forest dwellers were outraged.

In some of the states like Assam, Maharashtra there are disturbing reports of huts being razed to ground even during rains with the help of elephants (Prabhu P, 2002). In states like Andhra Pradesh, "at least some of the socially conscientious officials seemed to be veering round to the civil society and tribal groups' unanimous view that the circular was 'inhuman and impractical' and its implementation, a sure recipe for a tribal upheaval and that the state government has resolved to bring to the notice of the apex court 'the ground realities' and the practical problems in implementing the order" (Venkateshwarlu K, 2002).

Meanwhile, the report of the SC-appointed Central Empowered Committee (CEC) (CEC, 2002), consisting of three forest officers and two environmentalists, thoroughly condemned the encroachments and recommended their immediate evictions. The Committee treats encroachment as a law and order problem. It recommends strong contingent of police force and presence of a magistrate (in case of firing). It asks for immunity to the staff under section 197 of Criminal Procedure Code. With these dictatorial powers bestowed on the state governments, the Committee expects immediate compliance. If the states still fail, it further demands liability of the state government to pay Rs. 1,000 per hectare per month as compensation for environmental losses caused by continuing encroachment and a possible fine of Rs. 100 per month on the defaulting officials.

After the Ministry received much protest on the circular, it again issued another circular on October 30 emphasising that the recent directive did not overrule the guidelines issued in September 1990 for regularisation of eligible cases of encroachment. This takes us to the six circulars issued by the MoEF in September 1990, which were in line with the trend set in the Forest Policy of 1988. The June 1990 circular on Joint Forest Management was the beginning of a slow policy shift in favour of forest dwellers.

### **Forest Encroachment: What, Why, and How Much?**

The term "encroachment" used by the SC and MoEF prejudices the issue and criminalises all without any distinction. Ashish Kothari of Kalpavriksh aptly states: "We agree with the MoEF and the CEC that encroachment on forestlands by powerful vested interests is a serious issue and must be dealt with strictly. But to label tribal/ adivasi communities that have traditionally and customarily cultivated lands but do not have the title deeds to prove this as 'encroachers,' and to club them in the same category as powerful vested interests who have indeed eaten up our forests, is an unjust step to take, and in the long run detrimental to ecological conservation itself." (Kothari A, 2002)

Despite its avowed policies, the government has consistently failed to identify genuine forest dwellers, demarcate the land to which they have rights, and grant them proper legal title to those lands. If the government had carried out this process earlier, even by its inadequate guidelines, forests and forest dwellers both would have been in a far better shape today. The forest administrators have created a strong impression that encroachments are the major cause of deforestation and degradation, and that large chunks of forestland have been used up for regularisation of encroachment. It should be clearly understood that the extent of these encroachments is hardly the cause of the degradation of our forests. The noise around the encroachment issue has silenced discussion about the performance of our state foresters in sustaining the forests. The recorded forest area of the country is 76.52 million hectares (mha,) whereas the forest cover is 63.72 mha, out of which 38.79 mha is degraded and 24.93 mha is dense (FSI, 1999). Thus, the degraded forest area in the country is as high as 60 percent of the total forest cover. As against this, the total encroachment in forest areas in the country is 1.25 mha (MoEF, 2002), which is merely 1.9 per cent of the total forest area. Out of this total encroachment, the area used by the forest dwellers would be even smaller. It is thus clear that the extent of encroachment is minuscule and marginal in the context of degradation of forests, and is essentially played up to divert attention from real problems.

### **Evolution of State Forestry: Alienation of Forest Dwellers**

#### British Era of Sovereign Claims

In the late eighteenth century, with the oak supply falling short in England, the British turned their eyes on the teak of India for shipbuilding for the Royal Navy. Demands for teak were rising for railways too. At the advent of the British, ownership of forests was with the then princes or local chiefs. The local communities, however, had largely unhindered access and use of forest resources to meet their grazing, firewood, and timber requirements. Many of these communities had evolved informal norms and customs for protection and proper use of forests. In the early years, the British also had considered forests and other wastelands to be the property of village communities under whose boundaries they fell, and did not interfere much with the local customary usage.

In the beginning, the commercial potential of the forest wealth was largely unrecognised. The British, like the earlier rulers, were interested in the revenue that the land earned. The forests were considered more "as a necessity for the people, [but] as a revenue-earning resource, they were considered insignificant...This being the case...forests were considered as an obstruction to agriculture rather than otherwise, and consequently a bar to the prosperity of the Empire. It was the watchword of the time to bring...forest areas under cultivation, and the policy tended in that direction. The direct and indirect value of forest was underestimated, as is clearly exhibited by the provisions of many of the earlier settlements, especially in Bengal and Punjab, which transferred large forest areas forever to landholders or to the cultivators of the country, who at that period had neither a right to them nor in many instances even appreciated the boon granted to them, as they valued the areas as little as the Government which gave them" (Ribbentrop B, 1900).

With the growing demand for timber, in the first half of the nineteenth century, steady and uninterrupted supply of timber was necessary. A long and heated debate ensued amongst British bureaucrats on how to get the timber—whether to buy at the market rate, or to enter into lease contracts with local princes for the forest lands with exclusive rights to grow and cut timber, or to outright take over the forests and manage scientifically so as to stop, what they considered wasteful cutting of teak by local contractors and be able to get the quantity of timber uninterruptedly.

For the first time in 1807, a proclamation, which formed the basis of the Conservator's authority, announced that "the royalty rights in teak claimed by former governments were vested in the Company, and all unauthorised felling of teak by private individuals was prohibited." Even though the proclamation "contained no definition of the term 'sovereignty', nor had those forests been specified over which the sovereignty extended." (Stebbing, 1923, p. 70)

This was the beginning of the future forest service, which claimed scientific management, and gave all the powers to Conservator to sanction teak felling and selling. "The private timber trade was annihilated: for even if they bought timber with the Conservator's permission timber merchants could not market it, save by a Government agency." This led E P Stebbing to comment, "...the new regime was far too drastic to be continued as a method of permanent administration. The privilege of cutting fuel for private use, which had been practised at will by all from the time immemorial, was also invaded and prohibited, a short-sighted step of amazing folly" (Stebbing, 1923, p. 71). It is surprising that such a step of amazing folly, after temporary suspension for nearly four decades, was resumed by the British in 1860s, claiming "sovereignty" not only over teak, but also over forested lands.

The British government, obsessed with the idea of scientific conservancy measures, enquired in 1846 whether such measures (i.e. conservator's power of sanction) were to be made applicable only to government forests or to other forests too. A general opinion was to cover "all such forests as could not be clearly established to be private property, which right the Government of India subsequently upheld, empowering him to assess the rights of Government to all forest-lands to which a title could not be clearly established by private individuals" (Stebbing, 1923, pp. 118-123). This was a first step towards the inauguration of "efficient management" of forests in India. The logical consequence of the Conservatorship,

with the duty and efficiency required of it, was to gradually take over rights on every piece of land it could put its foot on.

*Debate over Proprietary Rights: Munro, Brandis, and Baden-Powell*

There were debates within the British bureaucracy against the take over of forests without considering the then existing proprietary rights. The Madras government, in fact, totally rejected state intervention in forests in the belief that tribals and peasants should exercise complete control over forest areas and state should at best play a subsidiary role. When the Forest Act of 1878 was under consideration, the Madras government declared that it could not be extended there, on the ground that the reserve forests in line with the provisions of the Act could not be established there. "The rights of the villagers over the waste lands and jungles were considered to be of such a nature as to prevent Government from forming independent State property" (Ribbentrop, 1900, p. 100).

Sir Thomas Munro, the governor of Madras, who had abolished conservatorship in 1823, had in fact, said in his minutes that the merchants and agriculturists were "too good traders not to cultivate teak or whatever wood is likely to yield a profit. They are so fond of planting...To encourage them no regulation is wanted, but a free market. Restore the liberty of trade in private wood: let the public be guarded by its ancient protector, not a stranger, but the Collector and Magistrate of the country, and we shall get all the wood the country can yield more certainly than by any restrictive measures. Private timber will be increased by good prices, and trade and agriculture will be free from vexation" (Ribbentrop, 1900, PP 84-85).

German forester, Dietrich Brandis, who came to be known as the founder of forestry service in India, supported the idea of creating government forests, but strongly urged to restrict them to areas of compact valuable blocks in the interiors that could be obtained without impinging on forest rights of communities. Brandis, in fact, advocated leaving aside rest of the areas under the control of village communities as village forests (Guha R, 1998).

All the voices of dissent and churning of about half a century were, however, defeated by the real hard-liners like Baden-Powell. Citing the precedence where Indian rulers had claimed their rights of absolute ownership, he argued for the absolute control and ownership right of the state on all common land, whether inhabited or not. In order to rationalise his argument, he invoked the rights of the conqueror, who obtained automatically all the rights as sovereign from the oriental sovereigns, i.e., native chiefs. He conveniently set aside the settled law in England that no property could be taken over from the citizens by the state.

The Imperial Forest Department was created in 1864 to consolidate the state control on public forests and to put forestry operations on a scientific footing. Help of some German experts was sought for this awesome task and Deitrich Brandis was appointed the first Inspector General of Forests. The first and foremost task in this regard was to forge legal mechanisms to assert and safeguard state control over forests. The first such attempt was made through the Indian Forest Act of 1865, which was replaced by a far more comprehensive piece of legislation in 1878.

This Act obliterated the centuries old customary use of forest resources by rural communities all over India. It provided for formation of three classes of forests: "Reserved forests," "Protected forests," and "Village forests." Reserved forests consisted of compact valuable areas to be brought under full state control. All private rights were extinguished, transferred elsewhere, or in exceptional cases allowed for limited exercise. In Protected forests, rights were recorded but not settled and state control was to be firmly maintained by detailed provisions for reservation of valuable trees and by demarcation of areas for grazing and firewood collection. Most of the protected forests were gradually converted to the category of reserve forests to bring them under greater state control. The third category of Village forests, which were to be earmarked to meet the needs of local communities, remained on paper only, as this option was never exercised in practice. The Act also greatly enlarged the punitive sanctions available to forest administration, closely regulating the extraction and transit of forest produce and prescribing a detailed set of penalties for transgressions of the Act. The same Act, with minor modifications in 1927, is still operational in independent India.

In various Indian "act of state" cases, especially in *Vajasingi Joravarsingi vs Secretary of State of India*, (1924) a line of argument was established that "in acceded or conquered territory a subject cannot in law resist the expropriation by the Crown of what under the previous Sovereign was his property" (Singh Chhatrapati, 1986, p. 27). This concept is contrary to the basic tenets of the Common Law or to the sacrosanct concept of property rights prevalent in England in the nineteenth century. It is also interesting to note that such interpretation was accepted in India, at a time when in the United States and in the British colonies in Africa, contrary decisions had already been taken, when similar issues after the cession to the British Crown had arisen. In one of the cases, "*Amodu Tijani vs Secretary Southern Nigeria*," it was accepted that "No doubt there was a cession to the British Crown, along with the Sovereignty...but this cession appears on the footing that the rights of property of the inhabitants were to be fully respected" (Singh Chhatrapati, 1998, pp. 28-29).

#### *Transporting an Alien Model of Forestry: Environmental Imperialism*

Thus, by bringing the forestry management model alien to communities, in the words of Dietrich Brandis, "an exotic plant, or a foreign artificially fostered institution," (Guha R, 1998, p. 95) the British government, by a stroke of an executive pen, expropriated the customary rights of local communities and established exclusive state control over forest resources. This inevitably led to total alienation of the local communities from forest management and generated a strong feeling of resentment against the forest department. Thus the very people, who were and could have been the best friends of forests, were turned into their worst enemies. Not only the people were not seen as the original proprietors of forests, they were perceived as being "erratic, unsystematic, and unmindful" of long-term sustainability by forests.

That independent India continued with this alien model speaks volumes of apathy and lack of concern not only for the forest dwelling communities, but also for the forests, and lack of respect for property rights. There are, thus, question marks on the appropriateness of such a model in the land where people have been living deep into the forests and having occupancy rights for generations. Artificially excluding the whole community from their very habitat is not the best way of protecting the forests. Hence, in countries like India, the model of reserving and thus excluding the communities was and is unworkable.

It is also true for the "Protected Areas," that is, Sanctuaries and National parks. The idea of unilaterally declaring an area as sanctuary/ national park and, with a fiat, excluding the people from either the enjoyment or evicting them from the area, respectively, with a view to preserving the area in its pristine form, is equally faulty and unworkable in countries like India. This concept ignores the ground realities of our country that people are the integral part of the forests and without involving them in their management, the wildlife or bio-diversity cannot be protected.

#### The Historical Process of Land-titling Denied to Forest Dwellers

The history of acquisition of tenure and property rights, not only in India but also throughout the world, has been the history of taking possession (*occupatio* in Roman law), followed by peaceable enjoyment (*usucapio*), and being perfected with the passage of time (Baden-Powell, 1898). A prolonged tenure gives a prescriptive right of ownership. Before and in the early part of the British regime, forests were considered as non-revenue generating resource. The official policy was to encourage expansion of agriculture in forest areas. Many of princely states made attractive offers of free land to encourage farmers from other areas to come and settle in their territory and start agriculture. Acquisition of a title to the land of long occupation has, thus, remained a norm.

Some people did not clear the area for occupation and use, and remained in the forests. These forest dwellers were later refused the same process of land titling when their forestlands were declared as reserve forests. The people who kept the forests intact are now penalised for not clear-cutting them for agricultural land!

#### The Post-Independence Era of Clear Cutting

One of the most important causes of the loss of forest cover has been the type of silviculture practices adopted in the post-independence era. After the passage of the Forest Act of 1878, the colonial government started bringing more and more areas under reserve forests and initiated a system for systematic harvesting of forests based on working plans. The plans relied on selective cutting of mature teak trees on rotational basis with natural regeneration from coppices as well as seeds. This ensured that no part of the forest was devoid of vegetative cover.

After independence, however, a new strategy of intensive commercial forestry was adopted from the sixties onwards. Large areas, usually the most productive areas, were brought under plantation working circles where all trees were clear felled to replace them with artificial plantations of fast growing and high yielding teak species. Thus the system of selective felling was replaced by clear cutting of all trees in selected coupes that were to be replaced by teak plantations. As a result thousands of hectares of natural forests were clear felled during the sixties, seventies, and the early eighties. As could have been expected, the teak plantations never came up, except in a few isolated cases. Most of the forest areas have still not recovered from the effects of years of clear cutting. J B Lal, former director of the Forest Survey of India, has referred to this practice of clear-cutting well stocked forests of mixed species and replacing them with teak plantations, adopted in many parts of the country in the post independence era, as ecological tragedy resulting from subordination of ecology to economics (Lal, 1989). It is clear, however, that this was not just an ecological tragedy but also an economic and human tragedy.

## **Recent Policy Changes to Improve Forest Management**

In the late 1980s, for the first time in the history of forest management, there was an acceptance of local communities' claims on the forests. This was a revolutionary break from the past. Even independent India's Forest Policy of 1952 had not recognised local peoples' claims. In fact, it stated categorically that "neighbouring areas are entitled to a prior claim over a forest and its produce" is destructive to national interest. It continued, "the accident of a village being situated close to a forest does not prejudice the right of the country as a whole to receive the benefits of a national asset."

The first policy, advocating local communities' claims on forests, even though harsh on the encroachment, is the National Forest Policy of 1998. It states: "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 as well as to provide gainful employment to people living in and around forests" (MoEF, 1998). It emphasised safeguarding the customary rights and interests of these people.

The MoEF carried forward this concept of involving local communities in the regeneration of forests and initiated a policy of Joint Forest Management (JFM) in June 1990. It states: "the National Forest Policy of 1988 envisages people's involvement in the development and protection of forests.... It [is] 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" (MoEF, 2000). The benefits to the individual members of the forest protection committees under the JFM policy are usufruct rights on grass, lops and tops of branches, minor forest produce and also a stipulated share (which varies in different states from 25% to 100%) in the sale of timber.

After two months, on September 18, 1990, the MoEF brought out six circulars. They are regarding settlements of disputed claims, *pattas*, leases, grants involving forestlands, guidelines regarding regularisation of encroachments, conversion of forest villages into revenue villages, settlement of other old habitations, payment of compensation for loss of life and property due to predation/ depredation by wild animals and payment of fair wages on forestry works. These circulars taken together give a good package for the resolution of old disputes over claims on forestlands and other problems and thus have the potential to reduce the deep distrust of people for the forest department. One of the circulars regarding disputed claims over forestlands states: "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" (MoEF, 2000b).

No action, however, has been taken on the circulars. In March 1984, the then Ministry of Agriculture had suggested that the state and union territory governments may confer heritable and inalienable rights on forest villagers if they were in occupation of the land for more than 20 years. The 1990 MoEF circular concludes: "But this suggestion does not seem to have been fully implemented." These circulars have remained on paper only.

Again, these circulars have not got rid of the age-old mindset of the forest department. For example, the directive on the encroachment does suggest that the respective state

governments may provide alternate economic base to such persons by associating them collectively in JFM programs. Its main thrust, nonetheless, remains immediate evictions of the encroachers. It does not analyse the genesis and causes of this ongoing problem, nor does it take into account the ground reality that forest dwellers are the best steward of those resources.

Very little has been accomplished with regard to the policy on JFM too. One, there are many deficiencies in the policy, like unequal partnership in matters of rights, power and authority between the participating communities and the forest administration, lack of legal and statutory backing to the policy, inadequate benefit-sharing, and so on. Two, the lack of enthusiasm of forest officials towards implementation is glaring and is reflected in the actual forestland covered under JFM. The area under JFM in 22 states is 10.25 million ha, 16% of the total forest area in India (FSI, 1999). More than 60% (7.43 mha) is found in only three states of Madhya Pradesh, Chhatisgarh, and Andhra Pradesh. The performance of rest of the states has been extremely poor. Even the slight shift in the policy away from centralised management to somewhat decentralised management of forests has remained on paper only. Necessary statutory and procedural changes have not been followed and the colonial mind set has not changed. These policy changes could have paved a way towards people-friendly solutions.

In the late 1990s, the MoEF and the Planning Commission constituted several committees to examine various forestry issues like afforestation policies and rehabilitation of wastelands, steps to confer ownership rights of minor forest produce to *Panchayats*, increase people's participation in forest management. "While the large number of committees constituted by the government in recent years indicates its keenness for policy change, the actual process of change has been somewhat slow," comment Saigal, Arora, and Rizvi in their book, *The New Foresters*. They conclude, "[t]here has been limited progress on the implementation of the recommendations of different committees" (Saigal et al, 2002, pp. 112-113).

The policy change and earnest implementation has to do with the political will at the central and state levels, which is highly lacking, to say the least. The most recent evidence is the May 3 circular, which has completely backtracked from the trend set by earlier policies. It has overlooked the fundamental reason for forest degradation—non-involvement of forest dwellers—that had compelled the policy review in the first place. Instead of furthering and strengthening the policy of people's involvement in forest management, it has sought to exclude them from the very area. This has again brought the issue of "encroachment" back to the table.

### **Community Rights to Community Commons**

The proponents of the exclusive state control on forests base their case on the claim of the "tragedy of the commons." Biologist Garret Hardin first articulated the idea that commonly held open access resources like forests and grazing lands inevitably suffer over-exploitation as no individual has an incentive to stop his use of the resource as long as others are also able to use it. Each individual strives for quick and maximum exploitation of the resource since all the benefits are accrued to him, but the costs are all borne by the whole community. It further states that village communities without cohesion do not have the necessary knowledge and expertise to manage the forests in a scientific manner on a long-term basis.

But these proponents fail to recognise that common ownership does not mean that it is a "free for all" resource and would inevitably suffer the tragedy of the commons. "Communally held open access resources" was largely a theoretical construct of Hardin as in practice such resources are never free for all but are controlled by host of intricate rules and regulations for their use. This was indeed the case with communal management of forests before the advent of British control. Local communities were actually managing in sensible and sustainable ways through informal rules and practices, as evidenced by the existence of widespread network of sacred groves. Bringing these resources under the state control actually created the tragedy of open access rather than solving it, as local communities lost all incentives and interest in the proper management of forests. The forests no longer belonged to them and they started acting irresponsibly.

It is beyond doubt that best way to put forest management on a sound footing is to re-establish the rights of local communities on forest areas of the country. This approach is now followed in several places around the world.

### **Illustrative Case studies of Community Rights**

#### CAMPFIRE, Zimbabwe

CAMPFIRE (The Communal Areas Management Program for Indigenous Resources) involves rural communities in conservation and development by returning to them the stewardship of their natural resources thus harmonising the needs of rural people with those of the ecosystem. It emerged with the recognition that as long as wildlife remained the property of the state, no one would invest in it as a resource. Since its official inception in 1989, CAMPFIRE has engaged more than a quarter of a million people in the practice of managing wildlife and reaping the benefits of using wild lands.

Since 1975, Zimbabwe has allowed private property holders to claim ownership of wildlife on their land and to benefit from its use. Under CAMPFIRE, people living on Zimbabwe's impoverished communal lands, which represent 42% of the country, claim the same right of proprietorship. Many of the communal lands have too little or unreliable rainfall for agriculture, but provide excellent wildlife habitat. Conceptually, CAMPFIRE includes all natural resources, but its focus has been wildlife management in communal areas, particularly those adjacent to national parks, where people and animals compete for scarce resources.

CAMPFIRE begins when a rural community, through its elected representative body, the Rural District Council, asks the government's wildlife department to grant them the legal authority to manage its wildlife resources, and demonstrates its capacity to do so. By granting people control over their resources, CAMPFIRE makes wildlife valuable to local communities because it is an economically and ecologically sound land use. The projects these communities devise to take advantage of this newfound value vary from district to district.

Most communities sell photographic or hunting concessions to tour operators, under rules and hunting quotas established in consultation with the wildlife department. Others choose to hunt or crop animal populations themselves, and many are looking at other resources, such as forest products. The revenues from these efforts generally go directly to households, which decide how to use the money, often opting for communal efforts such as grinding mills or other development projects. The councils, however, have the right to levy these revenues.

Zimbabwe has set aside, in perpetuity, more than 12% of its land as protected wildlife areas. Most of these are surrounded by communal lands. CAMPFIRE helps prevent the protected areas from becoming islands in a sea of development by making wildlife valuable for nearby communities. CAMPFIRE uses economic incentives to encourage the most appropriate management system for these fragile areas.

#### *Who Runs CAMPFIRE*

No single organisation runs CAMPFIRE. The members of the Collaborative Group are responsible for co-ordinating various inputs, including policy, training, institution building, scientific and sociological research, monitoring and international advocacy.

The original members of the Group include the *CAMPFIRE Association* representing rural district councils and therefore the interests of the rural communities involved in CAMPFIRE. The Association is the lead agency and co-ordinator of the program. It chairs the CAMPFIRE Collaborative Group. The other members are the Department of National Parks and Wildlife Management, Ministry of Local Government, Rural and Urban, Zimbabwe Trust, Africa Resources Trust, and World Wide Fund for Nature (WWF).

#### *Elephants, Crocodiles, and the People*

Not so long ago, when an elephant was found raiding the crops in Mahenye ward, near Gonarhezhou National Park in southern Zimbabwe, the reaction of the villagers would have been to demand that the wildlife department shoot the elephant. This time, however, the Chief himself intervened, saying: "That elephant is our future." The people chased the elephant out of the field instead.

That marks a major change in the attitude of the people of Mahenye ward. When the colonial government of Rhodesia created Gonarhezhou National Park, it drove out many of the Shangaan people who were living there. The people, not surprisingly, felt little attachment to the park. In fact, they felt if they killed the animals there would be no reason for the park to exist and they could move back onto their land. Poaching was rampant.

Under CAMPFIRE, however, the same villagers who once hunted illegally in the park can now grant a concession to a safari hunter who pays the community for the right to hunt on their land. Poaching is down as the people take a more protective view of their newly valuable resource and recognise the park as a reservoir of wealth—sort of a bank for animals.

In the village of Sinakatenge, elephants, buffalo, hippos and kudu were constantly crossing the Ume River from Matusadona National Park and raiding the villagers' maize, sorghum, watermelons, and other crops. Using money received from a safari hunting concession, they built an electric fence nearly 12 km long that enclosed nearly all of their fields, and paid two villagers to work full-time maintaining the fence. Since the fence went up, practically no crops have been damaged by wildlife.

Masoka ward, in north-east Zimbabwe, near the border with Mozambique, was once a very destitute place. With few resources, the residents saw no way out of poverty. Masoka however was one of the first wards to join CAMPFIRE in 1989. Since then its fortunes have changed. By 1994, the ward was earning over Z\$600,000 from a safari hunting concession.

The ward used the money to build a health clinic, pay game guards, and even fund a football team. The people of Masoka ward, once downcast, are now hopeful.

Crocodiles cruise the Manyame River in the Guruve CAMPFIRE area. With the growth of the commercial crocodile ranching industry in Zimbabwe, their nests have become valuable resource. Crocodile farmers pay local communities a fee for all the eggs they collect. Before CAMPFIRE, the people went out of their way to destroy crocodile nests. Now they protect them and take pains to ensure that only proper collectors who will pay for the eggs work in their areas.

#### *Critique*

In some instances the "decentralisation" of CAMPFIRE has become the "recentralisation" of a district-level elite resulting in ignorance of or hostility to the CAMPFIRE Program, mistrust of the councils concerned, and increasing intolerance of wildlife.

The integrity of CAMPFIRE's conceptualisation rests on the self-definition and voluntary participation of local people in the resource management. This aspect is compromised by the designation of pre-existing, administratively designed wards as the communal production units. These wards are often internally differentiated, socially and ecologically and lack the cohesion to motivate consensual entry into the Program.

The high and escalating value of the wildlife resource have had the effect of intensifying political conflict over the appropriation of these values at community, district, and national levels. Within communities and districts, the program has brought into sharper focus competing interests drawn on class, status and ethnic lines. At the national level the economic performance of the industry has attracted the attention of the political elite and their private sector allies, who seek to appropriate a higher share of its value through patronage, shrewd negotiation or bureaucratic re-centralisation.

#### *Conclusion*

All in all, Zimbabwe's CAMPFIRE program has had the distinction of being the first major project to recognise the importance of providing both benefits and a meaningful role to the people who lived with wildlife and its habitat. The program decentralises political and administrative powers to people at the grassroots level, distributes millions of dollars to the barefoot masses in communal areas, and has resulted in the adoption of eco-friendly views on wildlife and other natural resources by the people of Zimbabwe. It has also been of significance in reviving the cultural well being of the people in Zimbabwe. The program has been widely accepted by people because it does not contradict the African wisdom about the environment.

In practical terms, CAMPFIRE has rekindled the cultural principle of common ownership and management of the fruits of nature by emphasising and developing an infrastructure for effective local participation in decision making and sharing of all revenues earned through the program by producer communities. The program operates through democratically elected committees at village, ward, or district level where wildlife committees serve as vehicles to articulate people's problems and needs. The nomenclature may differ from one district to another, but central in CAMPFIRE is that institutions should allow democratic participation of all people.

This ensures that projects suit the cultural and economic needs of communities. It explains why most CAMPFIRE gatherings, whether dividend distribution ceremonies or quota setting meetings, are always opened by a traditional ceremony. "*Pamberi ne mhuka, pamberi ne budiro, pasi ne vateyi.*" (Forward with wildlife, forward with development, down with poachers). Each speaker at the annual general meeting of the Nyaminyami Wildlife Committee begins by reciting that chant, with fists raised.

For more than 100 years, Zimbabweans have watched their resources managed ruthlessly against their spiritual and economic interests. Through CAMPFIRE they feel their spirits are smiling once more.

### Nature Conservancy

The species that have a direct human use like elephants, tigers, and crocodiles can be protected by giving local communities an economic stake, as demonstrated by CAMPFIRE, Zimbabwe. How can one protect species that have no human use value? The answer is Nature Conservancy. It is a private environmental organisation set up in 1951 with "a mission to preserve plants, animals, and natural communities that represent the diversity of life on Earth by protecting the lands and waters they need to survive."

With the help of members' contributions, Nature Conservancy purchases areas that have a high biodiversity value. It has developed a strategic, science-based planning process, called "Conservation Design," which they use to identify the highest-priority places—landscapes and seascapes that, if conserved, promise to ensure biodiversity over the long term. Since a single organisation can neither buy all those high priority places, nor protect them single-handedly, it therefore joins together with communities, businesses, governments, partner organisations, and people to arrive at solutions that preserve lands and waters for prosperity. Ecological sound management techniques developed by Nature Conservancy do not exclude people living in the area nor reject all economic development as antithetical to the goal of biodiversity preservation.

- Total area protected in the United States: 12,621,000 acres
- Acres protected outside the United States in Canada, Latin America, the Caribbean, Asia and the Pacific: 80,181,446 acres
- Current number of Conservancy preserves under its management: 1,400
- Conservancy members in 1952: 554; in 2001: around 1 million
- Budget for 2001 = US\$ 692,410,635

It manages the largest system of private nature sanctuaries in the world and have 20,000 species (and counting) under its watch. A US\$1 billion campaign has been launched to save 200 of the world's Last Great Places. ([www.nature.org](http://www.nature.org))

The approach taken by Nature Conservancy is rather different from that of general green organisations. The latter usually lobby the government and get the sensitive area declared as a national park or sanctuary or bioserve. Communities living in that area are then ousted. Species protection is demanded by urban educated class but the burden of protection is born by some of the poorest communities of the country. It is striking that greens do not see this basic injustice in their approach. Nature Conservancy on the other hand puts its money where

its mouth is. The members pay themselves for the species they want to protect. The people whose land is acquired are given full compensation; they sell their land voluntarily to the Conservancy.

### Community Forestry in Nepal

During the Rana regime (1850-1950), there were attempts to formalise exploitation of forests through legal process. Ownership rights over big chunks of forests were awarded to private individuals. In the last decades of the Rana rule, the British sought good timber of *sal* from the Terai for the railways and military purposes. The Hill forests were inaccessible to outside forces and the local community had rights over the forests, even on the forests officially given over to the private individuals. In some cases, people used to keep *Ban heralu* (caretaker of forest) paying in form of paddy.

In 1957, all forests, including private, were nationalised through the Private Forest Nationalisation Act. This led to large-scale felling of timber (by landlords) to prevent the land being classified as forestland and, therefore, to become government-owned. Another major fall-out was that people lost their rights and control over the forests. The first Forest Ministry was established in 1959 and the Forest Act, 1961 was formulated on the line of the Indian Forest Act, 1927. However, the Act introduced handing over management of government forest to the newly formed panchayats.

At the same time, in the late 1970s, Forest officers got police powers on the Dehra Doon forestry model. Local people's bona fide use of government forests to meet their basic needs was deemed illegal. Afforestation programs with the international aid during 1960s and 70s did not succeed, partly because the local communities were not involved in the management. Massive deforestation continued throughout 1950-1980. The crisis led the World Bank to predict in 1978 that by 1993 the hills, and by 2000 the Terai, would be totally denuded.

How to arrest the rapid deforestation? It became a burning problem. A realisation was gradually dawning on the policy makers that the task was too stupendous and unachievable without active and substantial involvement of the local people.

The sixth five-year Plan (1981-85) and the Decentralisation Act, 1982 were the first steps towards decentralisation of powers of the Forest Department (FD). In 1989, His Majesty's Government of Nepal (HMGN), after deliberations for four years, jointly with Asian Development Bank (ADB) and Finnish International Development Agency (FINNIDA), brought out the Master Plan for forestry sector. Community forestry thus was a culmination of various experiments initiated in Nepal, as well as of crucial experiences of other countries.

The Master Plan recognised users groups in place of panchayat. It allowed both natural forests as well as degraded forests to be handed over as Community Forests (CF). It lay emphasis that "Private management and control (if not ownership of forest land) could be the most effective strategy, in the long run, for obtaining maximum production." It was categorical on the required change in the law and mind-set of the forest administration to be "directed away from policing and towards supporting the efforts of the people" and "to allow people to have full control over the forests that they develop and to utilise forest products without too many administrative difficulties" (Master Plan, 1989).

The Forest Act, 1993 gives detailed provisions for community forests to be managed by user groups. As per the Act, any part of national forests (looking into the distance between the forest and the village, and the wishes as well as the management capacity of local users) are to be handed over with perpetual succession rights to forest user groups (FUGs). FUGs are an autonomous and corporate body, with legal and statutory status and have perpetual succession rights to develop, conserve, use and manage the forests and sell and distribute the forest products independently by fixing their prices according to Work Plan. The FUGs were made entitled to 100% of the revenue (Forest Act, 1993). The subsequent Cabinet order, however, restricted block lands in Terai to be handed over as community forests and curtailed 40% of the revenue in Terai region, which is rich in *saal*-timber (Cabinet Circular, 2000).

The FD's role is to provide technical guidance and other co-operation, if required by the concerned FUG. Nevertheless, the District Forest Officer (DFO) has power to cancel the registration of the group and take back the community forest, if he finds non-compliance or irregularity on the group's part after giving it reasonable time to submit clarification. The FUG has a right to file a complaint to the Regional Forest Director, whose decision shall be final. If the DFO's decision is disapproved, the CF has to be re-handed over. If his decision is approved, the DFO has to reconstitute the users group and hand over the community forest to the reconstituted group.

Out of total forest cover of 5.83 million hectares (4.27 forest cover and 1.56 shrub cover), about 900,000 hectares of forests (21%) has been handed over as CF to about 11,400 user groups of about 1.3 million households (Department of Forests, 2002).

It has been found that vegetative cover has dramatically improved in the CFs even on degraded forestland. A glance at the forest and one knows whether it is community forest or national forest. "One can see the difference between the community forests and other forests," admitted K B Shrestha, Director-General of Community and Private Forests, Ministry of Forests and Soil Conservation (Mahapatra, Richard, 2000).

People are very enthusiastic. This has resulted in a rush for the study of ranger course. In some cases, income has started generating. According to a study by Nepal Australia Community Research Management Project, in 1988-99, five FUGs earned \$34,445 (Rs 1.6 million) and generated employment worth \$6,571. Kakitar Village of Lalitpur, Nepal has already spent \$2044 for irrigation purposes and getting potable water (Paudel, Keshab, 2000).

Thus, it is a win-win situation for both local communities and forest resources. But, the subsequent Cabinet order restricting the scope and revenue of the community forests in Terai is backtracking and may have negative repercussions.

The most important feature of success of the CF, apart from the crucial policy guidelines, is the role of various organisations and institutions. Institutions are "the underlying rules of the game" and organisations' role is "agents of institutional change" (North, Douglass, 1990). Many organisations played significant roles starting with the conception and formulation of the policy of CF. Role of nation-wide federation of the users groups, Federation of Community Forestry Users, Nepal (FECOFUN) has been very constructive through out the years. (FECOFUN, 1999-2000) Its main emphasis is on advocacy and lobbying on policy and legal issues, empowerment of grassroots communities, discharging a variety of services to the FUGs

like conflict resolution, emphasis on backward and marginalised factions and women. For example, FECOFUN district level officials play active role as mediators in various conflict resolutions like boundary disputes between people of two or more adjacent villages, disputes among the members of FUGs, etc. It serves as an internal audit for the FUGs. This can go a long way to consolidate efforts on the CF and provide an institutional frame for the community-managed resources, in contrast to the state-centred management. The Federation serves as a watchdog of any attempts on the part of government to water down the policy and can give an organised opposition to such attempts. It fought vehemently against the government move to give long-term lease of Bara lands to international timber companies, which could be potentially converted into CF.

International private and government donor agencies are allowed to establish their offices in the interior areas at district level, even though they can not directly work with the FUGs. Nevertheless, they remain constantly in direct contact with the community and the ground level reality and in close range of feed back mechanism.

All these organisations have given their might to the process of evolution of institutions. For example, the process of various experiments carried out by HMGN during 1950-1990, from nationalisation of forests, handing over forest management to panchayats, to handing over of the forests, is crucial to the evolution of institutions.

Plantations during 60s-70s by donor agencies, without people's involvement bore no fruits. What the people of village Siranmati, District Dolakha said with enthusiasm about their CF is very significant. "The surrounding hills were totally naked some 20 years ago. Then the Swiss (*sarkar*) agency planted these pine trees. However, nobody was interested in the protection, because nobody had any rights over the forest. Now every household is involved in the protection. We have in fact employed a watchman on a monthly salary of Rs. 1300. Every household pays Rs. 15 per month. Now, there are not only the pine trees, but there are coppices of the original trees like *Chilaune*, *Uttis*, *Mahuwa*, *Kattus*, *kalicut*, *danhero*, etc." (Mehta, Trupti, 2001)

Everywhere the FUGs design and put in place rules of conduct for the protection, which are fine-tuned to the local conditions. As a result, the process of natural regeneration from the dormant rootstock in soil has enhanced. In some cases, grazing is totally banned, while in others it is banned for some time periods. Some villages employ watchmen from contribution, while in others, members of each household take turns as guards. Detailed rules are set for how much grass and fuel wood each household can collect and when. Violators of the rules are apprehended and have to pay fines.

In many cases, these measures have caused hardships to the communities. Moreover, the major economic benefits from timber are still to come in the future. Yet, people are enduring hardships without any external coercion. In many cases, people have voluntarily reduced their cattle population to reduce biotic pressure on the forests. For years, the governments have tried, in vain, to popularise programs of stall feeding and reducing cattle. Now given the proper incentives, people have adopted these measures on their own.

Success of these programs shatters a widespread myth that poor people have a short time horizon and cannot undertake projects with long gestation periods. People of Kande in

Pokhara, Nepal articulated this very well, "Yes the cattle population of our village is now almost half. We have voluntarily disposed off our cattle because now we are confident that whatever more will be produced in the forest would belong to us. So now we are more responsible towards growth of forest. We have seen with our own eyes the wonderful results of natural regeneration" (Mehta, Trupti P, 2002).

Many FUGs have set rules and penalties for those who do not comply with the rules or who are caught felling trees or grazing. People of village Dolakha said about those who have not joined now and have not contributed towards labour and still were waiting for the outcome. "Those who have joined in the protection work would get their share. If some persons want to become a member later, they would have to pay for all the years" (Mehta, T, 2001). Nonetheless, there are problems with the CF policy and programs. The government, after getting good results of the CF, has tried to dilute the incentives by the Cabinet decision of taking back 40% revenue from the land in Terai.

There are some problems of implementation too, say for example, those of equity within the FUGs. As some landless women of village Dhagamvar, district Dolakha aired their problems, "We have much difficulty for fuel wood and fodder, because we have no land and cannot supplement fodder or fuel wood from the farms" (Mehta, 2001). This leaves some question marks regarding the situation of the weaker caste or landless households and effects of this program on their livelihood options. There are some disputes regarding boundaries of CF amongst FUGs of different villages, who have traditionally depended upon the same forests.

The Community Forestry program has sharply brought into focus a crucial issue of privatisation, i.e., giving long-term lease to big corporations vis a vis property rights to the communities, as was the case of Bara lands, for which the FUGs fought tooth and nail. They argued that the land was best suited for CF, and the local communities were ready and capable of managing them. In that case, the local communities had the first claim and not some influential international or national corporations or timber companies. This was the case of rent-seeking behaviour of the corporations, who tried to take undue advantage of their influence on the government. They were able to halt the move. After they found out that there were moves afoot to snatch away what could have been theirs, they asserted their rights. The FUGs and the FECOFUN have opposed the Cabinet decision also. They have been empowered by the rights given to them by statutes and also during the process of asserting their rights. This makes it clear that no separate empowerment aids or programs for communities are needed. What is needed is the right to the communities and the political space to assert the rights.

### **Community Rights in India: The Way Ahead**

It is clear that forest management and "encroachments" by local communities are inseparable issues and the attempts to dissociate the two can only add fuel to the fire. The issue of encroachment cannot be merely treated as a law and order problem. Nor can it be treated, as the CEC observes, a "cancer in the forests spreading without pausing and spreading into vitals of the life supporting systems of nature destroying all upon which the life, including the human life itself depends" (CEC, 2002). The cancer, in fact, is not encroachments. The cancer is the exclusion of the local communities from the management of the resources. Because of the state control, forest resources have suffered greatly. That is the reason why regeneration of degraded forests and protection of forests is now being perceived to be

impossible without the active participation of the local communities. "Scientific management of forests' in India has survived more than 100 years. Unfortunately, the forests have not. Erosion of people's control over their own resources and decline in the resources' health are not unconnected" (Khare, A, 1992). The myth of "scientific management" of forests, introduced to take away the management from the hands of the people, has been shattered. This was reflected in the policy shift embodied in the six circulars, of 1990. To tackle the problem of encroachment, a two-pronged strategy, a long-term and a temporary one should be evolved. The long-term strategy is handing over rights on forest resources to the people and sharing benefits with them. This presupposes devolving substantial stakes and rights and economic incentives to them. In the meantime, as a temporary measure, all pre 1980 cultivation by the forest dwellers should be regularised forthwith.

#### From JFM to Village Forests

While the present policy of JFM encourages participation of local communities in forest management, it falters badly in terms of establishing well-defined community rights over forest areas. Moreover the implementation of existing policy too has been lacklustre. There is thus an urgent necessity to establish the legal framework for moving towards "community" or "village" forests with full rights and autonomy to manage forests on the basis of their knowledge and wisdom. The village communities should have full and perpetual rights on major as well as minor forest products in such forests including that of marketing of products and forest department should play a supportive role in form of providing technical assistance. A clear legislative basis should be provided for this arrangement in the forest act.

Section 28 of the Indian Forest Act for the constitution of "village forests" can provide the necessary starting point in this regard. This provision of the Forest Act has never been implemented and has by and large remained dormant. This section should be amended to clearly define the rights and responsibilities of village communities. The government of UP has already done this by notifying the guidelines for JFM as rules under Section 28 of the Indian Forest Act and expressly giving the village communities the rights of forest officials (GOUP, 1997). But, this is not enough. Clear provisions need to be made in the Forest Act itself with procedural details elaborated in the rules as is found in Nepal. This would provide tremendous incentives to the village communities in forest regeneration. Long-term security of tenure and autonomy in decision-making are some of the vital elements in providing incentives to local community organisations to engage themselves in the gigantic task of forest protection and regeneration.

#### Moving Towards Joint Protected Area Management

The principles underlying community rights on forests are equally applicable in case of protected areas of sanctuaries and national parks. Hence steps should be taken to move towards joint protected area management to ensure that local communities and the wild life can exist together in harmony. This is how the princely states managed their game reserves, which apart from providing habitat to the game animals also met the needs local communities. Hence innovative programs need to be initiated which would give local communities vital stakes in the protection of the wildlife.

The main difficulty in initiating such programs comes from the Wild Life Protection Act, which is exclusionary in nature and does not allow any activities, which are expressly not necessary to protect the interests of the wildlife alone. Section 29 of this Act gives authority to the Chief

Wild Life Warden to allow activities that he considers to be in the interest of the wildlife. But this section being too vague and arbitrary is liable to be misused. Hence, this power should not be left to discretion of the Wild Life Warden. Instead, the section should be made abundantly unambiguous by specifically providing for allowing activities benefiting local communities, which would in turn ease the conflict between them and the wildlife and thus also be in the interest of the wildlife.

The program of eco-development being implemented for the communities living on the fringes of protected areas to reduce their dependence on forests still does not give adequate stakes to the local communities in the protection of wild life and has not made much headway. Recently Madhya Pradesh has passed a resolution providing for formation of "Eco-development Committees" in the villages within and on the fringes of protected areas to ensure their participation in Protected Area management (GOMP, October 2001). As the silviculture operations of tree felling are banned in these areas, no part of the income from such operations can be given to these committees. To compensate for this loss of income, it provides for giving annual grants to these committees, which is equivalent to the value of the forest produce made available to the community committees active in the adjacent dense forest areas lying outside the PA. This ensures that the costs of not exploiting the forest produce in PAs are borne by the society as a whole and there is no undue burden of this on the local communities, which are more often the poor sections of the society. In addition to this important provision, it also provides for meeting all the local requirements of fuelwood, fodder, and small timber from the protected areas free of cost.

This requires amendments in the Wild Life Protection Act to move towards Joint Protected Area Management, which would promote symbiotic relationship between local communities and wildlife. Unfortunately, the recent Bill passed by the Parliament is silent on this crucial aspect.

### **Regularising the Existing Encroachments**

It is true that cultivation on steep slopes is both harmful for the soil conservation and forest growth as well as inconvenient and economically non-paying proposition for the people, who toil on these slopes. But, to jump from this to outright and immediate evictions is not a solution at all. The improvement in the JFM policy and change in the attitude and mind-set of the forest department, pre-requisite for the people to earnestly participate in the management, would require some time. Also people would require time to trust the forest department and to perceive that forest produce can give them good income. Substantial results are needed before their perception changes. It is also true that most of the encroached lands of the poor communities are of poor quality. But, at present, without any option of an alternative, the people strive hard on such lands. Once they start getting substantial income from non-timber and timber products, and once they are sure of the permanent or long-term contract, irrevocable at the whim of the forest department, they would remain least interested in continuing with the hard toil on the encroached land.

But, meanwhile, they can not live on dreams and wishes alone. To start in this direction requires earnestness among the policy makers and the forest department. Otherwise, the old distrust would not evaporate overnight. Unless and until the wisdom, seriousness and earnestness required for the good management does not dawn on the policy makers, good

stewardship would remain a hollow dream. No amount of coercive evictions is going to solve the problem.

Before the long-term gains start accruing to the people, thus, the encroachments should be regularised or at least not be disturbed. The first and foremost requisite step is that the encroachment is regularised, and a clear-cut program of making unambiguous and legally-binding contracts with the people is initiated.

#### Norms for Regularisation: Fine Receipts or Field Verification?

The September 1990 circular of the MoEF distinguishes two types of encroachments—one, pre-1980 "eligible" encroachments, liable to be regularised and two, pre-1980 "ineligible" encroachments and all post-1980 encroachments, not liable to be regularised and liable to be evicted. There is, however, no clear definition of what pre-1980 encroachments are eligible and what are not. Moreover, to accept as evidence only the fine receipts would be tantamount to denying the rightful dues to the forest dwellers. The Commissioner of Scheduled Castes and Scheduled Tribes has vividly said: "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 may be as good as lost. It is the fact of possession of land, its cultivation and actual reclamation in some cases by his ancestors, which is common knowledge in 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 can be 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 to the tribal people. They cannot be expected to know what is there in government records. In these circumstances if the records were to be insisted as evidence, the disputes about land can never be expected to be resolved" (Sharma B D, 1997, p. 36).

As the latest MoEF circular of October 30, 2002 suggests, other evidences also should be taken into consideration. In this context, the Maharashtra GR of October 10, 2002 can be taken as a basis, as it gives suitable guidelines of taking not only documentary evidences, but also allows physical evidences or testimonies of villagers as a proof of encroachment. Instead of going through all these hassles, a decision could be taken to regularise all the encroachments and immediately start with the improvised JFM and eventually hand over the JFM forests as village forests to the people.

The experiences of even half-hearted JFM policy or Community Forest policy in Nepal or Zimbabwe experiment of sharing revenue of Park Management show a way out. Instead of evicting lakhs of poor forest dwellers from their encroachment, and thereby creating a serious law and order problem and potentially furthering environmental problem, is it not better to start devolving powers and rights to the forest-dwellers, so that they also become part of the development process? That would be a good environmental policy and good economics as well.

#### **Save Natural Forests: Promote Private Forestry**

It is interesting to note that 97% of forestlands are owned and managed by the government, but most of the raw material for wood-based industries is imported from outside.

Wood can become a major industry and combined with its ancillary activities has potential to provide substantial economic benefits to a large number of people, who can grow timber either government forestlands under JFM or on private lands. The current consumption of the raw material is between 24 to 30 million cm (GOI 1999), which is likely to increase several folds in the years to come. Domestic needs of wood for the town and village population have remained a burning problem, which prompts massive government efforts to unsuccessfully promote among the population fanciful alternatives, which are usually non-viable. Tree growing offers a very good economic opportunity to private individuals, co-operatives, and companies.

Until 1980s, most of the large wood-based industries, including paper and pulp industries, were receiving supplies of their raw material, usually at subsidised rates, from government forests. Several of them had long-term raw material supply agreement with the state governments (Saigal and Kashyap, 2002).

However, there was no move either on the part of the government or the industry to grow plantations of timber/ bamboo on the leased out forestlands. This has been one of the main reasons of massive deforestation.

The Forest (Conservation) Act of 1980 was in response to the continuing deforestation. Ban on the lease of forests to industries and moratorium on clear felling by the Forest Department was envisaged to halt the process of deforestation. Meanwhile, the Supreme Court also ordered ban on tree felling in the mid-1990s.

As a consequence of the changes brought about by the ban on felling of trees and their transportation, supply of raw material from government forests to wood based industries has gradually declined, forcing the latter to look for other alternatives. The option of raising own captive plantations on a large scale is not available to these companies due to ceiling limits on agricultural land and restrictions on leasing of government forestland (Saigal and Kashyap, 2002). This has taken away a good opportunity for private parties to grow timber/ bamboo / eucalyptus to supply to industries.

There are many restrictions on some of the trees, especially timber. Strict restrictions on the sale of timber grown on private land, without permission of the forest department, is the most effective deterrent against timber plantations on private lands. Private plantations on non-forestlands suffer from lack of suitable policy support. There is a separate set of regulations for individual species found on any private land. Permission from the Divisional Forest Officer or a designated tree authority is required to fell trees and to transport the produce. The private sector's participation in forestry activities is determined by policies at the central and state levels, not only those directly related to forests but also policies and legislation introduced for other sectors e.g. land ceiling on agricultural lands, export-import policies, tax laws etc. (Singh 2002).

Private plantations can supplement the product of the community-managed forests, if the restrictive policies of the government are removed. There is an urgent need to look into such restrictive policies and mend them urgently.

Moreover, there are many forest areas, which could provide good quality timber, if proper natural regeneration is allowed. This is possible only if the local communities are entrusted with the stewardship of the forests. The same restrictive policies hamper community initiatives of growing these precious species in these areas too.

### **Forests to Forest Dwellers: Efficient and Ethical Resolution**

The experiences world over and at home have made it amply clear that resources in the hands of private parties—be that of individuals, communities, or corporations—are better managed than in the hands of government. Who should be entrusted with these resources depends upon the types of resources, circumstances, and local customs and traditions. For resources that have generally been in the common, like water and forests, the best stewards are the local communities who have been managing those commons historically. Entrusting these resources to any other entity would mean keeping the communities out forcefully—by guns and guards. Whether these guns and guards are employed by the government or a private corporation, they would not be able to withstand the battles for bare survival by the communities. Neither corporatisation, nor collectivisation is an option.

In countries like India, where communities live in and around forests, the wilderness vision or the ideal of ecology without humans is infeasible. The notion that the protection of forests requires them to be separated from humans springs from the Western vision of wilderness. Having lived for centuries in the forests, communities have the requisite traditional know how to best manage these resources. The traditional know how is not infallible, but it is not a giant leap of faith to assume that the communities will learn from outsiders new scientific developments that are appropriate to their concerns. This appraisal by communities and the required meshing of the new with the old knowledge is an effective deterrent to unnecessary scientism—worship of the new just because it is new. Once communities are given clearly demarcated and legally enforceable rights in forests, their management will prove to be the most optimal.

The history of state forestry, from the British to our government, has been of replacing the diverse species of a natural forest with a mono species. Both the scientific and sustainable forestry management has led to the same results. Communities are more likely to find economic and social benefits from the existing diversity of resources that the forests offer. There is higher probability of a natural fit between diverse needs of communities and diverse offerings of forests.

In addition to all the utilitarian or efficiency arguments, it must be remembered that local communities have a prior claim—a moral claim—on the forests. They have been living there and using the resource for generations. It is on the premise of prior use that all resources have been settled in any civilised society. It is gross injustice not to recognise the rights of forest dwellers.

Community ownership and management solve two problems simultaneously: the protection of forests and of dignified livelihood to the poorest communities in the country. They build their

future from the natural asset of forests. The most efficient as well as moral resolution is to take our forests from the foresters and put them in the hands of forest dwellers.

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