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# **TRIBAL EVICTIONS FROM FOREST LAND**

**March 2005**

**(Dr. Jean Dreze)**

*Eviction of tribal communities and other forest-dwelling communities from forest areas will be discontinued. Cooperation of these communities will be sought for protecting forests and for undertaking social afforestation.*

**(Common Minimum Programme of the UPA government)**

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# **TRIBAL EVICTIONS FROM FOREST LAND**

## **Preamble**

The Common Minimum Programme of the UPA government clearly states that *“eviction of tribal communities and other forest-dwelling communities from forest areas will be discontinued”*. This is an important commitment: during the last few years, there has been a devastating wave of forced evictions of tribal communities from forest land around the country, which needs to be stopped as soon as possible. Unfortunately, recent reports suggest that forced evictions continue in many places, with unrelenting brutality. This note discusses the problem and presents recommendations for immediate action.

## **1. Background**

This section briefly discusses the circumstances that have led to large-scale evictions of tribal families from forest land in recent years. See also **Annexure 1** for a summary.

### **1.1. Historical non-recognition of tribal rights over forest land**

Many tribal families today are regarded as “encroachers” on forest land (i.e. persons who are cultivating or residing on forest land without a legal right to be there). In many cases, however, it would be more accurate to say that the “forest” is encroaching on their traditional rights. As a recent letter of the Ministry of Environment and Forests on “traditional rights of tribals on forest lands” (see **Annexure 2**) puts it:

“According to the Indian Forest Act, 1927, the Government can constitute any forest land or waste land which is the property of Government or over which the Government has proprietary rights, a reserved forest, by issuing a notification to this effect. Commercial interests of the then British Government motivated it to declare more and more lands as reserved forests, without ascertaining the rights of the tribals and other forest dwellers.

Even after independence in 1947, during the process of amalgamation of princely states, the activity of consolidation of government forests continued. The State Governments / UT Administrations proclaimed the lands of ex-princely states and the zamindar-lands as Reserved Forests. However, no effective steps were taken to

simultaneously settle the rights of tribals and other forests dwellers. Absence of records of rights which never existed for these people, became the main constraint in resolving this issue. **As a result, the rural people, especially tribals and forest dwellers who have been living in the forest since time immemorial, have come to be erroneously looked upon as encroachers of forest lands.**”

In a recent affidavit submitted to the Supreme Court, the Ministry of Environment and Forests (MoEF) also recognized the **historical injustice** done to tribal and forest-dwelling communities whose rights were not verified or recorded during consolidation of the forests.<sup>1</sup> This historical injustice had been highlighted earlier by Dr. B.D. Sharma in the Twenty-Ninth Report of the Commissioner SC&ST, submitted in May 1990.<sup>2</sup>

## 1.2. The 1990 guidelines

In response to Dr. B.D. Sharma’s report, **the MoEF issued six sets of “Guidelines” on 18 September 1990**, dealing inter alia with: Regularization of Encroachments (FP1); Review of Disputed Claims over Forest Land (FP2); Regularization of Pattas & Leases (FP3); and Conversion of Forest Villages to Revenue Villages (FP5). These Guidelines were supposed to provide a framework to resolve the problem of settlement of rights of tribals and other forest dwellers on forest land. For instance, FP1 outlined procedures whereby state governments could apply to the Government of India for regularization of “pre-1980 encroachments”. As discussed below, however, **these Guidelines have not been implemented, and in many ways they were quite restrictive in the first place.**

## 1.3. Non-implementation of the 1990 guidelines

In a recent affidavit submitted to the Supreme Court, the MoEF mentions that “the State Governments have failed to give any response” to requests for implementation of the 1990 Guidelines. The affidavit also points out that the State Governments have “mixed up” [sic] the two distinct issues of (1) regularization of encroachments, and (2) settlement of disputed claims of tribals over forest lands. The distinction turns on the fact that “encroachment” applies only in cases where forest land has been illegally occupied *after*

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<sup>1</sup> IA 1126 in WP 202/1985 (Godavarman vs Union of India), dated 21 July 2004; see *Endangered Symbiosis*, pp. 267-279.

<sup>2</sup> The main arguments are summarized in the Commissioner’s covering letter to the President, dated 28 May 1990; see ES, pp. 168-180.

*being duly notified* under the Indian Forest Act or the State Forest Acts. Disputed claims arise when forest land has not been duly notified in the first place. As the affidavit observes:

“... proposals have been received only under the category of regularization of eligible encroachments from a couple of States. This has deprived the tribals of natural justice as the Central Government’s guidelines for regularization of encroachments are different from the guidelines for settling disputed settlement claims... **the Central Government is committed to the recognition of the tribal rights in forest areas**”.<sup>3</sup>

**On 5 February 2004, the MoEF issued new guidelines for “regularization of the rights of the tribals on the forest lands”, in continuation of the 1990 Guidelines.**<sup>4</sup> These “supplementary guidelines” request the State Governments to give legal recognition to “the traditional rights of the tribal population on forest lands”, and to submit proposals for conferring “heritable but inalienable rights over such lands” on “tribal dwellers who are in continuous occupation of such forest land at least since 31/12/1993”. However, **these guidelines were stayed by the Supreme Court** on 23/2/2004, in response to an Intervention Application filed by Harish Salve, the *Amicus Curiae* to the Supreme Court in the Godavarman case.<sup>5</sup>

#### **1.4. The Godavarman case, IA 703 and subsequent MoEF orders**

Since 1995, a public interest litigation known as the “Godavarman case” is being heard in the Supreme Court. This “public interest litigation” (PIL) is not primarily concerned with tribal rights on forest land; the main concern is with the destruction of forests by commercial interests and powerful lobbies. However, this PIL has caused an enormous amount of “collateral damage” for tribal communities in the form of orders that effectively restrict (or worse still negate) their rights on forest land.

In Intervention Application 703 (“IA 703”), filed on 23 November 2001, the Amicus Curiae (Adv. Harish Salve) drew attention to the danger of forest encroachments by powerful lobbies being “regularized” by the government. In response, the Supreme Court forbade the

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<sup>3</sup> IA 1126 in WP 202/1985 (Godavarman vs Union of India), dated 21 July 2004; see ES, p. 269.

<sup>4</sup> See ES, pp. 205-207.

<sup>5</sup> The Supreme Court also stayed related Guidelines issued by the MoEF on 3 February 2004, aimed at “stepping up of process for conversion of forest villages into revenue villages”.

Central Government to regularize encroachments without its permission. This was interpreted by the MoEF as a direction to evict encroachers, although there is no express order of the Supreme Court to evict. On 3 May 2002, the Inspector General of Forests instructed state governments “to evict the ineligible encroachers and all post-1980 encroachers from forest lands in a time bound manner”.

**The MoEF order of 3 May 2002 created a wrong impression that evictions had been ordered by the Supreme Court, and massive eviction drives instantly began.** Following nationwide protests of tribal communities, the MoEF issued a follow-up order on 30 October 2002 reaffirming the government’s commitment to the implementation of the 1990 Guidelines. But due to the misunderstanding that the Supreme Court had expressly ordered the eviction of encroachers, eviction drives have continued.

### **1.5. Recent “eviction drives”**

The “eviction drives” triggered by recent MoEF orders have caused immense hardship for tribal communities across the country. According to a statement of the MoEF in Parliament on 16 August 2004, “encroachers” have been evicted from 1.5 lakh hectares of land. The MoEF did not inform Parliament about the number of people evicted, but according to the Campaign for Survival and Dignity (a network of some 200 organisations concerned with the rights of tribal people), **about 3 million tribal families face the threat of eviction.**

Further, evictions have often taken place in the most brutal manner. Houses have been set on fire or trampled by elephants, standing crops have been destroyed, women have been molested – there is a long catalogue of well-documented atrocities. A sample of recent cases is presented in **Annexure 3**. An illustrative extract follows:

“The homes of 73 tribal families of Bhandarpaani in Betul District (Madhya Pradesh) were set on fire by the Forest Department on the night of 4 July 2004. People have been kept in different places and families separated – relatives and even members of the same families are unaware of each other’s whereabouts. Their only fault was that their village has been situated on forest land for generations. Eight children are suffering from severe pneumonia and malnutrition; one of them (Kishan, aged 18 months) died on 22 July. Thirty-five persons of the tribe were illegally confined in Ranipur Forest Range Office; 15 were produced in the High Court at Jabalpur on 26 July in a Habeas Corpus petition. Bakhat Singh, after being released in the Court, was taken away by the Forest Department and has been missing since then.”<sup>6</sup>

<sup>6</sup> Based on a communication from Anurag Modi (Jan Sangharsh Morcha, Madhya Pradesh) and affidavits submitted to the High Court in Jabalpur.

## 1.6. Participatory verification in Maharashtra

One major limitation of the 1990 Guidelines (which also applies to the “supplementary” Guidelines of 2004) is that they do not include any instructions for the pro-active verification of claims for “regularization” of encroachments. **In Maharashtra, there have been important initiatives for pro-active verification of claims through transparent and participatory procedures.** On 10 October 2002, the Government of Maharashtra issued an Order for this purpose, summarized in **Annexure 4**. Important aspects of the verification process in Maharashtra include active involvement of the Gram Sabha, opportunity for the tribal claimants to adduce all relevant evidence (including oral testimonies), intensive training of officials, and transparency at every step.

The verification procedure in Maharashtra leads to the preparation of “proposals” from the state government to the Central Government for the regularization of encroachments. Since the Supreme Court has stayed the regularization of encroachments, these proposals are yet to be processed. Meanwhile, however, the claims of “eligible encroachers” have been formally entered in the records as well as on laminated certificates given to the applicants. This protects them from eviction drives.

**Maharashtra’s pioneering experiment deserves to be replicated elsewhere.** An adapted version of the Maharashtra Order was sent by the National Advisory Council to the Ministry of Environment and Forests after its seventh meeting on 27 November 2004, for consideration and comments. According to a personal communication from Dr. Prodipto Ghosh (Secretary, MoEF) on 7 January 2004, draft guidelines for the verification of claims based on the note sent by the NAC have been sent to the Prime Minister’s Office.

## 2. Recent Developments

Initial discussions of these issues took place at the National Advisory Council (NAC) on 20 October 2004 and 27 November 2004. Following on this, the NAC convened a “dialogue” between the Ministry of Environment and Forests (MoEF) and activists concerned with tribal rights on forest land. A meeting with the Prime Minister was also arranged.

## 2.1. Dialogue with the Ministry of Environment and Forests

A “dialogue” with the MoEF took place on 3 November 2004. Among those present were Aruna Roy and Jean Drèze (National Advisory Council), Pradip Prabhu (convenor, Campaign for Survival and Dignity), tribal representatives of the Campaign for Survival and Dignity, Prodipto Ghosh (Secretary, MoEF), Nirmal Kumar Joshi (DG of Forests and member of CEC), Anurag Bajpai (AIGF) and other IGFs. Also present were representatives of Planning Commission, Ministry of Rural Development and Ministry of Tribal Affairs.

The meeting identified significant points of agreement among the participants:

- a) The formal position of the MoEF on the encroachment issue is: **“Any tribal in possession of and cultivating forest land in his/her homeland in exercise of his/her traditional rights is not an encroacher”**.
- b) The formal definition of an encroacher is “a person who is in a forest area without a legal right to be there.” But in the case of the tribals they are in the forests following “traditional rights” and these rights should find legal recognition. Hence the order of 5 February 2004 is based on the principle that traditional rights (physical, oral and shared history of the community) which indicate that the community has been in place for the past ten years (i.e. prior to 1993) will go to establish that the tribal community is not in the forest area without the legal right to be there and hence is not an encroacher.
- c) **The responsibility for verification is on the state government.**
- d) For tribals, 31/12/1993 is the cutoff date to verify claims within the frame of the formal position of MoEF, as stated in the order of 5 February 2004. For others it is 25/10/1980.
- e) The cutoff date of one year for processing all claims (mentioned in the order of 5 February 2004) could be relaxed.
- f) MoEF is committed to have the stay on the orders of 3 and 5 February 2004 vacated.
- g) MoEF has issued two orders to all state governments that tribals in “bonafide” possession of land should not be evicted.
- h) **MoEF is working on a legislation to provide a process of verification of claims for regularization, disputed claims, pattas & leases and conversion of forest villages.**

**At the end of the meeting, the MoEF agreed to: (1) issue new orders clarifying its position on encroachments and related issues and calling for a halt to eviction drives; (2) facilitate “regional consultations” on the implementation of the 1990 Guidelines; (3) prepare a draft legislation for the verification of eligible encroachments, resolution of disputed claims, and settlement of rights of tribal communities and forest dwellers.**

## **2.2. Meeting with the Prime Minister**

A follow-up meeting with the Prime Minister took place on 5 November 2004. Among those present were Pradip Prabhu (Convenor, Campaign for Survival and Dignity), tribal representatives of the Campaign for Survival and Dignity, Mr. Subramaniam (Private Secretary to the PM), R. Gopalakrishnan (Joint Secretary, PMO), Prithvi Raj Chauhan (Minister of State to PMO) and the Prime Minister.

Both Secretaries concurred with the delegation on the seriousness of the situation. **The Prime Minister said that the matter should be treated with utmost urgency and a solution should be evolved as soon as possible.** The following points also came up:

- a. **Evictions should be stopped with immediate effect.** The Prime Minister directed that immediate orders to this effect should be issued to all Chief Secretaries.
- b. The Prime Minister asked his secretaries to talk with the MoEF to **expedite vacation of the stay on the MoEF order of 5 February 2004.**
- c. However when his attention was drawn to the fact that the implementation of the 1990 Guidelines had not been stayed, the PM directed his officials to work out the modalities of **prompt implementation of the 1990 Guidelines.**
- d. The Prime Minister endorsed the suggestion that the **Maharashtra approach to verification of claims should be adopted across the country.** He directed the officials to study the Maharashtra Order and work out the modalities.
- e. The special constraints facing settlement of claims of forest dwellers living in areas that have subsequently been declared National Parks and Sanctuaries under the Wildlife Protection Act were also brought to the notice of the Prime Minister.
- f. Note was taken of the formation of a “Standing Committee on Inter-Sectoral Issues Relating to Tribal Development” (chaired by Shri Balchandra Mungekar, Planning

Commission). The Prime Minister supported the request for representation of the Campaign for Survival and Dignity on the Committee.<sup>7</sup>

### 2.3. Action taken by the MoEF

In pursuance of the “dialogue” convened by the National Advisory Council, and of further communications from the Prime Minister’s Office, the Ministry of Environment and Forests issued new instructions on 21 December 2004 (see **Annexure 2**). After recapitulating the history of the “crisis”, the letter states:

“The Central Government is convinced that the difficulty in distinguishing between genuine tribals/ forests dwellers and ineligible encroachers by the State Governments / UT Administrations is the main cause of the problems of tribals... In view of the above, and without prejudice to Supreme Court’s order dated 23-11-2001 and 23-2-2004, it has been found appropriate to request the State/UT Governments, that as an interim measure, they should not resort to eviction of tribal people and forest dwellers other than ineligible encroachers, till the complete survey is done for the recognition of such people and their rights, after setting up of District level Committees involving a Deputy Collector, a Sub-Divisional Forest Officer, and a representative of Tribal Welfare Department, by the State/UT Governments as reiterated in guidelines dated 18-09-1990 and 30-10-2002 of the Central Government. **The State/UT Governments are advised to exclude such tribals/ forest dwellers, other than ineligible encroachers, from the eviction drives. Simultaneously, it is also clarified here that this interim measure does not stop State/UT Governments from evicting the ineligible encroachers from forest lands.**”

While this letter may help to restrain the current “eviction drives”, **it does nothing to protect “ineligible encroachers”**. Further, the term “ineligible encroachers” remains **ambiguous**. It would be logical not to consider anyone (among tribals and longstanding forest dwellers) as “ineligible encroacher” until such time as a credible process of verification has taken place. However, **far from insisting on pro-active verification, the letter states that the “eviction drives” can continue for “ineligible encroachers”, without clarifying how ineligible encroachers are to be identified**. Seen in this light, the letter is almost a green signal for the continuation of eviction drives, instead of an order to discontinue them, as it purports to be.

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<sup>7</sup> Shri S. R. Sankaran (IAS, retired), Dr. B. D. Sharma (Ex. Commissioner SC & ST) and Adv. Pradip Prabhu (Convenor, CSD) were subsequently invited to join the Committee.

It is also worth noting that the letter does nothing to ensure that the eviction of “ineligible encroachers” (however defined) proceeds in a legal and humane manner. Recent experience suggests that basic safeguards are urgently required in this respect.

### **3. Limitations of the 1990 Guidelines**

As mentioned earlier, pro-active implementation of the 1990 Guidelines would be a step forward in resolving the present crisis. However, the 1990 Guidelines have major limitations that need to be addressed:

(1) Restricted applicability: Guidelines FP(1), on the regularization of encroachments, are applicable to states that had “evolved certain eligibility criteria... and taken a decision to regularize such encroachments but could not implement either wholly or partially before the enactment of the Forest (Conservation) Act 1980”.<sup>8</sup> Tribal communities in other states (including Andhra Pradesh, Jharkhand, Kerala and Tamil Nadu) are, in principle, excluded.

(2) Documentary evidence: In Guidelines FP(1), applicants have to submit documentary evidence (e.g. evidence of “fines” for encroachments, paid before 1980) in order to be eligible for regularization. This is, obviously, very restrictive. However, this requirement has been waived in the MoEF Order of 30 October 2002.<sup>9</sup> Documentary evidence is not required in the verification procedure used in Maharashtra (see Appendix 4).

(3) Compensatory afforestation: Guidelines FP(1) state that regularization of encroachments is conditional on “compensatory afforestation as per existing guideline”. This is, again, very restrictive.

(4) No due process for eviction: The 1990 Guidelines place no explicit restrictions on the methods used to evict “ineligible encroachers”. Judging from recent experiences, strong safeguards are needed in this regard.

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<sup>8</sup> See ES p. 182.

<sup>9</sup> See ES p. 228.

(5) Obsolete cut-off date: Almost fifteen years have elapsed since the 1990 Guidelines were issued. The cut-off date of 1980 for eligibility to regularization is obviously out of date. The case for a more recent cut-off date is all the more compelling given the failure of the state to implement the 1990 Guidelines, and its general apathy in the intervening period. One alternative would be to adopt the cut-off date of 1993 suggested in the “supplementary Guidelines” of 5 February 2004 (currently stayed by the Supreme Court).

For these and other reasons, prompt implementation of the 1990 Guidelines is not an adequate solution to the crisis. Further steps are required, including fresh legislation to recognise and protect the forest rights of tribal communities and other forest dwellers.

Finally, note should be taken of the fact that the 1990 Guidelines precede the Panchayats (Extension to the Scheduled Areas) Act (PESA), which provides new legal spaces for decentralized forest governance in Schedule V areas by empowering Gram Sabhas to safeguard and preserve their community resources. These should be taken into account in any revision of the 1990 Guidelines.

## 4. Recommendations

In the light of these observations, the National Advisory Council makes the following recommendations:

1. Further instructions should be issued by the Ministry of Environment and Forests to:

- (1) Put a more definitive end to “eviction drives”;
- (2) Clarify the notion of “ineligible encroachers”;
- (3) Clarify the criteria of “eligibility”;
- (4) Clarify that no tribal person (or longstanding forest dweller) can be declared “ineligible” in the absence of a due process of verification;
- (5) Clarify that evictions of tribals (or other longstanding forest dwellers) should take place only in the case of persons who have been determined to be ineligible after the prescribed due process, and refuse to shift voluntarily, and that even in such cases “in situ rehabilitation” should be the preferred option whenever possible;
- (6) Issue guidelines to ensure that evictions, when inevitable, proceed in a legal and humane manner and that evicted persons (other than commercial lobbies etc.) have sustainable livelihood options, preferably through “in situ rehabilitation”.

2. State governments should be directed to initiate a process of pro-active verification based on participatory and transparent procedures. The Ministry of Tribal Affairs should provide the basic framework for pro-active verification, building on Maharashtra’s experience in this respect.

3. Regional consultations on the implementation of the 1990 Guidelines and subsequent instructions (including the “supplementary” Guidelines of 3 and 5 February 2004) should be organized by the MoEF, as agreed on 3 November 2004.

4. A dialogue should be initiated with concerned parties (including Amicus Curiae Adv. Harish Salve and members of the Central Empowered Committee, the Standing Committee, the Campaign for Survival and Dignity, other citizens’ organizations, the National Advisory Council, the Ministry of Environment and Forests, the Ministry of Tribal Affairs and other

concerned Ministries) to explore ways of protecting tribal communities and forest-dwellers from the “collateral damage” caused by recent orders of the Supreme Court in the Godavarman case, e.g. through joint interventions in the Supreme Court. The following issues need urgent discussion, among others:

- (1) The Supreme Court ban on regularization of encroachments.
- (2) The Supreme Court stay on the 3/2/2004 and 5/2/2004 orders of the MoEF.
- (3) The wholesale ban on collection, processing and sale of Minor Forest Produce (MFP) and Non-Timber Forest Produce (NTFP) from Protected Areas.
- (4) The ban on de-reservation of forest land (and the need for an exemption for the purpose of implementing the 1990/2004 Guidelines).
- (5) The issue of conversion of forest villages into revenue villages and the settlement of other old habitations/unsurveyed villages.
- (6) The ban on any change in the status of forest land (and the nature of rights that may be conferred).
- (7) Orders relating to “compensatory afforestation” and “net present value” and their implications for tribal communities and forest dwellers.
- (8) The need to combine stern orders against encroachments on forest land by commercial interests and powerful lobbies with constructive orders to protect the rights of adivasis and other forest dwellers. As things stand, both categories tend to be clubbed under the same orders, with disastrous consequences.

5. A comprehensive central legislation should be drafted to give due recognition to the forest rights of tribal communities and forest dwellers. We understand that a draft “Scheduled Tribes and Forest Dwellers (Recognition of Forest Rights) Act” is being prepared by the Ministry of Tribal Affairs and the Prime Minister’s Office in consultation with the Campaign for Survival and Dignity and other concerned organisations. We welcome this initiative and urge that this draft should be finalized as soon as possible in a transparent manner.

## Annexure 1:

### Key Laws and Orders Relating to Tribal Evictions from Forest Land

Note: Asterisks (\*) indicate quotes from the letter of 21 December issued by the Ministry of Environment and Forests (see **Annexure 2**).

- 1927        **Indian Forest Act.** The government “can constitute any forest land or waste land which is the property of Government or over which the Government has proprietary rights, a reserved forest, by issuing a notification to this effect”.\*
- 1980        **Forests Conservation Act** (simultaneously, the 42<sup>nd</sup> Constitutional Amendment shifts forests from the “State List” to the “Concurrent List”). The FCA prohibits non-forest use of forest land without GOI approval. Also advocates “sustainable forest management through participatory approach”, with “due regard to the traditional rights of the tribal people on forest land”.\*
- 1988        **National Forest Policy.**
- 1990, May 28 Dr. B.D. Sharma, Commissioner for SCs and STs, submits the **29<sup>th</sup> Report** on the conditions of SCs and STs.
- 1990, Sep 18 MoEF issues six sets of Guidelines (the “**1990 Guidelines**”) in pursuance of the National Forest Policy and Dr. B.D. Sharma’s letter. FP(1) deals with “Encroachment on Forest Land”, FP(2) with “Disputed Claims”, FP(3) with Leases/Pattas and FP(5) with Conversion of Forest Villages and Settlement of Old Habitations.
- 1991, Oct 28 Committee constituted by Supreme Court to Investigate into Claims of adivasis for Regularization of Encroachments files its Report concerning Evidence to be Examined and Criteria for Regularization.
- 1991, Oct 28 Supreme Court in its Order expressly directing that the Competent Authority even in cases where claims are not accompanied by documentary evidence must inquire into the claim.
- 1995, Mar 7 Supreme Court directs States of Maharashtra & MP to implement FP(1) in WP 1778/1986 (Pradip Prabhu vs State of Maharashtra). Poor implementation in states except with Co-Petitioners of 1778/86.
- 1990-2001    **State governments fail to implement the 1990 Guidelines** (except FP(1) to some extent). Lack of clarity about Guidelines and verification procedures persists. Issues of “encroachments” and “disputed claims” remain unresolved. The encroachments issue dominates MoEF attention while the question of disputed claims and related matters (leases/pattas, forest villages, etc.) are lost sight of.
- 2001, Nov 23 Amicus Curiae files **IA 703** in the “Godarvarman case” (Writ Petition (C) No. 202 of 1995), which seeks to restrain “regularization of any encroachments” as well as “further encroachments”, and “steps to clear the encroachments in forests which have taken place after 1980”. **Prayer (a) requests the Court to “restrain the Union of India from permitting regularization of any encroachments whatsoever without leave of this Hon’ble Court”.**

- 2001, Nov 23 **SC registers IA 703 and states that “there will be an interim order in terms of prayer (a)”. However, there is no SC order directing the States/GOI to evict “encroachers” from forest land.**
- 2002, Feb 18 SC directs Chief Secretaries to file a reply to IA 703.<sup>10</sup>
- 2002, May 3 Letter of Inspector General of Forests (IGF) instructs state governments “to evict the ineligible encroachers and all post-1980 encroachers from forest lands in a time bound manner”<sup>\*.11</sup> **This letter refers to the SC order of 23 November 2001 in IA 703, and apparently created an impression that the SC had ordered the States to evict “encroachers” from forest land. This triggered a wave of brutal evictions around the country.**
- 2002, Oct 10 Maharashtra Government issues an Order laying down a Comprehensive Procedure for Verifying Claims for Regularization in the Gram Sabha.
- 2002, Oct 30 Follow-up order of IGF clarifies that **the 1990 Guidelines continue to apply.** “There is no change in the policy of the Ministry with regard to regularization of pre-1980 eligible encroachments, and the commitment with reference to forest-tribal interface on the disputed settlement claims [remains] valid.”<sup>\*</sup> The order also states that "In respect of disputed claims of eligible encroachments of the tribals for want of First Offence Report/settlement of rights etc., the States may consider setting up Commission/Committees at the level of districts for their settlement provided other conditions are fulfilled". However the letter also states: “The States should simultaneously show progress on the eviction of ineligible encroachments. The States may consider 'in situ' rehabilitation involving these ineligible encroachers in forestry activities through Joint Forest Management.”
- 2004, Feb 3 MoEF issues supplementary guidelines aimed at “stepping up of process for conversion of forest villages into revenue villages”.
- 2004, Feb 5 MoEF issues **supplementary guidelines** “to encourage the State Governments / UT Administrations to take up the matter of settlement of rights of tribals and forest dwellers in the right earnest and perspective”<sup>\*</sup>. However, **these guidelines (and the 3 February guidelines) are stayed by the Supreme Court on 23 February 2004.** The Central Government has moved an application to vacate the stay.

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<sup>10</sup> The order reads: “The Chief Secretaries of Orissa, West Bengal, Karnataka, Tamil Nadu, Assam, Maharashtra, Madhya Pradesh, Chattisgarh and Kerala are directed to file a reply to this I.A. , in so far as it concerns the said states in relation to the steps required to be taken by them to prevent further encroachment of forest land and in particular land in the hilly terrains, national parks and sanctuaries, etc. It should also be indicated as to what steps have been taken to clear encroachments from the forest which have taken place at an earlier point of time. Affidavits be filed by the said Sstates and the Union of India within four weeks.” (See ES, p. 225.)

<sup>11</sup> “All encroachments which are not eligible for regularization as per guidelines issued by the Ministry vide No. 13.1/90-F.P.(1) dated 18.9.90 should be summarily evicted in a time bound manner and in any case no later than 30<sup>th</sup> September 2002.”

**Annexure 2:**  
**Letter of 21 December issued by the Ministry of Environment and Forests**

Government of India  
Ministry of Environment and Forests

N.K. Joshi  
Director General of Forests and Special Secretary

Tel: 91 11 24361509  
91 11 24363957

No. 2-3/2004-FC (Pt-II)

21<sup>st</sup> December 2004

To  
The Chief Secretary  
All States/UT's

**Sub: Traditional rights of tribals on forest lands – discontinuance of eviction of tribals thereof.**

Sir,

All over the world, forestry, as a land-use, has survived on the concept of sustained yield which was ensured by creating compatible legal systems. In India, consolidation of forest laws started during the British period with the inception of the Indian Forest Department in 1864 and scientific management of forests was introduced for planned and systematic management of the forests. The British government enacted the first law on forests in 1865. To consolidate the law relating to forests, the transit of forest produce and other related matters, the Indian Forest Act was enacted in 1927. According to the Indian Forest Act, 1927, the Government can constitute any forest land or waste land which is the property of Government or over which the Government has proprietary rights, a reserved forest, by issuing a notification to this effect. Commercial interests of the then British Government motivated it to declare more and more lands as reserved forests, without ascertaining the rights of the tribals and other forest dwellers.

Even after independence in 1947, during the process of amalgamation of princely states, the activity of consolidation of government forests continued. The State Governments / UT Administrations proclaimed the lands of ex-princely states and the zamindar-lands as Reserved Forests. However, no effective steps were taken to simultaneously settle the rights of tribals and other forests dwellers. Absence of records of rights which never existed for these people, became the main constraint in resolving this issue. As a result, the rural people, especially tribals and forest dwellers who have been living in the forest since time immemorial, have come to be erroneously looked upon as encroachers of forest lands.

The burning human problem of non-recognition of tribal rights over land with its origin in faulty implementation of legal provisions in pre-independent India, and the same remaining unresolved even after independence, has continued to attract public attention. Having acknowledged the gravity of the problem the Government has been contemplating ways and means to address it. Consequently, for the first time, the guidelines under the Forest (Conservation) Act, 1980, showed the way for legal solutions to the long pending unresolved problem of settlement of rights of the tribals and other forest dwellers living on the forest

lands since time immemorial. Side by side, recognition of the concept of sustainable forest management through participatory approach, in the National Forest Policy, 1988, brought to the fore mutual interdependence of forests and people. Unlike the 1952 Forest Policy which centred around production and commercial forestry, the 1988 Policy gives due regard to the traditional rights of the tribal people on forest land. While recognizing the symbiotic relationship between the tribal people and forests, it also safeguards the customary rights and interests of the tribal people and forest dwellers on forest lands.

To fulfill the commitments as enshrined in the national forest Policy, 1988, in respect of settlement of people's rights, especially rights of tribals and forest dwellers, over forest lands in a regulated manner, the Central Government on 18<sup>th</sup> September 1990 issued guidelines for settlement of disputed claims of tribals, which were reiterated on 30-10-2002, requesting State/UT Governments to consider the settlement of disputed claims of tribals over forest lands and to set up Commission / Committees at the district levels involving the Revenue, Forest and Tribal Welfare Departments for the settlement of disputed claims of tribals and forest dwellers. The State Governments/ UT Administrations were also requested to submit proposals in this regard to enable the Central Government to take a final decision in the matter in a time-bound manner. However, the State/UT Governments could not implement the guidelines effectively and the issue remained unresolved.

The situation of the tribals became more vulnerable when, in pursuance of the Hon'ble Supreme Court order dated 23-11-2001 in IA No. 703 in IA No. 502 in Writ Petition (C) No. 202 of 1995, the Central Government instructed all the State/UT Governments on 3<sup>rd</sup> May 2002 to evict the ineligible encroachers and all post-1980 encroachers from forest lands in a time bound manner. Consequent follow up action by the State / UT Governments for evicting the ineligible encroachers brought more intensely to the forefront, the issue of the disputed claims and rights of the genuine tribals and forest dwellers. They could not be distinguished from encroachers, and were proceeded against. This generated much consternation. Various organizations took up the case of such tribals and forest dwellers whose disputed claims had not been enquired into, and who were being proceeded against and evicted. This prompted the Central Government to issue a clarification on 30-10-2002 to the effect that there is no change in the policy of the Ministry with regard to regularization of pre-1980 eligible encroachments, and the commitment with reference to forest-tribal interface on the disputed settlement claims remained valid.

The Central Government in its continuous bid to settle the disputed claims of the tribals and the forest dwellers, and to legitimize their traditional rights over forest lands, of subsistence agriculture, and trade in MFP issued supplementary Guidelines on 5-2-2004 to encourage the State Governments / UT Administrations to take up the matter of settlement of rights of tribals and forest dwellers in the right earnest and perspective. However, before action could start on these guidelines, their operation was stayed by the Apex Court ex-parte on 23-2-2004. Central Government has moved an application before the Apex Court for vacation of the order.

After a critical examination of the issue of settlement of claims over forest lands and eviction of ineligible encroachers of forest lands, what emerges is that the State/UT Governments were not able to distinguish between the encroachers, and the original tribals and other forest dwellers living on forest lands since time immemorial. The Central Government is convinced that the difficulty in distinguishing between genuine tribals/ forests dwellers and ineligible encroachers by the State Governments / UT Administrations is the main cause of the

problems of tribals. Therefore, some kind of interim measures are necessary to safeguard the interests of the tribals and forest dwellers who have been living in forests since long, and whose disputed claims are yet to be settled.

In view of the above, and without prejudice to Supreme Court's order dated 23-11-2001 and 23-2-2004, it has been found appropriate to request the State/UT Governments, that as an interim measure, they should not resort to eviction of tribal people and forest dwellers other than ineligible encroachers, till the complete survey is done for the recognition of such people and their rights, after setting up of District level Committees involving a Deputy Collector, a Sub-Divisional Forest Officer, and a representative of Tribal Welfare Department, by the State/UT Governments as reiterated in guidelines dated 18-09-1990 and 30-10-2002 of the Central Government. The State/UT Governments are advised to exclude such tribals/ forest dwellers, other than ineligible encroachers, from the eviction drives. Simultaneously, it is also clarified here that this interim measure does not stop State/UT Governments from evicting the ineligible encroachers from forest lands.

Suitable instructions may be issued to forest functionaries at all levels to keep the aforesaid in view while dealing with eviction of ineligible encroachments from forest lands.

Yours faithfully,

Sgd.  
(N.K. Joshi)

Copy to:

1. The PMO (Attn. Shri. K.V. Pratap, Deputy Secretary)
2. Officer on Special Duty (Attn. Shri. Dhiraj Srivastava), National Advisory Council, 2, Motilal Nehru Place, New Delhi.
3. Secretary, Ministry of Tribal Affairs, Government of India.
4. All PCCF's/Nodal offices (All States/UT's).
5. All Regional Offices, Ministry of Environment and Forests.
6. Director (FC)
7. AIG's (FC)
8. Guard file.

Paryavaran Bhavan, C.G.O. Complex, Lodhi Road, New Delhi 110003.

### **Annexure 3:**

#### **Recent Cases of Tribal Evictions from Forest Land**

- On 16 August 2004, The homes of 15 adivasis families of Kundal village in Bali Tehsil (Pali District, Rajasthan) were razed to the ground by the Forest Department with the protection of 100 policemen and 7 Mahila Police led by the ACF and SDO. The land with standing crop of maize was destroyed with tractor and local cattle herders were asked to put their cattle on the land to remove even the stubs. This action by the Forest Department was undertaken in spite of a pending appeal concerning the same lands in the Revenue Appellate Authority under Section 34A of Wild Life Protection Act. The adivasis were cultivating the land prior to 1980 and were entitled to regularization but no verification process had been carried out. The Revenue Appellate Authority has ruled the eviction as illegal. [“Even Justice is of Little Help to Tribals”, Tehelka Newswatch dated 16 October 2004; and report on the evictions by Astha, an NGO based in Udaipur.]
- In June and July 2004, ten tribal children (aged 2 to 5) have died of “malnutrition” in Dongiriguda, a tribal forest settlement of Nawrangpur district in Orissa. According to the Forest Department, the settlement is a “post 1980 encroachment” because of which it is unwilling to permit even the District Collector to install a tubewell for drinking water on the grounds that the FCA does not permit it. [Secretary, Women and Child Development, Orissa, personal communication; and “Orissa Tribal Dwellers Get Health Relief”, report by [Sampad Mahapatra](#) on NDTV, 8 August 8 2004.]
- In Sonebhadra District of Uttar Pradesh, tribal families are resisting eviction from 1,213 acres of land, which has been in their possession for over 7 decades. The problem dates back to the pre-independence era when Sonebhadra was an unsurveyed area. Hence even though the legal status of the land was shown as revenue land and the tribals are recorded as owners, the orders in the Godavarman Case have resulted in the Forest Department claiming the land as forest land (in spite of being unable to produce any evidence to substantiate its claim). [“Police and Forest Department’s Firing on Tribal Women and Children at Village Darma, P.S Pannugang, District Sonebhadra, U.P, on 22 July 2004”, report by an independent fact-finding team.]
- The standing crops on forest land of 6 adivasis of Babkhal and 1 from Motidabhas village of Dang Dist. Of Gujarat were totally destroyed by the forest department at 10 p.m. on 23<sup>rd</sup> and 25<sup>th</sup> of September 2004. Standing crop of paddy, Nagli, Tuvar dal and chillies worth Rs 2,20,000/- was fully destroyed.
- The homes of 73 tribal families of Bhandarpaani in Betul District (Madhya Pradesh) were set on fire by the Forest Department on the night of 4 July 2004. People have been kept in different places and families separated – relatives and even members of the same families are unaware of each other’s whereabouts. Their only fault was that their village has been situated on forest land for generations. Eight children are suffering from severe pneumonia and malnutrition; one of them (Kishan, aged 18 months) died on 22 July. Thirty-five persons of the tribe were illegally confined in Ranipur Forest Range Office; 15 were produced in the High Court at Jabalpur on 26 July in a Habeas Corpus petition. Bakhat Singh, after being released in the Court, was taken away by the Forest Department and has been missing since then. [Based on a communication from Anurag Modi (Jan Sangharsh Morcha, Madhya Pradesh) and affidavits submitted to the High Court in Jabalpur.]

- In the districts of Burhanpur, Damoh and especially in Betul the forest, police and revenue officials enter in one or other tribal villages every other day in the dark cover of night. They beat tribal women, misbehave with them and often put them in overnight illegal confinement without the knowledge of their husbands. 2 tribal women of Danwakheda village are languishing in jail in an offence related to forestland that is bailable from the forest range office. The tribals of Ghorpadmal were attacked by a team of 50 police, forest & revenue personnel at night and the women assaulted on their private parts with rifle butts. When they resisted, they were booked under charges of dacoity.
- On 29th June 2004, three Adivasi youths, of Mendhakhapuri village of Khakanar Tahsil of Burhanpur in MP, were severely injured in a forest department firing during an eviction drive. Tribals of more than 35 villages have their houses burnt, livestock, crops destroyed and they are not allowed to cultivate their land. Local police stations have not registered any complaints. Most of the casualties have been in the villages of Chimnapur, Davali, Jhanjar, Bomiliaput, Jamunala and Hasan pura in Neapanagar Tahsil where Adivasi houses were burnt as part of the eviction drive. The monsoon rains worsened conditions of the Adivasis who along with their children have been rendered shelterless.
- On 1st July 2004, in Bomiliaput village of Neapanagar Tehsil in MP, 50 houses were burnt, utensils, beds, and household items taken away. Crops like soyabean, paddy, maize, jowari, wheat and cotton seeds were burnt. 50 houses were burnt in Hasanpura. In February 2004, 117 houses were burnt in Jhanjar. On 8th July 2004, in Jhanjar, 5 houses were burnt. On the same day, in yet another hamlet of Jhanjar, 22 houses were burnt. In June 2004, in Davali village, 50 houses were burnt. Mr. Ter Singh Patel, the village headman, aged 65, was severely beaten. His wife too was injured. Police refused to accept the FIR. In June 2000, in Haldiakheda village, all 50 houses and animals were burnt. The incident was repeated again in February 2004 wherein all houses were burnt. In Nov 2003, in Chidiapani village, 40 houses were burnt.
- While incidents of burning have not occurred in Khakanar Tehsil of MP, threats and manhandling are common. On 29th June 2004, in Amgaon village, Sukma Bai, aged 25, was beaten by forest officials while she was collecting firewood. Her mother in law, Gendi Bai, aged 55, was also severely beaten up.
- In Hingua village of Sendhwa Tehsil in MP 5 children have died of starvation. There are 40 more children in this village who are severely malnourished and in grave danger. 184 other children are in the IIIrd stage of malnutrition here. 24 surrounding villages are also facing similar grave and critical conditions of malnutrition. In Chatterpur Dist. Of MP 8 children died due to malnourishment in August and September. In Bhainsatola village of Damoh district, 7 tribal children died due to malnutrition, within a span of two months. 3 children of Saidabad village of Khalwa block of Khandwa district died due to malnutrition in March 2004. Five months later, on 11th of September 5 more children lost their lives in village Mohalkheri village of the same block. In Shivpuri district, the Saharia tribals are severely malnourished, 50 children have died from malnutrition in March-May 2004. In the tribal dominated areas of Pahardgarh block of Morena Dt. 5 children lost their lives due to malnutrition in June-August in the villages of Maanpur, Mara, Jaderu, Dhaundha, Khora and Kusmani. The loss of food sources from the forest is the main cause for the growing malnutrition and deaths of tribal children in MP.

## Annexure 4: Maharashtra's Innovative Procedure for the Verification of Rights

As mentioned in the text, the “1990 Guidelines” did not specify a procedure for the verification of rights on forest land. Innovative steps in this regard have been taken in Maharashtra. In an **Order dated 10 October 2002 (copied below)**, the Government of Maharashtra attempted to put in place a comprehensive, transparent and participatory procedure for the verification of claims to “regularization”. The salient features of this procedure are as follows:<sup>12</sup>

- The Government of Maharashtra had passed orders on 23 December 1978 and 12 September 1979 directing the Forest Department to “Regularize Encroachments on Forest Land during 1972 to 1978”. Annexure A of the order of 23 December 1978 specifically referred to “receipts or certificates of imprisonment *or other relevant evidence*” as proof of encroachment and possession of the land during the relevant period to address the problem that eligible claimants often do not possess documentary evidence (fines receipts or certificates of imprisonment) of 1972 to 1978.
- However as “relevant evidence” was not clarified in the Order, the Forest Department rejected a large number of eligible claims and prepared lists based purely on their records of prosecution, without verifying the actual ground realities. The ban of the Forests Conservation Act 1980 on diversion of forest land for non-forest purposes stalled the verification of claims in Maharashtra.
- In response, Pradip Prabhu filed Writ Petition 1778 of 1986 in the Supreme Court on behalf of tribal people’s organizations working in Thane District. The Inquiry Committee appointed to examine the claims of the tribals, examined the issue of what constituted ‘relevant evidence’ in considerable detail and made out the grounds to accept both circumstantial evidence available from a verification of the ground realities as well as evidence gathered from community elders.
- The Inquiry Committee evolved a procedure to verify claims consisting of an on-the-spot enquiry after due notice to the co-petitioners and allowed for the involvement of the Petitioner organizations in the enquiry at all stages. This ensured an open and transparent process on the spot in the presence of all parties; i.e. the tribal claimant, Forest Department, and village elders as panchas. To ensure independence, the enquiry was conducted by the Talathi/Patwari.
- In its Interim Report to the Court, the Inquiry Committee defined “relevant evidence”, laid down the verification procedure, and clarified the eligibility criteria for regularization. While endorsing the recommendations in its order dated 28/10/1991, the Supreme Court further directed that an Inquiry be conducted even in cases where the claim was not supported by documentary evidence.
- Based on orders of the Supreme Court, the Interim Report of the Inquiry Committee on “relevant evidence”, the procedure to verify the claims and the criteria for regularization, the Collector of Amravati inquired into the claims of the tribals of the Melghat region to verify their eligibility or otherwise for regularization before evicting them following the order of MoEF of 3/5/2002. The Amravati process was adopted by the Government of Maharashtra and extended to the whole state in an Order on 10<sup>th</sup> October 2002.
- The Order of 10<sup>th</sup> October 2002 provided for a Local Committee at the village level to assist the District Committee by calling for claims in the Gram Sabha, verifying the circumstantial evidence prevailing on the ground and receiving the evidence of the elders and presenting their findings and conclusions before the Gram Sabha. The procedure also allowed a claimant aggrieved by the decision of the Local Committee to appeal to a Taluka level Committee who would pass on the findings to the District Committee.
- The Order of 10<sup>th</sup> October 2002 also provided for a comprehensive programme for training of all the persons involved in the verification process from the Officials, Local Committee members and NGOs to ensure that not just the letter of the Order but the spirit was well understood by all.

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<sup>12</sup> Based on a note received from Dr. Pradip Prabhu. For the text of the Order, see ES, pp. 258-261. See also *Vanputra*, a short video on the verification of rights in Amravati district, Maharashtra (available on CD from AKANKSHA Cell, District Collectorate, Amravati).

GR of Government of Maharashtra on Formation of Village and Taluka Level Committees to Examine Eligibility of Encroachers on Forest Land.

Government of Maharashtra, Revenue and Forests  
Government Decision No. Sankirn 2002 / 372 / J-1  
Mantralaya, Mumbai, 400032  
Dated 10th October 2002

Read: 1) Govt. Order, Revenue and Forests Dept, LEN 1078 / 3483 / G-I, dt. 27/12/1978  
2) Govt. Order, Revenue and Forests Dept. LEN 1095/ 2325 / 96 / J-1, dt. 20/12/95

**Introduction**

Government of Maharashtra has issued directions to regularize encroachments made on wastelands, grazing and forest- lands between 12/12/1978 and 31/3/1978 for subsistence vide Govt. Decision, Revenue and Forests Dept. LEN 1078 / 2325/96/G-1, dated 27/12/1978. Subsequently Writ Petitions were filed in the Supreme Court to determine the criteria for regularization. Subsequent to the directions of the Supreme Court, Government of Maharashtra appointed a Committee for each district under the supervision of the District Collector, constituted by a Dy. Collector, an Asst. Divisional Forest Officer and an Asst. Project Officer (2nd Class) nominated by the Tribal Commissioner. These Committees were to examine the claims of the tribal encroachers after giving them an opportunity to adduce evidence in support of their claim, *vide* Govt. Decision, Revenue and Forests Dept. LEN 1095/2325/96/J-1 dated 20/12/1995. Accordingly, in a meeting called by the Chief Minister on 18/9/2002, a decision was made by Government, with a view to hasten the process and ensure veracity, to appoint village and taluka level committees to assist the District Committee in all districts, in line with the pattern followed in Amravati district.

**Government Decision**

**1. A Local Committee** shall be established to verify the claims for regularisation of encroachments on forestlands constituted by the following members:

1. Sarpanch / Dy. Sarpanch / member of Panchayat Samiti / Member of Zilla Parishad (in the case of a Group Gram Panchayat, for villages other than the main village, a member of the Gram Panchayat of the concerned village)
2. Kotwal / Police Patil
3. Village Elder/Senior Citizen
4. Talathi
5. Forest / Beat Guard

2. In cases where the decision of the committee is not acceptable, such encroacher / claimant will have the opportunity to present his views to a **Review Committee** established for the purpose, consisting of

1. Naib Tehsildar
2. Circle Officer
3. Range Forest Office

**3. Procedure to be followed by Committee**

1. It is necessary to examine subsisting encroachments of the period 1/4/72 to 31/3/78. But the same be done within the purview of the guidelines of the Government of India of 18/9/1990. Similarly there is merit in examining subsisting encroachments prior to 1972.

2. With a view to ensure that
  - a) all concerned are informed,
  - b) all encroachers have the opportunity to make their claims in their language,
  - c) the weaker sections of the community are spared the time and expense of travel, and
  - d) all encroachers are covered and no person is not given an opportunity

An assembly of the village should be held to ensure participation of the community.

3. A timetable giving the dates and time of such meetings should be prepared and publicised in advance. A village assembly should be held in every village to verify all claims of encroachments between 1/11/2002 and 31/12/2002. An inspector and an Area Officer must be appointed to ensure that the program is conducted in a disciplined and regulated manner to enhance peoples participation.

4. Traditional methods of publicity in the local language must be used to inform the people about the program of deciding the eligibility of claims. Information of the task of the committee, its aims, objectives and procedure should be made available in the village sqaire, gram panchayat office of all villages, panchayat samiti and tehsil office.

5. After publicising the advance program a village assembly should be conducted by the village committee. In such assemblies, on receipt of the complete application of the concerned encroacher all claims should be verified in the presence of the assembly. This program should be done during the period between 1/11/2002 and 31/12/2002.

#### **4. Procedure to Examine the Criteria for Regularisation**

It is necessary to clarify the criteria used to decide the period of the encroachment. Primarily an assessment of the ground realities as they existed at the relevant time is necessary and is possible by a verification of natural and situational evidence of the subsisting encroachment. Hence a responsible local committee conversant with ground realities has the opportunity to verify the same and can record the evidence of cultivators about the event of encroachment, which has taken place in the past. Benefit of doubt should be given to the concerned encroacher and his claim can be accepted. Documentary evidence of the relevant period can be regarded as proof of encroachment, but there is no objection to recording the evidence of residents of the village. Hence the Committee can accept the following as evidence.

- a. Governmental / Semi-Governmental documentary evidence / relevant evidence gathered by more than 3 members of the committee from a spot verification / the evidence of neighboring cultivators and of senior citizens of the villages/ and affidavit submitted in the village assembly by the encroacher / claimant.
- b. As lands encroached between 1/4/1972 and 31/3/1978 are available for release with a few exception and disputes, *vide* Government Decision of 12th September 1979. It is important that the committee definitively decides the period of the encroachment. While deciding eligible cases the following two points be kept in mind.
  - i. the claimant should fulfill all other conditions of Government Decisions of 27/12/1978 and 12/9/1979.
  - ii. While deciding the exact period of encroachment, the village level committee should pay attention to the following guidelines.
    1. All claims where the claimant has documentary evidence of the period between 1/4/1972 and 31/3/1978 should be accepted.
    2. If a claimant does not have documentary evidence for the period between 1/4/1972 and 31/3/1978, but has documentary evidence for the period prior to 1/4/1972 and post 31/3/1978 and the encroachment is still subsisting and in the possession of the claimants, such claimants should be given the benefit of doubt.

3. If the claimant has no documentary evidence for the relevant period but the Gram Sabha on the basis of other relevant evidence is of the opinion that the encroachment is pre 1978, such claims should be carefully examined and the benefit of doubt should be given to the claimant.
4. If the claimant does not have documentary evidence of the relevant period prior to 1972 or between 1/4/1972 and 31/3/1978 and the Gram Sabha has also rejected his claim, then the veracity of such claims should be carefully examined by the committee. In particular, such claims should be specifically referred to the Review Committee.
5. If the claimant does not have any documentary evidence and the Gram Sabha is of the opinion that the encroachment is post 1978, such claims should be rejected.
6. If the claimant does not have documentary evidence of the period prior to 1972 or between 1/4/1972 and 31/3/1978 and the encroachment has been subsisting continuously after 1978 such claims should be considered to be doubtful. If the claimant has documentary evidence for the period of 1978 to 1980 and the opinion of the Gram Sabha is that the encroachment is pre 1978, such claims should be accepted.

The Format given in Annexure to Govt. Decision, Revenue and Forests Dept, LEN 1078 / 3483/ G-1, dated 27/12/1978 be utilised for the above task.

In case of claims that are upheld for regularisation within the purview of the guidelines laid down by the Government of India in its orders dated 18/9/1990 then appropriate action should be taken. In cases where claims for regularisation are rejected, necessary step should be taken to evict the encroachment as per the direction of the Supreme Court.

#### **5. Training and Publicity Workshop at Taluka Level**

The following process be adopted with a view to expedite the process and keep it simple.

- a. A pre-planned publicity and training workshop be organised, at the taluka level for Sarpanchas, Dy. Sarpanchs, Kotwals, Police Patils, Forest Officers and Functionaries, Senior Citizens, Journalists, Revenue Officials and Functionaries, Talathis and members of the Taluk / Village level Committees, between 15th October 2002 and 1st November 2002 after due prior publicity.
- b. All Officials should be invited to this workshop and should be given the information of the procedures and processes of the village level inquiry.
- c. A separate session should be held for NGOs and Journalists
- d. The Village Assemblies should be held after the program is planned and announced

In the name and on the order of the Governor of Maharashtra

Sd/-

Ramakant Asmar

Jt. Secretary, Revenue and Forests Dept.

Government of Maharashtra