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Contested Terrain Forest Cases in the Supreme Court of India

A report by

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for

SRUTI
Society for Rural Urban and Tribal Initiative

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While all care has been taken to cross verify information contained in this paper, it would be advisable to refer to the original Orders/ IAs/ Affidavits before using any of this material for litigation or advocacy purposes. Copies of these materials are available with SRUTI and can be accessed on request.

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Preface

The last few years have seen a lot of interest in the directions passed by the Supreme Court regarding 'encroachments' on forest lands, as well as on a variety of related issues which impact on the rights of tribals and forest dwellers. These orders have emerged as interim directions from a number of PILs pending before the Court, and resulted in a flurry of protest when the concerned line departments have set out to implement them. For a large part, this process has been marked by a lack of information among organisations working with tribals and forest dwellers about the exact nature and context of these orders and directions. This gap in information, especially at the local level, has been something of a stumbling block in the mobilisation efforts of people's organisations around these issues, and therefore of concern.

Over the past few months effort has been made to bridge this information gap, through the generation of monthly case updates on email¹ as well as through the publication of reports². The present document cannot hope to match these efforts in depth or regularity. Instead, this document has been designed as an intense one time exercise to collect and collate the most critical court material relating to the rights of tribals and forest dwellers in the Supreme Court, and present it in an easily accessible printed format for ready reference. It is hoped that this document will complement and enrich the ongoing efforts at providing regular updates from the Supreme Court in forest related matters.

A note on the methodology adopted. Three pending cases in the Supreme Court were identified for scrutiny which impact on forest rights, and for the sake of convenience we refer to these cases collectively as 'the forest cases' through out this report:

- *T.N. Godavarman Thirumalpad vs. Union of India*³
- *Centre for Environmental Law, WWF-I vs. Union of India*⁴
- *Naveen Raheja vs. Union of India*⁵

Although efforts have been made to observe the Court hearings sporadically ever since the emergence of the issue of encroachments, concerted effort was made to observe all the hearings in each of these cases over the last six months. These observations were of tremendous use in providing pointers to a number of related issues and the range of pending IAs.

An effort has been made to collect all the reported and unreported orders passed by the Supreme Court in these cases, with uneven results. While we were able to access a large amount of documentation in the *Godavarman case*, we were unable to gain access to documentation in the other two cases, despite all efforts. Since these are pending cases and the orders of the Court are interim in nature, only a few of them find their way into published journals in the public domain. Thus even the compilation of orders is far from complete. The result has been an incomplete set of findings and an unfinished task.

¹ See, for instance, the Forest Case Update, a monthly update which commenced in June 2004.

² See, for instance, *Endangered Symbiosis: Evictions and India's Forest Communities* by the Campaign for Survival and Dignity (December 2004).

³ Writ Petition (Civil) No. 202 of 1995 Supreme Court of India.

⁴ Writ Petition (Civil) No. 337 of 1995 Supreme Court of India.

⁵ Writ Petition (Civil) No. 47 of 1998 Supreme Court of India.

It is important to make this point at the outset because it raises vital issues of access to information and the resultant impact on the most marginalized sections of our society. It is of great concern that in cases labelled 'Public Interest Litigation' affecting rights of millions of people across the country, access to Court documents are denied to these very people on the ground that they are not parties to the case. This results in a catch-22 situation where we are unable to intervene in cases because we don't know the details of what is going on, and we are unable to find out what is going on because we are not parties to the case.

It is hoped that the process of breaching the walls of silence and secrecy surrounding the forest cases pending before the Supreme Court, which this document attempts to begin, will be continued by people's organisations, even as they use this document to advance their struggles.

This report would not have been possible without the initiative and guidance of Rohit Jain of SRUTI, who remained a valuable sounding board and motivator even through times when it seemed hopeless. We would also like to acknowledge the contribution of the Campaign for Survival and Dignity to this document, whose insights and experience we have freely drawn upon. We would particularly like to thank Pradip Prabhu, Madhu Sarin, and Priya Srinivasan for their support.

A number of lawyers opened their case files and libraries to us, and their generosity cannot be overstated. They include Colin Gonsalves, Prashant Bhushan, Sanjay Upadhyay and Ritwik Dutta. A special mention of the help provided by Mr. S. Muralidhar would not be out of place. We are deeply grateful to each one of them.

Finally we must thank the SRUTI team for their encouragement and continued interest in our discoveries. We also thank Gopal Saxena for cheerfully dashing all over town burdened with documents, taking a real load off our shoulders.

Needless to say, the mistakes in this document, if any, are our own, and we take full responsibility for them.

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New Delhi

Chapter I

Brief overview of the Forest Cases in the Supreme Court

The forest cases

As stated earlier, there are three main cases pending before the Supreme Court which deal with the issue of forests. The case *T.N. Godavarman Thirumalpad v. Union of India*⁶ has had few parallels in the history of the Supreme Court, even by the expansive standard of India's proactive judiciary. It was filed as a letter petition by a former estate owner in Tamil Nadu who was distressed by the illicit felling of timber from forests which had been nurtured for generations by his family, and taken over by the government under the land reforms process. This letter was converted by the Court into a Public Interest Litigation (PIL), and over time its scope was extended to forest lands in all parts of the country.

In the initial phase the Court operated largely within the existing legislative framework regarding control and management of forests, and cracked down on wood based industrial activity all over the country. It issued detailed directions for the protection and sustainable use of forests. It also created its own monitoring and implementation machinery through regional committees. The control over functioning of sawmills, plywood and veneer factories is even today a major component in the case

Beginning from December 1996 the Supreme Court broke the confines of the existing legislative framework, and has issued sweeping directions which have impacted the ownership, management and control of forests, forest land and forest produce. During this time the Court took upon itself the task of determining who can have access to the forest land and forest resources, and through what means. As a result a flood of opposing interest groups have approached the Court in the past 8 years, and today the case is arguably the largest ever to be litigated in India, not only in terms of sheer quantity (the number of pending/disposed Intervention Applications has crossed twelve hundred) but also in the myriad issues the Court has taken on.

The case also demonstrates the contradictions which emerge when the Court assumes the roles of adjudicator, administrator and legislator, all rolled into one. Not the least among these is the dilemma of identifying legitimate interests from a network of conflicting interests, and from among these identifying those which are 'public interest'. Some of these issues are examined in greater detail in a subsequent section. Among the plethora of issues which have come up for scrutiny, is the issue of 'encroachments' on forest lands by tribals and forest dwellers.

The *CEL, WWF-I Case* has also been treated as a continuing mandamus by the Court, and has come up for hearing at regular intervals since 1995. There has been a marked shift in focus over the years. While initially the Court was deeply concerned by the failure of state governments across the country to issue final notifications under the *Wildlife Protection Act, 1972*, in recent years much of its time is taken up examining the permissions granted by the National Board of Wildlife for diversion of land from protected areas for non forest purposes.

⁶ Writ Petition (Civil) No. 202 of 1995

Another case that needs to be carefully watched is *Naveen Raheja vs. Union of India*⁷ which relates primarily to the protection of wildlife. However, since we were unable to obtain access to the court documents in this case, it would be premature to make any comment on this case.

There is one other case we would like to bring into the radar of scrutiny. Soon after the *CEL, WWF-I case*, a writ petition was filed raising fundamental challenges to the framework of the conservation law itself, namely, *Coorg Organisation for Rural development (CORD) and another vs. State of Madhya Pradesh and ors.*⁸ Unfortunately this case has come up for hearing only once and has not generated any interest either in the bench or the bar. In fact, it is largely unknown.

Existing statutory law:

While a history of legislation of forest laws in this country is beyond the scope of this document, it is still important to sketch an outline of the statutory and legislative provisions. Soon after the first war of independence in 1857, the British administration enacted a number of major legislations through which they were able to establish legal control over and domination of natural resources and land in the country⁹, one of them being the *Indian Forest Act, 1878*. This is the parent statute of the current *Indian Forest Act, 1927*, and of all existing forest laws in the country; the mechanisms it put into place for governance are still very much in place.

The Indian State made its policy towards its forest wealth very clear through the *1952 Forest Policy*, which served to reinforce the domination of the state over forests and their use for commercial purposes. The alienation of tribals and forest dwellers from their traditional rights over forests and forest produce took on a new momentum after this.

The enactment of the *Forest Conservation Act, 1980* (FCA) by the Centre served to freeze the field situation, giving enormous powers to the Forest Department and the Central Government. The FCA lays down that prior to diversion of forest land for non forestry purpose, the permission of the Central Government must be obtained. The Act is supported by the *Forest Conservation Rules, 2004*, and a host of notifications and orders.

An acknowledgement of the dissonance between statutory law and the natural rights of tribals and forest dwellers came with the *1988 Indian Forest Policy*, which for the first time acknowledged the symbiotic relationship between tribals and forests, and also recognised that tribals and forest dwelling communities are dependant for their survival and livelihood on forests, and their rights need to be recognised.

On the recommendation of the Commissioner for Scheduled Castes and Scheduled Tribes in his 29th report, the government converted this statement of intent into a concrete recognition of rights with a set of circulars on 18.9.1990¹⁰ (henceforth the 1990 guidelines) approved by the Cabinet. These relate to:

⁷ Writ petition (Civil) No. 47 of 1998

⁸ Writ Petition (C) no. 672 of 1998

⁹ Some of these were the *Land Acquisition Act, 1894*, the *Northern India Canal and Drainage Act, 1973*, the *Societies Registration Act, 1860*.

¹⁰ For our purposes only these four guidelines are relevant. The Government had however, issued two other guidelines in this set, which related to payment of wages to forest workers, and compensation for loss of life due to predation of wild animals. A complete set of these 6 guidelines has been reproduced in "*Forest Lands: Tribals Struggle for Survival*" by **Dr. B.D. Sharma**, Sahyog Pustak Kuteer (Jan. 2003).

1. *Encroachments on Forest Land- a Review thereof and measures for confinement*¹¹: This order provides for regularization of encroachments predating the *Forest Conservation Act, 1980*, and fixes the cut off date as 25.10.1980, the date on which the FCA came into force.
2. *Review of Disputed Claims over Forest Land arising out of Forest Settlement*¹²: This order provides for settlement of disputed claims over reserve forests where the Settlement of Rights has been faulty or has not been done.
3. *Disputes regarding pattas/ leases/ grants involving forest lands*¹³: This order relates to pattas/ leases/ grants of forest land which could not be renewed or have become 'illegal' due to the enactment of the FCA in 1980.
4. *Conversion of Forest Villages into Revenue Villages and Settlement of other Old Habitations*¹⁴: This order relates to the settlement of old habitations and dwelling sites, as well as dereservation of forest land for conversion of forest villages into revenue villages.

The implementation of these dramatically important orders has been far from satisfactory. One of the main reasons for this is the abysmal lack of awareness about the existence of these orders at the local level, both among tribals and forest dwellers, as well as among the foresters and revenue officials. As a result, the filing of claims has been rare, unless an organised local pressure group takes the lead in a particular area. The state governments too have been tardy in the implementation of these orders, and even those that have processed some claims, have not pursued the necessary permission procedure under the *Forest Conservation Act, 1980* with any diligence.

These national laws are supplemented by an intricate network of state level forest laws and revenue laws governing a host of issues such as extraction and trade in non timber forest produce (NTFP), exercise of usufructuary rights over forest lands, demarcation of jurisdictional boundaries between different departments, as well as the role of panchayati raj institutions.

Protected areas are governed by the *Wildlife Protection Act, 1972* (WPA), which lays down a detailed procedure for the creation and management of national parks, sanctuaries, and community managed protected areas. Certain critical amendments were made to this law in 2002 recognising the right of local communities to extract forest produce for personal consumption.

The enactment of the *Panchayats Extension to Scheduled Areas Act, 1997* (PESA) has been an important step towards empowerment of local communities in tribal areas with respect to their natural resources. Subsequently, a number of state governments, especially those having sizeable tribal populations, have made amendments to state level panchayati raj legislations in purported compliance with the directions of PESA. These laws give powers to communities, through the Gram Sabhas (village councils), to manage and control their natural resources, including forests and forest produce.

¹¹ No.13-1/90/-FP (I)

¹² No.13-1/90/-FP (2)

¹³ No.13-1/90/-FP (3)

¹⁴ No.13-1/90/-FP (5)

Chapter II

The definition of ‘forest land’: groundwork for a new judicial interpretation of forest law

While adjudicating on a range of forest related issues in the forest cases pending before it, the Supreme Court appears to have turned a blind eye to the above legislative framework, and the complex interrelationship of rights, duties and boundaries it represents. While tracking all these developments is beyond the scope of this document, we will point out in the present chapter some of the key changes that have impacted the legal position on forests as it stands today.

Definition of forest land:

The Supreme Court passed a benchmark judgment in the *Godavarman case* on 12.12.1996 where the term “forest land” was re-defined for the purpose of section 2 of the *Forest Conservation Act, 1980*, (henceforth FCA) as follows:

“The word “forest” must be understood according to its dictionary meaning. This description covers all statutorily recognised forests, whether designated as reserved, protected or otherwise for the purpose of section 2(i) of the Forest Conservation Act. The term “forest land”, occurring in section 2, will not only include “forest” as understood in the dictionary sense, but also any area recorded as forest in the Government record irrespective of the ownership. This is how it has to be understood for the purpose of section 2 of the Act. The provisions enacted in the Forest Conservation Act, 1980 for the conservation of forests and the matters connected therewith must apply clearly to all forests so understood irrespective of the ownership or classification thereof.”¹⁵

The pronouncement that the FCA is applicable to forests irrespective of the nature of ownership or classification of land, as long as it is forest in the dictionary sense, has grave implications in itself. As a result of this order large areas recorded as forest in government records, whether under the Revenue Department, private or community ownership, have come under the ambit of the FCA, and therefore under the departmental control of the Forest Departments of various states. The order, through a process of oversimplification and interpretative jugglery, has not only re-written the law, but history itself. A direct result of this order is the ongoing demarcation of “forest like lands” in several states under the supervision of the Court.

Over time this interpretation of ‘forest land’ has continued to gain in acceptance. As a result it has been brought into play not only for the purpose of the FCA, but also a range of other issues concerning forests before the Court, throwing into confusion a variety of state legislations which have carefully demarcated definitional, and therefore jurisdictional boundaries. Today legal uncertainty haunts a variety of issues concerning the rights of tribals and forest dwellers over forests, such as the rights of patta holders in Orange Areas (undemarcated protected forests) in MP and Chattisgarh, right to

¹⁵ (1997) 2 SCC 267 at para 4

regularisation of land title of tribals and forest dwellers, rights over non-timber forest produce, and also exercise of nistar and other customary rights which are recognised by the statutory frame work.

One of the most interesting offshoots of the expanded definition of forest land by the Supreme Court has been the emergence of the concept of Net Present Value, which is examined in some detail below.

Compensatory Afforestation Fund and Net Present Value

The *Forest Conservation Act, 1980* and the Rules framed under it, have long required that diversion of forest land for non-forest purpose must be accompanied by compensatory afforestation, usually in an area upto double of the diverted land. The user agency is required to pay the state government for the compensatory afforestation according to certain formulae. However, it was becoming increasingly apparent that the actual implementation of these afforestation programmes was far from satisfactory.

During the course of hearings in the *Godavarman case*,¹⁶ Mr. Kirit Rawal, Additional Solicitor General, placed on record a statement showing the position of the cases approved for diverting forest area for non-forestry purposes, compensatory afforestation stipulated and actually done, funds to be received, actually received and utilised. The statement showed a dismal performance by most of the states, with 50% or less of the amounts received for compensatory afforestation having actually been spent by state governments. The Supreme Court *suo moto* took this statement on record and treated it as an independent IA¹⁷, and notice was issued to the defaulting states which had recorded poor progress in utilisation of funds.

The question which arises, clarified the Court on 8.9.2000¹⁸ “is whether the present practice...of the applicant depositing money with the State Government and requiring it to carry out the afforestation is satisfactory or not...” The Court expressed its view that the primary responsibility of ensuring reforestation should be that of the individual user agency. In fact, his duty must go beyond that to ensuring that the reforested area is maintained and the trees survive and reach full growth. The Court went to the extent of observing that an annual environmental audit should be worked into the grant of permission, and if the survival rate of the trees in the reforested area falls below a certain percentage, the permission under the FCA should be cancelled. Unfortunately, this line of thought has become diluted over the years.

In a hearing on 23.11.2001¹⁹ the Court directed the MoEF to formulate a scheme:

“whereby whenever any permission is granted for change of user of forest land for non-forest purposes and one of the conditions of the permission is that there should be compensatory afforestation then the responsibility of the same should be that of the user-agency and should be required to set apart a sum of money for doing the needful. In such a case the State Governments concerned will have to

¹⁶ Order dated 17.4.2000 in IA Nos. 419 and 420, 2003 SCALE (PIL) 104

¹⁷ This was numbered as IA No. 566.

¹⁸ Unreported order.

¹⁹ In IA 566. Unreported order.

provide or make available land on which reforestation can take place and this land may have to be made available either at the expense of the user agency or of the State Governments, as the State Governments may decide.”

The matter was sent for consideration to the Central Empowered Committee (CEC), which submitted its recommendations²⁰. The CEC examined the current practice on the issue, and reported that a number of state governments have been facing problems accessing the funds deposited by user agencies towards compensatory afforestation. The reason for this has been, according to the CEC, that “the funds received from the user agencies for compensatory afforestation are deposited as revenue receipts with the State Government which are made available to the Forest Department only through budgetary provision....which is time consuming and fraught with delays.”

The CEC reported that “in the States of Madhya Pradesh and Chattisgarh, the net present value is being recovered @ Rs.5.80 lakhs per hectare to Rs.9.20 lakhs per hectare of the forest land depending upon the quality and density of the forest land diverted for non-forestry use.” It placed on record its approval of this practice.

The CEC accordingly recommended that:

- While granting approval under the FCA, in addition to the funds realised for compensatory afforestation, net present value of the forest land diverted for non-forestry purposes shall also be recovered from the user agencies;
- a ‘Compensatory Afforestation Fund’ be created in which all funds received from the user agencies towards compensatory afforestation, additional compensatory afforestation, penal compensatory afforestation, net present value of forest land, Catchment Area Treatment Plan funds, etc., shall be deposited.
- The rules, procedure and composition of the body for management of the Compensatory Afforestation Fund be finalised by MoEF with the concurrence of CEC;
- funds received from the user agencies in cases where the forest land diverted falls within Protected Areas i.e. area notified under the *Wild Life (Protection) Act, 1972*, for undertaking activities related to protection of bio-diversity, wildlife, etc., shall also be deposited in this Fund. Such funds be exclusively used for undertaking protection and conservation activities in protected areas of the respective State/UT;
- any balance or unspent amount received on account of compensatory afforestation lying with the State/UT, or any amount that is yet to be recovered from the user agency shall also be deposited in this Fund.
- besides artificial regeneration (plantations), the funds shall also be utilised for undertaking assisted natural regeneration, protection of forests and other related

²⁰ *Saving India’s Forests and Wildlife*, Sanctuary, Mumbai, November 2003. There is some confusion about the date of the report. The aforesaid publication states that the report is dated 13.8.2002, while the Court orders refer to the report as dated September 2002. However, there is no contradiction regarding the contents of the said report.

activities. For this purpose, site specific plans should be prepared and implemented in a time bound manner;

- user agencies, especially public sector undertakings such as Power Grid Corporation, NTPC, etc., which frequently require forest land for their projects, should also be involved in undertaking compensatory afforestation by establishing Special Purpose Vehicle; and
- an independent system of concurrent monitoring and evaluation be evolved and implemented by the Compensatory Afforestation Fund to ensure that the funds are properly and effectively utilised.

This report was accepted in its entirety by the Court²¹ vide order dated 30.10.2002²², and directions in these exact terms were passed. The Union of India was directed to frame rules for the purpose of constitution of a body to manage the compensatory afforestation fund within 8 weeks.

It is important to quote the following direction, which remains the first, and only, articulation by the Court of the concept of Net Present Value:

“The net present value is to be recovered at the rate of Rs. 5.80 lakhs per hectare to Rs. 9.20 lakhs per hectare of forest land depending upon the quantity and density of the land in question converted for non-forest use. This will be subject to upward revision by the Ministry of Environment and Forests in consultation with Central Empowered Committee as and when necessary.”²³

The MoEF has issued several directions²⁴ thereafter regarding payment of NPV for diversion of forest land for non-forest purpose, according to which:

- NPV is payable in all cases that have been granted in-principle approval after 30.10.2002
- NPV must be realised before Stage II (final) approval is granted
- NPV must be recovered in all cases where Stage I approval has been granted after 30.10.2002, even if Stage II approval has also been granted.
- State Governments should charge NPV within the range of Rs. 5.80 lakhs to Rs. 9.20 lakhs per ha depending upon the quality of forest, density and the type of species in the area.
- The funds should be transferred to CAMPA.

After two years of back and forth, with different draft Rules being provided to the Court and the Amicus for perusal, the MoEF also passed a direction on 23rd April 2004²⁵ constituting the Compensatory Afforestation Fund Management and Planning Authority (CAMPA). (See Box)

²¹ The Court observed that since none of the State Governments had filed any objection to the CEC's report, it was presumed that they are not opposed to it. @ para 33

²² Order passed in I.A. 566, 2002 (9) SCALE 81

²³ 2002 (9) SCALE 81 at page 88.

²⁴ Letters dated 17/18 Sept. 2003 and 19/22 Sept. 2003, F.No.5-1/98-FC (Pt II), among others.

²⁵ In exercise of the powers conferred by sub-section (3) of section 3 of the *Environment Protection Act, 1986*.

Constitution of CAMPA

The GO constituting the Compensatory Afforestation Fund Management and Planning Authority (CAMPA) vests custodianship of the Compensatory Afforestation Fund in CAMPA, including its management, disbursement, monitoring and evaluation. The money payable towards compensatory afforestation, Catchment Area Treatment Plan, and Net Present Value, in compliance of conditions while according forest clearance or in pursuance of the orders of the Supreme Court, the Central Government or any other competent authority, is to be deposited in this fund. Any unrealised compensatory afforestation funds are also to be realised by the States and UTs, and transferred to CAMPA.

Money realised from a State or the Union Territory shall be used only in that particular State or Union Territory, as per the site specific schemes. The money received towards Net Present Value (NPV) shall be used for natural assisted regeneration, forest management, protection, infrastructure development, wildlife protection and management, and other forest produce saving devices and other allied activities. Funds recovered from user agencies relating to protected areas are to be maintained separately.

The organisational structure of CAMPA has been laid down in some detail. The GO provides for a Governing Body and Executive Body at the Central Level, as well as a Steering Committee and a Management Committee at the State/UT level.

At the Centre

The Chairperson of the Governing Body is the Minister of Environment and Forests. A total of 15 members are stipulated by designation, all of them senior officers of the MoEF. There is only one non-forester in the body, an eminent professional ecologist. This body is to meet at least once in 6 months, and its role is to review the broad policy framework of CAMPA, monitor the progress of utilization of funds released by CAMPA, approve the annual budget, annual reports and audited accounts of CAMPA.

The Executive Body at the Centre is chaired by the Director General of Forests and Special Secretary, MoEF. It has 6 members, 5 of whom are drawn from amongst senior officers of the MoEF. The non-forester member in this body is a professional ecologist. This body deals with the day-to-day working of CAMPA, including receipts of funds, their investment, deployment of staff and handling of expenditure on establishment and overheads.

At the State

The GO also provides for the setting up of State level Steering Committees under the chairpersonship of the Chief Secretary. All the members are senior officers of the state Forest Departments, except for a representative of an eminent NGO nominated for a two year period. The Chief Conservator of Forests (Plans/schemes) is the Member Secretary. This Committee will meet at least every six months, and ensures inter departmental coordination, facilitation of policy decisions and concurrence to the Annual Plan of Operation (APO).

The executive body at the State level is the State Management Committee, under the chairmanship of the Principle Chief Conservator of Forests. Again, the membership is drawn from the senior Forest Department bureaucracy, bar one NGO nominee. The Nodal Officer would act as the Member Secretary. The State Management Committee is responsible for the preparation of the Annual Plan of Operation (APO) of the State, and its submission to CAMPA. The Committee is also responsible for the qualitative and quantitative supervision of the work being implemented in the State out of the funds released from CAMPA.

Law in process:

The directions of the Court in relation to compensatory afforestation and net present value are of great relevance to the subject of regularisation of land rights of

tribals and forest dwellers in forests. This can perhaps best be demonstrated by referring to a much older order dated 22.9.2000²⁶ where the request of the State of Madhya Pradesh for permission to regularise encroachments on forest lands was considered. One of the conditions for permission was that the State Government will carry out afforestation over the equivalent land. The Court observed that “one cannot shut eyes to the fact that there would be encroachment thereafter.” It went on to say that experience has shown that whenever regularisation takes place subject to imposition of conditions, such as compensatory afforestation, while regularisation becomes effective, conditions remain unfulfilled.

The Court was of the view that: “it will be more appropriate that the conditions imposed in relation to regularisations are required to be fulfilled first before any regularisation is granted. The result of this would be that the regularisation would be deferred but the fulfilment of the conditions ensuring inter alia compensatory afforestation would be ensured.”

This order, although it relates to compensatory afforestation, could be interpreted to mean that net present value is payable in advance prior to regularisation of encroachments, and settlement of land rights in accordance with the 1990 guidelines. This is a matter of great concern since it acts as a huge disincentive to state governments to undertake the process of regularisation and settlement.

There is a need to differentiate between commercial diversion of forest land, and non-commercial diversion of so-called forest land where the claim of ownership of the State is itself disputed. For the State to demand payment of NPV in such cases can only be described as opportunistic behavior of the worst kind.

In addition, the Court has undertaken no scientific or rational reasoning while fixing the net present value at Rs. 5.80 lakhs to Rs. 9.20 lakhs per hectare. In fact this amount is abysmally low and cannot even begin to compensate the loss of biodiversity and forest cover resulting from commercial exploitation of forest land. These directions, therefore, lack rationality from all points of view.

However, the issues of compensatory afforestation, the administration of CAMPA, and especially the issue of net present value are far from settled. A large number of IAs filed by user agencies as well as state governments have been filed challenging the current position on these issues, and are awaiting hearing. The Amicus Curiae has indicated to the Court that there is a need to disaggregate the rates payable by different user agencies towards Net Present Value, depending on the social status of the user, as well as the nature of the land which is being diverted.²⁷ The MoEF as well as some of the State Governments have gone on record to state that no net present value should be payable while regularising land rights of tribals and forest dwellers, since their occupation pre-dates the legal notification of the land as forest.²⁸ Clearly it will be some time before we see closure on this subject.

²⁶ In IA 424 in WP (C) 202/ 1995. Quoted from Compilation of orders in Saving India's Forests and Wildlife, Sanctuary, Mumbai, November 2003, p. 23

²⁷ Personal observations of the author during hearing dated 28.1.2005 in Writ Petition (C) no. 202 of 1995, Supreme Court.

²⁸ For instance, in the affidavits filed by the Union of India and the State of Tripura in IA no. 703. These affidavits, and others, are examined in greater detail in a subsequent chapter.

Chapter III

Formation of Central Empowered Committee

Early on in the proceedings the Court realised that it was flooded with litigations that it was not really designed to handle. In order to assist the Court in the task it had taken on, a High Powered Committee was set up to oversee the implementation of orders relating to operation and licencing of sawmills, plywood and veneer factories, and the transportation of timber, as well as investigation into specific violations of these orders. It was assisted in its investigations by a Special Investigation Team constituted for this purpose.

On 1st May 2000 the Amicus Curiae had filed an application seeking clarification of the working of the HPC and its power to levy fines. While upholding the power of the HPC to levy fines, the Court observed that “inasmuch as the HPC would in effect be discharging quasi judicial functions, it will be appropriate that the HPC may briefly indicate the reasons in support of the order passed by it.”²⁹ Unfortunately, not much is known about the functioning of these bodies.

As early as 17th September 1998³⁰ the Supreme Court took note of the *Arunachal Pradesh Forest Protection Authority*, set up by the Central Government under section 3(3) of the *Environment (Protection) Act, 1986*. All pending applications relating to the state of Arunachal Pradesh were referred to this Authority for disposal in accordance with the orders of the Supreme Court. The Authority would also have the power to supervise the implementation of these orders and inform the Court in this regard, seek clarifications, and could also be approached directly by individuals. The Court observed that it expected all the parties, the State Government and the Forest Corporation to extend full and proper cooperation to the Authority for this purpose.

Pleased with the functioning of this Authority, the Court asked the government to consider the feasibility of setting up such committees/ authorities in other states, and also at the national level, in the nature of a supervisory or appellate authority over the state authorities.

This idea was reiterated by the Court again in April 2000³¹, where it observed that even if some time is taken in setting up the state level authorities, the central government should consider “putting in place a national level authority which will have the technical expertise to deal with the problems which are at present handled by the High Courts and this Court and dispose of them expeditiously keeping in mind the principle of sustainable development.”

Even so, the burden on the Court was increasing steadily, and during the hearing on 23.4.2001³² the Advocate General for the State of Madhya Pradesh suggested that a nodal agency be set up under section 3(3) of the *Environment (Protection) Act, 1986* (EPA) to oversee the working of the forest with power to dispose of applications and take

²⁹ Order dated 1.5.2000, 2000 AIR SCW 1730 @1731.

³⁰ 1998 SCALE (PIL) 260, reiterated in order dated 10.12.1998 in IA no. 295, reported in SCALE (PIL) 279

³¹ Vide order dated 13.4.2000 in I.A 295, reported in 2003 SCALE (PIL) 103

³² 2001(4) SCALE 107

decisions. This could then become a role model for other states. A similar proposal was made by the AG for Chattisgarh as well. After hearing counsels for the various state governments, the Court passed an order on 12.5.2001³³ constituting an Empowered Committee each for the states of MP and Chattisgarh consisting of representatives of the states as well as the MOEF. The role of the Empowered Committee would be to consider and if possible dispose of the applications pending before the Court relating to the two states, as well as fresh applications, in conformity with the orders passed by the Court. It was made clear that these committees were being constituted pending the constitution of the appropriate statutory agencies under the EPA.

When the Central Government continued to delay the setting up of an authority at the national level, the Supreme Court went ahead and constituted the Central Empowered Committee (CEC) at the national level on 9.5.2002³⁴. The Court conceived it as “a Committee for all the forest areas in the whole of India with power to give directions, hear objections and take decisions so that there is no need to approach this Court from time to time.”³⁵

It must be pointed out that as per the directions of the Court, the Committee was constituted for five years and the members were appointed in their “personal capacities”. Interestingly, the members, including the chairperson, were appointed in consultation with the Amicus Curiae, and the member secretary was appointed by name by the Court itself. It was also directed that none of the members can be removed without the leave of the Court.

The Court was constrained to remind the Central Government several times of the need to issue a notification in this regard, and finally on 8th June 2002 the MoEF issued a notification³⁶ constituting the CEC. The five member committee comprises of three officials of the Ministry of Environment and Forests (including the Chairperson who is a former Secretary of the Ministry), a wildlife conservationist and an Advocate practising in the Supreme Court. The notification does not however make any reference to the EPA.

Key functions of the CEC:

Some of the key functions of the CEC are to:

- monitor of implementation of the Supreme Court’s orders in the *Godavarman* and *CEL, WWF-I* cases; and place instances of non-compliance before the Court;
- examine all interlocutory applications pending in these two writ petitions at that time, as well as the reports and affidavits filed by the States in response, and place its recommendations before the Court for orders;
- examine all IAs, reports and affidavits referred to it by the Supreme Court in the light of the orders passed by the Court in the said two writ petitions.

³³ 2001(4) SCALE 228

³⁴ 2002(5) SCALE 6

³⁵ Order dated 12.8.2002, unreported.

³⁶ Notification dated 8.6.2002 bearing File no. 1-1/CEC/ SC/ 2002. It is interesting that this notification is issued and signed by Mr. Jiwarajika, who is also the Member Secretary of the CEC and is named in the notification.

- individuals will be at liberty to move the Committee for suitable relief against any steps taken by the Central Government, State Government, or any other authority in respect of :
 - deforestation, encroachments, working of the wood based industries, Working Plans, compensatory afforestation, plantations, regeneration, illegal felling and transportation of timber, illegal mining in forest area, and any other conservation issues;
 - the implementation of the *Forest (Conservation) Act, 1980, Indian Forest Act, 1927, Wild Life (Protection) Act, 1972* (including the respective Rules, Regulations and Guidelines) on which the Supreme Court has passed orders in the two aforesaid cases

The Committee is bound to dispose of such applications in conformity with the orders passed by the Court. Where the Committee is unable to appropriately dispose of an application, it may place its recommendations before the Supreme Court for appropriate clarifications or orders. The CEC is required to submit quarterly reports to the Supreme Court.

In the exercise of its functions the CEC has the power to:

- Establish its own procedure in dealing with applications and other issues. This has been done through the notification of the Rules and Procedure of the CEC in June 2002³⁷.
- Call for documents from any person or the Central or State Governments or any other official.
- Summon any person and receive evidence from such person on oath either on affidavit or otherwise.
- Seek assistance/presence of any person(s)/ official(s) required by it in relation to its work.
- Co-opt one or more persons as its members or as special invitees for dealing with specific issues. While dealing with issues pertaining to a particular State, wherever feasible, the Chief Secretary and Principal Chief Conservator of Forests of the State shall be co-opted as special invitees.
- Undertake field visits, public hearings, meetings with officials and NGOs, through one or more of its members or special invitees or through such Central Government / State Government officials, institutions, experts, NGOs and others.
- Pass interim orders to meet the ends of justice.
- Seek clarifications/modifications from the Supreme Court.

Although the CEC was initially conceived as an authority under the EPA, eventually the notification which constitutes it makes no mention of this Act. Even the Court has made it clear that this Committee is to function “till the Central Government constitutes a statutory agency as contemplated by Section 3 of the *Environment*

³⁷ Notification no. 1-1/CEC/2002-03 dated 14.6.2002. Copies of the said Rules can be provided on request.

(Protection) Act, 1986³⁸. For the time being, therefore the CEC has *not* asserted the statutory powers ascribed by the EPA to such an authority, such as:

- the powers of closure, prohibition or restriction of the location of relevant industries,
- operation or processes in relevant areas under section 5 of the EPA;
- power to punish under the EPA.

Implications:

The unique manner in which the CEC has been constituted gives it a status beyond that envisaged under the EPA, its membership, powers and functions having been assigned by the directions of the Supreme Court itself³⁹. Thus it is an exceptionally powerful body. Time and experience will demonstrate the manner in which these powers will be used, the effectiveness of mechanisms for accountability, if any, and finally the ability of the CEC to bridge the judicial-executive divide which marks the nature of its task.

At the same time there are already indicators that the functioning of the CEC needs to be carefully watched. One of the primary reasons for this is that its membership comprises wholly of foresters and conservationists. None of the other concerned ministries, such as the Ministry of Tribal Affairs, are represented. Nor are any representatives from the tribal rights or dalit rights movements co-opted in this body.

Since the Supreme Court itself has directed that the CEC will devise its own procedures, the CEC is not bound to follow the procedure laid down in the *Civil Procedure Code* or in any of the state forest laws when dealing with applications. As a result there are serious prima facie concerns about due process and the right to natural justice. Before making its recommendations in IA 703 (regarding encroachments), for instance, no effort was made to hear any representatives from these interest groups, and there is therefore a valid criticism that these recommendations have been made without examining the complexities of the issue. It must not be forgotten that due process is a fundamental right under Article 21 of the Constitution, the precious right to life itself.

The situation is complicated by the fact that the recommendations/reports of the CEC are not available in the public domain. Given that these relate to the rights of millions of people across the country, there is an urgent need to ensure transparency, fairness and accountability in the functioning of this body.

³⁸ 2002 (5) SCALE 6 at para 1.

³⁹ Order in IA 295 dated 9.5.2002.

Chapter IV

Regularisation of “Encroachments”

Some early directions on the issue of encroachments:

An early indicator of the concern of the Court regarding encroachments on forest land was the firmness with which it came down on encroachers in the **Thatkola Reserve Forest**, Chickmanglur, Karnataka. When large scale deforestation and encroachments by coffee plantations was brought to the notice of the Court by the Amicus⁴⁰, a Commissioner of the Court was appointed to go to the site and present a report. The encroachers were directed to maintain status quo meanwhile.

Subsequently, as per the direction of the Court, a survey of the boundaries of the Thatkola Reserve Forest as well as the extent and details of encroachments was done by the Survey of India.⁴¹ The Court directed that “no regularisation of any forest or other land in this area shall be made till further orders of this Court”.

The Survey of India reported that 611.23 acres of forest land had been encroached upon, and provided a list of the encroachers. This report, which had been endorsed by the Empowered Committee, was accepted as final by the Court.⁴² It observed:

“There can be no manner of doubt that any land which forms part of the Thatkola Reserve Forest could only belong to the Government. Once the forest was established in the year 1936, all other rights therein came to an end.”

The Court was of the view that all encroachers from the Thatkola Reserve Forest as identified by the Survey of India shall be removed immediately, for which the Chief Secretary, Karnataka, shall be personally responsible. Use of police force was permitted. It was also held that the encroachers who do not voluntarily vacate the land by 31st January 2003 will have to pay the State Government Rs. 5 lakhs per hectare per month as damages. While these direction may appear stringent, it cannot be forgotten that the Supreme Court treaded very carefully before curbing the rights of these encroachers, making enquiries through no less than three separate bodies: the Commissioner of the Court, the Empowered Committee, as well as the Survey of India. Only after all these three reports confirmed the fact of encroachment were directions for removal passed.⁴³

Around the same time the Court also examined a case regarding regularisation of encroachments in Tamil Nadu⁴⁴. On the first date of hearing the Court issued notice to the State of Tamil Nadu, and passed an order that:

“in the meantime, no pattas with regard to any forest land shall be granted nor shall any encroachment be regularised.”⁴⁵

⁴⁰ Vide order dated 29.7.1998 in IA no. 276; (2000) 10 SCC 494.

⁴¹ Vide order dated 7.5.1999

⁴² Vide order dated 30.10.2002; 2002 (9) SCALE 81

⁴³ In the same order, while passing directions in a separate IA filed by persons from Gujarat who had been directed to remove their encroachments by the Range Officer, the Court granted then two weeks time to respond to the show cause notice. (2000) 10 SCC 494 @ para 9.

⁴⁴ Being IA no. 418.

⁴⁵ Vide order dated 7.5.1999, unreported.

No further information on this IA is available, except that some of the affected pattaholders filed IAs subsequently which were taken on board by order dated 2.8.1999⁴⁶.

Encroachments in Andaman and Nicobar Islands: IA 502

Perturbed by the indiscriminate deforestation taking place in the islands of Andamans and Nicobar (A&N), in collusion with the Andaman and Nicobar Islands Forest Plantation and Development Corporation Ltd., an application was filed by three environmental groups in 1999 seeking the Supreme Court's intervention⁴⁷. They were particularly concerned about the effect this was having on primitive tribes, such as the Onges and Jarawas in Little Andamans. While the matter of removal of encroachments in these areas was raised by the applicants in their prayer, the main focus initially was on destruction of forests and the looming extinction of these primitive tribes.

In November 2001 the Court appointed Mr. Shekhar Singh of the IIPA to personally visit the area and make his report. This report was submitted in January 2002, with recommendations relating to a variety of issues such as protection of the primitive tribes, felling of trees, monitoring of sawmills, transportation of timber, the Andaman Trunk Road, and so on. Some recommendations were also made for removal of encroachments. On the basis of these recommendations the Court passed the following order for the Union Territory:

“...Regularisation of encroachments on forest land in any form, including allotment/ use of forest land for agricultural or horticultural purposes, shall be strictly prohibited.... All post 1978 forest encroachments shall be completely removed within three months.”⁴⁸

Insofar as families who had encroached on forest land prior to 1978 were concerned, the Court directed that they should be shifted to their rehabilitation sites, and if they do not shift within a fixed timeframe, they should be forcibly evicted and will also lose any further claim to compensation or land. An effective action plan for the eviction of encroachers should be prepared and implemented under direct supervision, monitoring and control of a Committee under the Chairmanship of the Lt. Governor. Progress reports on eviction shall be filed in the Court every month by the Chief Secretary, A&N.

These directions of the Court have led to a complicated array of litigations, the details of which are way beyond the scope of this document.⁴⁹ Suffice it to say that a number of applications have been filed, some which have challenged the failure of the administration to implement these directions⁵⁰, while others have sought their dilution⁵¹. Other applications have pointed out that the matter of encroachments is not so simple since A&N has a huge proportion of immigrant population, belonging to tribal and marginalized sections drawn from other states in the Indian mainland, such as Bihar.

⁴⁶ Unreported order.

⁴⁷ These organisations had initially approached the Calcutta High Court bench at Port Blair, and upon its advice approached the Supreme Court.

⁴⁸ Vide order dated 7.5.2002 in IA no 502, unreported.

⁴⁹ A large part of the documentation relating to these litigations is available with the author and can be accessed on request.

⁵⁰ Such as IA 1024 filed by SANE, BNHS, and Kalpavriksh.

⁵¹ See for instance IA No. 918 filed by the A&N Administration pleading impossibility in implementation of this and many of the other directions passed by the Court.

These immigrants have been brought and settled there by the Indian Government, and by no means can they be described as ‘outsiders’ any more.

Another significant offshoot of these directions has been a petition filed by the Local Borns Association⁵², which is an association of persons who are descendants of the prisoners sentenced to imprisonment in A&N by British colonial rulers. These persons have challenged the attempt of the UT administration to subvert the directions of the Court through an inordinately generous rehabilitation programme for post 1978 encroachers through release of ‘deemed forest land’. They argue that the UT government has gone out of its way to reward these encroachers. This petition has generated intervention applications by the Vanvasi Kalyan Ashram, Port Blair, as well as by a sitting MP of the Lok Sabha, both arguing in favour of the rehabilitation package for post 1978 encroachers. The issue has been examined by the CEC, which in its report dated 18.3.2004⁵³ has recommended:

- “forest land including deemed forest should not be allowed to be used for rehabilitation of forest encroachers. The Andaman and Nicobar Islands Administration should reconsider the rehabilitation package on the basis of available non forest land.”
- “Removal of encroachers should be implemented forthwith”.

These litigations demonstrate the remarkable complexities surrounding eviction of encroachers from forest land. A startling array of competing interest groups in A&N alone has already emerged before the Court, whose rights often conflict with each other, such as:

- the primitive tribes, such as the Onges and the Jarawas;
- the Local Borns’, who are descendants of colonial prisoners, many of whom were freedom fighters;
- the immigrants who are tribals and landless persons from the mainland, such as Bihar, brought here by the Indian State;
- the owners of sawmills and the timber traders, and other groups who have benefited commercially from the exploitation of the forests, and so on.

When the issue has become so entangled in relation to a territory as small as Andaman & Nicobar Islands, the mind boggles at the daring displayed by the Court in taking on the project of dealing with encroachments in the entire country.

Intervention of the Amicus Curiae: IA 703

Matters came to a head with the filing of IA no 703 by the Amicus Curiae on 23.11.2001 which painted a gloomy picture of massive illegal encroachment over forest land all over the country. This was a generalised application and sought general directions, one of which was granted immediately by the Court by way of an interim order. Issuing notice to the respondents the Court directed that:

“An application has been filed by the Id. Amicus Curiae in Court against the illegal encroachment of forest land in various States and Union Territories is

⁵² *Local Borns’ Association and ors. vs. The Chief Secy, Andaman & Nicobar Islands and ors;* SLP (C) No. 18030 of 2003

⁵³ Recommendations of the Central Empowered Committee in Special Leave to Appeal (Civil) No. 18030 of 2003 dated 18.3.2004

taken on board. Let the same be registered and numbered. Issue notice to the respondents returnable after six weeks. There will be an interim order in terms of prayer (a).”⁵⁴

The prayer (a) in the IA filed by the Amicus is reproduced below:

“(a) Restrain the Union of India from permitting regularisation of any encroachments whatsoever without the leave of this Hon’ble Court”.

The effect of this order is that for the last 4 years there has been an “interim” stay on regularisation of encroachments in the entire country.

Unfortunately, the MOEF chose to project this order as a direction to enforce eviction of ‘encroachments’ on forest lands without due process of law across the country. On 3.5.2002, it issued a circular to all the State Governments and Union Territories directing them to carry out a time bound summary eviction of all encroachments not eligible for regularisation as per the 1990 guidelines, fixing the final date for this process as 30th September 2002.

It was only after considerable public protest that this order was withdrawn in a subsequent circular dated 330th October 2002, which also reiterated the MoEF’s commitment to the 1990 guidelines.⁵⁵

Report of the Central Empowered Committee:

Meanwhile, the matter was examined by the newly set up CEC, which submitted its report on 5th August 2002. This report was numbered as IA 824 by the Court. After a brief overview of the issue, which is marked by a lack of input from sources other than the MOEF and state forest departments, the CEC recommended as follows⁵⁶:

- all further regularisation of encroachments in forest lands in any form including issue of pattas, ownership certificate, certificate of possession, lease, renewal of lease etc. be strictly prohibited, except in cases where eligibility for regularisation exists under the 1990 guidelines;
- the Preliminary Offence Report under the relevant Forest Act will be the basis to decide date of encroachment;
- whether an area is a forest or not will be resolved on the basis of forest department records, and only in their absence will other relevant government records be relied on;
- all ineligible encroachments be evicted forthwith, and for this the Chief Secretary of the concerned state be made personally responsible;
- constitution of state level committees for the supervision and coordination of removal of encroachments, and also for preparation of a plan for review of available infrastructure for protection of forests;
- in case of failure of the state government to remove encroachments, it shall be liable to pay compensation for environmental losses at the rate of Rs. 1000 per hectare per month, which can be recovered by the state government from

⁵⁴ Vide order dated 23.11.2001, unreported.

⁵⁵ See for more: ENDANGERED SYMBIOSIS: Evictions and India’s Forest Communities, Report of the Jan Sunwai July 19-20, 2003, Campaign for Survival and Dignity.

⁵⁶ Recommendations of the Central Empowered Committee in IA no. 703 in IA no. 502 in Writ Petition (C) No. 202 of 1995, Supreme Court of India.

- encroachers involved in commercial gain; a fine of Rs. 100 per month can be imposed on defaulting officers as well;
- the concerned State Government shall have the liberty to provide suitable rehabilitation package;
 - where encroachments on forest land have already been regularised, these can be transferred only by testamentary succession and not by alienation.

A number of state governments have filed affidavits before the Court in response to this report, and these are examined in some detail in Chapter V below. The report of the CEC has also seen a spate of Interlocutory Applications being filed in the Court by NGOs, peoples organisations, and concerned individuals. These are examined in detail in Chapter VI below.

Further intervention of the Amicus Curiae: IA 1126

A development of some significance was the filing of IA No. 1126⁵⁷, also by the Amicus Curiae, on the eve of the 2004 general elections. This application brought to the notice of the Court various orders passed by the Central Government regarding the rights of tribals and forest dwellers over forest land. The GOs the IA seeks to challenge are as follows:

1. Gazette Notification dated 3.2.2004⁵⁸ regarding the Forest Conservation Rules, 2004: these relate to the setting up and the powers of Regional Empowered Committees under the Act.
2. Letter of the Inspector General of Forests dated 5.2.2004⁵⁹: direction to all State Governments and Union Territories in the country to take necessary steps to recognise traditional rights of the tribals on forest lands, and incorporate them into state level Acts, Rules and Regulations. This must be done to ensure that “these tribals can get unfettered legal rights over such lands” which shall be “heritable but inalienable”. The circular brought within its ambit all “those tribal dwellers who are in continuous occupation of such forest land at least since 31.12.1993”.
3. Letter dated 7.10.2003 of the Asst. IG Forests granting approval to the State of Madhya Pradesh for the modification of legal status of 1,68,840.291 hectares of forest land regularised under encroachments, to be treated as revenue land;
4. Letter dated 6.2.2004 of the Asst. IG Forests regarding diversion of forest land for a pilot project for relocation of tribals from forest areas in Dhalai district, Tripura; and
5. Order dated 13.1.2004 of the Asst IG Forests regarding conversion of 67 forest villages into revenue villages in favour of patta holders in Badwani district, Madhya Pradesh.

This application was filed and taken on board by the Supreme Court on 23rd February 2004, and the following order was passed staying the operation of all the aforesaid GOs:

“...In the meantime, Annexures P-1, P-2, P-3, P-4 and P-5 dated 5.2.2004, 3.2.2004, 7.10.2003, 6.2.2004 and 13.1.2004 respectively, to the I.A., shall not be implemented.”

⁵⁷ Filed in Court on 23.2.2004 by the Amicus Curiae.

⁵⁸ The Gazette of India, Extraordinary Part II Section 3 Subsection (1) dated Feb 3 2004.

⁵⁹ No. 2-1/2003-FC (Pt)

Affidavit filed by MoEF:

Consequent to this order, the MoEF filed an affidavit in reply on 21st July 2004. The Affidavit prays for the revocation of the stay on the implementation of the aforementioned orders of the MoEF for the following reasons:

- The affidavit recognises that “for most areas in India, especially the tribal areas, record of rights did not exist due to which rights of the tribals could not be settled during the process of consolidation of forests in the country. Therefore, the rural people, especially tribals who have been living in the forests since time immemorial, were deprived of their traditional rights and livelihood and consequently, these tribals have become encroachers in the eyes of law.”⁶⁰
- It acknowledges that after independence in 1947, during the process of amalgamation of princely states, large areas were proclaimed as Reserved Forests “without settlement of tribal rights as the records of rights never existed for tribals”.⁶¹
- It quotes extensively from the *National Forest Policy, 1988* and its recognition of the “symbiotic relationship between the tribal people and forests” and goes on to assert that “the Central Government is committed to the recognition of the tribal rights in forest areas”.
- To fulfil these commitments, the Central Government on 18th September, 1990 issued a series of guidelines after obtaining the approval of the Union Cabinet for one time settlement of people’s rights under the *Forest (Conservation) Act, 1980*.⁶² The affidavit points out the “distinction between the guidelines of regularization of encroachments and the settlement of disputed claims of tribals over forest lands.” Only a few state governments have submitted proposals for regularization of eligible encroachments, while there have been no proposals for the settlement of disputed claims over forest lands. “This has deprived the tribals of natural justice as the Central Government’s guidelines for regularization of encroachment are different from the guidelines for settling disputed settlement claims.”
- The Affidavit asserts that the fresh Guidelines do not relate to encroachers, but to remedy a serious historical injustice, and will also significantly lead to better forest conservation.
- It is also asserted that the Central Government had taken a policy decision not to insist on Compensatory Afforestation or payment of Net Present Value in such cases because “there are no felling of trees, no change of land use and also such conversions help in reducing the biotic pressure on forests.”
- The affidavit then goes on to deal with each of the objections raised by the Amicus in his application regarding the 5 GOs.

⁶⁰ Affidavit of the MoEF in IA 1126, @ para 7.

⁶¹ Ibid, @ para 8.

⁶² Ibid, @ paras 16-26.

The affidavit of the MoEF, sworn by no less than the Assistant Inspector General of Forests himself, is of tremendous significance. This is because it makes important statements of policy of the Central Government on the issue of land rights of tribals and other forest dwellers. It also clearly asserts the role of the Executive to decide on matters of policy, based on the legislative framework designed by the Legislature, even in the face of disapproval from the Judiciary.

It is a matter of concern that this disapproval has become increasingly apparent over the last few months when IA 1126 has come up for hearing. It is extremely important that the Court examines the matter of tribal rights over forests in its entirety, rather than through the narrow lens of protection of tree cover alone. For this the very least the Court must do is to hear all the interested parties that are already before it, through their various affidavits (such as the different state governments) and IAs (such as the NGOs and other activists). Only then, after grasping the full complexity of the range of issues involved, will the Court be equipped to take a decision on this issue.

Chapter VI

Affidavits of State Governments in the Godavarman case

As stated before, after the controversial recommendations made by the Central Empowered Committee in IA 703 in its report dated 5.8.2002, a number of State Governments and Union Territories have filed affidavits placing their policy positions on record before the Court. While the affidavit filed by the MoEF in July 2004 has received considerable attention, there has been little information available till now on the stand taken by various state governments before the Court on the issue of rights of forest dwellers and tribals over forest lands. This chapter seeks to close this long standing gap.⁶³

While there are some states, such as Uttaranchal, which more or less approve of the CEC's recommendations, a number of state governments have raised fundamental objections.

The Maharashtra government underlines the problem in undemarcated forest areas, where the Record of Rights are still under dispute. It submits that "it is not appropriate to remove encroachments made by the ST, SC, Vimukti Jati and Nomadic tribes, Neo Budh and other weaker sections of the society without ascertaining and finalising eligibility criteria as well as other aforementioned factors." The government of Orissa has gone on record to say that it is bound by the provisions of the *Orissa Forest Act*, according to which only a civil court can ascertain whether the occupier of the land in question is an encroacher. It has argued that it is administratively undesirable to undertake an eviction drive as envisaged in the CEC report, without providing for alternate livelihood, especially for adivasis "who have had age old relationship with the forest including its use for cultivation".

The governments of Tripura and Dadra & Nagar Haveli have brought to the notice of the Court the historical use and occupation of lands by tribals, especially for jhum cultivation, prior to state notification of these lands as forests.

Governments of Kerala, Madhya Pradesh and Chattisgarh have submitted that in addition to Preliminary Offence Reports (POR), other circumstantial evidence ought to be considered in order to determine whether the encroachment pre-dates the FCA or not.

It is also important to point out that most of these affidavits have been sworn by officials from the Forest Departments of the various State Governments. The detailed responses of the state governments which we were able to access⁶⁴ are given in the table below.

⁶³ The present chapter is based on an inspection of the Court Record in Writ Petition (C) No. 202 of 1995 in the PIL section of the Supreme Court Registry by Naveen.TK, Advocate, on 11.11.2004

⁶⁴ The affidavits which could not be accessed, but which have been filed in IA 703, include: Assam (22.10.2002) West Bengal (25.10.2002) Arunachal Pradesh (10.9.2002) Andaman and Nicobar (12.11.2002) Rajasthan (9.9.2002) Karnataka (10.9.2002) Punjab (20.9.2002)

Table: Affidavits filed by various State Governments in the Godavarman case regarding regularisation of encroachment⁶⁵

State/ UT Date of filing	Main averments made
Kerala 22.02.2002	<ul style="list-style-type: none"> • As a matter of policy State of Kerala does not intend to regularise any encroachment on forest land in any form, including issuance of pattas, which do not conform to the guidelines of 18.9.1990. • The cut off date for Kerala is 1.1.1977. "The cut off date can be ascertained not only by First Offence Report, but also from other allied documents issued by the competent authorities and the age of crop determined by joint verification by Forest, Revenue and Agricultural departments." • The basis for regularisation of encroachment would be joint verification reports made by the Forest and Revenue authorities. • Though the government is agreed in principle to eviction of encroachments ineligible for regularisation, "it involves a lot of social issues in the specific case, where the situation is unique and severe on account of high density of population and minimal extent of individual land holding combined with unemployment problem. In many cases, there are litigations before subordinate courts and summary evictions may lead to contempt of court in such cases. In many cases, eviction can be resorted only after completion of judicial process. In other cases also, summary evictions will lead to social problems, as it is difficult to find alternative land for rehabilitation of evictees. However, eviction of all ineligible encroachments will be done along with the rehabilitation of the evictees."
Uttaranchal 22.10. 2002	<ul style="list-style-type: none"> • The state government shares the opinion of the CEC and strongly supports the view that no encroachments should be regularised; further encroachment should be prevented and all post-1980 encroachments should be removed. • Total recorded encroachment in Reserve Forests in the State is 10,382.23131 ha., of which 9443.97771 ha. is pre-1980 encroachment and 938.2536 is post-1980 encroachment.
Dadra & Nagar Haveli 25.10. 2002	<ul style="list-style-type: none"> • The area of forest land notified as Reserve Forest is 19,876.41 ha of which 9,200 ha has been notified as Wildlife sanctuaries (WLS). • That 845 teram plots in forest areas were given to tribals for the purpose of cultivation on annual lease. Altogether, there are 729 teram plot holders, and the land in question is 613.30 ha of RF and Wildlife Sanctuary distributed sporadically throughout the UT. As per the records of various committees set up for the purpose of examining the issue, including Home Ministry Advisory Committee, attempts have been made to resettle the teram plot holders en-block on the fringes, in areas where there is cultivable land and where there is no dense vegetation. • Historically, the so-called teram plots were given to local tribals since Portuguese times on annual lease, which used to be renewed every year by the department after realising certain fees. There are documents in possession of most of the teram plot holders of such annual lease rent paid by them to the Government. After the promulgation of the FCA such renewal by the

⁶⁵ The majority of these affidavits have been filed in IA 703. Text within quotation marks is quoted from the respective affidavits, based on the inspection of the Court Record.

	<p>Government would be in contravention of the Act. However, the teram plot holders are still continuing with their practice of paddy cultivation over their respective areas. No permanent hutments or any other constructions have taken place on such plots, and the land is used solely for the purpose of seasonal cultivation of paddy and local millets. Since these plots have been cultivated annually under the aforesaid practice right from the time of Portuguese, the administration is of the considered view that the issue may not be deemed as encroachment in view of the practice having acquired the status of “traditional practice with official status”.</p> <ul style="list-style-type: none"> • “Therefore it is humbly submitted that the continuation of lease in respect of these teram plot holders will be a thoughtful proposition till the administration finds an amicable solution to this problem. Some of them are landless and do not have any other source of livelihood. Out of a total of 792 teram plot holders 140 are landless families who holds 153 teram plot admeasuring 112 ha of RF and WLS and they deserve special dispensation.” • “Besides the above issue of teram plots this administration further wishes to submit that due to non-availability of sufficient land for agriculture the predominant proportion of tribals which constitute 80% of the entire population also resorts to unauthorised cultivation in forest areas. The forest areas being rich in nutrients are chosen mostly for raising paddy seedlings for small duration of three to six months. These encroachers do not necessarily cultivate the same area the following year. However, most of such encroachment are of recurrent nature and even after eviction, the encroachers carry out fresh clearance either at the site or elsewhere in the forest. Forest executive staff have taken steps to book offences under the <i>Indian Forest Act, 1927</i> and file cases in courts”. The affidavit submits data regarding unauthorised seasonal cultivation for the last four years. <table border="1" data-bbox="550 1131 1183 1373"> <thead> <tr> <th>Year</th> <th>Area under such encroachment (in hectares)</th> </tr> </thead> <tbody> <tr> <td>1999</td> <td>83.74</td> </tr> <tr> <td>2000</td> <td>34.10</td> </tr> <tr> <td>2001</td> <td>5.386</td> </tr> <tr> <td>2002</td> <td>39.80</td> </tr> <tr> <td>Total</td> <td>163.026</td> </tr> </tbody> </table> <p>In the aforementioned cases of encroachments, the UT administration would prefer to organise special eviction drives. “In order to avoid recurrence of such encroachments the administration plans to take up boundary demarcation, consolidation and fencing of the sensitive areas prone to encroachment. Side by side scheme of JFM is proposed to be implemented to elicit involvement of people living on the fringes of forest in return for benefits from RFs.”</p>	Year	Area under such encroachment (in hectares)	1999	83.74	2000	34.10	2001	5.386	2002	39.80	Total	163.026
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<p>Daman & Diu 25.10. 2002</p>	<ul style="list-style-type: none"> • No natural forests exist in the Union Territory except for small patches of mangrove forest. • Of a total territory of 7200 ha in Daman and Diu 186.75 ha land has been notified as “proposed Reserve Forest” under section 4 of the <i>Indian Forest Act, 1927</i>. Subsequently, 23.90 ha has been notified as Reserve Forest. Further, 63.30 ha was taken out of the list of “proposed reserve Forest” in 1981. • The remaining 99.55 ha of “proposed Reserve Forest” is currently either under 												

	examination for rights and claims before the Forest Survey Officer, or disputed by various parties in courts.																				
Tripura 22.10. 2002	<ul style="list-style-type: none"> • Tripura has an area of 6292.681 sq. km under forest i.e. 59.98% of the total geographical area. • The following data is based on a survey report dated 15th Jan 1999. <table border="1" data-bbox="522 430 1287 705"> <thead> <tr> <th>Status</th> <th>Pre-1980 (in hectares)</th> <th>Post -1980</th> <th>Total</th> </tr> </thead> <tbody> <tr> <td>Reserve Forest</td> <td>14982.34</td> <td>2408.830</td> <td>17391.170</td> </tr> <tr> <td>Proposed RF</td> <td>2533.81</td> <td>976.480</td> <td>3510.290</td> </tr> <tr> <td>Unclassified Government Forest</td> <td>32215.46</td> <td>6219.195</td> <td>38434.665</td> </tr> <tr> <td>TOTAL</td> <td>49731.61</td> <td>9604.505</td> <td>59336.115</td> </tr> </tbody> </table> <ul style="list-style-type: none"> • “Influx of refugees is a serious problem faced by the state administration”. • “The tribals in Tripura, have been living in the forest as part of their ecosystem even before Tripura merged with the Indian Union in 1949. Such tribals have been practising jhuming as a traditional practice and as a way of life, the tribals are still staying in the forests as part of the ecosystem. Such tribals cannot be called encroachers and be evicted from their own habitats”. • The state government has been rehabilitating the tribals through the Directorate of Tribal Rehabilitation in Plantation and Primitive Groups Programme (TR-P& PGP) in the 1970s and 1980s. Although a good number of tribals living in the forest were settled under this rehabilitation programme, no land has been recorded in their names and they are still living in the forests. “All such tribals who have been living in the forests and have been resettled in the above programme sanctioned by the Central Government cannot be called encroachers and evicted from their habitats. Such occupation deserves to regularised”. • More than 86 forest villages were constituted and forest land allotted, subsequent to a notification dated 8.5.1956 under s.20 (ii) of <i>Indian Forest Act, 1927</i>. Such land has not been formally recorded in the names of those forest villages. The Central Government has subsequently decided to convert these forest villages into revenue villages under the <i>Forest Conservation Act, 1980</i>. However this conversion has not yet been fully processed. The inhabitants of these forest villages cannot be treated as encroachers and evicted. • Various ambitious developmental programmes have been undertaken by the state government to rehabilitate tribals after regrouping them into clusters and settled cultivation. This rehabilitation may be treated as ancillary to conservation, management and development under the FCA. Thus, diversion of forest land for rehabilitation of people may be considered as a special case of diversion, as it is essentially required for rehabilitation of persons belonging to the SC/STs, and other people who may be shifted from core zones of National Parks or Reserve Forests. • “The tribals who have been shown as post-1980 encroachers are generally those who went outside forest area in search of jhum land and again returned to the forest in the same way. In view of the fact that those tribals were living in the forests as jhumias and as a part of the ecosystem, the State Government did 	Status	Pre-1980 (in hectares)	Post -1980	Total	Reserve Forest	14982.34	2408.830	17391.170	Proposed RF	2533.81	976.480	3510.290	Unclassified Government Forest	32215.46	6219.195	38434.665	TOTAL	49731.61	9604.505	59336.115
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	<p>not feel it necessary prior to 25.10.1980 to evolve certain eligibility criteria in accordance with local needs and conditions to regularise their occupation of jhum lands. Since they have not come from elsewhere and settled in forests, they cannot be called encroachers. Their right to continue in the forests deserves to be recognised.”</p> <ul style="list-style-type: none"> • The State Government⁶⁶ has referred the matter to MoEF with a request that: <ul style="list-style-type: none"> (i) the term encroachment may be clearly defined by MoEF before action is initiated for eviction of encroachers; (ii) the eviction of ineligible encroachments may be deferred until a decision is taken by the Central Government on the proposal submitted by the State Government for regularisation of pre-1980 and other eligible encroachment; (iii) rehabilitation of tribals living in forests by way of regrouping in cluster villages or otherwise may be recognised as an activity ancillary to conservation, management and development of forests. • The State Government therefore is of the view that the tribals who are mostly jhumias living in the forests as part of the ecosystem even before Tripura merged in the Indian Union in 1949 and who have been practising jhuming, including those resettled under various government programmes on forest land and those in forest villages before or after FCA, may be allowed to live in the forests.
<p>Tripura (affidavit in IA no. 1126) 29.7.2004⁶⁷</p>	<ul style="list-style-type: none"> • “Tribals have been engaged in shifting cultivation [locally called jhumias] to eke out their livelihood and jhum cultivation was their only source of sustenance. They have been living inside the forest area as a part of the ecosystem since time immemorial and the tribals and forests developed a symbiotic relationship wherein the existence of one providing support to the existence and growth of the other.” • It is admitted that at the time of constitution of such area as Reserve Forests, the rights of the tribals could not be recognised by the State Government. The main reason is the inability of government functionaries to play a proactive role to recognise traditional rights and claims of such tribal peoples at the time of constitution of the Reserve Forests. Further, “the nature loving tribals living in harmony with the forests and its ecosystem away from the mainstream, were too simple and primitive to play a proactive role to interact with the Government functionaries to get their traditional rights recognised”. • “The absence of legal recognition of traditional rights and the claims of the tribal-forest dwellers in the State of Tripura has inflicted a historical injustice on them and they have been rendered as the encroachers on forest land in the eyes of law, which in fact, they are not.” Rights of shifting cultivators “to continue in the forests deserves to be recognised.”
<p>Maharashtra 12.10.2002⁶⁸</p>	<ul style="list-style-type: none"> • The State Government anticipates that the implementation of evictions as recommended by the CEC would create socio-economic problems for the tribal population living within or around the fringes of the forest areas. It will “also

⁶⁶ Vide letter no. F.6/400/land/for-2002/301 dated 13th/14th August 2002

⁶⁷ This affidavit has been filed by the State of Tripura in IA 1126, and affirms the position taken by the MoEF in its affidavit of July 2004 in the same IA. At the time of inspection of the file, no other affidavits had been filed by any of the State Governments in this particular IA.

⁶⁸ Earlier affidavit of 8.9.2002 could not be accessed.

	<p>create social unrest amongst the socially and economically backward classes and lead to widespread social unrest throughout the state which might be difficult to contain”.</p> <ul style="list-style-type: none"> • The State Government is committed to removing ineligible encroachers from forest land. However since most of the forest areas concerned are mainly acquired private forest areas, these are undemarcated. In these undemarcated areas Record of Rights are still under dispute, and majority of encroachers belong to “tribals, SCs and the economically weaker sections of the society”. Therefore, prior to removal of encroachments “these relevant and basic issues are required to be taken into consideration”. • In spite of serious efforts, it has not been possible to finalise the cases of pre-1978 encroachments; where the State Government have neither been able to regularise nor remove encroachments. • “Therefore it is not appropriate to remove encroachments made by the ST, SC, Vimukti Jati and Nomadic tribes, Neo Budh and other weaker sections of the society without ascertaining and finalising eligibility criteria as well as other aforementioned factors.”
Chattisgarh 7.9.2002	<ul style="list-style-type: none"> • In addition to POR other circumstantial evidence may be considered to establish the date/ period of the encroachment. • Forest Department has removed 5329.585 ha of encroachments from 6492 encroachers, “and the eviction process is on”.
Madhya Pradesh 11.9.2002⁶⁹	<ul style="list-style-type: none"> • The State Government is totally committed to preventing encroachment of forest land but in view of the socio economic dimension of the problem it has not been possible to resolve the issue expeditiously. • “Encroachers are mostly poor tribal people and they need to be properly rehabilitated outside the forest areas in case any eviction is contemplated, for which large amounts of money would be required.It was requested that the Central Government may be directed to finance the rehabilitation programme”. • “The State Government agrees that the decision as to whether an encroachment relates to a period before/ after 24.10.1980 should be based on POR and other relevant government record.”
Orissa 27.9.2002	<ul style="list-style-type: none"> • The State Government in their resolution⁷⁰ dated 10th June 1972 had decided that encroachments existing in forests for past several years have to be taken note of. Keeping the realities of situation in view, the area should be released for settlement to tribals, harijans and other landless persons. • It has been the declared policy of the State Government to allot land to the landless. The eligibility criteria for settlement of government land in favour of landless encroachers have been laid down in the <i>Orissa Prevention of Land Encroachment Act, 1972</i>, the rules framed thereunder and executive instructions issued in this regard from time to time. The above statute had required a comprehensive survey of all forest lands to determine areas that should be set apart for agricultural use. Sub-Divisional Committees were constituted to take up the survey and District Collectors were required to

⁶⁹ Subsequent affidavit of 31.1.04 could not be accessed.

⁷⁰ No. 32823/ GE (GC)-69/72-R

	<p>compile consolidated district reports in this regard.</p> <ul style="list-style-type: none"> • As the aforementioned task of survey was not completed by the administration, through a subsequent government order⁷¹ dated 8 July 1975, the Government granted further time upto 31 Dec 1975 for Sub-Divisional Committees to compile their survey. Due to various administrative reasons the work could not be completed prior to 25.10.1980, when the <i>Forest Conservation Act, 1980</i> came into force. • The matter came up for discussion in the Conference of State Revenue Ministers held at New Delhi, in January 1997. The Conference recommended the early completion of this work of settlement as per guidelines issued by the Central Government. • The State Government has committed before the people to settle all pre-1980 encroachments. • Pursuant to the various State Government policy decisions and as per Government of India guidelines dated 18.9.1990, the State Government furnished a proposal for regularisation of pre-1980 encroachments to the Ministry of Environment and Forests, with respect to seventeen districts of the state. These included Deogarh, Boudh, Rayagada, Nayagarh, Kandhamal, Dhenkanal, Khurda, Sambalpur, Bargarh, Koraput, Cuttack, Kalahandi, Jharsuguda, Nuapada, Ganjam, Jajpur and Sonapur. By this regularisation, 3754 families will be benefited and 3328.4151 ha of forest area is to be settled in their favour. Besides, 3408.0504 ha of forest land has been identified for Compensatory Afforestation and schemes have been prepared at an estimated cost of Rs. 5,94,55,197. • Accordingly, the State Government prays that the Court allow regularisation of all pre-1980 eligible encroachment in forest areas in the State of Orissa. <p>(These averments have been reiterated by the State Government in an application filed for this purpose in January 2005, the details of which are given in Chapter VI below.)</p>
<p>Orissa (additional affidavit) 9.1.2003</p>	<ul style="list-style-type: none"> • It has been placed before the Empowered Committee that many forest fringe dwellers who have been collecting annuals like wild grasses kendu and sal leaves, fallen branches and trees and dead wood etc., are now being denied a part of their livelihood through strict implementation of the Supreme Court's order in I.A. No. 548 of 2000. A plea has been made to the Empowered Committee that in recognition of age-old traditional forest related rights, the ban imposed on sanctuaries may not be made applicable to non-organised sectors. • The State government prays that the Court restore the traditional rights of forest fringe dwellers in the harvesting of annuals from sanctuaries. • The forest officials have no power under the statutory framework of <i>Orissa Forest Act, 1972</i> to order removal of encroachments over forest land, which provides that it is for the Civil Court to decide who is an encroacher and thereafter order eviction of the offender. • Accordingly 28,371 cases of encroachment over forest land, over an area of 47,304 hectare are pending in the Courts as on December 2001. So far only 333 such cases, involving 258.275 ha, have been freed from encroachments. • "State Government is approaching the prevention and eviction of encroachers issue as per the provisions of the <i>Orissa Forest Act</i>, and as is administratively

⁷¹ Res. No. 50958- GE (4L)- 136/75- R

	desirable without alienating those sections of the poor, especially adivasis who have had age old relationship with the Forest including its use of cultivation without providing for alternate livelihoods in a manner that does not result in an organised backlash and thereby giving rise to civil unrest”.
Nagaland 27.1.2003	<ul style="list-style-type: none"> • Only ten states are party to the proceedings before the CEC. It is submitted that all the states should be first asked to file responses before taking any action recommended by the CEC. • In Nagaland only a small portion of forest area is under the disposal of the State Government (11.8%). In consideration of the legal status of forests in the state, the Nagaland State Assembly has not adopted the <i>Forest Conservation Act, 1980</i>. The State Government, by an executive order, has only extended the application of the said Act to Reserve Forests. • In pursuance of the orders of the Supreme Court to regulate felling of trees and to maintain a sustainable growth of forests, the State government has framed the <i>Nagaland Tree Felling Regulation, 2002</i>.
Jharkhand 27.12.2003	<ul style="list-style-type: none"> • The affidavit states that Preliminary Offence Report (POR) cannot be a proof of encroachment in order to determine whether there has been continuous encroachment prior to 1980, since a POR is a one time event, while encroachment has to be continuous. • The affidavit also states that the issue of Gair Majurua lands recorded as forest/jungle jhari in Revenue records of Revenue Department needs to be worked out.

Chapter VI

Other Interim Applications on the issue of forest rights

As stated earlier, orders passed by the Supreme Court in these cases have witnessed litigation emanating from various interest groups including industry, sawmills, state governments, people's movements and conservation groups. In a significant number of cases public sector corporations, private companies and state governments have approached the Court seeking clearance to undertake non-forest activities in forest areas. Conservation groups are involved in a number of cases relating to protected areas and wildlife. Various non-governmental organisations, people's organisations, and individuals have also filed Interim Applications in the Supreme Court as well as the Central Empowered Committee. In the Supreme Court alone, the number of IAs in the Godavarman case alone has crossed 1200, and there are an unknown number pending before the CEC.

In the present section we have focussed only on the applications which relate to the issue of regularisation of land rights of tribals and forest dwellers. We have also included a list of IAs with a brief description of the subject matter in Annexure I to this report. It must be clarified that these include only those applications which we have been able to access either directly from the parties, their counsel, or from the limited access provided to us to the Court files till January 2005. All these applications are *pending hearing* before the Supreme Court at the time of writing this report.

Interim Applications in the Supreme Court

The applications listed at items A to J, namely IA Nos. 841, 829, 830-32, 899, 918, 927-28, 961, 1024, 1134 and 1252, have been tagged together with IA 703 by the Court, which means that they are to be heard together in a bunch. Along with these is connected the report of the CEC, numbered separately as IA 824. The last date on which these IAs were heard was 18.2.2005. At item K below is IA no. 969-70 which has been tagged with IA 1126, and these two applications are coming up for hearing separately from the rest of the applications relating to regularisation of land rights.

We have also given details of some of the other applications which foreground important and emerging areas of debate, such as the compensatory afforestation fund, and the definition of forest land.

A. Kashtakari Sanghathan: IA 829

Kashtakari Sanghathan, a people's organisation based in Dahanu, Maharashtra, has filed this interlocutory application for impleadment. The application primarily challenges the report of the CEC in IA 703, and asks the Court to keep in mind that the implementation of the CEC's recommendations will result in mass disruption of the lives and livelihood of tribal people, affecting their right to life with dignity. It further brings to the notice of the Court the *Forest Policy of 1988*, the *1990 Guidelines*, the orders passed in the State of Maharashtra, as well as the judgment of the Supreme Court in *Pradip*

*Prabhu vs. State of Maharashtra*⁷². It points out that there was no opportunity given by the CEC to tribals and forest dwellers, or their representatives, to state their case/opinion, even though its recommendations adversely and gravely affect their lives. The application reminds the Court of the symbiotic relationship between the tribals and forests, and urges the Court to adopt the “cultivate and care” approach.

B. National Committee for Protection of Natural Resources: IA No.899

The application filed by NCPNR also challenges the report of the CEC in IA 703, arguing that it will have far reaching adverse consequences. It argues that tribals and forest dwellers are engaged in subsistence activity, and cannot be called encroachers nor evicted. It bases its argument on the *1988 Forest Policy*, the *1990 Guidelines*, and constitutional provisions.

Apart from the prayer for impleadment, this IA also prays for implementation of 1990 guidelines (FP (2) and (3)), for quashing of the recommendations of CEC in IA 703, and for a direction to state governments to ensure eviction of tribals and forest dwellers is carried out only after claims disposed of through due process of law. It also prays that during verification of claims, all evidence be taken into account, and not just the preliminary offence report, as recommended by the CEC.

C. Samatha: IA 841

Samatha, an organisation based in Andhra Pradesh, has filed an application seeking impleadment. It requests the Court to examine the issue of encroachment and eviction of tribals carefully. It further argues that the restraining orders of the Supreme Court on regularization should consider the *1990 Guidelines*.

D. Paromita Goswami: IA 830-831

The applicant is a social worker and secretary of Elgar Pratishtan, an organisation working in Chandrapur and Gadchiroli in Maharashtra, and begins by stating that she supports position of the Amicus Curiae in IA 703 with regard to encroachments. However, she points out, it is important to note that the State of Maharashtra has initiated large scale Joint Forest Management (JFM) in which tribals are involved in forest protection at no extra cost to the government and this must be promoted. She states that pursuant to the 1.6.1990 guidelines relating the operation of JFM programmes, there are 36,075 such JFM committees in 22 states across the country. On 1.1.2000, there was 10.24 million hectares of forest land being protected by these committees.

The applicant relies upon the CEC’s report in IA 703 to argue that the Forest Department has inadequate staff and resources to protect forests. She states that no-one brought to the CEC’s notice the JFM scheme and its potential, so this has not been mentioned by it. She goes on to state:

“...the object of the applicant by filing this application is to protect the forest as well as the interest of the forest dwellers who are part of the JFM programme and are also playing a vital role in protecting the forest. They cannot be treated as encroachers and they have been in the forest area for the past many generations. There is no other alternative that the Government can provide for their livelihood.

⁷² Writ Petition (C) No. 1778 of 1986

Similarly, Government also get somebody to protect the forest at no extra cost and no financial burden that would fall on the Government.”

It is necessary to point out that the applicant has filed a large number of documents to support her case, including satellite images of a number of selected villages from her area from 1998 onwards. This is important given that the idea of establishing encroachments through the use of satellite imagery has been a favoured argument of the Amicus Curiae since as far back as mid-2002.

E. Andaman and Nicobar Government: IA No. 918

This application has been filed by the Andaman and Nicobar Government seeking variation of the Court’s order dated 7.5.2002 wherein the Shekhar Singh report was accepted and detailed directions were given regarding removal of encroachments, felling of trees, etc, in A&N. The A&N government argues that it has made diligent and sincere efforts to implement these directions, but is experiencing serious practical difficulties.

The applicant has therefore prayed for variation of the order of 7.5.2002.

F. The Society of Andaman and Nicobar Ecology (SANE), Bombay Natural History Society (BNHS) and Kalpavriksh: IA No. 1024

This IA points out that the administration of A&N has not implemented the directions made by the Court in its order dated 7.5.2002, which has been brought to the notice of the CEC in several hearings. The IA prays for, among other things, the regulation of entry of people into the islands through issue of inner line permits; issue of identity cards to residents; bar on fresh monoculture/ commercial plantations by the Andaman and Nicobar Forest and Development Corporation; and treatment facilities for bamboo and cane.

An important aspect of this IA is that it seeks specific directions from the Court for the formation of village forest protection committees as per JFM norms. It prays that “the practice of distributing timber and NTFP free to settlers should be discontinued. Instead, rural populations should be formed into village forest protection committees and, as per the joint forest management protection norms prevalent in other parts of the country, the amount of timber and NTFP required by village communities should be given to them on the basis of a memorandum of understanding, in return for the role in protecting the forests adjacent to their settlements and in detecting and preventing encroachments”.⁷³

G. K. Rajavel and 41 others: IA No. 927-28:

The applicants describe themselves as farmers from Tamil Nadu, living below the poverty line. They migrated to Batlagundu Forest Range in Tamil Nadu in 1971, and planted lemon and silk-cotton trees. In 1983 the State of TN surveyed the land and granted yearly leases for harvesting the yield of the trees. This continued till 2002, but on 16.4.2003, the respondent State issued eviction notices to them.

The applicants challenge the eviction notices issued to them by the State Government, and argue that the long period of their tenure should be an important factor to be considered. Further, they argue that due process has not been followed by the State

⁷³ IA no. 1024 in IA no 703, at Prayer (vii).

Government in the eviction procedure, such as proper notice through publication in the local newspapers, and so on.

The applicants also challenge the recommendations of the CEC in IA 703, and argue that these recommendations have to be seen along with the *1990 guidelines*.

Apart from the prayer for impleadment, the applicants also seek directions from the court for an ex-parte order to allow them to harvest their crop, and a stay of dispossession/ eviction on the basis of the notice issued to them until the 1990 guidelines and all evidence (not just POR) are taken into account. They cite the decision of the Supreme Court in Writ Petition 1778 of 1986⁷⁴ with regard to evidence. In addition, they seek quashing of the recommendations of CEC.

H. State of Karnataka (IA 961)

The State of Karnataka states that it has already filed an affidavit in IA 703 (summarised in Chapter V above) where it has given details of evictions from forest lands as per the Court's order, and also submitted a report before the CEC. The following status in Karnataka is therefore already on record:

- That 91,903 hectares of forest land has been encroached upon in Karnataka after 27.4.1978;
- Of this, action has been taken in 75,992 hectares. With respect to 24,022 hectares forest offence cases have been registered, and for the remaining land eviction proceedings under section 64(a) of the *Karnataka Forest Act, 1963* have been initiated.
- Steps have been taken for eviction with respect to 15,911 hectares.

The application asserts that it is not possible to evict all these people by 30.9.2002, and seeks extension of time till 31.5.2003. This prayer is, of course, irrelevant now.

It also points out that the Karnataka Legislative Assembly, in its session from 23rd to 31st December 2002, passed a resolution for regularisation of forest encroachments. Most of these encroachers are very poor, belonging to backward castes or tribals and have no other land or livelihood, and hence a sympathetic view is required. This resolution states that the cut-off date for regularisation of encroachments should not be 24.10.1980. Instead it proposes that for lands under cultivation the date should be 14.4.1990, and for lands under housing it should be 14.4.1998. The application states that "regularisation of the forest encroachments will be subject to current Land Grant Rules. Eligible encroachers in the deep interiors will have to be brought to the periphery."

The applicant State Government has already requested the Central Government to review and relax existing guidelines, and prays that necessary orders be passed by the Supreme Court for this purpose.

I. Ranchi Association (Regd.): IA no. 1134

The applicant association works primarily for the tribals from Chotanagpur region who were brought to the A&N islands by the Indian government immediately after independence. These tribals were settled and given agricultural lands, and the applicant claims to file this application on behalf of 5,794 such families.

⁷⁴ *Pradip Prabhu vs. State of Maharashtra*

The applicant challenges the report of Mr. Shekhar Singh, on the ground that it did not consider the specific situation as well as the law relating to the rights of these tribals. Since a large number of these persons were given legal title only after 1978, they stand to be evicted pursuant to the Shekhar Singh report, and are therefore facing tremendous hardship.

The applicants rely upon various constitutional provisions, the *A&N Islands (Land Tenure Regulation, 1926* as well as the *A&N Islands Land Revenue and Land Reform Regulation, 1966*.

The IA prays for a direction to the Administration of A&N to conduct a survey or physical verification prior to implementing the Supreme Court's orders, and also seeks a direction that alternative sites for rehabilitation must be provided simultaneously with any eviction process.

J. State of Orissa: IA No. 1252

The application reiterates the various policy decisions taken by the state government over the years regarding regularisation of encroachments on forest lands by tribals, as well as the 1990 guidelines. In pursuance of the stated policy, the state government submitted to the Central Government proposals for regularisation of rights of 3754 families over 3328.4151 ha of forest land. Some of these also involve forest villages. For this purpose it has already identified 3408.0504 ha of non-forest land for Compensatory Afforestation at an estimated cost of approximately Rs. 6 crores.

However, due to the order of the Supreme Court dated 23.11.2001, all regularisation of encroachments in the country has been stayed, and therefore the State Government was advised by the MoEF to approach the Supreme Court for permission before its proposals can be processed.

Due to non-regularisation of land rights, the state government is unable to provide basic amenities, such as hospitals, schools, roads, electricity, etc. in these areas. The tribal population of the state is experiencing extreme hardships, and has also been agitating for several years, leading to unrest in the tribal belt.

The IA therefore prays for a direction to the Government of India "to consider and dispose off the proposals for regularisation of eligible pre-1980 encroachments in Forest Areas in respect of 17 Districts of the State of Orissa namely: Deogarh, Boudh, Rayagada, Nayagarh, Kandhamal, Dhenkanal, Khurda, Sambalpur, Bargarh, Koraput, Cuttack, Kalahandi, Jharsuguda, Nuapada, Ganjam, Jajpur and Sonapur".

The Court issued notice to the respondents on 18.2.2005, and also directed the CEC to file its response.

K. State of Chattisgarh: IA 969-970

The State of Chattisgarh through this IA seeks to bring to the notice of the Court a specific problem it has encountered. The State Government had, through its proposal dated 4.2.2002, sought clearance from the Central Government for regularisation and distribution of pattas to "eligible encroachers" in the state.

The IA provides the following table⁷⁵:

⁷⁵ Quoted from the IA 969, based on the inspection of the Court Record.

Category*	
One	Pre-1976 in Forest Villages and Reserve Forests, which were left out in earlier regularisation i.e. 64966.33 ha in favour of 46,642 families.
Two	Encroachments during 1.1.1977 to 6.3.1979, i.e. 106565.4001 ha in favour of 96115 families.
Three	Encroachments during 7.3.1979 to 24.10.1980 i.e. 11953.981 ha in favour of 9281 families.

The MoEF after considering the proposal allowed the state government to go ahead with Category I and Category II of the regularisation, provided that compensatory afforestation conditions are met with. This was in accordance with the order dated 22.9.2000 passed by the Supreme Court where it was directed that “Compensatory Afforestation imposed in relation to regularisation should be fulfilled first before regularisation is granted”⁷⁶. The MoEF, after certifying that the application is in order and the conditions have been met, directed the State Government to approach the Court for necessary directions. It is to seek this approval that this IA has been filed.

L. State of Madhya Pradesh (IA 958)

This application filed by the State of MP seeks modification of the Court’s order dated 29.10.2002 in IA 566, which requires that Net Present Value of the forest that is sought to be diverted for any non-forest use is to be deposited in the Compensatory Afforestation Fund by respective user agencies. The applicant argues that since the land diverted belongs to the State government, the NPV should be deposited in the consolidated fund of the concerned State, and not the Compensatory Afforestation Fund.

M. Farmers Welfare Association of District Ropar, Punjab (IA 727)

This Application has been filed for exclusion of the land owned by members of the Applicant Association from the “list of forest area” prepared by the State government, pursuant to the Supreme Court’s judgement dated 12-12-1996 where the term ‘forest land’ was re-defined.⁷⁷

According to the applicant the area was notified under section 4 of the *Punjab Land Preservation Act, 1900* and has been under cultivation prior to the enactment of the FCA. The CEC examined the matter, and has made a recommendation that the IA be disposed of with the clarification that the Applicant or the State of Punjab is at liberty to seek approval from the Central Government for deletion of this land from the “list of forest area”.

N. Deepak Aggarwal⁷⁸ (I.A. 857-858)

The applicant has opposed the illegal allotment of forest land in Korba in favour of a private company, Messrs. Maruti, to establish a coal washery plant, without seeking approval under the *Forest (Conservation) Act, 1980*. The application contends that the

⁷⁶ This order was passed in IA 424 in IA 702 and the quotation has been taken from the text of IA 969 based on the inspection of the Court Record. Copy of the order, whether reported or unreported, is not available with the authors.

⁷⁷ (1997) 2 SCC 267.

⁷⁸ Further details about the Applicant are not available.

allotted area was found suitable to be an Orange Area (undemarcated protected forest) by the Orange Area Survey and Demarcation Unit, Bilaspur.

The Company claims that the said area is unsurveyed revenue land and not a notified protected forest. It is also not forest land (deemed forest) as per the notification dated 13.1.1997 issued by the State government.

According to the Government of Chattisgarh the allotted land is not recorded as Reserved Forest or Protected Forest in the records. Further, there is no notification to the effect that the land allotted is an Orange Area (undemarcated protected forest).

The matter was considered by the CEC, which has submitted a report in the Supreme Court stating that notwithstanding the non-availability of any notification showing that the area was a notified reserve forest or protected forest, this area was continuously being considered by the Chattisgarh Forest Department to be a “forest”. The report cites the letter of the DFO, Katghora, which clearly mentions that the land comes under the category of *Bade Jhar/Chote Jhar Ka Jungle* (i.e Orange Area/ undemarcated protected forest) and contains about 200 trees per ha. Further, the report cites the findings of the Orange Area Survey and Demarcation Unit, Bilaspur that the allotted area is suitable for notification as demarcated protected forest.

The CEC has therefore recommended to the Supreme Court that the land allotted to Messrs Maruti should be treated as “forest” for the purpose of Section 2 of the *Forest (Conservation) Act, 1980*.

Interim Applications before the CEC

Since its formation on 9th May 2002 the CEC has seen an increasing number of applications come before it covering a wide variety of issues. In the present section we focus only on some relating to eviction of encroachments. Since access to the documents before CEC is not available, we have not been able to get a complete picture of the pending relevant Applications before the CEC.

1. National Committee for Protection of Natural Resources (NCPNR)

The NCPNR has filed an application before the CEC to take into account various concerns regarding the issue of eviction of encroachers. It prays that the recommendations of the CEC ought to be based on an approach that consciously distinguishes occupation of forest for bonafide use and consumption of forest resources for subsistence on the one hand, and intensive commercial exploitation of forest resources on the other. It articulates the need to take into account the bonafide use of forests for livelihood purposes by tribals and forest dwellers. The application seeks to prioritise settlement of rights and claims under FP(2) and FP(3) of the *1990 Guidelines*, over immediate eviction of encroachments. Notice has been issued in this IA and it is pending hearing.

2. Jan Sangharsh Morcha: IA No. 29

The Jan Sangharsh Morcha, Betul, has also filed an application before the CEC seeking similar directions. This application, in addition, specifically prays for a recommendation that till the rights and claims are settled as laid down in the *1990 Guidelines* no tribal and other forest dwellers shall be evicted. Notice has been issued to the respondents, and the application is pending hearing.

3. Ekta Parishad: IA No. 198

Ekta Parishad has filed an application in connection to the legal status of “Orange Areas” in Madhya Pradesh and Chattisgarh. After elaborating the uncertainty around the legal status of these areas, and the direct and adverse impact this has on the fundamental right to life of the people who are dependent on such lands, the application prays for:

- appropriate directions to settle the exact legal status of Orange Areas;
- constitution of a High Level Committee, comprising of representatives of the Central Government, State Governments of Madhya Pradesh and Chattisgarh, including the Revenue and Forest officials, and representatives of the affected people, to draw up a time bound action plan;
- stop all evictions of valid patta holders and occupants of land in Orange Areas, as well those areas where the process of settlement of demarcated forests is not complete, and
- appropriate directions to the concerned State Governments, to ensure bonafide requirements of people including their nistar rights are met.

Notice has been issued to the respondents in this application, and it is pending hearing.

4. Government of Maharashtra: 1A no. 36

An application has been filed by the Government of Maharashtra in WP (C) No. 337/1995 (*CEL, WWF-I case*) pertaining to the conversion of forest villages to revenue villages. No further information about this application is available.

5. One Earth- One Life: IA No. 9

The Director of the legal cell of ‘One Earth- One Life’ an NGO in Palakkad, Kerala has filed this application seeking appropriate action from the CEC against the large scale alienation of forest land after the enactment of the *Kerala Private Forest Act, 1971*. No further information about this application is available.

6. One Earth- One Life, Palakkad, Kerala: IA No. 308

This application has also been filed by ‘One Earth- One Life’. The applicant brings to the notice of the CEC the large scale alienation of forest lands in the state due to encroachments even after the enactment of the *Forest Conservation Act, 1980*, and opposes the regularisation of encroachments on forest lands by awarding ownership over the encroached lands. No further information about this application is available.

Chapter VII

Directions passed by the Supreme Court on Protected Areas

As stated earlier, there are several pending cases in the Supreme Court pertaining to the governance of protected areas in the country. These include:

The CEL- WWF-I case⁷⁹;

This PIL was filed in 1995 by **WWF-India**, a premier wildlife conservation institution. This writ petition is the main case relating to protected areas pending in the Supreme Court and a large number of orders of far reaching consequence have been passed by the Court in this case. Like the *Godavarman* case, this writ petition has also been treated as a continuing mandamus, and has been coming up for hearing at regular intervals.

Unfortunately, during the course of this study we were unable to gain access to the court documents in this writ petition, nor were we able to obtain copies from any other public source, including the office of the petitioner itself. This has been a considerable stumbling block in the analysis of the case, and its implications on the rights of tribals and forest dwellers.

In the result the following analysis is based purely on the material available in the public domain, primarily the orders reported in various legal journals.

Although the writ petition was limited to the issue of wildlife conservation, a number of intervention applications have been filed by a variety of applicants, including state governments, public sector undertakings, private companies, NGOs, people's organisations, conservationists and individuals. A variety of related issues have therefore come to the notice of the Court, and the case has expanded way beyond the ambit of the original writ petition. Of course, the numbers have not reached the proportions of the *Godavarman* case and are at present quite manageable.

It is also important to reiterate that while setting up the CEC, the Supreme Court has directed that implementation of its orders in this case will also fall within the jurisdiction of the Committee, along with the orders passed in the *Godavarman* case. Therefore, the CEC is bound to make recommendations/ orders in conformity with the orders passed by the Court in this case as well, and the Court also has referred a number of IAs in this writ petition to the CEC for consideration.

One of the early orders passed by the Court was on 22.8.1997, where it was directed that:

“Even though notification in respect of sanctuaries/national parks have been issued under section 18/35 in all States/ Union Territories, further proceedings as required under the Act i.e. issue of proclamation under section 21 and other steps as contemplated by the Act have not been taken. The concerned State Governments/ Union Territories are directed to issue the proclamation under section 21 in respect of the sanctuaries/national parks within two months and complete the process of

⁷⁹ *Centre for Environmental Law, World Wide Fund for Nature-India vs. Union of India and others*; Writ Petition (C) No. 337 of 1995

determination of rights and acquisition of lands or rights as contemplated by the Act within a period of one year.”

The compliance of State Governments with these directions was monitored by the Court over the next several hearings. Faced with a very real threat of contempt proceedings, most state governments did issue proclamations under section 21 of the *Wildlife Protection Act, 1972* (WPA) over the next year, and speeded up the final notifications. It is common knowledge now that these orders of the Supreme Court were misused by the line departments on the ground, short-circuiting the procedural and substantive rights of forest dwellers and tribals in national parks and sanctuaries.

The matter has come up for hearing on a number of occasions since then, but the interest of the Court in the settlement process dried up once it was established that all State Governments had complied with the directions relating to issue of Section 21 proclamations. There has been no further interrogation by the Court on the subject of whether settlement and acquisition of rights had taken place in accordance with the law. Instead on 13.11.2000 the Court passed the following order:

“Pending further orders, no dereservation of forests/ sanctuaries/ national parks shall be effected.”⁸⁰

This was followed by an order on 9.5.2002 which directed:

“In the meantime, no permission under Section 29 of the Wild Life Act should be granted without getting the approval of the Standing Committee.”⁸¹

The same year a number of amendments were made to the WPA, effectively making the National Board of Wildlife (NBWL) the nodal body for grant of permissions for any change in the land use of a protected area.

The result of these orders is that when a State Government/ user agency wishes to undertake any developmental activity inside a protected area in its jurisdiction, it has to seek the following permissions:

- permission of the National Board of Wildlife under the WPA,
- approval under the FCA
- once both these permissions have been granted, the State Government/ user agency has to seek permission from the Supreme Court for changing the land use.

The material available indicates that over the years the focus of the Court has shifted considerably. Much of its time is now taken up in processing a variety of applications for diversion of portions of different national parks and sanctuaries for varied industrial/ commercial purposes. A few examples are:

- Laying of 800 KV Tehri-Meerut transmission Line by Power Grid Corporation of India Ltd. through the Rajaji National Park: permission granted by Supreme Court subject to payment of Rs. 50 crore, along with other conditions⁸²;

⁸⁰ Order dated 13.11.2000 in I.A. No. 2 in WP (Civil) no. 337 of 1995. 2000 SCALE (PIL) 325

⁸¹ Order dated 9.5.2002 in I.A. No. 18 in WP (Civil) no. 337 of 1995. 2002 SCALE (PIL) 174

⁸² Vide order dated 30.10.2002 in IA no. 634-635 in Writ Petition (C) no 202 of 1995

- Use of 49.26 ha inside Shettihally Wildlife Sanctuary for Upper Tunga irrigation Project: permission granted by Supreme Court subject to payment of Rs. 15 crore⁸³;
- Oil/gas exploration in Desert National Park in Rajasthan by ONGC: the NBWL had approved the application on the condition of payment of Rs. 5 crore, later reduced to Rs. 2 crores. Supreme Court granted permission⁸⁴.
- Drinking water scheme in 0.275 ha of Rajaji National Park by Uttaranchal Pey Jal Nigam: since this was required for the Ardh Kumbh Mela, the Court directed the CEC⁸⁵ and the MoEF⁸⁶ to urgently consider the application.
- Uranium exploration in Chitral and Peddagattu in Rajiv Gandhi Wildlife Sanctuary (Tiger Reserve), Andhra Pradesh, by Government of India: Supreme Court granted the permission subject to fulfilment of conditions imposed by NBWL, including payment of Rs. 5 crore by user agency⁸⁷.

Godavarman case:

Even though the subject matter of protected areas has since 1995 been the domain of the *CEL*, *WWF-I case*, a number of initiatives have been taken by the Court in the *Godavarman case* which relate directly to the same subject matter.

In early 2000, the Amicus Curiae filed an application⁸⁸ seeking a clarification from the Court whether its judgment of 12th December 1996⁸⁹ related to protected areas as well, and seeking directions against commercial exploitation of such areas. The Court did not examine the existing legislative provisions on the subject, but while issuing notice to the respondents (which included only the State and Union Territory governments) on 14.2.2000, passed the following interim order:

“In the meantime, we restrain respondents No.2 to 32 from ordering the removal of dead, diseased, dying or wind-fallen trees, drift wood and grasses, etc. from any National Park, Game Sanctuary or forest. If any order to this effect has already been passed by any of the respondent-States, the operation of the same shall stand immediately stayed.”⁹⁰

Even though this order was meant to be of an interim nature, it has become carved in stone over the past four years, thus turning established law under the WPA on its head. Even subsequently, notice was not issued to any of the other ministries concerned, nor to any representatives of tribal or forest dwelling communities or to any persons whose rights in the forest produce in these areas had been summarily stopped. Since it is an

⁸³ Vide order dated 14.7.2003 in IA no. 705 in Writ Petition (C) no 202 of 1995

⁸⁴ Vide order dated 7.11.2003 in I.A. Nos. 22 and 23 in WP (Civil) no. 337 of 1995; 2003 SCALE (PIL) 287

⁸⁵ Vide order dated 5.9.2003 in WP (Civil) no. 337 of 1995; 2003 (7) SCALE 447

⁸⁶ Vide order dated 22.9.2003 in WP (Civil) no. 337 of 1995; 2003 (8) SCALE 120

⁸⁷ Vide order dated 30.8.2004 in IA no. 61 in WP (Civil) no. 337 of 1995; unreported.

⁸⁸ IA no. 548 in Writ Petition No. 202 of 1995.

⁸⁹ (1997) 2 SCC 267

⁹⁰ Vide order dated 14.2.2000 in IA no. 548 in WP (Civil) No. 202 of 1995; unreported.

unreported order, it did not gain any public attention either, and was finally tracked down only after the forest departments began to curb the legal rights of local communities to extract forest produce from national parks and sanctuaries.

Not surprisingly, the order has been the subject matter of a number of applications before the Court seeking clarifications and modifications, by a variety of interest groups. These include:

- The word “forests” was deleted from this order, thus restricting its operation only to protected areas.⁹¹
- Upon a representation by the State of Rajasthan, the Court held that: “it is clarified that the said interim order will have no application in so far as plucking & collection of tendu leaves is concerned”.⁹²
- In a subsequent clarification⁹³, the Court stated that: “It is clarified that the order of this Court prohibiting cutting of trees does not apply to bamboos including cane, which really belongs to the grass family, other than those in the national parks and sanctuaries. In other words, no bamboos including cane in national parks and sanctuaries can be cut but the same may be cut elsewhere.”

Each time the Court has compounded the problem by passing further interim orders without referring to either the statutory provisions, the existing practice, or seeking the assistance of any person/s other than the ‘parties’ to the case. The matter was referred to the CEC which submitted its report in November 2004. (See BOX)

Some other pending cases regarding protected areas:

Apart from these two main cases relating to protected areas pending in the Supreme Court, there are at least two other cases on the subject which are pending, and the directions passed in these could have important implications.

Naveen Raheja vs. Union of India⁹⁴

Insofar as the *Naveen Raheja case* is concerned, no material is available in the public domain apart from the reported interim orders. For the time being therefore, we are not commenting on this case, except to say that it relates to the protection of wildlife, whether in zoos or in the wild. In this case the Court appears to have paid attention to the issue of timely disbursement of funds meant for this purpose from the Central Government to the concerned state agencies.

⁹¹ Vide order dated 28.2.2000 in IA no. 548 in WP (Civil) No. 202 of 1995, unreported.

⁹² Vide order dated 3.4.2000 in IA no. 548 in WP (Civil) No. 202 of 1995, 2000 (4) SCALE 168.

⁹³ Vide order dated 18.2.2002 in IA 707, as quoted in *Saving India’s Forests and Wildlife*, Sanctuary, Mumbai, November 2003, p. 31.

⁹⁴ Writ Petition (C) No. 47 of 1998

Report of the CEC in IA 548

The report of the CEC in IA 548⁹⁵ regarding commercial exploitation of protected areas recommends that the following clarifications be made by the Court:

- Clarification about allowing conservation and protection related activities for better management of the protected areas: that habitat improvement activities, fire protection measures, management of wet grassland habitats, communication and protection measures, as well as anti poaching initiatives which satisfy certain criteria, are exempted from seeking permission from the Supreme Court.
- Clarification about prohibited activities: To ensure greater clarity regarding which activities are prohibited in protected areas, the CEC recommends that an order be passed specifically prohibiting the following activities, unless they are undertaken for the purpose of conservation itself:
 - (i) felling of trees and their removal;
 - (ii) removal of bamboo or grasses for any purpose whatsoever;
 - (iii) removal of corals and other living forms from marine national parks/ sanctuaries;
 - (iv) construction of tourist complexes, hotels, restaurants, zoos, safari parks or any other building not for direct use for protection and management of wildlife and its habitat;
 - (v) removal of sand and boulders to any place outside the protected areas;
 - (vi) survey, prospecting, and mining; including old, new as well as temporary working permissions;
 - (vii) laying of transmissions lines, construction of irrigation projects, power projects, etc;
 - (viii) laying of industrial pipelines for oil, water, slurry, etc.
 - (ix) mineral and oil exploration;
 - (x) dumping of garbage, sewage, waste and discharge of industrial effluents.
- Exemption of small public utility projects of non-commercial nature from the cumbersome approval procedure currently in place: these include underground water pipelines of upto 4 inch diameter, distribution lines upto 11 KV for supply of electricity to rural areas, telephone lines or optical fibre for communication facilities; wells, handpumps, small water tanks for water supply to villagers who are yet to be relocated from the protected areas.
- Formulation of a Management Plan Code on the pattern of the Working Plan Code by the MoEF, in the form of a Manual.
- Establishment of a Technical Cell at the Wildlife Institute of India to work in coordination with NBWL and MoEF, to facilitate the preparation and implementation of Management Plan of the highest technical standard.

Conspicuous from its absence from the proposed list of prohibited activities is the removal of NTFP (other than bamboo and grasses) by forest dwellers and tribals for their livelihood needs. The Court has not accepted or rejected these recommendations till now. They are pending consideration, along with a number of other connected applications on the subject.

⁹⁵The interim report in IA No. 548 for clarification/ modification of this Hon'ble Courts' Order dated 14.2.2000.

Coorg Organisation for Rural Development (CORD) and another vs. State of Madhya Pradesh and ors.⁹⁶

This writ petition raises fundamental questions relating to the ideological and scientific foundation of the conservation strategies of the state in general, the *Wild Life Protection Act, 1972*, and the directions passed by the Court in the *CEL, WWF-I case* in particular. It goes to the root of the matter by questioning the legal and constitutional basis of the power assumed by the State to remove tribals from protected areas, who have, it asserts, a natural right to their life and livelihood which depends on these forests.

Unfortunately, this remarkable writ petition has come up for hearing only once, and has fallen off the map after that. There is a real need breathe life into this comatose petition and revive the issues it raises.

⁹⁶ Writ Petition (C) no. 672 of 1998

Chapter VII

Conclusions and Beginnings

When the process of collecting material for this report began six months ago, the focus was on the issue of regularisation of encroachments. However, it soon became apparent that this issue is intrinsically linked to a variety of other issues before the Court, such as the various directions relating to compensatory afforestation and net present value, and even the functioning of the CEC itself. It also became painfully clear that information regarding these developments, far from being communicated to the tribals and forest dwelling communities most affected by them, is being actively misrepresented by the line departments. This report can only begin to bridge this enormous, and potentially dangerous, information divide between the Court and the ground, a responsibility that must ultimately lie with the Court itself.

The result of this has been that many of the interim orders of the Court have remained unchallenged for years, and over time have become carved in stone. This is in spite of the fact that these directions have often ignored, by-passed or wrongly interpreted statutory law, and the rights contained therein. Many of them have been passed as interim orders without examining the statutory provisions relating to the subject. The order of 23.11.2001 relating to encroachments, which was passed without examining the existing forest laws, including the 1990 guidelines, is just one such example. While the brittle foundations on which some of these orders stand is easily demonstrable, challenges have remained rare and tentative.

Instead, one after another, these orders are presented to the public by the line departments as 'fait accompli'. The fact that these orders have been passed by the Supreme Court, a forum that is hardly within the reach of those already socially and economically marginalised, becomes a psychological barrier to potential challenge. Apart from the clutch of applications filed against the CEC's report on the subject of encroachments, there have been no interventions by representatives of tribal/ forest dwelling communities against orders passed on other pertinent issues. This is not a trend that evokes optimism.

Even within the limited arena of the encroachment issue, while a number of applications are pending before the Court, placing a colourful hue of arguments and affirmations, there is a need to carefully understand the trends they represent. Some applicants, for instance, have plugged Joint Forest Management as the route for 'solving' the problem of tribals. They recommend that JFM be introduced widely in order to use the tribals and forest dwellers to protect the forests 'on behalf of' the State. This is a mockery of the enormous historical wrong committed by the State on the rights of tribals and forest dwellers to their land, their fundamental right to life, livelihood and dignity. How can partial and contractual rights to usufruct under JFM schemes, implemented in a half-hearted, if not openly devious manner by line departments, ever replace the right to ownership of land? There is an urgent need to obstruct this dangerous line of argument pending before the Court.

The constitution of the Central Empowered Committee two years ago, has not even served the purpose for which it was set up, that is, to reduce the pressure on the Court's time. Far from any significant reduction of pressure, the number of litigants before the Court is on the rise, and ranges from individuals seeking grant of saw mill licences, to applications by the Andaman & Nicobar administration for permission to cut trees for relief operations after the tsunami. Long hours are spent every week by a three judge bench disposing of these applications.

Meanwhile the Central Empowered Committee has grown into a case study in itself, generating dynamics of its own which are beyond the scope of the present paper. Suffice it to say that the due process rights of citizens under Article 21 are far from satisfied by a body which has no judicial membership, holds 'Court' in Delhi, follows its own procedure, is bound to follow no law except that laid down by the Supreme Court often by way of interim directions, and whose reports are not public documents. Concerns regarding the role and functioning of the CEC need a thorough and in-depth analysis, and eventually the Supreme Court itself must address them.

Often during the hearings there has been discussion on use of satellite imagery to decide the question of encroachments, although no directions have been passed in this regard till date. Placing two satellite maps next to each other to decide upon the boundaries of encroached land would be a neat and clinical solution, no doubt, and surgically swift. But behind these maps are real people, with real lives, and real constitutional rights as citizens.

For all these reasons, it must be recognised that this is truly one of the determining moments in the history of the Supreme Court in this country. It is now up to us whether we leave the terrain uncontested or equip ourselves for the arduous legal battles that lie ahead.

Annexure I

(The following is a verbatim copy of the list on the Court file and is based on the inspection of the court file on 4.11.2004 by S. Khanna and Naveen TK)

Updated vide Court's order dated 17.9.2004

Generated on 21.9.2004

The applications mentioned below were listed before the Hon'ble Court on different dates mentioned against each of them along with the directions for their listing, All the applications have been due for listing before the Hon'ble Court :-

Sl. no.	I.A. number	Listed on	Directions for Listing	Subject matter
1.	745 and 926	23.2.2004	After six weeks	Relating to the killing of the Forest Officer in Bihar
2.	756	30.1.2004	After four weeks	For development of large tracks of lands lying undeveloped in Delhi which were acquired by DDA and NCT of Delhi
3.	780 with 818	23.2.2004	Adjourned for 8 weeks	Painting of rocks in the area of Kullu and Manali
4.	826 in 566 with 955, 958, 985, 1001-1001A, 1013-1014, 1016-1018, 1019, 1046, 1047 New filed 1135, 1136 and 1137, 1164, 1180-1181 and 1182-1183, 1194-1195, 1196	17.9.2004	Adjourned, to be taken up after the compliance of I.A. no. 826	Recommendations of C.E.C. in I.A. No. 566 (Regarding Compensatory Afforestation)
5.	827	19.4.2004	After summer vacation	Report of C.E.C. regarding transfer of funds and related issues
6.	828 with 833, 834-35, 837-38, 839, 840, 846-47, 848-49, 850, 853-54, 855-56, 866-68, 869-70, 871-72, 873-74, 875-76, 877-78, 879-80, 881-82, 891-92, 893-94, 900, 910, 911, 912, 913, 916-17, 901-902, 903, 904 and 905 (New filed C.P.	1.8.2004	To be listed after the Judgement in I.A. No. 1785 in Writ Petition (Civil) 4677/85 is pronounced. The judgement has been pronounced on 18.3.2004. The said group of applications relates to mining and are ready for listing	Second report of the CEC regarding illegal mining in Aravalli Hills

	412/2004)			
7.	920 in 703 with 988, 1129 and 1151	17.9.2004	Adjourned	For staying the direction of CEC dated 20.12.2002 and abide by decision dated 9.8.2002 between Forest and Fisheries Department of Government of West Bengal etc.
8.	I.A. 925 in C.P. No. 193/ 01 and I.A. 1172	23.2.04	After four weeks	Recommendations of CEC in C.P. No. 193 of 2001 regarding: To initiate Contempt Proceedings against M/S Gowri Shankar and Vinoth Kumar of M/S Glenrock Estates Pvt. Ltd. Nilgiris
9.	930 in 669 and 659 with 775 967	23.2.04 23.2.04	Adjourned After five months	Recommendations of CEC in I.A. Nos. 659 and 669 regarding declaring Matheran and its surrounding as Eco-Sensitive Zone.
10.	932 in 819-821	30.1.04	After four weeks	Recommendations of CEC in I.A. no. 819-821 (to direct Power Grid Corporation of India Ltd. to realign the route of Power Transmission Lines between Tehri and Rishikesh in view of Barren land available.
11.	941 in 754-755 with 777 and 1036 (New filed I.A. Nos. 1131-1133, 1138-1146 and 1148) 1184, 1190 and 1191	30.1.04	After six weeks	Recommendations of CEC in I.A. Nos. 754-755 (on behalf of Wildlife Society of Orissa for setting aside orders dated 19.11.2001 in a case pending before High Court of Orissa)
12.	956 and 1121	25.8.2003	Issue notice and service is complete	For impleadment and direction filed by Mr. S. Ravishankar, Advocate, regarding: To direct the State of Tamil Nadu to withdraw its G.Os. No. 44 and 45 dated 3.3.2003 issued by the Department of Forest
13.	960	23.2.2004	- do -	For impleadment
14.	963-964	23.2.2004	- do -	To direct the timber imported by M/s Al Baari and Sons, March, Manipur from Myanmar and to release the detained timber by State Government
15.	969-970	23.2.2004	- do -	To pass appropriate orders as the proposal dated 4.2.2002 submitted by the Applicant State and permit the Applicant State to distribute Patha to eligible encroachers of category-II
16.	972 in 757 with 789-790, 962, 986, 1038-1041, 1042-1045 (New Filed 1159)	19.4.2004	Adjourned for one month	Recommendations of CEC in IA no. 757 (Filed by AC to declare Mount Abu as Eco fragile Area)
17.	976 in 727	19.4.2004	After summer	Recommendations of CEC in IA no.

			vacation	727 (To exclude land of Applicant and other farmers from the list of cultivated and habitation areas closed under Punjab Land Preservation Act, 1900)
18.	979 in 442-446 and 1204	23.2.2004	After four weeks	Recommendations of CEC in IA Nos. 442-446 regarding closure of mines by District Magistrate, Lalitpur, U.P.
19.	989 in 857-858 with 997, 998 and 1128, 1187	13.8.2004	After eight weeks	Recommendations of CEC in IA Nos. 857-858 (to stop felling of trees in the area allotted to M/s Maruti Explochem (P) Ltd. District Korba, Chhattisgarh)
20.	990 in 860 and 863	19.4.2004	Adjourned for eight weeks	Recommendations of CEC in IA no. 860 and 863 (Affidavit filed by State of Karnataka in IA Nos. 860 and 863 was transmitted to CEC for recommendation)
21.	991 and 1185	23.2.2004	After six weeks	Regarding alleged mining in Ghoursil Reserved Forest Lalitpur by Mr. Pooran Singh Bundela, MLA.
22.	992	23.2.2004	Adjourned. List on a date to be given by Registry	For grant of Industrial Licence for running a Saw Mill
23.	993 in 836 and 895	24.11.2003	To be listed independently	Recommendations of CEC in IA Nos. 836 and 895 (To quash order dated 20.8.2002 of Addl. Director General of Forest restoring mining lease of Respondent Nos. 4 and 5 and to vacate ad-interim stay granted by this Hon'ble Court vide order dated 16.12.2002)
24.	1000 with 982-984, 1026-1028 and 1123-24	13.8.2004	After five weeks	Recommendations of CEC in Jamuna Ramgarh Wildlife Sanctuary
25.	1003 in 965	17.9.2002	Call after three weeks	Recommendations of CEC in IA No. 965. On behalf of Ministry of Defence seeking permission to construct Ghatiabagarh-Upelekh Road (length km. 75.54) leading to China Border
26.	1029	17.9.2004	Adjourned	For directions filed by Ms. Sushma Suri, Advocate, on behalf of Ministry of Defence seeking permission for the construction of roads from Track Junction to Bheem base to Doka La and from Flag Hill in State of Sikkim
27.	1037 in 1008 and 1009	30.1.2004	After four weeks	Recommendations of CEC in IA Nos. 1008 and 1009 (To conduct an enquiry against Respondents for illegally felling 9,000 trees in Pathri Forest, Hardwar)
28.	1048 in 60 and	27.8.2004	After four weeks	Report of CEC in IA No. 60 (To inquire

	1158, 1203			into "Malik Makbuja Trees Scandal" in Bastar, MP.) And letter received from Empowered Committee, Chhattisgarh with the prayer to dissolve the Committee
29.	1126, 824 and 1171 in 703 in 502 with 841, 829, 830-832, 899, 918, 927-928, 961, 1024 and 1134	23.2.2004	After four weeks	Recommendations of CEC in IA No. 703 regarding large scale encroachment of forest lands.
30.	1127	23.2.2004	After four weeks	Letter dated 31.01.2004 of Mr. C.N. Premsagar, Forester for his and his family protection
31.	1154	17.9.2004	Referred to CEC for its recommendations	For direction filed by Ms. Sushma Suri, Advocate, on behalf of Ministry of Defence seeking permission to go ahead with the widening/ construction of road Foothills- Chaku- Tanga in the State of Arunachal Pradesh
32.	1155 AND 1156	30.4.2004 30.4.2004	List when other I.As. are coming	For impleadment, to set aside the order of HPC 12.2.2002 and for renewal of Applicant Saw Mill Licence. For impleadment and order ensuring the total suspension of non-forest activities in Ridge Area (South-West of Mehrauli to Masudpur and North of Vasant Vihar) like felling of tree, construction, etc. pending final report of Mr. Shekhar Singh
33.	1166 in 896-898	13.8.2004	After four weeks	Recommendations of CEC in IA Nos. 896-898 (On behalf of Power Grid Corporation for construction of 2400 KV D/C Dhaulaganga- Bareilly Transmission Line in Uttaranchal with permission for cutting and removal of affected trees falling in the route.
34	1176 in C.P. 555/2002	8.9.2003	To be listed after CEC recommendations	Recommendations of CEC in C.P. No. 555/ 2002 Contempt against the officers of J and K State Government
35.	1192	13.8.2004	Issue notice. Notice served on all Respondents by Special Messenger on 23.8.2004	Report of CEC in I.A. no. 331 filed in CEC regarding preservation of Environment and Bio-diversity in the land extending from South West of Mehrauli to Masoodpur and north of Vasant Vihar, New Delhi.
36.	1206	17.9.2004	Issue notice	Filed by Amicus Curie in Court on 17.9.2004 regarding Notice issued under section 173 of I.P.C. to the Chairman, Member Secretary and

				Members of CEC by the Deputy Conservator of Forests, Kudremukh, Wildlife Division, Karkala, Karnataka
37.	974			For directions and impleadment filed by Ajay K Agarwal (Adv.) with regard to directions to return back the amount of penalty to the Applicant mill situated in Assam.
38.	975 in 193, 585, 551 and 147			Recommendations of CEC in I.A. Nos. 193, 585, 551 and 147 regarding the closure of Saw Mills of Applicant in the State of UP vide this Court's Order dated 04.03.1997
39.	977 in 29, 829 and 1015			Recommendations of CEC in I.A.Nos. 29 and 629 regarding: to direct the State Forest Corporation, J&K to supply to the Applicant balance quantity of 20,745 cu.m. feet of timber which was already ordered.
40.	978 in 785 and 805-812			Recommendations of CEC in I.A.Nos. 811-12, 785, 805-10 regarding the cancellation of the licence of the Applicant's Saw Mill by the High Power Committee vide its order dated 22.4.2002
41.	980 in 390, 529 and 129			Recommendations of CEC in I.A. Nos. 390, 529 and 120 regarding clearance of timber of working wood based industries and felling of trees from District Council Area in Meghalaya, Nagaland and Manipur states.
42.	981 in 458			Recommendations of CEC in I.A. No. 458 regarding seeking modification/ clarification of para 34 of this Court's Order dated 15.1.1998 which prohibits redemption of confiscated timber to the person from whom illegal timber has been seized.
43.	994 in 548			For clarification of order dated 14.2.2000 filed by K.R. Sasiprabhu, Advocate, on behalf of State of Kerala to clarify as to whether total ban in collection of NTFP/MFP in the State of Kerala.
44.	1005-06 in 945 in 883			For recalling order dated 25.8.2003 filed by Rakesh K. Sharma, Advocate, on behalf of Nagaland State Cooperative Monitoring, for restoration of I.A. No. 883.
45.	1021-22			For directions filed by K.K. Gupta,

				Advocate, to allow Applicant's Saw Mill to continue functioning which has been established under the valid scheme.
46.	1030-31 in 921 in 813-815			For modification/ clarification of Court Order dated 18.8.2003 filed by Kuldeep Singh, Advocate, to clarify/modify the recommendations of CEC dated 16.4.2003 (I.A. No. 921)
47.	1032-33			For impleadment and directions filed by R.C. Gubrele, Advocate, to issue direction to the State of Uttar Pradesh to issue licences to the Applicant's Saw Mills
48.	1049, 1116			For intervention and directions filed by Abhijit Sen Gupta, Advocate, seeking directions from the Authority to issue licences to the Applicant's Saw Mill (West Bengal)
49.	1117-18			For further directions filed by D.K. Garg, Advocate, seeking directions from the State of J&K to provide land to members of Association who are owners and valid license holders of Saw Mills in State of J&K.
50.	1119-20			For directions filed by Ajay Chaudhary, Advocate, seeking directions to grant license to run their Saw Mills to the members of the Mahasangh, Rajasthan
51.	1125 in 909			Recommendations of CEC in I.A. No. 909 regarding protection of Environment in Rajiv Gandhi National Park, Karnataka
52.	1130			For intervention and directions filed by Niranjana Singh, Advocate, on behalf of Shri Jaganath Singh and another, seeking directions for filing a fresh affidavit stating the real status of licence to run Saw Mills (West Bengal).
53.	1147			For intervention and directions filed by M/s Maptlo, Advocates, regarding: directing an investigation to be conducted by an independent agency with regard to the destruction of Rani Reserve Forest, Gauhati.
54.	1152			For intervention and directions filed by Nirmala Singh, Advocate, on behalf of

				Ajay Chand and others regarding: to issue license or consider the case of applicant with regard to issuance of licence for running Saw Mills (West Bengal)
55.	1153			For intervention and directions filed by Prashant Kumar, Advocate, on behalf of VOICE regarding: to stop the illegal felling of trees in the public parks in the State of Haryana.
56.	1157			Report of CEC regarding unauthorised dwelling units in Corbett National Park, Uttaranchal
57.	1160-61			For directions filed by Promod Dayal, Advocate, on behalf of State of Uttar Pradesh to set aside the order dated 23.09.2003 passed by Lok Ayukta, Uttar Pradesh, on the application of Shri Shyam Bitrari.
58.	1165 in 458			For directions filed by D.K. Prasad, Advocate, on behalf of Ministry of Finance regarding: to permit the Customs Department to take appropriate confiscation and disposal of the timber and timber product and recovery of fines in all States/ Union Territories except North Eastern states.
59.	1167 in 895-898			Recommendations of CEC on Application of Santosh Bharati for illegal diversion of 580.2 acres reserved forest land within Bandhavgarh National Park, MP.
60.	1168 in 118, 219-220, 240, 472-473 and 762			Recommendations of CEC on applications seeking directions from Uttar Pradesh Forest Department for obtaining the approval of Central Government for granting lease to applicant.
61.	1169 in 949-950			Recommendations of CEC on Application filed by Gokhala Pangrapoli-Amereli for modification of Court's order dated 14.02.2000 to permit the allocation of forest land inside the Gir National Park for cutting the grass.
62.	1170 in 948- 948A			Recommendations of CEC seeking directions for granting permission to transfer the Applicant's Saw Mill situated at Pendra Road to Village

				Pendra.
63.	1173 in 77, 78, 83 and 92			Recommendations of CEC regarding seeking clarification that the areas leased out for plantations prior to the enactment of the Forest Act, are not forest.
64.	1174 in 804			Recommendation of CEC in I.A. filed by Santosh Bharati regarding illegal transportation of illegal timber in police vehicle.
65.	1175			Recommendation of CEC regarding use of forest land falling within Sanjay Gandhi National Park for III A Mumbai Water Supply Project.
66.	1177 in 742 and 743			Recommendations of CEC for grant of mining lease in the forest area for which the approval in principle has already been accorded by the Ministry of Environment and Forests in State of Rajasthan.
67.	1178 in 620-621 with 725			Recommendation of CEC in pursuance of I.A. filed by Santosh Bharati, Damoh, Madhya Pradesh regarding large scale of illegal mining in forest area of Shivpuri, State of Madhya Pradesh.
68.	1179 in 675-76 and 957			Recommendation of CEC in I.As. filed by State of Madhya Pradesh for setting aside order dated 18.8.2001 passed by Empowered Committee for State of Chattisgarh.
69.	1186 in 205-06, 645, 723-24, 737-39 and 763			Recommendation of CEC in I.A. Nos. 205-06, 645, 723-24, 737, 738-39 and 763 regarding mining should be completely stopped in the Andaman and Nicobar Islands.
70.	1118, 1189			Filed by Pramod Dayal on behalf of State of Uttar Pradesh for directions and modification of Court's order dated 04.03.1997 regarding closure of unlicensed saw mills, veneer and plywood industries be modified to grant permission/ license for opening of any such saw mill, veneer and plywood industries in Uttar Pradesh.
71.	1193 in 921 in 782-84, 793-95 & 813-15			For clarification of Court's orders dated 29.08.2002 and 01.08.2003 filed by B.B. Singh, Advocate, on behalf of State of Bihar allowing the proposed ban on export of timber outside the

				State of Bihar.
72.	1197-99			Filed by P.V. Yogeshwaran, Advocate, on behalf of Federation of Mining Association of Rajasthan regarding impleadment, directions and exemption from filing official translations: to direct State Government to redraw and delineate a fresh boundary of Sanctuary in the wake of report of Collector.
73.	1200 in 590			Recommendation of CEC in I.A. No. 590 regarding violent assault made on Mr. Mahesh Chandra Dubey, Tehsildar, Jabera of Damoh District, Madhya Pradesh
74.	1201 in 477			Recommendation of CEC in I.A. No. 477 regarding: drawing attention to incident occurred on 15-16, August 1999 at Damoh, Madhya Pradesh.
75.	1202			Filed by Sanjay R. Hegde, Advocate, regarding issue of interim order of stay of all further proceedings in I.A. No. 375 pending before CEC.
76.	C.P. 280 of 2003			Filed by Lalitha Kaushi, Advocate, for punishment of contemnor for violation of order dated 12.12.1996.
77.	C.P. 428 of 2004			Filed by S.M. Garg, Advocate, on behalf of Brijesh Sukla for defying orders dated 12.12.1996 and 04.03.1997. Direction regarding: to take appropriate steps to close all unlicensed saw mills, veneer and plywood industries in Uttar Pradesh.
78.	C.P. 442 of 2004			Filed by Santosh Singh, Advocate, on behalf of Hashrat Ali for flouting the order dated 04.03.1997 by the contemnor regarding closure of all saw mills, veneer and plywood industries in Uttar Pradesh.
79.	C.P. 499 of 2004			Filed by Madhukar Agrawal, Advocate: for violation of order dated 29-30.10.2002 by officials of Haryana.
80.	31 in 30 in Writ Petition (Civil) 171 of 1996			Recommendation of CEC in I.A. No. 30 in WP(C) 171/ 1995 for direction to the Central Government to file a scheme for use of about 4.10 crores unspent fund lying with State of J&K.

Annexure II

Table 1: Key orders in Godavarman Thirumalpad v. Union of India, Writ Petition (C) no. 202 of 1995⁹⁷

IA No.	Subject matter	Date and summary of order	Implications
WP(C) 202/1995	Definition of “forest land”	12.12.1996 For the purpose of section 2 of the <i>Forest Conservation Act, 1980</i> “The term “forest land”, occurring in section 2, will not only include “forest” as understood in the dictionary sense, but also any area recorded as forest in the Government record irrespective of the ownership...The provisions enacted in the Forest Conservation Act, 1980 for the conservation of forests and the matters connected therewith must apply clearly to all forests so understood irrespective of the ownership or classification thereof.” (1997) 2 SCC 267 at para 4	The order is already being implemented in many states, with the concerned Forest Departments undertaking massive boundary re-demarcations. Demarcation of “forest-like lands” has also begun in many states under the supervision of the Court.
IA 424	Compensatory Afforestation	22.9.2000 In a matter pertaining to a proposal for regularisation of encroachments made by the State of MP: held that “experience has shown that whenever regularisation takes place subject to imposition of certain conditions such as compensatory afforestation, the regularisation becomes effective without conditions ever being fulfilled...In our opinion it will be more appropriate that the conditions imposed in relation to regularisations are required to be fulfilled first before any regularisation is granted”.	That regularisation of encroachments requires prior and mandatory fulfillment of compensatory afforestation conditions. This position is already under challenge in a number of IAs before the Court.

⁹⁷ It is important that if any of these orders are to be used for the purpose of litigation or for use in official proceedings, the text be verified from the official publication directly. Copies of these orders, both reported and unreported, are available for inspection at the SRUTI office on request.

		In IA 424 in WP (C) 202/ 1995. Quoted from Compilation of Orders in <u>Saving India's Forests and Wildlife</u> , Sanctuary, Mumbai, November 2003, p. 23	
IA 566	Compensatory Afforestation	<p>23.11.2001</p> <p>MoEF directed to formulate scheme:</p> <ul style="list-style-type: none"> ▪ Applicable to all applications for non-forest use of forest land; ▪ Condition of permission is compensatory afforestation- the responsibility should be that of user-agency; ▪ User agency should be required to set apart a sum of money for this; ▪ State Government concerned will provide land on which reforestation can take place, either at its own expense or at the expense of the user agency, as the State Government may decide. <p>In IA 566. Unreported order.</p>	Has to be read with subsequent orders of the Court mentioned below.
IA 566	Compensatory Afforestation Fund	<p>30.10.2002</p> <p>“A ‘Compensatory Afforestation Fund’ shall be created in which all the monies received from the user-agencies towards compensatory afforestation, additional compensatory afforestation, penal compensatory afforestation, Net Present Value of the forest land, Catchment Area Treatment Plan Funds, etc. shall be deposited. The rules, procedure and composition of the body for management of the Compensatory Afforestation Fund shall be finalised by the Ministry of Environment and Forests with the concurrence of the Central Empowered Committee.”</p> <p>Order passed in I.A. 566, 2002 (9) SCALE 81</p>	Notification of CAMPA and its Rules has been done vide notification dated 23 rd April 2004. Actual functioning uncertain, as a number of challenges to the concept itself are pending before the Court.
I.A. 566	Net Present Value	<p>30.10.2002</p> <p>“while according transfer under the Forest Conservation Act, 1980 for change in user-agency from all non-forest purposes, the user agency shall also pay into the said fund the net present value of the forest land diverted for non-forest purposes. The present value is to be recovered at the rate of Rs. 5.80 lakhs per hectare to Rs. 9.20 lakhs</p>	Can be interpreted to apply to not only regularisation of encroachments, but also settlement of rights, and conversion of forest villages into revenue villages. Potentially

		<p>per hectare of forest land depending upon the quantity and density of the land in question converted for non forest use. This will be subject to upward revision by the Ministry of Environment and Forests in consultation with Central Empowered Committee as and when necessary.”</p> <p>Order passed in I.A. 566, 2002 (9) SCALE 81</p>	<p>major hurdle, since it acts as a disincentive to regularisation of encroachments and settlement of rights.</p> <p>Many challenges to the scientific rationale (or lack of it) of this concept are presently pending in the Court. One such challenge has been raised in the affidavit of MoEF in IA 1126.</p>
IA 826 and 859 in IA 566	Net Present Value	<p>1.8.2003</p> <p>“...adjourned for four weeks. In the meantime, no approval shall be granted without imposing the condition indicated in this Court’s order dated 30.10.2002 relating to the payment of net present value of the forest land”.</p> <p>Order in IA no. 826 and 559 in WP (C) 202 of 1995, unreported.</p>	<p>Payment of NPV by user agencies is mandatory throughout the country.</p> <p>MoEF has issued Guidelines dated 17.9.2003 regarding payment of NPV, according to which NPV shall be payable in all cases that have been granted in-principle approval after 30.10.2002, i.e., before Stage II approval. The funds should be transferred to CAMPA.</p>

IA 548	Removal of MFP from protected areas	<p>14.2.2000</p> <p>“In the meantime, we restrain respondents No.2 to 32 from ordering the removal of dead, diseased, dying or wind-fallen trees, drift wood and grasses, etc. from any National Park, Game Sanctuary or forest. If any order to this effect has already been passed by any of the respondent-States, the operation of the same shall stand immediately stayed.”</p> <p>Order in IA no. 548, unreported. Subsequently the word “forest” was deleted vide order dated 28.2.2000.</p>	<p>These orders, in effect, bar collection of aforementioned materials from protected areas. It has been interpreted by many State Forest Departments as a bar on collection of any kind of MFP from any protected area. The question is whether such an order flies in the face of customary rights within such areas, as well as rights recognised by the WPA and lawful settlements made thereunder.</p>
IA 548	Removal of MFP from protected areas	<p>3.4.2000</p> <p>Upon a representation by the State of Rajasthan: “it is clarified that the said interim order will have no application in so far as plucking & collection of tendu leaves is concerned”.</p> <p>Order in IA no. 548, 2000 (4) SCALE 168</p>	
IA 707	Removal of MFP from protected areas	<p>18.2.2002</p> <p>“It is clarified that the order of this Court prohibiting cutting of trees does not apply to bamboos including cane, which really belongs to the grass family, other than those in the national parks and sanctuaries. In other words, no bamboos including cane in national parks and sanctuaries can be cut but the same may be cut elsewhere.”</p> <p>Order in IA 707, as quoted in <u>Saving India's Forests and Wildlife</u>, Sanctuary, Mumbai, November 2003, p. 31.</p>	
IA 418	Land rights: grant of pattas.	<p>7.5.1999</p> <p>In a case regarding regularisation of encroachments in Tamil Nadu: “in the meantime, no pattas with regard to any forest land shall be granted nor shall any encroachment be regularised</p> <p>Order in IA no. 418, unreported.</p>	<p>For consistency, any challenge to the order dated 23.11.2001 must include a challenge to this order.</p>
IA 703	Land rights: regularisation of	<p>23.11.2001</p> <p>“An application has been filed by the Id. Amicus Curiae in Court</p>	<p>For the last four years there has been an “interim” stay on</p>

	encroachments	<p>against the illegal encroachment of forest land in various States and Union Territories is taken on board. Let the same be registered and numbered. Issue notice to the respondents returnable after six weeks. There will be an interim order in terms of prayer (a).”</p> <p>Order in IA 703, unreported. The prayer (a) in IA 703 is reproduced below: “(a) Restrain the Union of India from permitting regularisation of any encroachments whatsoever without the leave of this Hon’ble Court”.</p>	<p>regularisation of encroachments. Also, it has been interpreted by State Governments as a stay on settlement of disputed claims as well. Therefore the process of settlement of land rights under the <i>1990 Guidelines</i> has come to a complete standstill.</p> <p>Has spawned a large number of applications by a variety of interest groups, which are all to be heard together.</p>
IA 502	Land rights: encroachments in A&N islands	<p>7.5.2002</p> <p>“Regularisation of encroachments on forest land in any form, including allotment/ use of forest land for agricultural or horticultural purposes, shall be strictly prohibited.... All post 1978 forest encroachments shall be completely removed within three months.”</p> <p>Order in IA no 502, unreported.</p>	<p>This order relates only to the Andaman & Nicobar Islands, and does not have any applicability to the rest of the country.</p>
IA 276	Land rights: eviction of “encroachers”	<p>30.10.2002</p> <p>While directing the eviction of encroachers from Tatkola Reserved Forest, Chickmagalur district, Karnataka., the Court observed:</p> <p>“There can be no manner of doubt that any land which forms part of the Thatkola Reserve Forest could only belong to the Government. Once the forest was established in the year 1936, all other rights therein came to an end.”</p> <p>It was further directed that those who did not voluntarily vacate/surrender the encroached lands by the specified date would have to pay punitive compensation at the rate of Rs. 5 lakh per ha per month to the State Government.</p>	<p>The Court passed these directions only after prolonged examination and several enquiries identifying individual encroachers.</p> <p>Imposing exemplary fines is well within the power of the Court. Therefore, the distinction between industrial/commercial encroachments and ‘encroachments’ by socio-economically marginalised sections</p>

		2002 (9) SCALE 81	has to be re-emphasised before the Court.
IA 1126	Land rights: regularisation of tribal rights over forest lands	<p>23.2.2004 Implementation of 5 MoEF orders stayed, namely:</p> <ul style="list-style-type: none"> ▪ notification dated 3.2.2004: notifying the Forest Conservation Rules, 2004 ▪ circular dated 5.2.2004: regularise tribal rights over forest land all over the country within one year, treating 31.12.1993 as cut off date for eligibility. ▪ order dated 7.10.2003: regularising encroachments on 1,68,840.291 hectares, and permitting its mutation as revenue land in MP; ▪ order dated 6.2.2004: diversion of forest land for pilot project for relocation of tribals from forests in Dhalai district, Tripura; ▪ order dated 13.1.2004: conversion of 67 forest villages into revenue villages in Badwani, MP; <p>Order in IA no. 1126, unreported.</p>	The stay order has created an uncertainty in the legal position regarding variety of issues in the area of tribal land rights. There is a need to have this situation resolved one way or another, through one device or another, as early as possible.
IA 295	Constitution of CEC	<p>9.5.2002 A Central Empowered Committee constituted at the national level to monitor the implementation of the Court's orders in the <i>Godavarman</i> and <i>CEL</i>, <i>WWF-I</i> cases, and place non-compliance before it in respect of all the forest areas in the whole of India.</p>	The CEC was not notified under the <i>Environment Protection Act, 1980</i> , as originally directed. Instead, the membership, powers and functions of the CEC are determined by the order of the Court, and therefore it is an extra-statutory body with enormous powers and little accountability.

Table 2: Key orders in Centre for Environmental Law, WWF-I v. Union of India, Writ Petition (C) no. 337 of 1995

IA No.	Subject matter	Date and summary of order	Implications
WP (C) No. 337 of 1995	Land Rights: protected areas	22.8.1997 “Even though notification in respect of sanctuaries/national parks have been issued under section 18/35 in all States/ Union Territories, further proceedings as required under the Act i.e. issue of proclamation under section 21 and other steps as contemplated by the Act have not been taken. The concerned State Governments/ Union Territories are directed to issue the proclamation under section 21 in respect of the sanctuaries/national parks within two months and complete the process of determination of rights and acquisition of lands or rights as contemplated by the Act within a period of one year.”	As a result of this order, and in order to avoid contempt proceedings, a number of state governments hurried through the settlement procedures required under the WPA, riding rough shod over existing rights of local communities. The Court also did not go into the question of whether settlements were properly conducted, after it was satisfied that proclamations under S. 21 had been issued.
IA No. 2	Land Rights: protected areas and forests	13.11.2000 “Pending further orders, no dereservation of forests/ sanctuaries/ national parks shall be effected.” Order in I.A. No. 2, 2000 SCALE (PIL) 325	As a result of this order, for any de-reservation of a Reserve Forest, Protected Forest or protected area, the user agency has to approach the Court for special permission, after obtaining the necessary statutory approvals.
IA No. 18	Land Rights: protected areas	9.5.2002 “In the meantime, no permission under Section 29 of the Wild Life Act should be granted without getting the approval of the Standing Committee.” Order in I.A. No. 18, 2002 SCALE (PIL) 174	Now that the WPA has been amended, this means that permission from the National Board of Wild Life (NBWL) has to be obtained, rather than the earlier Standing Committee.