

# AN ANALYSIS OF INTERNATIONAL LAW, NATIONAL LEGISLATION, JUDGEMENTS, AND INSTITUTIONS AS THEY INTERRELATE WITH TERRITORIES AND AREAS CONSERVED BY INDIGENOUS PEOPLES AND LOCAL COMMUNITIES

REPORT NO. 13

INDIA



Stockholm Resilience Centre  
Research for Governance of Social-Ecological Systems



KALPAVRIKSH



Environmental  
Action Group

**NATURAL JUSTICE**

The ICCA  
Consortium

“Land is the foundation of the lives and cultures of Indigenous peoples all over the world... Without access to and respect for their rights over their lands, territories and natural resources, the survival of Indigenous peoples’ particular distinct cultures is threatened.”

*Permanent Forum on Indigenous Issues  
Report on the Sixth Session  
25 May 2007*

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**Published by:** Natural Justice in Bangalore and Kalpavriksh in Pune and Delhi

**Date:** September 2012

**Cover Photo:** The conserved forest of Mendha Lekha (Maharashtra), the first community in India to be granted community forest rights under the 2006 Forest Rights Act. © Ashish Kothari

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## ACRONYMS

ATREE	Ashoka Trust for Research in Environment and Education
BD	Biological Diversity
BHS	Biodiversity Heritage Sites
BILT	Ballarpur Industries Ltd
BMC	Biodiversity Management Committee
BNHS	Bombay Natural History Society
BR	Biosphere Reserves
BRAI	Biotechnology Regulatory Authority of India
BRT	Biligiri Rangaswamy Temple
CBD	Convention on Biological Diversity
CCAs	Community Conserved Areas
CFR	Community Forest Resource
CM	Chief Minister
CTH	Critical Tiger Habitats
CVCAs	Critically Vulnerable Coastal Areas
CWLW	Chief Wildlife Warden
DDA	District Development Authority
DLC	District Level Committee
EDC	Eco- Development Committees
EEZ	Exclusive Economic Zone
EMF	Environment Monitory Fund
FD	Forest Department
FDA	Forest Development Authority
FPC	Forest Protection Committee
FRA	Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act
FRC	Forest Rights Committees
GE	Genetically Engineered
GEF	Global Environment Facility
GOMBR	Gulf of Mannar Biosphere Reserve
GoMNP	Gulf of Mannar National Park
GR	Government Resolution
GS	Gram Sabha
HC	High Court
IBAs	Important Bird Areas
ICCAs	Indigenous Peoples' and Community Conserved Areas and Territories
ICH	Intangible Cultural Heritage
ICH	Intangible Cultural Heritage
IMP	Integrated Management Plans
IP	Intellectual Property
IPR	Intellectual Property Rights
IUCN	Union for Conservation of Nature and Natural Resources

JFM	Joint Forest Management
JPAM	Joint Protected Area Management
KNPP	Koodankulam Nuclear Power Plant
LPG	Liquified Petroleum Gas
MFP	Minor Forest Produce
MFRA	Marine Fishing Regulation Acts
MoEF	Ministry of Environment and Forests
MPA	Marine Protected Areas
NBA	National Biodiversity Authority
NBSAP	National Biodiversity Strategy and Action Plan (NBSAP)
NBWL	National Board for Wildlife
NGO	Non-Government Organisation
NP	National Park
NTFP	Non-Timber Forest Products
PAs	Protected Areas
PESA	Panchayats (Extension to the Scheduled Areas) (PESA) Act
PIC	Prior Informed Consent
PoWPA	Programme of Work in Protected Areas
PPV&FR	Protection of Plant Varieties and Farmers' Rights
R&D	Research and Development
RTI	Right to Information Act
SBB	State Biodiversity Board
SDO	Sub District Officer
SNS	Sacred Natural Sites
TK	Traditional Knowledge
TKDL	Traditional Knowledge Digital Library
TP	Transport Permit
UN	United Nations
UNESCO	United Nations Educational, Scientific and Cultural Organisation
VC	Village Council
VP	Van Panchayats
WB	World Bank
WGEEP	Western Ghats Ecology Expert Panel
WHS	World Heritage Site
WLPA	Wild Life (Protection) Act
WWF-India	World Wide Fund for Nature
ZBGAS	Budakattu Zilla Girijana Abhivruddi Sangha

## INTRODUCTION

Across the world, areas with high or important biodiversity are often located within Indigenous peoples' and local communities' conserved territories and areas (ICCAs). Traditional and contemporary systems of stewardship embedded within cultural practices enable the conservation, restoration and connectivity of ecosystems, habitats, and specific species in accordance with indigenous and local worldviews. In spite of the benefits ICCAs have for maintaining the integrity of ecosystems, cultures and human wellbeing, they are under increasing threat. These threats are compounded because very few states adequately and appropriately value, support or recognize ICCAs and the crucial contribution of Indigenous peoples and local communities to their stewardship, governance and maintenance.

In this context, the ICCA Consortium conducted two studies from 2011-2012. The first (the *Legal Review*) analyses the interaction between ICCAs and international and national laws, judgements, and institutional frameworks. The second (the *Recognition Study*) considers various legal, administrative, social, and other ways of recognizing and supporting ICCAs. Both also explored the ways in which Indigenous peoples and local communities are working within international and national legal frameworks to secure their rights and maintain the resilience of their ICCAs. The box below sets out the full body of work.

### 1. Legal Review

- An analysis of international law and jurisprudence relevant to ICCAs
- Regional overviews and 15 country level reports:
  - *Africa*: Kenya, Namibia and Senegal
  - *Americas*: Bolivia, Canada, Chile, Panama, and Suriname
  - *Asia*: India, Iran, Malaysia, the Philippines, and Taiwan
  - *Pacific*: Australia and Fiji

### 2. Recognition Study

- An analysis of the legal and non-legal forms of recognizing and supporting ICCAs
- 19 country level reports:
  - *Africa*: Kenya, Namibia and Senegal
  - *Americas*: Bolivia, Canada, Chile, Costa Rica, Panama, and Suriname
  - *Asia*: India, Iran, the Philippines, and Russia
  - *Europe*: Croatia, Italy, Spain, and United Kingdom (England)
  - *Pacific*: Australia and Fiji

The *Legal Review* and *Recognition Study*, including research methodology, international analysis, and regional and country reports, are available at: [www.iccaconsortium.org](http://www.iccaconsortium.org).

This report is part of the legal review, and focuses on India. It is written by Neema Pathak Broome<sup>1</sup>, with inputs from Shalini Bhutani<sup>2</sup>, Ramya Rajagopalan<sup>3</sup>, Shiba Desor<sup>4</sup>, and Mridula Vijairaghavan.<sup>5</sup>

## 1. COUNTRY, COMMUNITIES AND COMMUNITY CONSERVED AREAS

### 1.1 Country

India is home to over a billion people and represents a wide spectrum of biological, cultural and geographic diversity. The confluence of three major biogeographic zones, i.e. the Indo-Malayan, the Eurasian and the Afro-Tropical makes India extremely biodiverse in its genes, species and ecosystems. It is one of the world's 12 megadiversity countries. India contains over 8.1 per cent of the world's biodiversity on 2.4 per cent of the earth's surface. An estimated 47,000 plant species identified represent 11 per cent of the world's flora. India is also considered one of the world's eight centres of origin of cultivated plants.<sup>6</sup> India's faunal wealth is equally diverse. A total of 89,450 estimated animal species represent 7 per cent of the world's fauna. The ancient practice of domesticating animals has resulted in India's diverse livestock, poultry and other animal breeds<sup>7</sup>. India has an equally varied cultural diversity. The Anthropological Survey of India has identified 91 eco-cultural zones in India inhabited by 4,635 ethnic communities, speaking 325 languages/dialects.<sup>8</sup> Moreover, 67.7 million of the 220 or so million Indigenous-Tribal people in the world live in India. This makes India a country with amongst the largest indigenous-tribal population, constituting 8.08 per cent of the country's population, representing 461 tribes.<sup>9</sup>

Notably, the UN phrase of "indigenous peoples" has not been accepted by the government of India, neither has it been recognised and used by many tribal groups and academics in India. There are a number of reasons, mainly to do with a history much different from that of the Americas and other parts of the world which led to the emergence of the term. The term Indigenous peoples itself appears to be contentious in the Indian context as there are many claimants to it; these include the Dalits (claiming their Dravidian antecedence), the Vaishnavite Meiteis of Manipur and the caste Hindus of Assam, and sometimes even the Hindu Rajput and

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<sup>6</sup> TPCG and Kalpavriksh.2005. *Securing India's Future: Final Technical Report of the National Biodiversity Strategy and Action Plan*. Prepared by the NBSAP Technical and Policy Core Group, Kalpavriksh, Delhi/Pune.

<sup>7</sup> TPCG and Kalpavriksh.2005. *Securing India's Future: Final Technical Report of the National Biodiversity Strategy and Action Plan*. Prepared by the NBSAP Technical and Policy Core Group, Kalpavriksh, Delhi/Pune.

<sup>8</sup> Singh, K.S. 1992. *People of India: An Introduction*. Anthropological Survey of India, and Laurens and Co., Calcutta.

<sup>9</sup> Anon. 1998. *Adivasi/ Indigenous Peoples in India – A Brief Situationer*. South Asia Regions, New Delhi.

Brahmin communities. The government of India recognises the term “Scheduled Tribes”, which has also been recognised in the Constitution of India and represents what is commonly referred to as “Adivasi” communities or “original inhabitants”. Although because of a number of political reasons all communities that are identified as or identify themselves as “adivasis” have not been assigned this status. Additionally, there are communities who are traditionally not considered adivasis but have been listed as scheduled tribes. Scheduled Tribe is a term used for the purpose of ‘administering’ certain specific constitutional privileges, protection and benefits for specific section of peoples, who have been recognised as historically disadvantaged and ‘backward’<sup>10</sup> although the term “tribe” itself often attracts conflicting views. As a result, depending on the region, the concerned people, and socio-political context, different terms are used to address “indigenous peoples”.

For this paper we will not be using the term Indigenous Peoples in the Indian context. To identify different ethnic groups we will use the word tribal communities and local communities as may be appropriate and locally acceptable. Accordingly, instead of ICCAs, we will be using the term Community Conserved Areas or CCAs.

## 1.2 Communities & Environmental Change

Forest biodiversity and resources have supported the livelihoods and lives of forest-dependent people in India for thousands of years. Animals and plants have been worshipped and form a central role in various cultures and tradition. Forests, rivers, mountains and lakes have been seen as the abode of gods. Many Indian communities have protected forest patches dedicated to deities and ancestral spirits as sacred groves. In fact, even today many sacred groves still provide a refuge to several endangered and threatened species of flora and fauna<sup>11</sup>.

72% of the total population of India lives in rural areas<sup>12</sup> and is directly dependent on terrestrial and aquatic natural resources for its food, health, shelter and diverse livelihood systems. This population includes both tribal and non-tribal communities, who are settled farmers (mostly small and marginal), shifting cultivators, pastoralists, fishers or artisans. The economic and occupational profile of the country is predominantly agrarian, with 58.4% of the employed population working in agriculture, animal husbandry, forestry, fisheries and related occupations. In particular, produce from forests such as fuel wood and non-timber forest products (NTFP) contributes heavily to household subsistence and income for people living in or adjacent to forests. An estimated 147 million villagers live in and around forests and another 275 million villagers depend heavily on forests as an important source of livelihood. Additionally, 170,000 villages with a total population of 147 million have forestland within

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<sup>10</sup> Bijoy, C.R. and Raman, K.R., 2003, “The Real Story: Adivasi Movements to Recover Land” in EPW, Vol. 38, No. 20 (May 17-23). Cited in J.J. Roy Burman. Adivasi: A Contentious Term to denote Tribes as Indigenous Peoples of India. *MAINSTREAM*, VOL XLVII, NO 32, JULY 25, 2009

<sup>11</sup> Malhotra, K. C., Gokhale, Y., Chatterjee, S., Srivastava, S. (2007). *Sacred Groves in India*. Aryan Books International, New Delhi, and Indira Gandhi Rashtriya Manav Sangrahalaya, Bhopal. Pg 170

<sup>12</sup> Statistics of India, 2012.

village premises<sup>13</sup>. Livelihood security for this segment of the population is critically linked to both ecological security and the security of access and control over natural resources. Sustainability of such livelihoods requires a sustainable natural resource base, since land, water and biodiversity are their very foundation<sup>14</sup>.

Despite this scenario, tenurial security over forestland and access to forestland for gathering, pasture, shifting cultivation and pastoralism remains a major source of livelihood insecurity. Since independence in 1947, over 30 million people have been displaced by large development projects (such as hydroelectric dams, mines and other industrial projects), as also by wildlife protected areas. Comprehensive figures for displacement by protected areas are not available. Some social activists claim that in the past five years, 300,000 families have been evicted from protected areas alone, with other estimates in the range of 100,000 over the last 3-4 decades<sup>15</sup>. Much more than physical displacement, however, there has been heavy restriction on access to forest land and resources, resulting in at least 3 million forest-dependent people becoming amongst the most marginalized groups in the country<sup>16</sup>.

Ironically enough, the very government which has taken such draconian steps against some of India's poorest communities in the name of conservation, has no compunctions in giving up ecologically critical areas for so-called 'development' projects. In November 2004, for instance, it gave clearance for the construction of the Lower Subansiri project in Arunachal Pradesh, despite strong evidence that this project will destroy crucial and irreplaceable wildlife habitat<sup>17</sup>. In October 2004, 40 organisations from across India signed an Open Letter to the MoEF, expressing dismay at the Ministry's continuous signing away of wildlife habitats to such projects, on the basis of flimsy and often fraudulent environmental impact assessments<sup>18</sup>. Many protected areas from which traditional communities are being moved out are being opened up for large-scale commercial tourism, called "ecotourism", as if adding the prefix "eco" will magically transform a destructive activity into a benign one!

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<sup>13</sup> Forest Survey of India, Government of India 2000. [http://www.fsi.org.in/list\\_of\\_publication.htm](http://www.fsi.org.in/list_of_publication.htm)

<sup>14</sup> Kocherry, T. 2001. 'Biodiversity And Communities That Live On Subsistence'. Submission made to the *Thematic Working Group on Livelihoods*, NBSAP. National Fishworkers Forum, Thiruvananthapuram. In TPCG and Kalpavriksh. 2005. *Securing India's Future: Final Technical Report of the National Biodiversity Strategy and Action Plan*. Prepared by the NBSAP Technical and Policy Core Group, Kalpavriksh, Delhi/Pune.

<sup>15</sup> A. Lasgorceix and A. Kothari. Displacement and Relocation of Local Communities from Protected Areas in India: A Synthesis and Analysis of Case Studies. (unpublished, Delhi/Pune, Kalpavriksh, 2009).

<sup>16</sup> M. Wani and A. Kothari. Conservation and People's Livelihood Rights in India: Final Report of a Research Project Conducted Under the UNESCO Small Grants Programme. Unpublished report. (Pune/Delhi, Kalpavriksh, 2007).

[www.kalpavriksh.org/f1/f1.2/UNESCO%20CNL%20project%20final%20report.pdf](http://www.kalpavriksh.org/f1/f1.2/UNESCO%20CNL%20project%20final%20report.pdf)

<sup>17</sup> N. Vagholikar. Large Dams in North East India – The Politics of Environmental Governance. In *Green Governance Award Issue 2008* (Mumbai, BNHS, 2008), N. Vagholikar. Lies Dammed Lies: Untruths Compromise India's Ecological Security. In *Sanctuary Asia Vol. XXVIII No. 4, August 2008* (Mumbai, 2008)

<sup>18</sup> <http://www.kalpavriksh.org/campaigns/campopenletter/campol>.

An indication of the short shrift being given to the environment in the current era of globalization is the increase in the number of 'development' projects given environmental clearance and the increase in the rate of diversion of forest lands for non-forest purposes. Documents obtained by Kalpavriksh from the MoEF by using the Right to Information Act, reveal that of all the forest land diversion that has occurred since 1981 (when a system for central government permission for such diversion was put into place), over 55% (totalling about 600,000 hectares) has been after 2001. Over 70% of forest land cleared for mining since 1981, has been in the period 1997-2007<sup>19</sup>.

### 1.3 Communities' Conserved Areas (CCAs)

There are literally thousands of such areas in India and other countries. To give a few examples<sup>20</sup>:

- Sacred sites and species were once extremely widespread across India, according to one estimate covering perhaps about 10% of many regions. These included forest groves, village irrigation tanks, Himalayan grasslands, and individual species (such as langur, nilgai, elephant, *ficus* species). Unfortunately, the forces of commercialization, cultural change, population increase, and development projects have destroyed many of these sites. But though considerably less in number and coverage, they are still common. Prof. KC Malhotra and other researchers estimate that there may still be between 100,000 and 150,000<sup>21</sup> CCAs in the country. Many of the sacred groves have preserved remnant populations of rare and endemic species, sometimes in their original and undisturbed form, that have been wiped out elsewhere. In general such areas are quite small (sometimes only a handful of trees), but there are also large ones like the Mawphlang Sacred Grove in Meghalaya which covers 75 hectares. In fact researchers B.K. Tiwari, S. Barik and R.S. Tripathi from the North East Hill University have recorded 79 sacred groves in Meghalaya, ranging in size from .01 to 1200 ha, of which about 40 range between 50ha to 400ha. Interestingly, in some parts of India, communities have designated new forest areas as sacred in order to protect them. For example in Uttaranchal in the late 1990s, a number of village communities devoted parts of their forests to the goddess till such time that the forests are completely regenerated.
- Dozens of heronries are being protected by communities that live around them. Trees in or near village ponds are often the favourite nesting and roosting sites for pelicans, storks, herons, egrets, ibises, and other water birds. Well-known examples include Kokkare Bellur in Karnataka; Nellapattu, Vedurapattu, and Veerapuram in Andhra Pradesh; Chittarangudi and Vedanthangal in Tamil Nadu, and many others (some of which have become officially

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<sup>19</sup> <http://www.kalpavriksh.org/campaigns/campopenletter/campol>.

<sup>20</sup> Detailed case studies on these and other CCAs have been published in the Directory of Community Conserved Areas in India by Kalpavriksh. Pathak, N. (ed) 2009. *Community Conserved Areas in India –A Directory*. Kalpavriksh, Pune/Delhi

<sup>21</sup> Malhotra, K. C., Gokhale, Y., Chatterjee, S., Srivastava, S. (2007). *Sacred Groves in India*. Aryan Books International, New Delhi, and Indira Gandhi Rashtriya Manav Sangrahalaya, Bhopal. Pg 170

protected sanctuaries). Many of these harbour globally threatened species like the spotted billed pelican.

- Wintering water bird populations also find a safe haven in many wetlands within or adjacent to villages whose residents zealously guard them. Mangalajodi village in Orissa, on the edge of the Chilika lagoon, harbours several hundred thousand migratory ducks and waders. From being a village full of bird catchers (with substantial income coming from selling these birds), the residents are now offering complete protection against hunting and other disturbances. In Uttar Pradesh, Amakhera village of Aligarh district is home to a large number of migratory birds, which the villagers are careful not to disturb even while withdrawing irrigation and drinking water. Patna Lake in Etah District of the same state can support up to 100,000 water birds in a favorable season. The lake was declared a wildlife sanctuary in 1991 but has been protected for centuries by the locals as a sacred pond. Sareli village in Kheri District of Uttar Pradesh supports a nesting population of over 1000 openbill storks, considered harbingers of a good monsoon. As they feed on snails, villagers also consider them useful in controlling the spread of diseases.
- Quite a few species of plants and animals are protected across the landscape, because of their spiritual, religious, cultural, or economic value. The blue bull (*nilgai*), rhesus macaque, and blackbuck are the most commonly protected animals virtually across India; so too plants like many *Ficus* spp such as banyan and peepal. In central India, the Mahua tree (*Madhuca indica*) is almost never cut even while clearing land for cultivation. In Rajasthan, the khejdi (*Prosopis cineraria*) is considered a *kalpavriksh* (tree that grants all wishes) and zealously protected by many communities. In some communities, elephants or tigers are considered sacred and left strictly alone.
- In Orissa, Andhra Pradesh, and other states, tens of thousands hectares have been regenerated and/or protected by village communities. This is usually on their own (including in many cases by setting up all-women forest protection teams as in Dengejheri village in Orissa), or occasionally through government-supported programmes like joint forest management. The biodiversity value of these forests is considerable, including several threatened mammal and bird species. In some parts of Orissa, elephants are reported to be frequenting the community conserved forests, having moved in here from their earlier ranges that are disrupted by highways, railway lines and industries. In Orissa alone, there are believed to be more than 10,000 village forest protection committees. In the Ranpur block near Bhubaneswar, 180 conserving villages (many of them *adivasi* settlements) have together created a federation. This is to enable combining their initiatives at a landscape level, to maximize harmony and reduce conflicts, and to provide a unified organization to dialogue with the government or outsiders.
- In Nagaland, several dozen villages have over the last decade or two, conserved natural ecosystems as forest or wildlife reserves, the latter dedicated exclusively or predominantly to wildlife conservation. One of the biggest is the Khonoma Tragopan and Wildlife Sanctuary, spread over 20 square kilometers, where hunting and resource extraction is

completely prohibited; in another 50 square kilometers or so, very minimal resource use for home use only is allowed. Amongst the earliest initiatives were the forest and wildlife reserves set up by Luzophuhu village in Phek district, and the Ghoshu Bird Sanctuary declared by Gikhiye village in Zonheboto district, both in the 1980s. Many of these are recognized as Important Bird Areas. Given the indiscriminate hunting that this state has witnessed in the last 3 decades, these efforts are crucial in giving Nagaland's unique biodiversity a renewed lease on life.

- In Uttarakhand, some of the state's best forests are under the management of Van Panchayats (VP) set up several decades back, mostly in the Kumaon area (though by no means are all VPs well conserved). Some of these are very large, for example Makku Van Panchayat that covers roughly 2,000 hectares. Of the 2,240 square kilometers stretch of Gori Ganga River Basin, 1,439 square kilometres is under the management of the village Van Panchayats. This area forms an important corridor between, Nandadevi Biosphere Reserve and Askot Wildlife Sanctuary, which are critically important for highland biodiversity. Together with Nandadevi, Askot and areas conserved by the van panchayats the total area under protection in this ecologically sensitive area comes to about 88% of the entire river basin. In addition, villages such as Jadhargaon, Lasiyal and Nahin Kalan in Tehri Garhwal district, influenced by the Chipko movement, have regenerated and protected hundreds of hectares of forests and helped renew populations of leopard, bear, and other species.
- In Bongaigaon district of Assam, the villagers of Shankar Gholi are protecting a few hundred hectares of forest that contains, amongst other things, a troupe of the highly threatened Golden langur.
- With help from the NGO Tarun Bharat Sangh (TBS), several dozen villages in Alwar district (Rajasthan), have reconstructed the water regime, regenerated forests, and helped revive populations of wild herbivores, birds, and other wildlife. Bhaonta-Kolyala villages have even declared a "public wildlife sanctuary", over 1,200 hectares.
- Youth clubs from the villages around the Loktak Lake (Manipur), have formed a Sangai Protection Forum to protect the greatly endangered brow-antlered deer which is found only in this wetland. They take part in the management of the Keibul Lamjao National Park, which forms the core of the lake.
- In 1,800 hectares of deciduous forest, Gond *adivasis* of Mendha (Lekha), Gadchiroli district (Maharashtra), have warded off a paper mill from destroying the bamboo stocks, stopped the practice of lighting forest fires, and moved towards sustainable extraction of non-timber forest produce. Despite some continued hunting, the area harbours considerable wildlife including the endangered central race of the giant squirrel. The initiative has spread to several neighbouring villages. Also in Vidarbha, many other villages are conserving forests with significant wildlife potential. For instance, the forests of community-conserved Satara Tukum form an important buffer to the Tadoba Tiger Reserve. At nearby Saigata village, a

Dalit youth has led a 20-year movement to regenerate and conserve several hundred hectares.

- Many traditional practices of sustainable use helped in wildlife conservation. For instance, pastoral communities in Ladakh, Rajasthan, Gujarat, and many other states had strict rules regarding the amount and frequency of grazing on specified grasslands. Ornithologists have recorded that these helped (and in some cases continue) to maintain viable habitats for threatened species like bustards and floricans.
- At Khichan village (Rajasthan), villagers provide safety and food to the wintering demoiselle cranes, which flock there in huge numbers of up to 10,000. Several hundred thousand rupees are spent by the residents on this, without a grudge or grumble.
- The Bishnois, a community in Rajasthan and Punjab famous for its self-sacrificing defence of wildlife and trees, continue strong traditions of conservation. Blackbuck in particular are found in plentiful in their settlements. Blackbuck conservation is also taking place as a traditional practice in some other parts of India; e.g. the Buguda village of Ganjam district in Orissa has even left fallow a considerable part of its agricultural land for blackbuck to roam and graze on.
- In Goa, Kerala, and Orissa, important nesting sites for sea turtles such as Galjibag and Rushikulya beaches, have been protected through the action of local fisherfolk, with help from NGOs and the Forest Department. In 2006, over 100,000 turtles are reported to have nested at Rushikulya, on the Orissa coast, where the Rushikulya Sea Turtle Protection Committee formed by youth of Puranabandha village and a youth committee of Gokharkuda village, zealously protect the nesting beach. They also help prevent mass casualties of hatchlings that often wander towards inland areas attracted by the lights of villages.

In addition to conservation initiatives such as the ones above, there are also very many instances of natural ecosystems and wildlife populations having been saved by local communities from certain destruction. As examples, several big dams that would have submerged huge areas of forest or other ecosystems, have been stopped by people's movements. This includes proposed dams like the Bhopalpatnam-Ichhampalli in Maharashtra and Chhattisgarh, which would have submerged a major part of the Indravati Tiger Reserve, Bodhghat in Chhattisgarh, and Rathong Chu in Sikkim. Over hundreds of kilometres of India's coastline and the adjoining marine waters, the National Fishworkers' Forum has staved off destructive trawling, fought for the implementation of the Coastal Regulation Zone, and assisted in movements against industrial aquaculture, all of it leading to the protection of marine wildlife. Many such movements have saved areas that are equal in size if not sometimes bigger than official protected areas.



**(Clockwise, from top left) Baripada forest and water after village conservation efforts. © Neema Pathak Broome; Area conserved by the Tzula village in Nagaland. © Neema Pathak Broome; Kokare Bellur village. © Ashish Kothari; Khonoma Tragopan Sanctuary created by villagers in Nagaland. © Ashish Kothari**

Drawing on the above, CCAs cover a variety of ecosystems from forests, grasslands, wetlands, coastal and marine areas, sacred areas, high-altitude pasturelands or a mixture of two or more. They also directly protect the species or the habitat for a range of species of birds, antelope, primates and others. Some CCAs may focus on conserving one particular species and not an ecosystem as a whole, while others focus on the habitat and ecosystem functions. This they do

with a wide range of objectives and often the prime objective is not biodiversity conservation. Objectives could include: maintenance or enhancement of natural resources; countering ecological threats; fighting external developmental projects such as mining, hydro-electric projects; religious sentiments such as the sacred groves; political reasons like movement towards greater self-rule and equitable benefit sharing; protecting the biodiversity of the area; and also economic reasons.



**Barnakawas villagers with johad and forests, Arvari. © Ashish Kothari**

This diversity of objectives is fulfilled using different practices of management and governance, defined by the local context. Some of these practices are mere continuation of traditional systems, or new systems devised, where traditional systems are not effective anymore. The institutions established for this purpose range from a single institution for all decisions in a village to multiple institutions established for different purposes. Thus they could be gram sabhas (village assembly) as a whole making and implementing decisions, or women's groups, youth groups, elected groups (from within the village assembly) etc. making decisions and implementing them. It is important to keep in mind that the categorisation is not hard and fast - local variations within each of the categories is encountered from community to community. These committees might be set up by the village themselves, external agencies with the consent of the villagers or a mixture of these two entities. Sometimes conservation happens as

a traditional or newly followed practice without any particular institution established but as a socially accepted norm. Baripada village in Maharashtra is an example where formal and informal institutions function together and villagers and outside agencies function together, yet the power remains with the local villagers. The forest protection committee (FPC) under the Joint Forest Management (JFM) Scheme is the institution set up by the Forest Department for taking formal JFM-related decisions. Many other decisions about the development of the village and forest conservation are also made at informal village assemblies. For the implementation of decisions the village establishes sub-groups which have the responsibility of carrying out the activities. These include the justice committee, the water committee and so on. This is a common system being followed in many communities. In Dzongu in Sikkim, the protests against the dams are being launched by a group of youth from the community. Not all the people from the community necessarily support the views of this group, however they do command respect from majority of the people. In Thembang in Arunachal, the community, with facilitation and guidance from WWF-India, has declared a community reserve. In Goalpara in Assam, the villagers have constituted a FPC, which has a one year term, while an executive committee implements the rules and regulations. In all the kinds of institutions documented in India however, women play a negligible role in decision-making, except in some cases such as the women's groups in Uttarakhand and Orissa. Women are not necessarily excluded in all situations but the traditional social set up does not facilitate their participation in decision-making.

The number of ways of regulating the use of resources within CCAs are almost as numerous as the CCAs themselves! Although broadly these can be categorised as:

- CCAs with elaborately worked out rules and regulations (written or oral) and definite systems of monitoring.
- CCAs where people have a common understanding about what should or should not be done and social taboos and relationships work as monitoring systems.

There is a range of situations within these two categories, and rules and regulations could vary from very traditional to very new. They are dynamic and often change to suit different locations and situations. Rules could pertain to strictly no use of resources to extraction during specific periods or certain amounts and no commercial extraction of resources etc. In some cases the enforcement of these rules is strictly monitored while in others monitoring is not strict. Penalties could include social sanctions, fines, or direct confrontations with the offenders. Not surprisingly, in general situations where livelihoods are highly dependent on the concerned resources and threats to the resources are high, the regulatory systems are more stringent and monitored more strictly while traditional religious and cultural practices require least amount of monitoring. This is so because of the cultural ethos based on religious beliefs, like fear of a wrathful deity who will strike on those who violate the rules. An important lesson that emerges from this observation is that what regulatory system would work best in a given area can only be devised locally with full consultation with the local people. The more deeply these

regulations are ingrained in the local cultural, religious and economic ethos, the less the requirement for external monitoring.

CCAs across the country are faced with numerous internal and external threats. Many of these threats are rooted in the national and global context within which we all exist today. The model of 'development' that our societies, economies and polities are governed by mandates maximum use of resources in minimum time. This is a model where costs and benefits are weighed only in financial terms, directly contradicting the spirit and principles of sustainability or nature conservation. The current model of development believes in absolute preservation of nature in small islands and maximum extraction for human use everywhere else. It is therefore not surprising that the efforts of the communities based in regulated usage along with conservation as territories and landscapes are viewed with suspicion and scepticism. This prevents them from getting social, administrative and legal recognition. Lack of recognition, in turn, intensifies the existing internal and external threats or makes it difficult to deal with them.

Some of the internal factors that have an influence on a CCA and can threaten its existence are traditional social inequities, demographic changes (increase in human and livestock populations that lead to over exploitation of grazing lands), reduced availability of resources, and high cost of conservation. Often these problems are alterable and can be effectively solved if tackled appropriately, these *internal threats* include:

- **Internal inequities:** Communities are often highly stratified with many decisions made by the dominant sections of society (men, large landowners, 'upper' castes) without considering their impacts on the less privileged (women, landless, 'lower' castes). Such disparities in decision-making can create local dissatisfaction and affect the long-term sustainability of the initiative.
- **Demographic factors:** Human and livestock populations have increased manifold in several areas. Due to this (and a number of other reasons) the habitats have degraded and the total available resource base has shrunk. This leads to conflicts with others as also to over-exploitation of resources that communities are sometimes not able to curb on their own.
- **Cost of conservation:** Communities sometimes find it difficult to deal with issues such as investment in time and labour, paying salaries for village forest guards, conflicts with other communities, human-wildlife conflicts, dealing with powerful outside offenders, unable to earn livelihoods and so on. If they do not receive support at these critical times then the initiative itself comes under threat. In Jardhargaon in Uttarakhand among many other villages in the state, for example, the increased human wildlife conflict is discouraging the people from carrying on with conservation activities, as they have not been able to find any solutions for protecting their forests.
- **Out migration for employment and opportunities:** Lack of livelihoods, education and other opportunities often forces a large part of the working population of a community to migrate out. This leaves much fewer and sometimes only children, elderly and

women in the community. The remaining population is already overstretched with responsibilities and finds it difficult to deal with the social and ecological issues. This reduced population also finds it difficult to make effective decisions and enforce them. This situation is faced by many Van Panchayats in the state of Uttarakhand.

The *external threats* that have a tremendous influence on the above factors include the following:

- **Lack of security of tenure:** There is no comprehensive government policy in India to support CCAs. Although the term has begun to be included in government discourse and many legal spaces can now be used to provide some security but a lack of a larger positive policy restricts the use of such legal spaces leaving it to concerned context. Many CCAs are on lands owned by the government, over which the community does not have ownership or recognised access rights. The government can decide to change the land-use or lease the land for any other purpose without consulting or even informing the conserving communities. This is very gradually changing with a new law in place for forest ecosystems and being demanded for other ecosystems but the implementation remains poor and slow (see below on section on legal spaces).
- **Smuggling and poaching:** CCAs that contain commercially valuable resources (e.g. timber, fauna, minerals) are often encroached upon or threatened by commercial users, land grabbers, resource traffickers or individual community members.
- **Attitudes of the powers that be:** A lack of support to deal with the above kinds of situations, negative intervention or influence by government agencies or policies, and indifference towards CCAs have been found to be major reasons for discouraging communities in many of the documented CCAs. There are very few CCAs where such support is given to the villagers by the government agencies. Attitudes of conservationists and government agencies towards some ecological issues can sometimes be a major stumbling block in resolving some issues related to CCAs. For instance, the official attitude of considering shifting cultivation as necessarily harmful in all situations may not be in sync with the perception of the local population. The imposition of official sanctions flowing from that attitude imposed on the practice would affect local management practices and autonomy.
- **Weakening of traditional institutions and knowledge systems:** Traditional institutions and knowledge systems have eroded to a great extent because of a number of reasons, including colonial or centralised administration and politics and the dominance of modern science. This has weakened communities' abilities to manage their own environment. This often makes them dependent on constant external facilitation and inputs and often becomes a hurdle particularly in those CCAs which have revived because of external interventions.
- **The Education System:** The education system does not emphasise or even acknowledge the value of local natural resources, culture and traditional knowledge. This results in a

disconnect between the semi-educated village youth and the village and its life. Little traditional knowledge passes on to the newer generation and their interaction with the surrounding environment ends up becoming indifferent or negative. The youth often find local values irrelevant in the face of changing socio-economic scenarios and severe livelihood pressures.

- **Changing value systems and aspirations:** Community values, motivations and organisations are constantly faced with contradictory values and influences such as national and international markets along with inherent inequities within them and powerful commercial forces. Intrusions by dominant religions often have serious impacts on local value systems and traditional conservation practices (especially among indigenous/tribal communities). Local institutions have to be very strong to be able to face up to these challenges. Additionally, market forces have deeply penetrated local economies, increasing local material aspirations and individualism, thus further weakening traditional value systems.
- **Others:** The threats mentioned above are inter-related and interdependent, thus they often create vicious circles. For example, the market forces bring in ecologically and socially destructive yet economically alluring development projects, resulting in changed aspirations. A lack of support to deal with the above kinds of situations, negative intervention or influence by government agencies or policies, and indifference towards CCAs have been found to be major reasons for discouraging communities in many of the documented CCAs.

There are also various ecological and social limitations of CCAs. These include inability to resolve human-wildlife conflicts particularly in areas where wildlife populations have increased as a result of protection, lack of regular monitoring and evaluation systems, lack of baseline information to be able to assess changes over a period of time, not being able to control major forest fires and impacts on the surrounding area, local inequities (particularly lack of direct participation by women in most cases) and the limited capacity of people within the community and of those from outside. Creating successful CCAs is a slow process and where institutions have to work at a pace that the community is comfortable with. Under normal circumstances these would not seem like a limitation of CCAs but in a world that strives for instant gratification, the slow evolutionary process of CCAs is viewed as a disadvantage.

## **2. LAND, FRESHWATER AND MARINE LAWS AND POLICIES**

### **2.1 ICCAs and Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006**

The passage of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006 (hereafter called Forest Rights Act or FRA) is a watershed event in the prolonged struggle for recognition of rights of the tribal and non-tribal forest dependent communities in the country. For the first time in the history of Indian forest administration the

state admits that rights have been denied to forest dwelling people and the law attempts not only to right that 'historic injustice' but also give them a central role in forest management.

Since independence, the legal policies of the state overlooked local initiatives, displacing and dismantling the systems by imposing rigid norms and policies and systemically taking over the local decision-making powers. This led to an erosion of customary practices, and traditional institutions, causing an overall decline in the locally governed and managed ecosystems and resources. Most of the policies have largely bypassed local community governance institutions and have vested more powers in the state-controlled administration. Even where local governance structures were recognised, they were straitjacketed into uniform approaches that did not support diverse local initiatives.

The FRA attempts to address the rights of scheduled tribes and other forest dependent communities for habitation or cultivation, right of access, use and sale of non-timber forest produce (NTFP), and right to protect, regenerate, conserve or manage any community forest resource, among other rights (these rights can be claimed both as individuals and as a community). The Act recognises in section 3:

- The right of traditional forest dwellers to claim forest land occupied by them before December 13, 2005. These could be lands which have been the traditional territories, or occupied by the claimants any time before the specified date;
- The right of the government to divert forest land for 13 kinds of village development activities, including building of schools, hospitals, nursery/play schools and village roads, which may have been held in the past because of procedures required for forest clearance under the Forest Conservation Act of India;
- The rights of individuals and a community as a whole over minor forest produce, grazing land (including by the mobile pastoralist communities) and water resources, and so on; and
- The right of communities to protect, conserve, regenerate or manage any forest or community forest resource that has been traditionally protected (section 3(1)i).

These rights can be claimed in any area which can be described as forest land, including protected areas. This includes those areas where the settlements of rights have been carried out in the past under any previous Acts. In most cases in the country the earlier settlements, particularly those carried out under the Wildlife Protection Act have been extremely dissatisfactory and based on official records which often did not exist.

The provisions of this Act apply only to "forest dwelling Scheduled Tribes", defined in section 2(c) as "members or community of the Scheduled Tribes who primarily reside in and who depend on the forests or forest lands for bona fide livelihood needs and includes the Scheduled Tribe pastoralist communities"). It also applies to "other traditional forest dwellers" defined in

section 2(o) as “any member or community who has for at least three generations<sup>22</sup> prior to the 13th day of December, 2005 primarily resided in and who depend on the forest or forests land for bona fide livelihood needs”.



**Meeting on the FRA with members of the federation of CCAs in Nayagarh district of Orissa 2011.**  
© Neema Pathak Broome

There are two broad aspects of FRA that have great positive potential for forest based CCAs. First, the package of rights over forests to individuals and communities as mentioned above, and second, the decentralised self-governance model that it mandates, particularly in the areas where communities would choose to claim community rights including the right to protect, conserve and regenerate or manage. Although the Act does not specifically mention CCAs, these provisions while providing security of tenure to various members of the community, create an opportunity for CCAs by recognising their right to protect and manage the area (under section 3(1)(i)).

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<sup>22</sup> For the meaning of ‘generation’, see explanation in section 2(o): “For the purpose of this clause, “generation” means a period comprising of twenty-five years”.

The Act has also been revolutionary in envisaging the gram sabha (village assembly) to play an important role in a number of areas, from initiating proceedings for the recognition of forest rights (section 6(1)) to providing consent to resettlement plans (section 4(2)(e)). This breaks from the past, where authorised government officials only played this role.

The process involved in granting forest rights as outlined in section 6, including the procedure for appeals, involves various stages of approval and clearance starting with the gram sabha (section 6(1)) and including a number of divisional, sub-divisional and district-level committees. These divisional and sub-divisional authorities consist of representatives of the tribal welfare department, and the land and revenue department, as well as people's representatives from local panchayats and a forest department official. This ensures that decision-making powers are not held exclusively by the forest department with jurisdiction over the forests in question.

Forest rights holders cannot be resettled, nor can their rights be "in any manner affected for the purposes of creating inviolate areas for wildlife conservation", unless a number of specific conditions are satisfied (section 4(2)). It must be "established" by the state agencies exercising powers under the Wildlife Act that the activities of rights holders or the impact of their presence on "wild animals is sufficient to cause irreversible damage and threaten the existence of said species and their habitat" (section 4(2)(b)), and the state government must have "concluded that other reasonable options, such as, co-existence are not available" (section 4(2)(c)).

In addition, a resettlement or "alternatives package" must be prepared and communicated, providing a secure livelihood for the affected individuals and communities (section 4(2)(d)). The "free informed consent" of the gram sabhas in the area must be obtained in writing, with respect to the proposed resettlement and the package offered (section 4(2)(e)). Facilities and land allocation at the resettlement location must be complete before resettlement takes place (section 4(2)(f)). The Act also states that the "critical wildlife habitats" from which rights holders are relocated for the purposes of conservation cannot be subsequently diverted for any other use (section 4(2)).

The law recognizes the existence of "community forest resources", which are defined as "customary common forest land within the traditional or customary boundaries of the village or seasonal use of landscape in the case of pastoral communities", and may include "reserved forests, protected forests and protected areas such as Sanctuaries and National Parks to which the community had traditional access" (section 2(a)). Among the rights that can be granted under this Act is the right to "protect, regenerate or conserve or manage any community forest resource" that communities have been "traditionally protecting and conserving for sustainable use" (section 3(1)(i)). As such, communities to whom this law applies may be able to seek rights to protect forest lands that have traditionally been in their care, including forest lands situated within designated protected areas, but to do so they must follow the same procedure, outlined in section 6, that applies to the grant of all rights under this Act. In areas where rights have been granted under this Act, gram sabhas and other village-level institutions have the power to protect forests, wildlife and biodiversity (section 5(a)); ensure the protection of catchment

areas, water sources and other “ecological sensitive areas” (section 5(b)); ensure that the habitat of forest dwelling communities is “preserved from any form of destructive practices affecting their cultural and natural heritage” (section 5(c)); and ensure compliance with decisions taken in the gram sabha concerning access to community forest resources and preventing activities that adversely affect forests, wildlife and biodiversity (section 5(d)).

Where such rights are acquired in a designated protected area, such as a sanctuary or national park, it is not clear how the interface is to be managed between the rights of forest dwelling communities to protect and conserve an area, and the powers of wildlife officials and statutory authorities created under the Wildlife Act.

Although the implementation of the Act is slow and the government so far has not been very enthusiastic in its implementation, the Act is already being used on the ground by many communities to fight against relocation and threats from development projects.<sup>23</sup> Yet this also means that the Act continues to be subjectively interpreted by different actors based on their interests in the court of law and the two ministries, Ministry of Environment and Forests (holding the jurisdiction over the forests under question) and Ministry of Tribal Affairs (the nodal agency for implementation of the Act) have been issuing various notifications clarifying their position vis-à-vis the Act. The country is currently abuzz with debates, discussions, consultations, negotiations, and legal battles related to this Act<sup>24</sup>.

Such notifications include two notifications issued by the MoEF include the notification issued on 30<sup>th</sup> July 2009 (F. No. 11-9/1998-FC (pt)) specifying that forest clearance for any project requiring diversion of forest land for non-forestry purposes under Forest Conservation Act of India will only be given once the state ensures that the process of settlement of rights under FRA has been initiated and completed in an area (with documented evidence). It states<sup>25</sup>: “Accordingly, to formulate unconditional proposals under the Forest (Conservation) Act, 1980, the State/UT Governments are, wherever the process of settlement of rights under the FRA has been completed or currently under process, required to enclose evidences for having initiated and completed the above process, especially among other sections, Sections 3(1)(i), 3(1)(e) and 4(5).”

Furthermore, it requires gram sabha consent for taking up compensatory measures for a development project requiring forest diversion: “A letter from each of the concerned Gram Sabhas, indicating that all formalities/processes under the FRA have been carried out, and that they have given consent to the proposed diversion and the compensatory and ameliorative measures if any, having understood the purposes and details of proposed diversion.”

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<sup>23</sup> See for example <http://www.newstrackindia.com/newsdetails/2012/06/03/73--Woman-power-Tribals-stall-eco-tourism-project-in-Odisha-.html>

<sup>24</sup> For more details see <http://www.forestrightsact.com/what-is-this-act-about>.

<sup>25</sup> A statement issued by Campaign for Survival and Dignity on the July 2009 notification can be accessed at <http://www.forestrightsact.com/statements-and-news/122-env-ministry-body-accepts-that-projects-cannot-get-forest-land-without-certificate-consent-of-affected-villages>

These provisions and notifications together give powers to the local communities of the kind that is unprecedented in the history of India. However, it is not surprising therefore that the implementation of the Act is progressing painfully slowly except in areas where there are active civil society groups or interested government officers.

The potential of this Act in being able to empower is evident from the example of the village Mendha-Lekha (see case study 1 below).

## **2.2 Marine CCAs and Issues of Tenure<sup>26</sup>**

There are two legal regimes that are relevant for marine and coastal ecosystems - fisheries management legal frameworks, and marine and coastal biodiversity protection legal frameworks. However, there is no formal legal framework that recognizes the tenure or rights of fishing communities dependent on marine and coastal ecosystems. In this context, it is essential to keep in mind the Directive Principles of State Policy in the Constitution of India that asks the State to protect and improve the environment and to safeguard the forests and wildlife of the country (Article 48A). Article 51 A of the Constitution states that it is the fundamental duty of every citizen, to protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures. The Supreme Court has enunciated the doctrine of 'Public Trust', according to which certain common property such as rivers, seashores, forests and the air, are held by the Government in trusteeship for the free and unimpeded use of the general public<sup>27</sup>.

The Seventh Schedule of the Constitution (Article 246) details subjects that are on List I (Union/Central Government), List II (State government) and List III (Concurrent). While forests

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<sup>26</sup> This section has been contributed by Ramya Rajagopalan, International Collective for Support of Fisherfolk (ICSF) based on the following documents:

Government of India. 2012. Report of the working group on ecosystem resilience, biodiversity and sustainable livelihoods for the XII Five-year Plan. Planning Commission. 147. International Collective in Support of Fishworkers (ICSF). 2009. Proceedings of the workshop on social dimensions of marine protected areas implementation in India: Do fishing communities benefit? Chennai, ICSF. ICSF. 2012. Proceedings of the workshop on Fishery-dependent Livelihoods, Conservation and Sustainable Use of Biodiversity: The Case of Marine and Coastal Protected Areas in India. Chennai. ICSF.

Kurien, J & Mathew, S. 1982. Technological Change in Fishing: Its Impact on Fishermen. ICSSR Monograph. Thiruvananthapuram, Centre for Development Studies.

Mathew, S. 1991. Study of territorial use rights in small-scale fisheries: Traditional systems of fisheries management in Pulicat lake, Tamil Nadu, India. Food and Agriculture Organization of the United Nations, Rome, October 1991.

Nagasaila, D and V. Suresh. 2012. Marine Protected Areas – Appropriating Oceans, Criminalising Livelihoods Need for a Paradigm Shift in Approach and Action. ICSF.

Rajagopalan, Ramya. 2008. Marine protected areas in India. SAMUDRA Monograph. Chennai, ICSF. 69p.

Rajagopalan, Ramya. 2009. Social dimensions of sea turtle protection in Orissa - Case study of Gahirmatha (marine) wildlife sanctuary and the nesting beaches of Rushikulya and Debi. International Collective in Support of Fishworkers (ICSF). 29p.

<sup>27</sup> Bakshi, P.V. 2005. Constitution of India. M.C Mehta v. Kamal Nath (1997) 1 SCC388.

and the protection of wild animals and birds were earlier on the State List (List II), through the forty-second amendment in 1976, they were included under the Concurrent List (List III), where both the Union and State governments have the power to legislate. Fisheries is on the State list (List II) for fisheries in territorial waters, up to 12 nautical miles including the internal waters (waters between the shoreline and the baseline as determined by the Naval Hydrographic Office), and in the Central list (List I) for fisheries in the Exclusive Economic Zone (EEZ). This forms the broad basis under which the various legal regimes in India are developed. Tenure rights or customary rights of communities are not explicitly recognized under these frameworks. The 73<sup>rd</sup> Amendment Act of the Constitution in 1992 contains provision for devolution of powers and responsibilities to the *panchayats*, and one of the subjects devolved includes fisheries. However, this provision is yet to be utilized by the provincial governments.

Fisheries regulation, management and development falls both under the federal and provincial governments - issues relating to the EEZ are legislated and implemented by the federal government while those under territorial waters are legislated and implemented by provincial governments. The Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act enacted in 1976, recognizes the sovereign rights to conserve, manage, explore and exploit living resources in the Indian EEZ. The Act gives powers to make Rules for conservation and management of living resources of the EEZ and for creating specially designated areas for protecting the marine environment. However, the Act does not recognize the rights of communities. The governments of the provincial Maritime States<sup>28</sup> have enacted Marine Fishing Regulation Acts (MFRA), and subsequent Rules, to regulate fishing within the 12 nautical miles. In most States, this legislation was enacted at a time when there was tremendous conflict between the two sub-sectors<sup>29</sup> over access to fishing space and resources (Kurien and Mathew, 1982). The MFRA and Rules demarcate fishing zones for mechanized and non-mechanized vessels. These distances are either measured in terms of distance from the shoreline (from 5 to 10 kilometres) or on depth. This is one of the oldest spatial management measures for fisheries management that recognizes the rights of small-scale fishers to the specific zones.

Besides this, the government has adopted 'spatial measures' for fisheries management. There are number of community initiated measures based on the perception of their 'rights' where fishing by outsiders or by specific gear is regulated. There are several systems initiated by traditional fishing communities such as the *Padu* system in Pulicat Lake in Tamil Nadu, and the rotational system in Kerala. However these are not legally recognized. There are traditional institutions such as *katta panchayats* in Tamil Nadu, where the communities have developed rules and regulations for fishing, such as gear restrictions, area restrictions, closed seasons etc. Recently, there have been initiatives through projects of the Food and Agriculture Organization of the United Nations, to develop fisheries co-management plans with the provincial

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<sup>28</sup> In India, coastal provincial states that have maritime boundaries are often called maritime States

<sup>29</sup> Mechanised sector (comprising mostly of trawlers in late 1970s) and the non-mechanised fishing vessels.

government. However, these are still in preliminary stages, and require official and/or legal recognition.



**Fisherfolk in Lakshadweep islands 2009, security of tenure for fisherfolk is a major issue in marine areas in India. © Neema Pathak Broome**

Under the marine and coastal biodiversity conservation and protection framework, the Wildlife (Protection) Act, (WLPA, 1972), as amended in 2002, and 2006 provides some legal space for the participation of the local communities. Though the WLPA does not have specific provisions for declaring marine and coastal protected areas, the provisions for declaring protected areas, are applicable to marine and coastal ecosystems. However, the various amendments of the WLPA provide only for the participation of local communities in the management of the protected areas, it does not recognize the existing customary practices or rights of communities to the resources, specifically for marine and coastal biodiversity. The WLPA also does not make provisions for traditional local institutions that have been existent for generations to participate in the management of protected areas. It is only elected gram panchayats who have the space to participate in the management bodies (in Conservation and Community reserves) and advisory bodies (wildlife sanctuaries) to these protected areas. Even this provision for including

these gram panchayats in advisory bodies is not being implemented in most marine and coastal wildlife sanctuaries.

The 2002 amendment to the WLPA requires the government to settle the rights of affected communities within two years of the designation of protected areas. This, however, has not been implemented in any of the marine protected areas (MPAs) established in India (Rajagopalan 2008, ICSF 2009). The Tiger Reserve is the first category that addresses the issue of co-existence of wildlife and human activities, with due recognition to livelihoods, development, and the social and cultural rights of local communities in buffer/peripheral areas, i.e. communities living inside the Sundarban Tiger Reserve.

It can be interpreted that the government has no right to acquire the traditional rights of fishers within protected areas, as there is no legal provision for the same.<sup>30</sup> In the absence of such acquisition of rights, the traditional rights of fishers to fish are intact and cannot be taken away indirectly by restricting entry into the MPAs (Saila and Suresh, 2012).

There have been 31 protected areas (as wildlife sanctuaries or national parks) and 3 biosphere reserves that have been declared in marine and coastal ecosystems. Most of these protected areas declared undermine the *de facto* rights of fishing communities to access their traditional fishing grounds. Though there has been no written recognition of these rights, these have been existent for generations, and communities have been fishing in the waters around these areas without any restrictions. With the declaration of the protected areas, communities are restricted from accessing these fishing grounds.

Community Reserves and Conservation Reserves included in the WLPA after the 2002 amendment calls for the communities to be involved in the management of protected areas. These areas are declared only after the communities give their consent. However, there are currently no community reserves or conservation reserves within the marine environment, though there are proposals such as those from the state government of Orissa to declare the Rushikulya sea turtle rookery as a community reserve, and communities in Lakshadweep wanting to declare conservation reserve to protect giant clam resources. The local fishing community's response to this initiative has been weak, as the uniform administrative structure proposed by the government, including the requirement of representation of a forest official in the management committee, is viewed with suspicion. There is still no clarity on the role of the communities within the decision-making processes.

Besides the wildlife protection legal framework, the recently adopted notification of the coastal regulation zone (2011) has provisions for declaring eco-sensitive areas to be designated as Critically Vulnerable Coastal Areas (CVCAs). These areas such as the Sunderbans region are to be declared through a process of consultation with local fisher and other communities inhabiting the area and dependent on the resources for their livelihood. The basic objective of

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<sup>30</sup> Based on a legal interpretation, the current WLPA does not relate to rights in reserve forests and territorial waters, it deals mostly with land claims that are not settled already. There is no procedure or mention of acquiring fishing rights.

CVCAs is to promote conservation and sustainable use of coastal resources and habitats. Interesting local coastal communities and fisherfolk are to be consulted in the process of identifying, planning, notifying and implementing the CVAs, including in the management bodies. The notification further goes on to elaborate that the integrated management plans (IMPs) will take into account the needs of local communities. However, though the notification was brought out in early 2011, it is yet to be implemented.

Customary institutions and community-developed conservation and management practices are not recognized in both the wildlife and fisheries legal frameworks. Communities have designed regulations such as restricted harvesting days and the regulation of non-destructive gear in the case of seaweed collection by women in the Gulf of Mannar National Park, Tamil Nadu. These regulations are implemented through community restrictions and through traditional village-level governance institutions. However, these are not legally recognized. Within the fisheries context, there has been enough documentation on the Padu system, a traditional system of rotational access to a fishery whereby eligible fishing groups are given the right to fish in allocated fishing grounds, to reduce conflicts between different fishing groups, and indirectly contributing to conservation and sustainable use of resources.

Article 13 of the Constitution mandates that *“the State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void.”* The word ‘law’ includes any ordinance, order, by-law, rule, regulation, notification, **custom or usage** having in the territory of India the force of law.<sup>31</sup>

In the context of the fisheries article 13 gains significance because historically the fishing community in India have enjoyed traditional and customary rights of access to the sea and its resources. These rights have the force of law and hence, unless they are contrary to the constitution or any statutes, are binding in nature and enforceable within the community and as against the State as well. The Supreme Court of India in one of its interpretation of custom, clearly highlights that:

*“A custom, in order to be binding, must derive its force from the fact that by long usage it has obtained the force of law, but the English Rule that “a custom, in order that it may be legal and binding, must have been used so long that the memory of man runneth not to the contrary” should not be strictly applied to Indian conditions. All that is necessary to prove is that the usage has been acted upon in practice for such a long period and with such invariability as to show that it has, by common consent, been submitted to as the established governing rule of a particular locality. A custom may be proved by general evidence as to its existence by members of the tribe or family who would naturally be cognizant of its existence and its exercise without controversy, and such evidence may be safely acted on when it is supported by a public record of custom such as the Riwaj-i-am or Manual of Customary Law”<sup>32</sup>.*

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<sup>31</sup> Article 13 (3) (a) of Constitution of India

<sup>32</sup> ‘Gokal Chand v. Parvin Kumari’, 1952 SCR 825

It is important that these are kept in mind, especially while referring to fishing rights of communities in India. In a recent workshop (2012) organized to discuss issues relating to conservation, management and sustainable use of marine and coastal biodiversity, there was general consensus between the fishing communities and governments on the need to find a bridge between conservation and livelihoods based on sustainable use of resources. The communities demanded legal recognition for their rights to marine and coastal resources, along the lines of the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (also known as Forest Rights Act) that recognizes the rights of communities to resources. The recent report of the working group on Ecosystem Resilience, Biodiversity and Sustainable Livelihoods for the XII-five-year plan (2012-2017), highlights that in the coming period (2012-2017) measures would be taken to move away from a terrestrial approach to conservation, and the WLPA would be revised taking into account management measures that are appropriate for marine areas. It further suggests setting up of a task force for reviewing the legislation related to marine areas comprising of leaders from fishworker associations and other marine conservation organizations. It is important that these demands and recommendations be taken seriously, and the issues are addressed so as to develop and implement innovative governance mechanisms where communities are considered as equal partners in decision-making, while recognizing them as rights-holders.

### **2.3 Inland Wetlands ICCAs and the Wetlands (Conservation and Management) Rules 2010<sup>33</sup>**

In December 2010, the Ministry of Environment and Forests (MoEF) notified the Wetlands (Conservation and Management) Rules, under the Environment Protection Act of 1986. No such specific legal mechanism to protect freshwater or inland wetlands existed till then unlike for the coasts, which have had a Coastal Regulation Zone Notification since 1991.

Inland wetlands in India are crucial in the lives of several hundred million people, not only for water but also for food, livelihoods, medicine, cultural sustenance, and recreation. Equally important, they are home to unique and often endemic wildlife, many species of which are threatened. Wetlands are also actively protected by many local communities in India. A 2009 publication on Indian CCAs records that 11% of CCAs are inland wetlands and a number of other CCAs contain wetlands within them.<sup>34</sup> Yet wetlands are amongst the most abused of the country's ecosystems, "seriously threatened," as the Rules say, "by reclamation through drainage and landfill, pollution (discharge of domestic and industrial effluents, disposal of solid wastes), hydrological alterations (water withdrawal and inflow changes), and over-exploitation of their natural resources resulting in loss of biodiversity and disruption in goods and services". Though not explicitly mentioned, the serious threats include major hydroelectricity or irrigation

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<sup>33</sup> A copy of the rules can be accessed at <http://moef.nic.in/downloads/public-information/Wetlands-Rules-2010.pdf>. This section is based on an article written by Ashish Kothari, accessible at <http://infochangeindia.org/201104208764/Environment/Politics-of-Biodiversity/How-not-to-save-wetlands.html>

<sup>34</sup> Pathak, N. (ed) 2009. *Community Conserved Areas in India –A Directory*. Kalpavriksh, Pune/Delhi

projects, sand or bed mining, infrastructure projects, and chemical run-off from agriculture. The intention of the rules is to provide legal protection to the crucial ecological, biodiversity, economic, social and cultural benefits that wetlands provide, building on India's commitment to the Ramsar Convention and the National Environment Policy 2006

The definition of wetland includes, "...marsh, fen, peat land or water, natural or artificial, permanent or temporary, with water that is static or flowing, fresh, brackish or salt, including areas of marine water, the depth of which at low tide does not exceed 6 metres and includes all inland waters such as lakes, reservoirs, tank, backwaters, lagoon, creeks, estuaries and manmade wetland" and "the zone of direct influence on wetlands that is to say the drainage area or catchment region of the wetlands." Main river channels, paddy fields, and coastal wetlands are excluded from this notification.

Activities such as reclamation, new industries (or expansion of existing ones), any activity related to hazardous substances (including chemicals and GMOs), solid waste dumping, discharge of untreated wastes, and permanent construction (other than boat jetties) within 50 metres, are completely prohibited in these wetlands. Exceptions to these can be made only with the permission of a central authority, to be set up under the Rules. Activities such as water withdrawal, interrupting water sources in the catchment (including dams and diversion), harvesting of aquatic resources (living and non-living), aquaculture, agriculture, horticulture, dredging (except to remove silt), repair of existing buildings and infrastructure, and several activities at levels that could be harmful to the wetland such as grazing, discharge of treated effluents, motorised boats, and temporary facilities like pontoon bridges, etc can only be allowed after the permission of the state government.

The Rules establish a Central Wetlands Regulatory Authority, comprising officials from the Ministries of Environment and Forests, Tourism, Water Resources, Agriculture, Social Justice, and the Central Pollution Control Board, and four independent scientists. Its powers and functions include processing proposals for notification of wetlands, enforcing the Rules, granting clearances for regulated activities, determining the 'zone of direct influence', all in consultation with local authorities. It will also specify threshold levels for regulated activities, and issue directions to the states for conservation and wise use.

Wetlands are indeed highly threatened and these threats need to be regulated or stopped outright. Legislative backing for this is necessary, thus while the intent of these notifications is positive, its heavy reliance on centralised bureaucracies and a total lack of citizens' involvement, including those who may be currently managing and conserving these wetlands, is a violation of the basic principles of democracy and knowledge-based decision-making. Notably, The Rules do not envisage any role of fishing, farming, pastoral communities and other villagers and city-dwellers living adjacent to wetlands in the identification, management, and regulation of wetlands. There is no recognition of the history of these wetlands, their management and traditional knowledge associated with the same. Such centralisation may not be able to deal with the threats as the few agencies under the notification will not have the capacity to deal with all the permissions that would be required. Moreover, this will further alienate those

communities living close to and directly and indirectly managing and conserving these wetlands. For the millions of communities whose livelihoods depend on these wetlands it would mean further marginalisation and harassment.



Wetland in Bhaktapur, Rajasthan. Wetlands like this are important both for wildlife as well as the local people. © Neema Pathak Broome

### **3. PROTECTED AREAS, COMMUNITY CONSERVED AREAS AND SACRED NATURAL SITES**

#### **3.1 Protected Areas**

##### **3.1.1 Management Institutions and Definitions**

The Wild Life (Protection) Act 1972 (WLPA), is the main law under which protected areas are designated and managed. Until 2002, the WLPA envisaged only two types of Protected Areas, namely, National Parks and Wildlife Sanctuaries (section 18 to 35).<sup>35</sup> An amendment to the Act in 2002, included two more categories, namely, conservation reserves and community reserves

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<sup>35</sup> Original version had a third category called the Game Reserves which were subsequently removed and game reserves were converted to national parks or sanctuaries.

(sections 36 A and 36 C). A further amendment in 2006, added another category called the Tiger Reserve (section 38 V (4)).

The WLPA does not specify any definition for a PA, instead identification and designation of a PA is left entirely to the discretion of the state and central authorities. Such declaration is not based on any specific criteria. The various categories of PAs in the WLPA include:

**National Park (Chapter IV Sec 35 (1) of WLPA):** The State Government can declare any area a national park if they feel it is of ecological, faunal, floral, geomorphological, or zoological importance. Following this intention, a process of settlement of rights of communities who reside in such areas is carried out and once all rights have been settled, acquired or local communities relocated, the area can be declared a finally notified national park. The general interpretation is that no human settlements, rights or uses can be allowed in a national park.

**Wild Life Sanctuary (Chapter IV Sec 18 (1) of WLPA):** - The State Government can declare any area a wildlife sanctuary if they feel it is of ecological, faunal, floral, geomorphological, or zoological importance. Following this intention, a process of settlement of rights of communities who reside in such areas is carried out and once all rights have been settled, acquired or local communities relocated, the area can be declared a finally notified sanctuary. Human settlements, rights, and uses, if they are not detrimental for wildlife, can be allowed to continue in sanctuaries.

**Conservation Reserve (Section 36A(I) of WLPA):** The State Government after having consultations with the local communities can declare any area owned by the Government, particularly the areas adjacent to National Parks and sanctuaries and those areas which link one protected area with another, as a conservation reserve for protecting landscapes, seascapes, flora and fauna and their habitat, as a conservation reserve. Settlement of right process is not required to be carried out and rights can continue to exist.

**Community Reserve (Section 36C of WLPA):** The State Government may declare any private or community land outside a national park, sanctuary or a conservation reserve, as a community reserve, for protecting fauna, flora and traditional or cultural conservation values and practices, where the community or an individual has volunteered to conserve wild life and its habitat,

**Tiger Reserve (Sec 38V (4) of WLPA):** Constituted of a Core Zone and a Buffer Zone. The Core Zone is also referred to as the critical tiger habitat areas of national parks and sanctuaries, where it has been established, on the basis of scientific and objective criteria, that such areas are required to be kept as inviolate for the purposes of tiger conservation. Buffer or peripheral areas surrounding the critical tiger habitat or core areas and which require lesser degree of habitat protection. Buffer areas are meant to ensure the integrity of the critical tiger habitat with adequate dispersal for tiger population. Apart from the PAs mentioned in the WLPA, the Scheduled Tribes and Other Forest Dwellers (Recognition of Rights) Act 2006 (FRA) provides for creation of a stricter category within the existing protected areas called the Critical Wildlife Habitat (CWH).

Critical Wildlife Habitats (**Sec 2(b), Sec 4(2)(a-f) of FRA**): Critical Wildlife Habitats are such areas of existing National parks and Sanctuaries that are required to be kept as 'inviolable' for the purposes of wildlife conservation.

The main responsibility for conservation of biodiversity in India, including wildlife, lies with the Ministry of Environment and Forests headed by the Environment Minister based in New Delhi. The Ministry makes national level programmes, policies and acts related to conservation of biodiversity. Each state has a state minister of environment and state forest department who are responsible for implementing central schemes in the state as well as formulating state level policies for conservation of biodiversity.

### **3.1.2 Implementation of Element 2 of CBD Programme of Work in Protected Areas (PoWPA)**

An assessment of the implementation of Element 2 (and related parts of Element 1, 3 & 4) of the PoWPA in India was carried out in 2009, which reveals the following key points, continue to a great extent to hold true till date.<sup>36</sup> Specifically:

- No comprehensive or nation-wide assessment of the social and economic costs of protected areas (Section 2.1.1 of PoWPA) has been carried out.
- Negative impacts of PAs on people include curtailment of access to livelihood resources, physical displacement, and wildlife caused damage. Some measures to avoid these impacts (e.g. ecodevelopment programmes) exist, but remain very inadequate (lacking resources) and flawed in their design. In fact, physical displacement continues to take place without meeting the terms legally required.
- No mechanism is yet in place to involve indigenous and local communities in decision-making related to protected areas (establishment, planning and management), either at individual protected areas or the network/system level (Section 2.1.5). An exception to this could be the provision of Community Reserves and Conservation Reserves but both provisions have limitations and cannot be declared inside conventional protected areas such as wildlife sanctuaries and national parks. Even a provision under the Wild Life

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<sup>36</sup> Based on:

Balasinorwala, T., Lasgorceix, A. and Kothari, A. Review of Implementation of the CBD Programme of Work on Protected Areas (Elements Related to Governance): the Case of India. IUCN WCPA/CEESP Strategic Direction on Governance, Communities, Equity, and Livelihood Rights in Relation to Protected Areas (TILCEPA) and Kalpavriksh, Pune/Delhi. October 2009., and  
A Citizens Report on Status and Recommendations for Community Forest Rights under Forest Rights Act. Vasundhara and Kalpavriksh with OXFAM. May 2012  
[http://www.kalpavriksh.org/images/CLN/A%20citizen's%20report%20on%20CFRs\\_final.pdf](http://www.kalpavriksh.org/images/CLN/A%20citizen's%20report%20on%20CFRs_final.pdf), and  
Manthan-A Report of the National Committee on Forest Rights Act. December 2010. Ministry of Environment and Forests, New Delhi.  
([http://www.fra.org.in/Final%20Report\\_MoEF\\_FRA%20Committee%20report\\_Dec%202010.pdf](http://www.fra.org.in/Final%20Report_MoEF_FRA%20Committee%20report_Dec%202010.pdf))

(Protection) Act to create Sanctuary Advisory Committees (which are not institutions of shared decision-making in any case but provides for a multi-stakeholder advisory role), in place since 2003, has not been implemented anywhere.

- Recognition of new governance types of protected areas, especially CCAs, has been enabled in some recent legislations and programmes (as required by several Sections of PoWPA). But so far this has not resulted in any *existing* CCAs being recognized, supported, and incorporated into the PA network, because the provisions are either faulty or too new. Four Community Reserves have been declared in areas with the intention of stimulating community conservation action. A progressive new scheme in the 11<sup>th</sup> Plan offered funding to CCAs but few legally unrecognized CCAs received funding under this plan. Much information on this could not be accessed.

Two new pieces of legislation (the Wild Life Amendment Act 2006 in relation to Tiger Reserves and the Forest Rights Act 2006 in relation to all PAs) have the potential to move towards greater equity, participation, and benefit-sharing. In the former, there is greater scope for participation and co-existence at least in the buffer areas (see point 3.2.1. below). In the latter, forest ICCAs can receive full legal recognition through Community Forest Resource (CFR) rights, including within protected areas. In both, displacement of people can take place only with their consent. However, their positive implementation is dependent on interpretations of their provisions, clear guidelines, and changing mindsets on the ground. Three aspects are important in this context: (a) while there are provisions in these laws that are relevant to Element 2, there is no indication that PoWPA has been a driving force behind them, and at least for the Forest Rights Act the major push to notify it has come from people's groups; (b) implementation of both remains very weak, with CFR rights having been recognised in only a couple of protected areas so far, and rejected in many more; (c) there is in fact violation of the provisions in many areas, e.g. in the case of continued relocation of communities (including indigenous/advansi) from tiger reserves, without completing the process of recognising rights under FRA and giving them options of staying back with full rights and facilities.

In 2009-10, the MoEF opened up the Wild Life Act for amendments, and civil society groups made submissions on how to amend it to bring it in line with PoWPA. This process has not moved forward since then. Additionally, Kalpavriksh and other groups have twice assessed the status of implementation of Element 2 in India, and sent these assessment reports to MoEF with recommendations on what steps can be taken, the receipt of which by MoEF remains unacknowledged.

### **3.1.3 Recognition of CCAs in the Protected Areas Framework**

There is little to no scope for CCAs to be included in the current protected areas framework since National Parks and Sanctuaries exclude communities from management and decision making, and Community Reserves cannot be declared in existing national parks or sanctuaries (section 36C(1)). Neither can the Community Reserves and Conservation Reserves be declared by the communities on their own.

The law allows for some use of resources for subsistence purposes from within the PAs. Section 29 & 35(6) restrict access to resources within a Sanctuary and a National Park except with the permission from the Chief Wildlife Warden and State Wildlife Board. The resource extraction can only be allowed if it is beneficial for wildlife and extracted resources can only be used to meet the bonafide subsistence requirements of the local communities. In case of sanctuaries, grazing or movement of livestock may also be permitted (section 29, read with section 33(d)). No space for decision-making and in the management of the protected area is envisaged for the local communities and indigenous peoples within the Act. Decision-making powers rest with the Central and State Governments and management jurisdiction with the Chief Wildlife Warden of the state.

Conservation reserves may be declared by state governments on any government-owned land, “after having consultations with the local communities” (section 36A(1)). In the case of land owned by the central government, its “prior concurrence” is to be sought. The Chief Wildlife Warden controls and manages a conservation reserve (sections 33, 36B(1)), advised by a reserve management committee. The management committee for a conservation reserve includes one representative from each village within the jurisdiction of which the reserve is located, as well as representatives of NGOs working in wildlife conservation (section 36B(2)). The management committee therefore is only an advisory body and its decisions are not binding on the Chief Wildlife Warden.

Although Conservation reserves may be declared in any government land, the law states that they may also be designated to create buffer zones and corridors, providing for their establishment “particularly [in] the areas adjacent to national parks and sanctuaries and those areas which link one protected area with another, as a conservation reserve for protecting landscapes, seascapes, flora and fauna and their habitat” (section 36A(1)). Many of the restrictions that apply to sanctuaries apply “as far as may be” to conservation reserves (section 36A(2), read with sections 27(2)–(4), 30, 32 and 33). These include requirements to prevent the commission of an offence and to assist the authorities in identifying and apprehending offenders (sections 27(2)(a) and (b)). All the same, it appears that no settlement of rights process needs to be carried out and rights of the people, if not directly in conflict with protected areas objectives, can continue to exist. The law does not specify what happens in situations when the rights may be impacting on the ecological value of the reserve.

Community reserves may be declared by state governments on private or community-owned land, in areas where a “community or an individual has volunteered to conserve wild life and its habitat” (section 36C(1)). The purpose of establishing a community reserve is to protect flora and fauna, as well as “traditional or cultural conservation values and practices” (section 36C(1)). This is the only category where the latter value has been mentioned in the Act.

The community reserve management committee is responsible for “conserving, maintaining and managing” the reserve (section 36D(1)). The committee prepares and implements a management plan for the area, and takes “steps to ensure the protection of wild life and its

habitat in the reserve” (section 36D(3)). It regulates its own procedures (section 36D(5)) and elects a chair, who serves as an honorary wildlife warden for the reserve (section 36D(4)). The committee is made up primarily of community members: five representatives nominated by local village governance bodies (village panchayat or gram sabha), and one representative from the forest or wildlife department under whose jurisdiction the community reserve is located (section 36D(2)).

What this provision does not take into account is the fact that CCAs operate within a diversity of institutional structures and often have their own set of rules and regulations. The provisions for management committees do not provide space for community institutions to continue to be in existence or for the institutional structure to be decided in consultation with the local people. In managing an area owned by a community, the presence of a forest officer is also a serious deterrent for many CCAs. As with conservation reserves, many of the restrictions applicable to sanctuaries also apply “as far as may be” to community reserves (section 36C(2), read with sections 27(2)–(4), 30, 32 and 33). This includes requirements to prevent offences and to assist in apprehending offenders (sections 27(2)(a) and (b)).

For CCAs, these two area categories, namely conservation reserves and community reserves, represent an opportunity as well as a challenge. Most documented CCAs in India exist on government land. As such, they do not qualify for community reserve status, where communities would retain management responsibilities. There is currently no provision for community-managed government land to be declared a protected area under the WLPA. If such ICCAs were to seek legal recognition under the law, as a conservation reserve, management responsibilities would then pass to the government. As the law currently stands, only CCAs in private or community land can seek designation as a community reserve, of which there are not many in the country.

It is not surprising therefore that there have been few takers for these categories so far. Such reserves wherever they have been declared have been proposed by the government agencies or by the NGOs.

#### **3.1.4. Multi-stakeholder Bodies for Governance and Management of Protected Areas**

**National Board for Wildlife and its Standing Committee:** A National Board for Wildlife has been constituted by the Central Government as per section 5A of the WLPA and together with its standing committee (section 5B), its functions include, framing policies and advising the Central Government and the State Governments on promoting wildlife, making recommendations on setting up and management of PAs, monitoring the status of wildlife management and carrying out impact assessment of various projects and activities on wildlife. The members of the board include, the ex-officio representatives of various government departments including the Zoo Authority, Defence Ministry, Finance Ministry, state government representatives, forest department representatives, 5 representatives to be nominated by the central government from among the NGOs and ten representatives to be nominated by the central government from among conservationists, ecologists, and environmentalists.

A review of their minutes of the meetings<sup>37</sup> indicates that last few years of discussions in the board have focused largely on the impacts of various kinds of development projects on wildlife and protected areas. This is an indication of large number of such projects in the country threatening wildlife habitats. Although issues related to the governance of PAs have not been specifically mentioned in the Act, however, the mandate of “reviewing from time to time, the progress in the field of wildlife conservation in the country and suggesting measures for improvement thereto” should take into account issues related to governance, violations or element 2 of the CBD Programme of Work on Protected Areas (PoWPA), and those related to ICCAs. None of these issues related to those have made it to the agenda of the Board or its standing committee.

**State Board for Wild Life:** The state governments are to constitute a committee called State Board for Wild Life, constituted in a way similar to NBWL. The functions of the state board are also similar to the NBWL except that one of the functions include, “in relation to the measures to be taken for harmonizing the needs of the tribals and other dwellers of the forest with the protection and conservation of wildlife”. There are few if any such issues to have been discussed in the board meetings so far.

**Sanctuary Advisory Committee:** Section 33B of the WLPA, provides for constitution of “an Advisory Committee consisting of the Chief Wildlife Warden or his nominee not below the rank of Conservator of Forests as its head and shall include a member of the State Legislature within whose constituency the sanctuary is situated, three representatives of Panchayati Raj Institutions, two representatives of non-government organizations and three individuals active in the field of wildlife conservation, one representative each from departments dealing with Home and Veterinary matters, Honorary Wildlife Warden, if any, and the officer-in-charge of the sanctuary as Member-secretary.” Although this provision was included in the Act in 2002, not a single Sanctuary Advisory Committee has been constituted in the country till date.

**Tiger Conservation Foundations:** Section 38 (X) 1 of the WLPA, seeks the state governments to establish a Tiger Conservation Foundation with the objective of promoting tiger conservation and to involve local people in the process through eco-development. The composition of this Foundation has not been specified and the main functions include among others:

1. Ecological, economic, social and cultural development in the Tiger Reserves;
2. To promote eco-tourism with the involvement of local communities;
3. To mobilize financial resources for stake-holder development; and
4. To conduct environment education and awareness programmes.

Tiger Foundations have been created in many states but to what extent have they been able to achieve their mandate of encouraging and moving towards co-existence is unclear. Barring a few Tiger Reserves such as Periyar in Kerala (where efforts towards participatory management and to a small extent governance were in any case ongoing under the previous eco-

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<sup>37</sup> The minutes of the meetings of NBWL are accessible online at <http://envfor.nic.in/divisions/wild.html>

development scheme) no such efforts have been made. In fact, as this paper is being written there are local communities being physically relocated from their lands without exploring the possibility of co-existence with any seriousness, despite it being provided for in the WLPA.

### **3.2 ICCAs Within Protected Areas Systems**

#### **3.2.1. Provisions in the Protected Areas Framework for Recognizing Community Governance either Directly or Indirectly**

As mentioned above there is no scope for ICCAs within the WLPA. In fact, Community Reserves (36C (1)), which have only limited potential for recognizing ICCAs on privately or community owned lands are also not allowed to be created within national parks and sanctuaries. Section 38 (V) 4 (ii) of the Amended WLPA (2006), explains a buffer zone as an areas where the spill-over population of tigers can survive, which require lesser degree of protection and “which aim at promoting co-existence between wildlife and human activity, with due recognition of the livelihood, developmental, social and cultural rights of the local people ...”. In practice, however, this has not been implemented as yet in any of the tiger reserves, except where eco-development programmes were already ongoing under previous schemes such as Periyar Tiger Reserve mentioned above. On the contrary there is serious discontent among the people living in Critical Tiger Habitats, who are being relocated without their rights recognized under the FRA or giving them an option of continuing to stay inside the CTH. This is mainly for creation of core zone for the CTH.<sup>38</sup>

#### **3.2.3. Provisions for Community Management within the Protected Areas Framework**

In order to address conflicts with human settlements in and around protected areas, the government initiated an ambitious *ecodevelopment* programme in the 1990s, with the aim of meeting needs of the local people through ecologically sensitive developmental inputs. Until recently, these have been programmes funded by the Central Government, which in turn received assistance for this from external sources including the GEF/World Bank, particularly for 7 prominent protected areas in 1997-2002. Independent evaluations suggest that this project met with mixed success. In some protected areas such as Periyar Tiger Reserve (Kerala), the programme was successful in turning a conflict situation around into one of positive cooperation and providing enhanced livelihood thereby helping reduce poverty in several villages on the periphery of the Reserve. However, in many others such as Nagarhole National Park (Karnataka) and Pench National Park (Maharashtra) it either failed or created new tensions<sup>39</sup>. However, areas in which ecodevelopment was successful was more because of the

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<sup>38</sup> See for details

<http://www.kalpavriksh.org/images/Documentation/Advocacy/Recognition%20of%20Rights%20and%20Relocation%20in%20relation%20to%20CTHs.pdf>

<sup>39</sup> G. Shahabuddin. India Ecodevelopment Project: A fragmented legacy. In G. Shahabuddin, *Conservation at the Crossroads*. Permanent Black, Delhi. 2007.

J. Woodman. Ghosts In The Transmission: The Translation Of Global Conservation Concepts To Local Scenarios: A Case Study Of Ecodevelopment In Central India . Paper Submitted for the Ninth

dynamic nature of the teams implementing the programme than the inherent nature of the programme itself.

One of the key conceptual problems with 'ecodevelopment' is that it still treats local communities and conservation as being incompatible. Hence the primary focus is on 'diverting' local 'pressures' through provision of alternatives. In most cases, the alternatives themselves are very much mainstream rural development projects, with no clear logic on how they would lead to be better conservation or indeed more enhanced sustained livelihoods. In almost no known case, has 'ecodevelopment' created a greater involvement of local people in the management planning and decision-making of the protected areas. The model of 'ecodevelopment' prevalent in India is not one that takes people's access to natural resources as a matter of customary rights and providing security of tenure and access. Indeed the ecodevelopment approach has remained largely within the conventional bounds of top-down conservation, with little or no involvement of local people in protected area management, no reinforcement or granting of traditional resource rights, and little encouragement of traditional resource conservation practices or knowledge. Eco-development programmes have therefore been criticized for imposing institutions which were not linked to any existing institutions in the community whether customary or official. These programmes were extensively dependent on external funding for continuation; and the activities to be undertaken under the programme were predetermined only to be implemented by the local communities, who were mere beneficiaries and had no role what so ever in making site specific changes.

In the recent times the state governments (such as Maharashtra) have brought about some changes in the ecodevelopment resolution. The ecodevelopment committees are now to be elected by the entire adult population of a village rather than the forest officials and the activities are to be undertaken as per the micro-plan to be prepared by the village community. However, the greatest criticism for this programme in the current times comes from the facts that:

- Even if the programme has changed on paper, the forest staff implementing the programme are the same group and implement it with the an unchanged mind-set. This leads to negligible changes on the ground unless a village community is self-empowered to assert their rights or an NGO is involved in monitoring;
- Although the money has now been generated locally but much of the attention and time of the department goes into "spending the money on time" rather than other management issues. The forest staff continues to yield substantial power in decisions related to the expenditure and actual bank dealings; and
- Lastly and most importantly the ecodevelopment programmes continue to be implemented as if the Forest Rights Act has not been enacted. There have been few efforts in recognizing the rights of the communities inside protected areas, including

where eco development programme is being implemented. This Act has the potential to provide the tenure and access security that has eluded eco-development programme thus far.

### **3.3 Sacred Natural Sites and Other Protected Areas Designations**

#### **3.3.1 Sacred Natural Sites**

There are no legal and policy measures to recognise sacred natural sites (SNSs), but many policies related to community conservation make a special mention of sacred groves. Provisions relating to these are the same as mentioned for CCAs under various sections.

#### **3.3.2 World Heritage Sites, their declaration and management**

As of 2010, there were 28 World Heritage Sites in India, of which five are Natural Heritage Sites, all declared in the period between 1985-88. It is not clear what process was followed for these declarations then. Since these were already existing protected areas and the country then did not have policy statements and laws supporting access and ownership rights of the local communities, there has not been much debate about these declarations from the point of view of the rights of the local people. The government of India, however, has submitted a proposal for declaration of parts of the Western Ghats as a World Heritage Site in 2011. This proposal has faced serious opposition from the local community groups on the grounds that local communities have not been consulted in putting together the proposal. An Expert Panel was constituted by the government of India to come up with a conservation strategy for the Western Ghats, called the Western Ghats Ecology Expert Panel (WGEEP). In its report<sup>40</sup> of August 2011, the panel stated that “The Forest Rights Act (FRA) 2006 has yet to be implemented in its true spirit and the State Forest Departments to be alerted to the fact that implementation of this act is needed for future forestry governance”. Generally, the panel considered “that there is a need for greater participation of local people and communities in formulation and implementation of the Western Ghats National Heritage proposal.” [Part II, p. 322]. The panel further noted that: “... the “objections raised at the UN Permanent Forum on Indigenous Issues to the Indian proposals on 17 May 2011 at the Tenth Session, New York, 16-27 May 2011” are “serious and quite genuine” (Part II, p.121).

Due to the submissions made by the opposing groups to the UN Permanent Forum on indigenous Issues, IUCN has once again recommended to the UNESCO World Heritage Committee that it "defers the examination of the nomination of the Western Ghats (India) to the World Heritage List"<sup>41</sup>. This means that WHC may drop this proposal for nomination now and MoEF will need to submit a fresh proposal for nomination after three years.

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<sup>40</sup> WGEEP, Part II, p. 66, available at <http://www.indiaenvironmentportal.org.in/reports-documents/report-western-ghats-ecology-expert-panel-2011>

<sup>41</sup> IUCN Evaluation Report – May 2012, p.59 available at <http://whc.unesco.org/archive/2012/whc12-36com-inf8B2-en.pdf>

The Government of India, with support from UNESCO, is also currently running a programme in four WHSs, namely, Kaziranga National Park and Manas National Park in Assam, Keoladeo National Park in Rajasthan and Nandadevi National Park in Uttarakhand. This four year programme, “Building Partnership to Support World Heritage Programme in India” was initiated in 2010. The programme brings in financial resources to achieve a number of objectives including participation and livelihoods support for local communities. It has a decision-making body which includes along with the MoEF, ATREE and Wildlife Institute of India. Many resources have been invested into these sites under this programme, however, like all other programmes of the government to role of the people remains at the level of implementing predetermined decisions and actions. There is no role for the local communities in the actual governance. Neither does the programme take advantage to build or strengthen local institutional structures which could play a long term governance and management of these WHSs.

In addition, the government of India has also initiated a number of other programmes for protection and revival of populations of highly threatened large animals such as the Rhino, Gharial, Elephants, and Tigers, this has been done by launching programmes such as Project Tiger, which was launched by the Government of India in the year 1973 to save the endangered species of tiger in the country<sup>42</sup>. There are also areas which are protected either through other national Acts or under international conventions and treaties. These are discussed in the next sub-sections.

### **3.3.3 Biosphere Reserves, their declaration and management**

There are 17 Biosphere Reserves (BRs) in India. These biosphere reserves have been created mainly in and around existing protected areas. Declaration of the BRs have not been done with any consultation with the local people and indigenous communities. This designation has not led to any added restrictions for the local communities but there continues to be a resentment against these in some areas because of their association with the protected areas and also because the department managing these are the same ones.<sup>43</sup> Considering that the concept of the BRs is by far most relevant in being able to achieve the objective of conservation with and by the local people and indigenous communities, yet no thought or effort has gone into working out the governance and management mechanisms and effective institutional arrangements for them. In general, BRs in India are mainly of the following kinds:

- Those where the entire area is notified as a particular kind of government designated PA and is governed under the protected areas laws (which either have limited or little space for local people in the governance of the protected areas).
- Where an area is notified as a BR, within which there are some areas that are government notified (national parks or sanctuaries) PAs, while others are not designated. Whether the non-designated areas have ICCAs or any other kind of local

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<sup>42</sup> <http://www2.wii.gov.in/nwdc/tigerreserves.htm>

<sup>43</sup> Kothari, A. and Pathak, N. Lata Revisited. *The Hind, Sunday Magazine*. October 2, 2011

conservation and livelihoods related initiatives is not taken into account by the authorities in charge. Such BRs are also governed by the same agencies which are in charge of managing the protected areas. All of the BR in that case is not a legally notified protected area but for all practical purposes is governed as if it is (with the non-protected areas facing slightly less restrictions and some beneficiary schemes for the local people but no involvement in governance or management).

- Those where there is a protected area and the area surrounding it is declared a BR but the jurisdiction remains in the hands of different government agencies often competing with each other or being indifferent towards each other. Little or no coordination among these agencies and no involvement of the local people (including ICCAs if they exist in such area) results into the BR not being taken seriously.

### 3.3.4 Important Bird Areas, their Declaration and Management

465 Important Bird Areas (IBAs) have been identified in India by Bombay Natural History Society in a comprehensive data published in 2004.<sup>44</sup> Interestingly, an assessment carried out for the same publication also indicated that a large number of identified IBAs are also CCAs, or have been CCAs in the past but currently these are part of a protected area. The IBA criteria however do take into account role of local communities in conserving these sites. There have been some interactions between advocacy groups such as Kalpavriksh and conservation organisations such as Bombay Natural History Society (BNHS) to ensure that while identifying IBAs, it is also documented whether or not they are existing ICCAs.

A number of other recommendations have been advocated, some of which include:<sup>45</sup>

- Identification of such IBAs where communities have been protecting or have a potential to be involved;
- While providing support and legal backing to such IBAs ensuring that their existing systems of conservation and management are not imposed upon and all such recognition to happen with prior informed consent of the concerned communities;
- Before moving ahead with any assigning categories to such sites, ensuring that rights, responsibilities and roles are firmly established with the communities;
- Building capacity and bringing about attitudinal changes in all those who would have an interface with such sites including government officials, NGOs, donors and others; and

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<sup>44</sup> Islam, M. Z. and Rahmani, A. R. (2004) *Important Bird Areas in India: Priority Sites for Conservation*. Indian Bird Conservation Network: Bombay Natural History Society and Birdlife International (UK). Pp xviii + 1133

<sup>45</sup> Kothari, A. and Pathak, N. (2004). Can Communities Conserve Important Bird Areas? In Islam, M. Z. and Rahmani, A. R. (2004) *Important Bird Areas in India: Priority Sites for Conservation*. Indian Bird Conservation Network: Bombay Natural History Society and Birdlife International (UK). Pp xviii + 1133

- Ensuring that in local/district, state, and national planning, all such areas are off limits to destructive forms of development projects, including village development activities.

### 3.3.5 Ramsar Sites, their Declaration and Management

Only 25 wetlands in the country have been designated as Ramsar Sites.<sup>46</sup> An assessment on how many of these are also CCAs has not been done yet.

### 3.4 Trends and Recommendations

On one hand there is a greater awareness and recognition of the fact that local people's needs need to be taken into account in the management of protected area and the concerned people need to be included in the governance of these areas. The realisation that tenure insecurity is not only leading towards oppression of underprivileged communities but also having a severely negative impact on biodiversity conservation in the country have led to the emergence of laws such as the Forest Rights Act 2006. These new rights based legislations have had a wider impact to a certain extent, e.g. by in some way being instrumental in bringing about the changes in the processes leading towards creation of "inviolable zones" for conservation such as the Critical Wildlife Habitats and Critical Tiger Habitats, which clearly mention that no modification of rights (including relocation) can take place without the consent of the rights holders. However, the spirit and the content of the law is one thing and its actual implementation on the ground completely another. As a result, both the WLPA and FRA being very clear on no physical rehabilitation without recognition of rights under FRA, such relocation is continuously taking place from different Tiger Reserves and other Protected Areas in the country. Despite a notification from the MoEF about no development projects in an area without implementing FRA first, development projects continue to get clearances. Civil society groups and local community representatives from across the country are bringing such violations of the law to the notice of the concerned authorities, the government and increasingly to the apex court of the country. Even as this report is being written, new submissions are being made, new legal interpretations of various legal provisions are being made, new government resolutions and circulars are being brought out both in favour of local communities and against them. It is however clearer that sooner or later the implementation of these provisions will lead to a greater participation of the local communities in the governance of natural resources. However, considering that economic powers and globalisation is catching up at the same pace as decentralisation, what would emerge from the interface of these two is yet to be seen.

In the meantime in order to realise the full potential of the rights-based legislation, much needs to change in the attitude of the implementing agencies and existing colonial and post-colonial laws, particularly the protected area laws. Some specific suggestions towards achieving this change in the WLPA are given below:

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<sup>46</sup> Islam, M. Z. and Rahmani, A. R. (2008) *Potential and Existing Ramsar Sites in India*. Indian Bird Conservation Network. Bombay Natural History Society, Birdlife International and Royal Society for the Protection of Birds. Oxford University Press. Pp. 592

**Defining Protected Areas:** The WLPA recommends four categories of protected areas in the country, including Conservation Reserves and Community Reserves. As is clear from the definitions above, the criteria used to decide the categories to be assigned to a particular protected area are not spelt out. This means that some level of arbitrariness continues with regard to how wildlife authorities assign a particular category to a particular area (except to a certain extent in case of Tiger Reserves). This arbitrariness then carries forward into the management strategies, which are often not oriented to the specific local objectives and needs of the area but are based on some standard all-India prescriptions, greatly impacting the relationship with the local people who reside in and around these protected areas.



**Meeting with villagers in Meghat Tiger Reserve in Maharashtra on relocation from the reserve in 2010**  
© Neema Pathak Broome

Some suggestions towards resolving these issues include: The Act should lay out a clear set of criteria for each kind of protected areas, developed in a participatory manner. Declaration and categorisation of a protected area must therefore depend on these criteria and be accompanied with a clear statement of conservation objectives, which will help in designing the management approach to be followed for the protected area. The Act should authorise or facilitate a time-bound, one-time reclassification of all existing protected areas, based on the

established criteria. This also means that the provisions allowing only new areas to be declared Conservation Reserves and Community Reserves should be deleted and all areas should be opened to all categories depending on the conservation values and social/cultural factors.

**Governance and Participation:** It is a welcome step that the WLPA Act has recognised people's institutions in several provisions. However, local Panchayats have been taken as the bodies to represent local people's interests. Panchayats are often not truly representative of all sections of society, particularly the underprivileged. Also Panchayats are often constituted by combining many individual settlements. Most provisions for people's participation, as specified in the WLPA, are not in the nature of empowering them to take part in decision-making, or to manage their own surrounds with authority (other than the provisions for Community Reserves). Even the proposed committees for Sanctuaries and Conservation Reserves are only advisory in nature.

Suggestions towards resolving these issues include:

- The gram sabhas (village assembly) should be taken as the basic unit of governance at village level, and members of gram sabhas (elected or chosen by such sabhas) should represent the bodies concerning with management of PAs. Explicit provisions should be made to ensure participation of disprivileged sections in this governance. The definition of the gram sabha could be as used in the Forest Rights Act 2006; and
- Provisions should be made for meaningful involvement of communities in/around PAs of all categories, in the management of the PA, by setting up joint or co-management committees with decision-making powers (not only advisory in nature) (also see suggestions below in this regard). If need be, this can be implemented in a phased manner, trying a few representative PAs across the country, and then extending to the rest after learning lessons from the initial sample.

**Harmonizing with the Forest Rights Act:** The FRA mentioned above was enacted in 2006 and being a subsequent Act supersedes the contradictory provisions of the previous ones including the WLPA. However, since section 13 of FRA mentions that it is in addition to and not in derogation of any existing acts, there is some confusion on the ground related where both FRA and WLPA are applicable. Specifically:

- The WLPA specifies a settlement of rights process only after completing which a PA can be declared as finally notified. This process however, is extremely limited as it only takes into account the recorded rights and those rights which have not been recorded because of historic reasons are usually not accepted. On the other hand the FRA 2006 specifies a detailed process of recognition and settlement of rights in forests of all descriptions including PAs. Although it is clear that settlement and recognition of rights under FRA are applicable in PAs but there is a lack of clarity on whether the settlement of rights as prescribed in WLPA will still apply for the final declaration of a PA. There is an urgent need to bring in a change in the WLPA towards clarifying this;

- A number of activities of the local people, particularly those related to habitation, cultivation and resource use were illegal under WLPA. After FRA many of these activities will now be the legal rights of the people. WLPA needs to review its provisions related to forest rights, access and violations as per the provisions of the FRA;
- Considering that the FRA also gives the holders the right to ensure protection, management and regeneration of the forests over which they exercise rights. Also considering that the provision of “Community Forestry Resource” (Section 3 (1) i) gives the management and protection rights to the community which claims a forest areas as their CFR, there is an urgent need to clarify the relationship between CFR institutions and PA management. There is also a need to bring about changes in WLPA in recognition of this provision of the FRA, as mentioned above; and
- Harmonising the definition of gram sabha with that of FRA as mentioned above.

**The Multi-stakeholder Bodies:** The Act does not specify a clear relationship between the protected areas level committees (sanctuary advisory committee, Tiger Foundations), State Board and National Board. The functioning of the boards and the committees are left to these bodies to decide, with no overall framework, and clear guidelines on how the decisions should be taken. It is not surprising therefore that the National Board has given a go ahead to the development projects (some impacting the local communities) even when most members of the board have been against the permission, and all available submissions prove that the project could be harmful both for biodiversity and local people.

These bodies also need to look at the issues of governance, particularly role of the local people in decision-making and management. Towards the fulfilment of the government of India’s commitment under Element 2 of the PoWPA, these multi-stakeholder bodies need to review regularly, as to what extent has this commitment been fulfilled.

The National Board for Wildlife (Point 6) Section 5A (1) is widely represented, yet it does not include any representatives of the local communities. The board should include as its member five of the community representatives from different state boards and/or protected area committees by rotation. The functions of the State Board also need to include monitoring of ecological, social issues and evaluation of governance and management effectiveness.

At the protected areas level, inclusion of the Sanctuary Advisory Committee ((Point 17, Section 33B) in the Act was a welcome step. The Act, however, needs to make its constitution mandatory and one of its roles should be to evaluate issues related to governance of the sanctuary as also the national parks. The following suggestions will be critical to strengthen this committee and make it more effective and relevant. The committee needs to include as its members (Section 33 B (1))

- Representatives of the department of Rural Development, Tribal Welfare and other line agencies functioning in the area. This will facilitate coordinated action of all line

agencies for conservation and development of the protected area and villages in and around it; and

- Representatives of the gram sabhas of one third of the villages in and around the protected area by rotation. Adequate attention needs to be paid to the representation of the disprivileged sections, including reserving 50% of the seats for women from various sections of the society.

The activities of the committee (Section 33B (2)), must include among others:

- Ensuring consultation with all relevant gram sabhas for the management plan of the PA and approval of the management plan;
- Looking into the issues related to the governance of the sanctuary, to ensure participation of all relevant local communities and also harmonizing institutions under the FRA and WLPA;
- Ecological and social monitoring (including by trained members of communities) of the impacts of the management practice adopted for the sanctuary; and
- Advise on the basis of ecological impact assessments about extraction and level of extraction of produce from a sanctuary. As also with help of the concerned gram sabhas can arrive at a mechanism for sustainable extraction of natural produce.

**Resource Extraction:** The WLPA specifies that the forest produce being removed from protected areas should only be for the bona fide needs of people and not for commercial purposes. This is welcome as a shield against destructive commercial activities but it has led to stifling of small-scale livelihood needs and rights of local people, leading to large scale deprivation for communities for whom collection and sale was the only source of small cash income.<sup>47</sup> It is ironical that such a blanket provision is imposed on communities while tourism still has an open door in that “construction of commercial tourist lodges, hotels, zoos and safari parks” can still be undertaken with the permission of the National Board. Considering that under the FRA many communities may re-establish their rights to livelihoods, there needs to be a change in this provision to harmonize it with the FRA.

**Conservation Reserves:** Following suggestions would help overcome the limitations of the provision for creation of Conservation Reserves ((Point 20) Section 36A (1)):

- Once the area has been declared Conservation Reserve, no change in the land use should be allowed except as recommended by Conservation Reserve Management Committee in consultation with the Chief Wildlife Warden.

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<sup>47</sup> Wani, M. and Kothari, A. 2007. ‘Protected areas and human rights in India’, *Policy Matters*, Issue 15, July 2007.

- In Section 26A (1), the Conservation Reserve Management Committee should be the main managing body, rather than have only an advisory function to the CWLW.
- The Committee should include as its members:
  - Representatives from all relevant line agencies in the area.
  - One representative each from the gram sabhas of the villages in and around the PA, with adequate representation from the disprivileged sections, including 50% reservation for women from all sections.

The functions of the committee should include the following:

- Formulation of the management plan for the protected area in consultation with all the relevant gram sabhas;
- Regular monitoring and evaluation of the ecological and social impacts of the management practices being practiced in the protected area;
- Carrying out regular ecological impact assessment of the resource use inside the reserve with help from relevant gram sabhas and using local expertise and knowledge along with scientific principles; and
- Working out ecologically sensitive livelihood and development options along with the relevant gram sabhas and concerned line agencies working in the area.

**Community Reserves:** The provision of Community Reserves (Section 36 C (1)) is finally a recognition of the local people's efforts at conservation in the country. It is surprising though that while the Act recognises people's efforts at conservation it does not entrust them with the responsibility of carrying on with their practices and institutions. Instead, a new uniform institutional structure has been imposed. In addition, often such efforts are initiated not necessarily on private lands but traditionally used lands and resources, which may legally be under the jurisdiction of the government agencies. By keeping government owned lands outside the purview of this provision, hundreds of well deserving communities in the country have not been able to use this category. Given below are a few suggestions to make this provision more relevant for CCAs in India:

1. All community efforts at conservation, irrespective of the legal status of the land, should be allowed to be established as a community reserve if the concerned community shows willingness and capability to do so.
2. Section 36D of the Act specifying the institution for the management of the community reserves should be deleted, and in its place, the following could be inserted "Each community while applying would need to specify the local institution, its structure, functioning, rules and regulations (including whether written or unwritten) to the State Board and the CWLW. This local institution will be designated the Community Reserve Management Committee. In

consultation with the gram sabha (if the Committee is not the gram sabha itself), the Committee will organise a meeting with all the line agencies, including officer in-charge of the FD, and constitute a Community Reserve Advisory Committee if the community so desires.”

3. The Advisory Committee should meet with the gram sabha once every three months and carry out the following functions:

- Help in the formulation of a management plan for the PA, and provide technical inputs wherever needed and sought by the community.
- Help in carrying out monitoring and evaluation of ecological and social impacts of the management practices and resource use in the PA.
- Impart information on developmental programmes, scheme, etc. that may be applicable in the area.
- Help with book keeping, accounts, maintaining minutes, etc.
- Advise on financial resources for carrying out conservation and village development activities.
- Ensure that all sections of the community are adequately represented in the local institutions and equitably share the benefits of conservation, including reservation of seats for women from all sections of the community.

#### **4. NATURAL RESOURCES, ENVIRONMENTAL AND CULTURAL LAWS AND POLICIES<sup>48</sup>**

##### **4.1 Natural Resources and Environment**

There are a plethora of legal provisions dealing with different aspects of natural resources, in the country, some of these were formulated during the British times and whose provisions continue to suit the interests of the colonial government. Their implementation in present times, with some exceptions, continues to be top down and centralised. However, within these laws there are some spaces that could be used by communities, but the extent to which they

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<sup>48</sup> This section is partly based on the following documents:

Kothari, A., Pathak, N. and Bose, A. FORESTS, RIGHTS, AND CONSERVATION: *The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006, India*. Review paper for Institute for Global Environmental Strategies, Hayama, Japan. Kalpavriksh, Pune/Delhi, January 2009. [http://www.kalpavriksh.org/images/LawsNPolicies/IGES\\_FRApaper\\_Aug2009.pdf](http://www.kalpavriksh.org/images/LawsNPolicies/IGES_FRApaper_Aug2009.pdf)

Kothari, A. & Pathak, N. (2009) Conservation and Rights in India: Are We Moving towards Any Kind of Harmony. A Review paper for Rights and Resources, Washington, D.C. Kalpavriksh, Pune, August 2009.

Pathak, N. & Kothari, A. 2011. Indigenous and Community Conserved Areas: The Legal Framework in India. In Lausche, Barbara (2011). *Guidelines for Protected Areas Legislation*. IUCN, Gland, Switzerland. Xxvi + 370 pp

have been used to support CCAs has been highly dependent on the state governments and/or particular individuals within the government. More often than not efforts have been made to dilute provisions in favour of government agencies gaining more powers than the communities, a good example of that is the “village forest” provision under the Indian Forest Act 1927 and the Van Panchayat Rules 1931 (see below for details on both).

#### **4.1.1 Indian Forest Act 1927**

The first version of this Act was implemented by the British government in 1865, which was subsequently modified in 1927. The main objective of this Act was to bring most of the forest resources in the country under the control of the governments through the process of nationalisation and privatisation. A forest department was created around the time to centrally manage and govern these forests. Following much unrest and discontent, some forests were given back to the communities or could not be taken over but these were few and far between and the process of returning them was such that it led to numerous local conflicts and breakdown of traditional systems of management of the commons. During the nationalisation process most forests were converted to “Reserved Forests” after going through a perfunctory settlement of rights (under which most customary rights were extinguished for lack of written records. Hence Reserved Forests in most parts of the country had few or no rights of the local people. Certain concessions were sometimes allowed.<sup>49</sup>

This draconian Act, however, also allows reserved forests to be transferred to village communities for management as ‘village forests’. Local communities must submit a request to the relevant authorities and fulfil certain requirements. They are then vested with the “rights of the government” (section 28(1)) but the government retains the power to make rules concerning the management of village forests (section 28(2)). All of the prohibitions and restrictions that apply to reserved forests apply to village forests as long as they are consistent with the rules (section 28(3)).

Rules governing village forests are to spell out the role of communities in forest protection and improvement activities, and prescribe the conditions under which communities “may be provided with timber or other forest-produce or pasture” (section 28(2)), suggesting that some flexibility is available with respect to restrictions of use rights in the case of such forests. Since rules are to be made by the government, the participation of communities in their formulation depends heavily on the discretion of individual forest officials, and not surprisingly has not happened in any of the states where rules have been formed.

The section of this Act enabling village forests was, for decades, the only option for communities seeking legal cover for their traditional forest management practices. Enacted in 2006, the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act offers the possibility of more secure rights for Scheduled Tribes and other forest dwellers

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<sup>49</sup> Springate-Baginski, O., Sarin, M., Ghosh, S., Dasgupta, P., Bose, I., Banerjee, A., Sarap, K., Misra, P., Behera, S., Reddy, M.G., and P. T. Rao. 2008. *The Indian Forest Rights Act 2006: Commoning Enclosures?* Unpublished.

who meet the Act's specified criteria. Although the Ministry of Tribal Affairs is responsible for implementation, the Act does not have overriding force (section 13), which means that any powers and functions assigned to the Forest Department by other laws are concurrently effective.<sup>50</sup>

#### **4.1.2 Provisions of the Panchayats (Extension to the Scheduled Areas) (PESA) Act 1996**

This Act provides for the extension of the panchayat local governance system to 'scheduled' areas referred to in Article 244(1) of the Indian Constitution, which are areas with predominantly tribal populations. It requires state laws to be made "in consonance with the customary law, social and religious practices and traditional management practices of community resources" (section 4(a)). A gram sabha (village assembly) is to be established in every village (section 4(c)), and is "competent to" protect community resources (section 4(d)). Gram sabhas approve development plans and projects at the village level (section 4(e)(i)). They also have the power to control "local plans and resources for such plans including tribal sub-plans" (section 4(m)(vii)). This Act was, however, much diluted in state adaptations and limited rights were eventually granted to the communities concerned, thus resulting into much less devolution and benefits to the local communities as compared to the expectations of the concerned communities. After the enactment of Forests Rights Act in 2006, however, a number of communities are using the provision of FRA and PESA together to be able to claim holistic rights over their traditional territories and resources therein.

#### **4.1.3 Environment Protection Act 1986**

This Act provides for the protection and improvement of the environment and related matters, and awards the central government broad powers in this regard (section 3). These include the power to restrict industrial and other operations and processes in certain areas (section 3(2)(v)).

Factors the central government may consider in restricting such activities are spelled out in the Environment (Protection) Rules 1986 (section 5). Besides a number of environment and pollution-related concerns, these factors include: biological diversity of the area which needs to be preserved (section 5(1)(v)); proximity to a protected area under the Ancient Monuments and Archaeological Sites and Remains Act 1958, or a protected area under the Wild Life (Protection) Act 1972, or places protected under any treaty, agreement or convention (section 5(1)(viii)); "environmentally compatible land use" (section 5(1)(vi)); and "any other factors" the government considers to be relevant (section 5(1)(x)).

Together, these provisions have been used since 1989 to prevent industrial and development operations from taking place in specific sites across the country. Such areas have come to be known as 'ecologically sensitive areas'. Apart from restricting commercial and industrial development, the Act of 1986 and its Rules do not specify any other restrictions on community

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<sup>50</sup> For a detailed discussion of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006, see Part II Section 1 above.

access or use in such areas. The notification and rules for each ecologically sensitive area are site-specific and based on the local context.

#### **4.1.4 Biological Diversity Act 2002**

This law regulates access to biological diversity for commercial use and other specified purposes. It provides for the protection of intellectual property rights with respect to biological resources and associated knowledge, the sharing of benefits arising from their use, the conservation of biological diversity, and related matters.

The central government is responsible, inter alia, for developing “measures for identification and monitoring of areas rich in biological resources, promotion of in situ, and ex situ, conservation of biological resources” (section 36(1)). Where it has reason to believe that an area “rich in biological diversity, biological resources and their habitats is being threatened by overuse, abuse or neglect”, it has the power to direct the state government concerned to “take immediate ameliorative measures” (section 36(2)). The central government must also “endeavour to respect and protect the knowledge of local people relating to biological diversity” (section 36(5)).

The law allows state governments to declare “biodiversity heritage sites” in areas of “biodiversity importance” (section 37(1)). This is done “in consultation with the local bodies”. Rules for the management and conservation of such areas are framed by state governments in consultation with the central government (section 37(2)). State government may “frame schemes” to compensate individuals or communities “economically affected” by the designation of biodiversity heritage sites (section 37(3)).

The central government has the power to declare, in consultation with the concerned state government, “any species which is on the verge of extinction or likely to become extinct in the near future” as a threatened species, to prohibit or regulate its collection for any purpose, and to take “appropriate steps to rehabilitate and preserve those species” (section 38). The central government may also exempt from the provisions of this Act certain biological resources, “including biological resources normally traded as commodities” (section 40).

Most of these provisions either directly or indirectly exclude CCAs and local communities. All powers lie with the central or state government. Moreover, the provision for schemes to compensate those who are “economically affected” by the declaration of biodiversity heritage sites (section 37(3)) is a strong indication that use rights in such areas could be restricted, and implies that local communities could be excluded. It also implies that communities can be moved out of areas that are so declared. Yet there are communities, which intend to take advantage of this provision, which face problems due to the final decision about declaration being of the government (see the case below of Medak, Andhra Pradesh)

The law does contain certain provisions that may be of relevance to CCAs. First, every local governance body is required to constitute a biodiversity management committee to promote “conservation, sustainable use and documentation of biological diversity including preservation

of habitats, conservation of land races, folk varieties and cultivars, domesticated stocks and breeds of animals and microorganisms and chronicling of knowledge relating to biological diversity” (section 41(1)). In taking decisions related to the use of biological resources and associated knowledge, national and state-level authorities established under this Act must consult these committees (section 41(2)). Within their areas of jurisdiction, biodiversity management committees are allowed to charge a fee for access to or collection of any biological resource for commercial purposes (section 41(3)).

Second, the Act provides for the creation of local biodiversity funds in areas where “any institution of self-government” is functioning (section 43(1)). Grants and loans from national and state-level authorities, fees collected by local biodiversity committees and monies received through other sources, as may be decided by state governments, are paid into the fund (section 43(1)). The fund is to be used for the “conservation and promotion of biodiversity” and for the “benefit of the community in so far such use is consistent with conservation of biodiversity” (section 44(2)).

Third, the National Biodiversity Authority established under this Act must ensure that benefits arising from the commercial exploitation of biological resources are shared equitably, according to “mutually agreed terms and conditions between the person applying for such approval, local bodies concerned and the benefit claimers” (section 21(1)). ‘Benefit claimers’ are “conservers of biological resources, their byproducts, creators and holders of knowledge and information relating to the use of such biological resources, innovations and practices associated with such use and application” (section 2(a)).

Finally, state biodiversity boards established under this Act may, in consultation with local bodies, prohibit any commercial activities concerning access to or use of biological resources if such activities are deemed “detrimental or contrary to the objectives of conservation and sustainable use of biodiversity or equitable sharing of benefits arising out of such activity” (section 24(2)).

Biodiversity management committees can be authorized to deal with intellectual property rights, and can claim benefits from use of local resources and knowledge. The Act provides for village communities to carry out detailed resource mapping and biodiversity inventories, which would be crucial for establishing management strategies. But the mechanical process of documenting local knowledge on biodiversity could also be prone to misuse and biopiracy, in the absence of clear legal protection of such knowledge.

The Act does not address the rights of biodiversity management committees or their access to the resources they manage. Biodiversity management committees have the potential to be robust local institutions for conservation but their potential has been curtailed in the rules framed under the Act, limiting their role to the preparation of biodiversity registers and advising the state authorities on matters related to granting approvals. The Act does not specify whether biodiversity management committees have the power to deny access to resources that higher bodies have permitted.

Many communities are currently considering and some have already implemented the possibility of using the provisions of BMC along with those of CFRs under the FRA. FRA will overcome the lacunae of BMCs not having legal backing and assured access to resources.

#### **4.1.3. Biological Diversity Rules 2004**

The BD Rules include, that in considering applications for commercial access to biological resources and associated knowledge, the National Biodiversity Authority must consult the local bodies concerned (section 14(3)). It may restrict or refuse such an application on a number of grounds, including if access to biological resources is likely to result in an “adverse effect on the livelihoods of the local people” (section 16(1)(iii)).

Benefit-sharing arrangements are decided in consultation with local bodies and ‘benefit claimers’ (section 20(5)). In cases where biological resources or knowledge are accessed from a specific individual, group of individuals or organization, the Authority “may take steps to ensure that the agreed amount is paid directly to them through the district administration” (section 20(8)).

The main function of the BMCs is to prepare registers of biodiversity, in consultation with local communities (section 22(6)). They also advise state authorities on matters related to granting approvals, and maintain data concerning local “practitioners using the biological resources” (section 22(7)). Membership of biodiversity management committees must include women and individuals belonging to scheduled castes or tribes (section 22(2)). States like Karnataka and Sikkim have enacted their own rules, providing for greater empowerment of communities by delegating responsibilities for biodiversity conservation and management.<sup>51</sup>

Draft guidelines for biodiversity heritage sites have recently been finalized and circulated as a model for state governments. These guidelines were drafted by a multi-stakeholder committee and aim to address the limitations of the Act. If followed by state governments, the guidelines may help provide backing for ICCAs or landscapes in which ICCAs are embedded.

## **4.2 Policies and Action Plans**

### **4.2.1 National Forest Policy 1988**

The principal aim of the Forest Policy is to ensure “environmental stability and maintenance of ecological balance” (section 2.2). Direct economic benefits are “subordinated to this principal aim”. Basic objectives of the Policy include conserving natural heritage, preserving the “remaining natural forests”, and meeting subsistence requirements of rural and tribal populations (section 2.1).

The Forest Policy states that the country’s network of protected areas should be “strengthened and extended” (section 3.3), and that forest management plans should provide for corridors linking protected areas (section 4.5). It notes that forest management should “associate” tribal

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<sup>51</sup> See the Karnataka Biological Diversity Rules 2005 and the Sikkim State Biological Diversity Rules 2006.

peoples in the protection, regeneration and development of forests, and should safeguard their customary rights and interests (section 4.6). These provisions support the idea of community-level conservation efforts, particularly with respect to tribal peoples.

The strategy outlined in the policy includes social forestry, recommending that village and community land “not required for other productive uses” should be used to develop tree crops and fodder resources, with the revenues generated from such activities going to local panchayats or communities (section 4.2.3). The policy suggests that vesting in individuals “certain ownership rights over trees could be considered”, with the beneficiaries entitled to “usufruct” and in turn responsible for “security and maintenance”. In this connection, it mentions “weaker sections” of the population “such as landless labour, small and marginal farmers, scheduled castes, tribal communities and women from all sections of society”.

Rights and concessions in state forests “should always remain related to the carrying capacity of forests” (section 4.3.4.1), and “should primarily be for the bona fide use of the communities living within and around forest areas, specially the tribals” (section 4.3.4.2). The rights and concessions enjoyed by “tribals and other poor living within and near forests” should be “fully protected”, and their domestic requirements should be “the first charge on forest produce” (section 4.3.4.3). Scheduled castes and other poor communities living near forests should be given similar consideration, but always “determined by the carrying capacity of the forests” (section 4.3.4.4). Holders of customary rights and concessions in forested areas should be “motivated to identify themselves with the protection and development of forests from which they derive benefits” (section 4.3.4.2).

Government-approved management plans are required for state forests “to be worked” (section 4.3.2). Schemes and projects that “interfere with [...] ecologically sensitive areas should be severely restricted. Tropical rain/moist forests [...] should be totally safeguarded” (section 4.3.1).

Although the Policy supports the recognition of customary and traditional rights, and endorses subsistence use by forest-dependent communities, it takes a dim view of the traditional practice of shifting cultivation, advising that it be discouraged and alternative livelihood activities provided (section 4.7). It also calls for the regulation of grazing in forest areas with the involvement of communities, some areas to be “fully protected” and the levy of grazing fees (section 4.8.3). The Policy notes that “encroachment” on forest lands must be curbed, and no regularisation of existing encroachments should be permitted (section 4.8.1).

It was under this policy that the Government Resolution on Joint Forest Management was issued in 1990.<sup>52</sup> However, JFM continues to be implemented in project mode, without institutionalizing legalising participation in forest management.

#### **4.2.2 Joint Forest Management (JFM)**

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<sup>52</sup> Circular No. 6.21/89-FP dated 1 June 1990.

The Forest Policy of 1998 provided impetus for the introduction of joint forest management (JFM) in India. Two years after the policy was adopted, the central government issued a circular to all state governments,<sup>53</sup> recommending the involvement of local communities in the management of degraded forests and urging state governments to involve non-government organizations to facilitate the process. The programme was promoted through the Forest Policy and implemented through resolutions at the state level<sup>54</sup>. By the year 2000, JFM was operating in 22 of India's 28 states. Currently, JFM is operating in all 28 states, with 106,479 forest protection committees (22 million participants) covering 22.02 million hectares of forest.<sup>55</sup> The area under JFM is now comparable to the area under the protected areas network.<sup>56</sup>

Under JFM, local communities participate in the regeneration, management and conservation of degraded forests, in partnership with government forest departments, through the establishment of joint committees. Village communities are entitled to share in the benefits arising from such forests, but the extent and conditions of sharing arrangements are determined by state governments.<sup>57</sup>

In general, JFM involves the handing over of degraded forest land to villagers for the purpose of raising valuable timber species. Plantations are created and forests regenerated, with forest departments and village communities jointly responsible for forest management. After a period of 5-10 years, timber is harvested and the villages involved are entitled to receive a share of the revenue generated. This amount varies from state to state, with some communities receiving as little as 25 per cent, as is the case in West Bengal.

JFM has had varying success in different parts of the country. Its success or failure has depended on individual state policies and methods of implementation, and often on individual forest officers or local communities. The local context has also played an important part in the outcome of JFM initiatives. In states where community rights over resources had been totally extinguished through earlier government actions, JFM has provided an opportunity for communities to participate in forest use and management.<sup>58</sup> But where indigenous systems of forest use and management had survived, JFM has in many cases given rise to conflict and proved detrimental to community interests.<sup>59</sup> As opposed to an entire village making decisions, under JFM, decisions were taken by a few selected individuals along with the forest staff

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<sup>53</sup> Circular No. 6.21/89-F.P. dated 1 June 1990.

<sup>54</sup> [http://www.inspirenetwork.org/ford\\_forestry.htm](http://www.inspirenetwork.org/ford_forestry.htm)

<sup>55</sup> Ministry of Environment and Forests. *Annual Report 2007-08*. (Delhi, Ministry of Environment and Forests, Government of India, 2008). p. 193.

<sup>56</sup> [http://www.inspirenetwork.org/ford\\_forestry.htm](http://www.inspirenetwork.org/ford_forestry.htm)

<sup>57</sup> Apte, T. and Pathak, N. 2003. *International Forestry Networks in India*. A report for CIFOR, Bogor, Indonesia.

<sup>58</sup> Palit, S. 2001, Overview of Joint Forest Management Status, West Bengal. Draft paper prepared for a book on Joint Forest Management by Common Wealth Forestry Association, India Chapter. In Collaboration with Winrock International India and Ford Foundation, New Delhi.

<sup>59</sup> Sarin, M. 2001. "De-Democratisation in the Name of Devolution? Findings from Three States in India". CIFOR, Indonesia.

concerned. This left ample scope for non-transparent financial dealings and corruption, consequently encouraging distrust and politicisation of the entire initiative. JFM has also been criticized for taking a top-down approach in general, and for not handing over decision-making power to communities.<sup>60</sup>

In addition, many communities which participated in JFM received negligible or no benefits from the harvest. In the recent times some communities such as Mendha-Lekha, taking advantage of the transparency laws such as Right to Information Act (RTI) have asked the government to disclose the amount of profits received and share 50% (as per the resolution for Maharashtra state) with the local communities. After much resistance some figures have been released which “by no means present the real scenario” as per the local people.<sup>61</sup> Much debate and discussion in the country in last few years about the FRA had taken away the focus from JFM, however, as more and more communities are filing claims for the CFR provision, which unlike JFM gives both use and management rights to the people, in an effort to continue its hold over the forests, has revived efforts to bring more areas under JFM. Department, therefore, has faced serious criticism for hindering implementation of FRA, while promoting JFM.

#### **4.2.3 National Wildlife Action Plan 2002–2016**

This action plan outlines policy imperatives and strategic actions for a wide range of matters related to wildlife conservation within and outside protected areas, including the management of protected areas, the prevention of illegal trade in endangered species and the promotion of ecotourism. It stresses the importance of in situ conservation and recognizes that the livelihoods of millions are deeply tied to forest resources. It aims to ensure community participation in conservation generally, and supports the involvement of communities residing in and around protected areas in particular. Local communities are also to be included in the development of ecotourism in wildlife areas.

One of the policy imperatives outlined in the action plan is “Peoples’ Support for Wildlife”. It states: “Local communities traditionally depend on natural biomass and they must, therefore, have the first right on such resources. Such benefits must be subject to assumption of a basic responsibility to protect and conserve these resources by suitably modifying unsustainable activities.” It goes on to say that conservation programmes must attempt to reconcile livelihood security with wildlife protection through “creative zonation” and by adding new protected area categories “such as an inviolate core, conservation buffer, community buffer and multiple use areas” in consultation with local communities.

While the plan encourages community involvement in the formulation of management plans and their representation in management committees, it does not explicitly call for decision-

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<sup>60</sup> Sundar N, Jeffrey R and Thin N. 2001. *Branching Out: Joint Forest Management in India*. OUP. New Delhi. p26-27.

<sup>61</sup> Personal communication Subodh Kulkarni and Mohan Hirabai Hiralal, Vrikshamitra, Maharashtra and E-mail exchange with state forest department in May 2012.

making powers to be transferred. The role of communities in conservation is supplementary to that of government wildlife protection bodies and agencies. The plan specifically endorses the idea of community reserves and conservation reserves. This is the only specific recognition of CCAs (or potential CCAs) in the plan, apart from recommendations for two 'priority projects': one for the restoration of degraded habitats outside protected areas, which involves identifying "sites of community managed areas [...] where endemic or localised threatened species may continue to exist" and supporting their continued conservation (section IV-1.2); and the other for ensuring peoples' participation in wildlife conservation, which involves "encouraging" people to help protect and manage wildlife habitats outside protected areas, "including community conserved forests, wetlands, grasslands and coastal areas" (section VIII-9.3).

The action plan does contain a number of provisions that could benefit CCAs. Key among them are the recommendations concerning benefit sharing from tourism activities (section X-1.1) and the provision of financial and other incentives to communities participating in conservation efforts (section VIII-2.3 and VIII-9.2).

Also of potential relevance for CCAs are recommendations concerning the creation of a new central government-sponsored scheme to assist state governments in protecting wildlife and habitat outside protected areas (section III-2.1); and the development of special schemes for the welfare of local people outside protected areas "where critically endangered species are found" (section III-2.3). This recommendation resulted in the inclusion of scheme in the 11<sup>th</sup> Five Year Plan of India (with adequate financial resources) for support of wildlife conservation, including through ICCAs, outside PAs (see section 4.2.5 below for details on the scheme)

The recommendations for studies of "ethnic knowledge" to apply this knowledge to wildlife management and to obtain intellectual property rights to benefit local communities (section VI-4.1) may be of relevance in ICCAs with a long history of traditional management.

The action plan also calls for "time bound" programmes to assist voluntary relocation and rehabilitation of communities living in national parks and sanctuaries (section I-2.2); comprehensive guidelines on voluntary relocation from protected areas, starting with national parks in the first phase and including sanctuaries in the second phase (section VIII-6.1); the identification of strict conservation zones within protected areas (section II-1); all identified areas around protected areas and wildlife corridors to be declared as 'ecologically fragile' under the Environment (Protection) Act of 1986 (section III-5.2); and 'ecologically fragile' status also for crucial 'wildlife corridors', all biosphere reserves, World Heritage Sites, Ramsar sites and other areas declared or notified under international environmental treaties (section XI-5.2).

Despite the fact that specific timelines have been identified for achieving these objectives, there are few cases in which moves have been made for implementation, particularly on those issues which related to participation of local people and recognition of CCAs. This is mainly because of the absence of specific legal provisions under which the action plan could be implemented. The action plan's recommendations to involve people in the management of wildlife are not supported by the provisions of the Wildlife Act.

#### **4.2.4 National Environment Policy 2006**

As with most policy documents, the National Environment Policy contains many broad statements concerning the importance of community participation in various initiatives aimed at conservation. The Policy recognizes that communities have traditionally protected common resources such as “water sources, grazing grounds, local forests [and] fisheries” through “various norms” but notes that such norms have weakened (section 2). It acknowledges that the exclusion of local communities from the protected area declaration process and the loss of traditional rights in such areas have undermined wildlife conservation. It calls for expanding the country’s network of protected areas, “including Conservation and Community Reserves” (section 5.2.3), but does not specify how community rights and participation are to be ensured. The eco-development model is to be promoted in “fringe areas” of protected areas, to compensate communities for access restrictions within protected areas (section 5.2.3).

What may be of particular relevance to CCAs is the idea of ‘incomparable values’: “Significant risks to human health, life, and environmental life-support systems, besides certain other unique natural and man-made entities, which may impact the well-being, broadly conceived, of large numbers of persons, may be considered as “Incomparable” in that individuals or societies would not accept these risks for compensation in money or conventional goods and services. A conventional economic cost-benefit calculus would not, accordingly, apply in their case, and such entities would have priority in allocation of societal resources for their conservation without consideration of direct or immediate economic benefit” (section 4.vi).

The Policy calls for the establishment of mechanisms and processes to identify such entities (section 5.1.2), and recommends the inclusion, under this nomenclature, of “forests of high indigenous genetic diversity” (section 5.2.3), “several charismatic species of wildlife” (section 5.2.3), “ancient sacred groves and ‘biodiversity hotspots’” (section 5.2.4), “particular unique wetlands” (section 5.2.5), and “particular unique mountain scapes” (section 5.2.6).

The Policy also states that “Environmentally Sensitive Zones” should be defined as areas with resources of ‘incomparable value’ (section 5.1.3). It recommends the formulation of “area development plans” for such zones, and the creation of “local institutions with adequate participation for the environmental management of such areas” (section 5.1.3).

#### **4.2.5 Eleventh Five-Year Plan 2007–2012**

The ‘Development of National Parks and Wildlife Sanctuaries’ scheme was introduced in the 10th five-year planning period to support state governments in carrying out conservation activities in wildlife areas. Under the 11th Five Year Plan (volume 3, chapter 3), this scheme is re-named, ‘Integrated Development of Wildlife Habitats’, and its scope is widened to include the “management, protection, and development” of protected areas.

Among the initiatives to be taken under this scheme is the establishment of a system for surveys, inventories and socio-economic analysis to be used in management planning for protected areas, including community reserves and conservation reserves. The 11th Five-Year

Plan calls for “participatory management with village eco-development [as a] component of the programme.” It states that assistance should be provided for the management of “identified special vulnerable habitats of high conservation value” outside protected areas.<sup>62</sup> Not much information could be gathered on how this scheme directly benefited CCAs that operate without formal recognition (as was expected from the scheme by the civil society groups). Before its implementation the Biodiversity Division of the MoEF constituted a committee to develop a set of guidelines to support ICCAs under this scheme. The committee included civil society representatives such as Kalpavriksh. The report of the committee was finalised in the year 2006. Whether or not and how was it implemented could not be ascertained, till the time that this report was written. An informal enquiry in a few CCAs, however, revealed that one of the conditions to get assistance under this scheme was to declare the area a Community Reserve or a Conservation Reserve, which some CCAs, particularly in the state of Nagaland (where the CCAs legally belong to the local communities) agreed to, while others did not.

#### **4.2.6 Final Technical Report of the National Biodiversity Strategy and Action Plan (NBSAP) 2004<sup>63</sup>**

This document, prepared after an extensive 4 year consultative process, recognizes community conservation initiatives and stresses on legal, administrative and other kinds of support for ICCAs. It also stresses on developing guidelines for implementation of Joint Protected Area Management (JPAM). It contains a number of provisions for supporting CCAs and JPAM. Unfortunately, the final National Biodiversity Action Plan released by India in 2008, contains very little of the specific detail of this document.

#### **4.3 Traditional Knowledge, Intangible Heritage & Culture<sup>64</sup>**

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<sup>62</sup> Although the Eleventh Five-Year Plan does not mention financial support for ICCAs, a government report prepared in 2006 notes that “several community initiated and driven conservation programmes” exist, and recommends that budgetary support is provided to them:

Such CCAs exist in a wide spectrum of legal regimes ranging from government owned lands (both forest department as well as revenue department owned) as well as private owned lands. Such CCAs [community-conserved areas] may not necessarily be officially notified but should still be eligible for financial support as an incentive for community-led conservation practices.

This recommendation is reiterated in a report released in the following year.

<sup>63</sup> (<http://www.kalpavriksh.org/index.php/conservation-livelihoods1/72-biodiversity-and-wildlife/national-biodiversity-strategy-action-plan/224-nbsap-final-technical-report.html>)

<sup>64</sup> This section has been contributed by Shalini Bhutani, Independent Researcher, and has been written based on the following documents:

GRAIN & Kalpavriksh Environmental Action Group 2002 Traditional knowledge of biodiversity in Asia-Pacific: Problems of Piracy & Protection, GRAIN publications, October 2002

[www.grain.org/publications/tk-asia-2002-en.cfm](http://www.grain.org/publications/tk-asia-2002-en.cfm)

Kapoor, M., K. Kohli and M. Menon 2009.

India’s Notified Ecologically Sensitive Areas (ESAs): The Story so far...

Kalpavriksh, Delhi & WWF-India, New Delhi

Shalini Bhutani 5 October 2011 Traditional Knowledge, Modern Issues *mylawnet*

#### 4.3.1 Laws and Policies Relating to Traditional Knowledge or Communities' Intangible Heritage and Culture

CCAs *per se* might find some legal spaces in various laws for their physical protection in India, but this does not mean that all intangible aspects of a CCA, such as the knowledge of its local people, is also thereby 'protected'. For example, through the introduction of legal categories, conservation/community reserves in the WLPA, the State Government may declare a community reserve not only for protecting fauna, flora, but also *traditional or cultural conservation values and practices*.<sup>65</sup>

However, laws and policies on intellectual property (IP) do not seem to be in line with “protection of” traditional and cultural values under the WLPA. 'Protection' through IP laws in effect commodifies and privatises knowledge. Also, mainstream approaches for the protection of traditional knowledge separate the intellectual aspects from the physical resources on which they are based. Moreover, IP laws typically recognise identifiable 'inventors', and are incapable of capturing an undefined set of people possessing know-how. An CCA may geographically be a defined space, but on the local and traditional knowledge front it might share with other CCAs (particularly with those in similar ecological zones) certain biodiversity practices, local know-how and knowledge systems.

Several IP legislations are of relevance to the CCA discussion, yet they have inherent limitations. The Geographical Indications Act (1999) renders identity to products from a particular territory thus certifying their particular characteristics. The law grants protection to a collective of local producers and authorised users, whether they are artisans or craftsmen making a certain heritage-based product, or growers of a particular crop (Darjeeling Tea or Basmati Rice) or fruit (Alphonso mangoes). However, the Act is more about protecting the market for such products, rather than the actual landscape and the relations of people with it.

Likewise, the Protection of Plant Varieties and Farmers' Rights (PPV&FR) Act (2001) recognises 'farmer's variety' as a category for grant of breeder rights. This in effect reduces farmers' rights to a sub-category in an IP law and allows for exclusive economic rights over the developed variety.<sup>66</sup> The 'new' variety is required to be distinct, uniform and stable to be eligible for such

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[http://www.mylaw.net/Article/Traditional\\_knowledge\\_modern\\_issues/](http://www.mylaw.net/Article/Traditional_knowledge_modern_issues/)

Kohli. K and Bhutani. S, 2011 CHASING 'BENEFITS': Issues on Access to Genetic Resources and Traditional Knowledge with reference to India's Biodiversity Regime. Kalpavriksh and WWF-India, New Delhi  
[assets.wwfindia.org/downloads/chasing\\_benefits.pdf](http://assets.wwfindia.org/downloads/chasing_benefits.pdf)

Bhutani, S. 2012 Prized or Priced - Protection of India's Traditional Knowledge related to Biological Resources and Intellectual Property Rights, WWF-India, Delhi.

Bhutani, S. 2012 Genetic wealth belongs to people *d-sector.org*

<http://www.d-sector.org/article-det.asp?id=1758>

<sup>65</sup> Section 36(C)(1) of the WP Act 2002

<sup>66</sup> The breeder of a crop variety registered under the PPV&FR Act, has the exclusive right to produce, sell, market, distribute, import or export the variety. This is laid down in Section 28(1) of the said Act.

IP protection. This is in sharp contrast to local seed cultures of farming communities, which nurture (bio)diversity. A taskforce constituted by the national PPV&FR Authority identified 22 diverse agro-biodiversity hotspot regions in the country, some of which are also either centres of origin or centre for diversity for certain crop plants.<sup>67</sup> Agriculture in such areas is evidence of TK in the agro-pastoral interventions of the local human population. The proximity of these areas with existing protected areas/CCAs could be explored. The conservation strategies for these two distinct categories could possibly be synergised. The National Gene Fund set up under this law is, amongst other things, to be used for supporting the conservation and sustainable use of genetic resources including *in situ* collections and for strengthening the capability of the Panchayat in carrying out such conservation and sustainable use.<sup>68</sup> But ironically the monies in the Gene Fund are collected from fees charged upon grant of IP on planting material. Farmers who are engaged in the conservation of genetic resources of land, races and wild relatives of economic plants and their improvement through selection and preservation are also entitled for recognition and reward from the Gene Fund.<sup>69</sup> But such awards draw them into the IP system and become a means to get from them the economically valuable crop variety that they have developed. Ideally biodiversity-rich agricultural zones ought to be declared as 'IPR-free' areas towards freeing TK, intangible heritage and (agro/biodiverse) culture from IPR.

The Patent Act (1970) with amendments does not allow traditional knowledge *per se* to be patented. Yet, laws of other countries (such as that of US) that do not recognise oral knowledge as 'prior art' to invalidate patent claims lead to 'biopiracy'. Given that CCAs are biodiversity-rich areas, they are very vulnerable to bio-prospecting. Thus those advocating for legal protection of CCAs, also have to factor in the global struggle against tightening patent standards and their strict(er) implementation. The Government of India's policies and programmes for country-wide documentation of biodiversity traditional knowledge, be it through people's biodiversity registers or the Traditional Knowledge Digital Library (TKDL), have to be live-tested for their use to CCAs. Meanwhile, the Copyright regime is yet to fully address the concerns of folklore, leave aside making linkage to the CCA debates.

The community's wisdom cultures in CCAs may range from that on seeds, breeds and fisheries, to medicinal plants and forest resources. Laws and policies for the management of these are either newly emerging or being re-designed to reflect the dominant political economy. They all do not deal with traditional knowledge (TK) in equal manner. So the discussion on traditional knowledge, intangible cultural heritage (ICH) is spread across these diverse sectors with varying degrees of 'protection'.

The Biological Diversity (BD) Act (2002) and the implementing Rules (2004) deal with the access

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<sup>67</sup> Final Report of the Task Force 06/2007 constituted by the PPV&FRA, vide OM No.PPV&FRA/6-22/07/1312, dated October,08,2007 to identify the Agrobiodiversity hotspots in India for purposes of the 'National Gene Fund' usage.

<sup>68</sup> Section 45(2)(c) of the PPV&FR Act, 2001

<sup>69</sup> Ibid Section 39(1)(iii)

of both biological resources and TK. While detailed procedures are prescribed for such access, the experience has shown that involvement of local people, in any decision-making on local knowledge or resources has not become a culture in itself. It is hoped that countries like India that have committed themselves to the Nagoya Protocol would work towards insisting on prior informed consent (PIC) of local communities.<sup>70</sup> Meanwhile, the BD Act directs the Central Government to take measures for the protection of traditional knowledge and for the immediate ameliorative measures in case of overuse, abuse or neglect of biodiversity-rich areas. Local communities and traditional healers, such as *vaids* and *hakims* have been given the freedom to practice their activities sans having to seek approval under this Act.<sup>71</sup> Also a specific category under the BD Act – Biodiversity Heritage Sites (BHS), offers some space for CCAs. State-level Biological Diversity Rules may also provision for the particular socio-cultural needs of the local population.

But since the BD Act services the modern biotechnology industry, the access to biological resources and traditional knowledge that it provides for R&D and commercial use implies that products made from them would also have an impact on CCAs. Communities are confronting the real and potential threats to both their knowledge systems and the biological integrity of their natural environment as new genetically engineered (GE) seeds, fishes, animals, etc. are released in the open. For that reason, the policy document -- *National Biotechnology Development Strategy*, is also of relevance to this legal review. A proposed *Biotechnology Regulatory Authority of India (BRAI) Bill* will determine how biosafety concerns are addressed.

For the CCAs in forest areas, Forest Rights Act 2006, makes reference to traditional knowledge. Section 3 (k) recognises and vests the forest dwellers' *right of access to biodiversity and community right to intellectual property and traditional knowledge related to biodiversity and cultural diversity*.<sup>72</sup> The FRA also recognises *any other traditional right customarily enjoyed by the forest-dwellers covered under it (section 3 (l))*.<sup>73</sup> But so far in the implementation of this statute, there is little or no evidence of these provisions having been invoked.

A Bill on intangible cultural heritage (ICH) is also in the pipeline in India, but the draft is not accessible to the public yet. The National Commission for Heritage Sites Bill, 2009 has also not been passed by Parliament yet at the time of writing this paper. Existing laws for the conservation of the art and cultural heritage focus more on the protection and conservation of monuments, archaeological sites and remains. The thinking and with it the law has yet to evolve into viewing natural sites where local people's cultures survive with the natural environment, as an intrinsic part of national heritage.

As regards linguistic rights, they are enshrined as *cultural and educational rights* in the

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<sup>70</sup> The Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization under the Convention on Biological Diversity <http://www.cbd.int/abs/>

<sup>71</sup> Section 7 of the BA Act, 2002

<sup>72</sup> Section 3(1)(k) of the FR Act, 2006

<sup>73</sup> Ibid Section 3(l)

Constitution of India.<sup>74</sup> The right is not confined to minority communities. Nonetheless, language as a part of bio-cultural heritage has not yet received much attention.

#### **4.3.2 Spaces for Self-determination, Local and/or Customary Decision-making and Governance Systems, and Access to or Tenure Over Territories, Areas, and Natural Resources**

Most of the legislations discussed above provide limited space for community sovereignty. This is despite the fact that Constitutional Amendments mandate the devolution of powers to the local level, both in urban and rural areas through panchayats and municipalities.<sup>75</sup>

The Biological Diversity Act too was meant to be a step to take this further in the area of biodiversity governance, through the Biodiversity Management Committees. The realities are quite otherwise. For BMCs are becoming token institutions from which the state extracts both resources and knowledge. This behind a veneer of legally prescribed 'consultation' with local communities. Instances where the State Biodiversity Board recognises existing customary structures and governance systems are far and few; such as in Nagaland where the draft Biological Diversity Rules seek to recognise traditional village councils for decision-making on local resources. But the Act is essentially facilitating 'access'. Therefore, there are concerns about how its implementation will put at risk local people's own access on the resources that their lives and livelihoods depend on. The National Biodiversity Authority (NBA) under the Act is in the process of designing guidelines on BMCs and it is thus an opportune time to input with the CCA-related concerns. Meanwhile, the BHS Guidelines provide a possibility to link the discussion of landscapes to the real conservators.

While the FRA does recognise rights of people, but mere 'rights' in law are not adequate. Legislative measures have to be backed by appropriate administrative reform to give effect to the intent of the law. Rights are also beginning to take hue from the real world in which they are situated. Far more 'economic' value is attached even to rights today. The language of 'rights' is incapable of capturing the relationship that local communities have with their natural world and knowledge systems. Legal systems both in India and abroad are struggling to reconcile customary laws with western-styled laws on traditional knowledge and/or ICH.

In this context IP laws pose a particular challenge. For if an IPR is granted to an 'outsider', it shifts control out of the community. Alternatively, if a community or any of its members is granted an IPR, it may preclude other communities/members from continual practice of or collective association with certain practices. For instance, IP-'protected' seeds owned by a public institute or a private corporation can impose restrictions on small farmers using them. Modern-day IP systems also view knowledge very differently from how intellectual heritage is

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<sup>74</sup> Article 29 (1) of the Constitution of India on "Protection of interests of minorities" lays down that *any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.*

<sup>75</sup> The 73rd and 74th Constitutional Amendment Acts, 1992

viewed by the local communities. This goes to the core of self-determination as mere territories demarcated as CCAs is not enough for local people; they have to be able to live by what they know, have known and will know about the living world in that area.

The Constitution of India specifically refers to IP by giving the Parliament the power to enact laws relating to patents, inventions and designs; copyrights; trademarks and merchandise marks.<sup>76</sup> In the last two decades since economic 'reforms' in India, most legislative changes on IP have been induced by international law. There is still a rife debate in the country on whether laws passed by Parliament to supposedly effect India's treaty obligations should actually be accepted by people who have otherwise not been given any opportunity to deliberate it.



**Women in Dangejheri village in Orissa confronting illegal fuelwood collectors inside their CCA.  
© Neema Pathak Broome**

Another Constitutional debate that has re-surfaced in recent time is with respect to land. The Constitution of India does not recognise the right to property as a fundamental right, yet it lays

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<sup>76</sup> Part XI, Chapter I, Article 246, as read with the Seventh Schedule, Union List, Section 49

down that no person shall be deprived of property except by authority of law.<sup>77</sup> The the Draft Land Acquisition and Rehabilitation & Resettlement Bill, 2011 also becomes directly relevant for the local communities seeking security for CCAs.

An area often neglected by law and policy on knowledge management, is that of the women and knowledge. Currently, there is little official protection for women as knowledge-keepers. The CBD itself (1992) recognises “the vital role that women play in the conservation and sustainable use of biological diversity” and affirms “the need for the full participation of women at all levels of policy-making and implementation for biological diversity conservation”.

#### **4.3.3 State Agencies Mandated to Develop and Implement these Laws and Policies?**

The regulation of different aspects of traditional knowledge and ICH is strewn across different ministries of the Government of India at the Central level. These include:

- Ministry of Environment and Forest
- Ministry of Agriculture
- Ministry of Tribal Affairs
- Ministry of Health and Family Welfare
- Ministry of Human Resource Development
- Ministry of Rural Development
- Ministry of Panchayati Raj and
- Ministry of Commerce
- Ministry of Law and Justice
- Ministry of Minority Affairs.

There is little or no coordination amongst these on the issue of traditional knowledge or ICH. Even in inter-ministerial processes trade interests take pre-eminence at the macro-level. It is the Ministry of *Commerce*, through its Department of Industrial Policy and Promotion that is now working on a draft TK Bill. The DIPP in 2009 constituted a Task Force on Traditional Knowledge. It was meant to submit its report along with a draft enactment, if required, for ‘protecting’ TK, including traditional cultural expressions.

Other than these, the National Knowledge Commission and the Planning Commission, through

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<sup>77</sup> Article 300A of the Constitution of India

its many sub-groups, have been making recommendations to both the Prime Minister's Office and the Government of the day on matters of TK & ICH.

## **5. JUDGEMENTS<sup>78</sup>**

The judicial system has, in recent times, become one of the main arenas in which the ineffective implementation of laws and policies related to conservation has been challenged. Below are a number of significant judicial decisions that are related to community conservation. While some of these could play an important role in promoting community based conservation in the country by setting a precedent, there are others which, by neglecting community voices or discouraging community initiatives, can have a negative overall impact on the future of CCAs in India. Sometimes the statement preceding the main judgement has analysis and/or opinion of the *jure* which can be of great significance and be used in future for arguments in the court of law depending on the context of a given case.

### **5.1 Cases that Deal with Access Rights and their Implications:**

There have been many instances where the High Court or the Supreme Court has passed judgements affecting access rights of local forest dependent communities of the area. Some such examples include:

#### **5.1.1 *Centre for Environmental Law v Union of India and Others*<sup>79</sup>**

Viewing the lack of settlement of rights processes under the WLPA in Protected Areas as one of the reasons for their ineffective management, WWF-India filed a case in the Supreme Court urging it to direct states to implement the WLPA in full spirit and letter. The resulting order in 1997 directed the *“concerned State Governments/ Union territories to issue proclamation under Section 21 (related to settlement of rights) in respect of the sanctuaries/ national parks within two months and complete the process of determination of rights and acquisition of land or rights as contemplated by the Act within a period of one year...”* Following the judgement, many state governments rushed the process, and in doing so either ignored a huge number of existing rights or accepted all human uses without adequate consideration. Pre-existing CCAs in such protected areas were not recognized. The process of settlement of rights, both because of its nature and the haste with which it was carried out, also ignored customary rights and conservation practices.

#### **5.1.2 *T.N. Godavarman Thirumulkpad v Union of India and Others***

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<sup>78</sup> This section has been researched and written by Shiba Desor (member Kalpavriksh) and Mridula Vijairaghavan (Student B.B.A.,L.L.B – 2<sup>nd</sup> year, Symbiosis Law School, Pune) in June 2012 with help from Neema Pathak Broome, Kalpavriksh, Pune.

<sup>79</sup> *Centre for Environmental Law v Union of India and Others* WP(C) No. 337 of 1995

In 1995, a petition was filed by T.N. Godavarman Thirumulpad (Writ Petition No. 202) against the large-scale deforestation activities occurring in Gudalur Taluk of Nilgiri in Tamil Nadu. In response to the petition, a series of landmark orders affecting forest conservation were passed by the Apex Court<sup>80</sup>. One such order is the 14 February, 2000 order restraining the state government from ordering the removal of dead, diseased, dying or wind fallen trees, drift wood and grasses from any national park, game sanctuary or forest. On 28 February, 2000 the order was modified to remove the word 'forest'. The Order ignored the fact that several million people living in and around protected areas across the country<sup>81</sup> derive livelihood support from the collection and sale of non-timber forest products. The Order was followed by a 2002 amendment to the Wildlife Act (Sections (29) & 35 (6)), which prohibited the commercial use of forest produce taken from protected areas. A subsequent circular issued by the Ministry of Environment and Forests clarified that henceforth "rights and privileges cannot be enjoyed in protected areas".<sup>82</sup> These measures led to a complete ban on the removal of non-timber forest produce from national parks and sanctuaries for any commercial purpose, including minor local transactions, all over India, causing severe hardship and starvation for, many forest dwellers<sup>83</sup>.

With respect to community-based conservation efforts, the denial of access to forest products alienates communities from the ecosystems they have traditionally conserved and managed. An example where such a denial has affected local management practices of a community is the *soligas* of Biligiri Rangaswamy Temple (BRT) Wildlife Sanctuary in Karnataka. In BRT, before the declaration as a sanctuary the *soligas* had their traditional way of forest management. They subsisted on shifting cultivation, along with gathering of NTFP for subsistence purposes and some amount of hunting, engaged in a customary practice of setting litter fires annually. As a consequence of a mixture of Supreme Court orders and WLPA provisions, their traditional practice of setting litter fires (which had ecological and cultural significance) was banned. The *soligas* claimed (and there have been other research reports supporting the claims) that the suppression of traditional fires has led to a degradation of the area with increase in the spread of invasive species *Lantana camara*. The 2006 ban on NTFP collection in BRT, because of the above mentioned order, also led to increased tensions between the local community and the Forest Department and an increase in unemployment and wage labour.

### 5.1.3 V. Sambasivam vs. Union of India and Ors<sup>84</sup>

Even an Act as revolutionary in the Indian` context as the Forest Rights Act has faced the negative impacts of judicial activism. In February 2008 a writ petition was filed by a retired Deputy Conservator of Forests claiming that the Forest Rights Act is contrary to the provisions of the Constitution and many earlier orders passed by Supreme Court and seeking a declaration

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<sup>80</sup> T.N. Godavarman Thirumulpad v Union of India and Others, Writ Petition No. 202 of 1995.

<sup>81</sup> A. Kothari, N. Singh, and S. Suri. Conservation in India: A new direction. In *Economic and Political Weekly*, October 28, 1995

<sup>82</sup> Circular F.No. 2-1/2003-FC, dated 20 October 2003.

<sup>83</sup> Wani and Kothari, *Conservation and People's Livelihood Rights in India [The UNESCO Small Grants Programme]*, 2007.

<sup>84</sup> V. Sambasivam vs. Union of India and Ors, 30-04-2008, Writ Petition 4933/2008

of the Act as illegal, contrary and void. His arguments stressed that enforcement of the Act will necessarily lead to huge negative ecological impacts through both forest use rights and provision of forest diversion for public utilities. On February 22nd, 2008, the Madras High Court issued an interim order in this case staying alienation of any land through grant of *pattas* (titles) or by any other manner under the Forest Rights Act and any felling of trees under the development rights section of the Act. Against this order a Special Leave Petition was filed with the submission for vacating the interim order as it will obstruct implementation of the Act. A collective of local forest dwellers, the *Adivasigal Kurumbas Munnetra Sangam*, were included as respondents for this case by order of April 1, 2008, as they had also requested for vacation of the interim order.

On April 30th, 2008, the HC issued the order that the process of claim filing and verification for forest rights and process for diversion of forest land for public utilities may continue as before as per the provisions of Forest Rights Act, but before actual issuing of any title or actual felling of any trees, orders will have to be obtained from this court.

Such an order, when seen in the context of its impact on the process of claiming community forest rights for forest use, management and conservation under Forest Rights Act by local communities, is very discouraging. Although the order does not restrict anyone from initiating the process of filing the claims, at a practical level it has been often misinterpreted. As a result, although 21,781 claims (out of which 3361 are claims for community forest rights) have been filed in Tamil Nadu (as per Ministry of Tribal Affairs status report on FRA 31 May, 2012), no title has yet been distributed despite the fact that 3,723 titles are ready for distribution by the District Level Committee (DLC), constituted under the law for this purpose. Thus, considering the fact that tens of thousands of forest dwellers will be eligible within Tamil Nadu for recognition of rights, a process where each title needs to be accepted first by the High Court inevitably stalls the entire implementation of the Act in the state.

## **5.2 Cases in which the Judiciary Acknowledges the Role of Forest Dwellers' in Conservation**

### **5.2.1 *Salem Mavatta Ezhpulli Malaivazh vs The State Of Tamil Nadu*<sup>85</sup>, decided on 20 October, 2009,**

**This case** was heard by the Madras High Court, which deals with a piece of land that has been declared as reserve forest, rights over which are being claimed by 217 individuals. They claim to be cultivating this land since 1991. However, as per the judgement, they do not have adequate proof, and in the absence of signs of traditional habitation such as mosques, temples, burial ground, ancient sculptures, they were not granted the land, but are given another opportunity to prove their usage of the land and their origin, to ultimately claim rights over it.

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<sup>85</sup> *Salem Mavatta Ezhpulli Malaivazh vs The State Of Tamil Nadu*<sup>85</sup>, 20-10-2009, Writ Appeal No.376 of 2008

The case does not pointedly deal with community conservation rights, but in the course of the judgement, the Court makes it apparent that it acknowledges the importance of local communities for conservation through the following statement: “..the forest dwelling Scheduled Tribes and other traditional forest dwellers, who are depending on forest produce and the forest, conserve bio-diversity and maintain the ecological balance by conserving the forest. They do not allow others to destroy the forest. It is for the said reason, even under the Tamil Nadu Forest Act, 1882, the claim of rights of occupancy and ownership, even in the reserve forest was recognised and is still continuing.”

### **5.2.2 Jagpal Singh & Ors. vs State Of Punjab & Ors.<sup>86</sup>**

In the landmark judgment decided on 28 January, 2011, the Supreme Court of India held that there is an urgent need for saving and restoring the common lands to its original purpose, so that the same may be used by the people at large for its common use and has directed all the State Governments to take steps for restoration and preservation of common lands. Following this order, the State of Rajasthan launched a program for protection of common land and has announced the draft Rajasthan Common Land Policy, 2010<sup>87</sup> Although not used specifically for the purpose of community conservation, this pronouncement could be used for lobbying in support of community control and conservation of the commons, particularly those community resources and commons targeted by industrial and mining projects.

### **5.2.3 T.N. Godavarman Thirumulpad vs Union Of India & Ors, 13 February, 2012<sup>88</sup>**

This judgement given on 13 February, 2012 provides another instance of the Court's acknowledgement of the importance of community conservation, where the Apex Court acknowledged that community conserved areas are important corridors for wildlife between various Protected Areas in the country through the following statement: “Fact is that many important habitats still exist outside those areas which require special attention from the point of view of conservation...The tenurial status of such habitats ranges from government-controlled Reserved Forests to Protected Forests, revenue forests, interspersed vegetation in plantation sector, revenue lands, village forests, private forests, religious forests, territorial waters, *Community Conserved Areas* etc. Such habitats also act as corridors for wildlife between PAs thus ensuring connectivity in the landscape.”<sup>89</sup>

The judgement was made when the Amicus Curiae sought directions from the Central and state (Chattisgarh) government for allocation of funds and preparation of a rescue plan for endangered species of wild buffalo. The earlier plan for financial assistance had been restricted to Sanctuaries and National Parks since it was formulated before the categories of Community

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<sup>86</sup> *Jagpal Singh & Ors. vs State Of Punjab & Ors.*, 28-01-2011, Civil Appeal No.1132 /2011

<sup>87</sup> The Indian Express, Government bans sale, transfer of Panchayat Common Land 13-06-2012, <http://www.indianexpress.com/news/govt-bans-sale-transfer-of-panchayat-common-land/961202/>

<sup>88</sup> *T.N. Godavarman Thirumulpad vs Union Of India & Ors*, 13-2- 2012 Writ Petition No. 202 of 1995.

<sup>89</sup> Emphasis added.

Reserves and Conservation Reserves were included in Protected Areas through the WIPA 2003 amendment. However there are other aspects of the same judgement, some of which contradict this acceptance, that are discussed in the next section of the review.

### 5.3 Cases Neglecting the Significance of CCAs

#### 5.3.1 *T.N. Godavarman Thirumulpad vs Union Of India & Ors, 13 February, 2012*

Many times a single judgement can have multiple facets and set contradictory precedents depending on which part of the judgement is being focused upon. An example is the judgement of the case mentioned above. Although recognising the value of community conservation in the paragraph above, the court still neither goes into the issues of governance nor advises the government to explore ways of achieving conservation through people's participation. Instead it goes on to say: "*Provision for availability of natural water, less or no disturbance from the tourists has to be assured. State also has to take steps to remove encroachments and, if necessary, can also cancel the patta (titles) already granted and initiate acquisition proceedings to preserve and protect wildlife and its corridors. Areas outside PAs is reported to have the maximum number of man- animal conflict, they fall prey to poachers easily, and often invite ire of the cultivators when they cause damage to their crops.*" This is mentioned without any reference to the Forest Rights Act which provides for recognition of rights and also ensures that no existing rights can be modified without the consent of the gram sabha.

The judgement directs the State Government to develop an annual plan of operations as per the centrally sponsored 'Integrated development of Wildlife Habitats' scheme<sup>90</sup>. The rationale given in the judgement is: "*As per the Scheme and the Act, the State Government is empowered to notify conservation reserves and community reserves for protecting the landscape, seascapes, flora and fauna and their habitat. The Act also empowers the State Government to declare any private and community land not comprised within the national parks, sanctuaries or conservation reserves as community reserves for protecting fauna, flora and traditional or cultural conservation values and practice.*"

Despite acknowledging earlier in the same judgement the conservation value of community conserved areas lying outside the network of PAs, it continues to focus on bringing areas under legal categories of protected areas rather than encouraging informal and community driven initiatives or traditions of conservation. In a country like India where population is huge and forests are contested spaces, there has to be essentially a reliance on both areas designated legally as PAs and areas where local groups and communities are informally or through local institutions conserving ecosystems or protecting certain species. This judgement although good in some parts, also has elements which could negate the very concept of CCAs, such as:

- Mentioning that it is the responsibilities of the state government to cancel existing *pattas* (title deeds) if need be for endangered species conservation; and

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<sup>90</sup> See section 4.2.5 of the paper for a note on Integrated development of Wildlife Habitats scheme

- Not mentioning that the above should happen following procedures provided for in the FRA.

Had the judgement (after its acknowledgement of conservation value of areas outside the PA network) mentioned that the support for conservation could come to the CCAs irrespective of whether they fall in the legal category of protected areas or not, it would have become a landmark judgement.

Dependence on judgements therefore could be a double edged sword and is best avoided till it becomes a last resort. Having said that, sometimes while the final judgement may not favour community conservation, some acknowledgements and admissions made during the course of the case proceedings (like the acknowledgement of forest dwellers' role in conservation in the Salem Mavatta case, or the acknowledgement of CCAs as serving as wildlife corridors in the present case) can be used to strengthen the arguments in favour of CCAs.

### **5.3.2 V. Sambasivam vs. Union of India and Ors.<sup>91</sup>**

This judgement which was previously discussed in the first section in relation to its implications on implementation of FRA and indirect implications for community conservation is also discouraging CCAs considering the rationale the High Court gave for its decision. It had reasoned: *“A perusal of the government guidelines also shows that diversion of forest lands subject to certain conditions has been under the consideration of the government for some time. However, in view of the apprehensions voiced by the petitioner and the possible ecological abuse, we feel that pending disposal of the writ petition, **a balance should be struck between the implementation of the Policy and the rights of the Scheduled Tribes on the one hand and the ecological balance and the issue of sustainable development on the other. We are also not very confident of how strong a check the Gram Sabhas will provide if a claim is made by the Government that felling of trees is required for the construction of certain facilities.**”* (Emphasis added).

Such a statement makes it seem as if implementation of FRA necessarily implies the necessity of a trade-off between rights and ecology, and goes against the preamble of the Forest Rights Act. On the other hand, the preamble recognises the status of forest dwelling people as ‘integral to the very survival and sustainability of the forest eco-system’, rather than excluded from its conservation, as is reflected in the Act’s provisions which give them ‘responsibilities and authority’ for ‘strengthening the conservation regime of forests’. While the provisions of the Act gives communities rights to protect, conserve and manage forest resources, the implementation of the law is being hindered by such judgements.

Overall, there are few judgements that expressly engage with community conservation. While some remarks made within the judgements can be used to strengthen arguments in favour of CCAs the overall decisions in most cases continue to ignore the significance of community

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<sup>91</sup> V. Sambasivam vs. Union of India and Ors, 30-04-2008, Writ Petition 4933/2008

conservation. Also, by persistently denying access to forest use for local communities, the court is in fact undermining community conservation.

## **6. IMPLEMENTATION**

As mentioned above the national and state policy environments within which ICCAs are located have a great influence on their success and failure. More important than having this policy, environment is also the manner in which these laws and policies are implemented and the attitudes of those implementing these.

As has been discussed in the sections above that there already exist spaces in the law for providing much needed security to the conserving communities. However, as illustrated in the various examples presented below (see case study on Mendha Lekha and case study on Nellapattu Bird Sanctuary below) every time the concerned communities have tried to use them they have faced challenges engaging with the relevant government officials. Numerous such efforts have thus failed because of inappropriate implementation. For example, despite a widespread and well-documented community forestry movement in the state of Orissa (reportedly about 10,000 community forestry initiatives in the state), the FRA remains largely unimplemented. While the implementing agencies are moving slowly on the FRA, they are fairly quick at implementing schemes such as the Joint Forest Management Scheme (JFM) which not under any law and provides ample space in the process of implementation for greater powers in favour of the government agencies. There are numerous examples of community forest management in Orissa where JFM was implemented in areas where communities were already managing their resources. In some cases (subject to the interest level and social sensitivity of the implementing officer) JFM provided the support the communities needed. However, in the majority of cases JFM led to the further break down in existing systems. Where the village community was strong such as Mendha Lekha, JFM could be implemented in its own terms and conditions, but in most cases JFM brought about detrimental changes because of the manner in which it was implemented. Communities which had a custom of collective decisions-making changed to JFM decisions being made by a few selected individuals along with the forest staff concerned. This left ample scope for non-transparent financial dealings; leading to corruption, and the concomitant spreading of distrust among stakeholders and politicisation of the entire initiative.

*Van Panchayats (VP)*, which were arguably one of the strongest legal spaces for forest-based CCAs in India (although applied only to the hill state of Uttarakhand) since 1931, have been systemically diluted over the years with final amendment being in 1997. Because of these amendments VPs in Uttarakhand have been affected by imposition of the JFM scheme. Kharg Karki, a village in Uttarakhand Champawat district has a VP formed in 1954. The VP was largely functioning well till JFM was introduced in 1998. Within 6 months of this, the VP Sarpanch resigned due to friction with Forest Department staff over handling of budgets. Since then the village has not been able to recover from the disruption. In another case, there was an old VP, formed in 1945-47 covering 4 villages, which was functioning pretty well. Once JFM started in 1999, the forests were divided into 4 VPs, one for each village. As the forest area and its

composition for the 4 villages is not uniform, some of the villages are left with forest patches with chir pine which is much less useful than broad-leaved species like oak. This has upset the villagers to the extent that most women do not participate in the forest management activities anymore.<sup>92</sup>

In Buldhana district in Maharashtra the situation was slightly more complicated, here JFM was successfully initiated in some villages by a forest officer. JFM provided space for communities to come together for protection of the resources that were under threat of degradation. Within a couple of years some parts of these jointly managed forests came under the newly established Gyanganga Wildlife Sanctuary, bringing with it the restrictive provisions of the Wild Life (Protection) Act (WLPA). Local people's efforts at conservation and the existing local institutions were discounted and became officially defunct. This created a serious conflict situation. This initiative had the potential of becoming the country's first jointly managed protected area, if only wildlife authorities had taken advantage of the existing cordial relationship between the people and forest officials. However, the straitjacketed use of the WLPA brought the initiative to the verge of breakdown.

Similarly, in Kailadevi Sanctuary of Rajasthan, local people had forest protection committees much before the area was declared a protected area. Many years after the declaration of the sanctuary, the Forest Department began implementing the official ecodevelopment scheme. The existing FPCs were co-opted to be the ecodevelopment committees (EDCs). After half a decade of ecodevelopment the scenario has completely changed. Whereas in the past these FPCs had numerous meetings on village and forest conservation issues, now many months pass before a single meeting takes place, mainly because of unavailability of the forest official, whose presence is mandatory for an EDC meeting. Ecodevelopment also came with funded projects and plans—community participation in conservation is therefore now more to avail the financial and other opportunities rather than a community feeling and/or concern for degrading natural resources as was the case earlier.

A few attempts have also been made in the recent times to bring some CCAs under the WLPA as Community Reserves and Conservation Reserves. The experience with those has not been very encouraging so far. In case of Kokare-Bellure in Karnataka, which is a traditional bird protection site and also identified as an IBA, there was an attempt to declare this a community reserve. Instead of free and prior informed discussions with the villagers, the proposal was mooted by the state forest department without informing the conserving community. As a result the proposal and declaration were both rejected by the community when the issue came to their notice. Kokare-bellure, in fact have had to ward off many such efforts by outside agencies to “support” their initiative, either by building infrastructure or by bringing in large investments, all forgetting, however to consult the communities that they intended to support.

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<sup>92</sup> Sarin, M. 2001. From Right Holders to 'Beneficiaries'? Community Forest Management, Van Panchayats and Village Forest Joint Management in Uttarakhand. CIFOR, Indonesia.

In some areas the process of declaring a protected area has taken place without realising the existence of the CCA but because of the ecological value of the area. As such declaration does not require exploration of what local systems of management and conservation already exist and most officially designated protected areas (national parks and wildlife sanctuaries) are completely exclusionary and alienating, such declarations have mostly impacted the ICCAs negatively. For example bird conservation sites such as Nellapattu in Andhra Pradesh were declared a wildlife sanctuary, which is a category that imposes strict restrictions on the local people. The area is still a sanctuary much to the dissatisfaction of the local people who have traditionally protected the birds (see case study below).

There are some civil society organizations in India who believe that an ideal law or policy may never come. While demanding changes in the existing legislation or lobbying for completely new laws, they are also experimenting with combining the strengths of various laws or suggesting relevant changes in specific laws. If implemented well the strengths of different laws can be combined to provide legal support to ICCAs. A good example of combining the strengths of various laws (despite their individual limitations) can be seen in Gadchiroli district of Maharashtra (another effort that was initiated in village Mendha-Lekha). A few CCAs and civil society organizations are trying to implement the Biological Diversity Act, the Forest Rights Act and the Employment Guarantee Scheme of the Central Government together.

The Biological Diversity Act (BDA) provides for all village communities to form a decentralized system of biodiversity management, namely, the Biodiversity Management Committee (BMC). Unlike many other Acts this Act provides fair amount of autonomy to the village communities vis-à-vis the constitution of the BMC. BMCs also have detailed guidelines which can be used for their formulation and working. Additionally, BMCs can also be authorized to deal with intellectual property rights and can claim benefits from use of local resources and knowledge. However, the Act does not address the issue of rights and access over the resources that the BMCs are expected to manage. This has been one of the major *lacunae* of most laws relating to natural resource management. On the other hand, the Forest Rights Act enacted in 2006 provides for the villagers to claim as a, “community forestry resource” patches of forests that they have been traditionally using, managing and protecting. The later would thus establish a community ownership over the concerned resource. Although FRA also provides for a committee to be formulated for the purpose of management and conservation, the scope and actual nitty-gritty of how this committee is to be formed and so on, have not been specified in the Act. Both the above Acts provide for village communities to carry out detailed resource mapping and biodiversity inventories which would be crucial for establishing management strategies. Finally, to be able to make conservation more effective and sustainable it is also important to link it with local livelihoods. To be able to do this the National Employment Guarantee Scheme has been used. The scheme provides for village communities to plan for village development and enlist the number of people requiring employment and kind of activities needed for village development. Once this list is given to the government, it is mandatory for the government to provide employment to those people for those activities, if found feasible. Although very promising this is still at the level of an experiment but more and

more groups are inclined towards trying this out but much will depend on the process of implementation and support the government agencies are willing to provide.

At the request of the Government of India, organizations like Kalpavriksh have come together to produce guidelines for various existing laws for their effective implementation. For example a set of guidelines have been submitted to the Ministry of Environment and Forests (MoEF) for implementation of Biodiversity Heritage Sites under the Biological Diversity Act 2002. If implemented these guidelines could help provide legal space for a large number of CCAs in India. Similarly, a set of guidelines were submitted to the MoEF in the year 2004 for implementation of the provision of Community Reserves, though unfortunately the guidelines have not been accepted yet. A set of amendments in the text of the Act was also suggested, such that more CCAs could take advantage of this provision. More recently in the year 2009, a set of guidelines have been provided to the Ministry of Environment and Forest towards effective recognition of CCAs. All of these emphasise that as much as the actual provisions of the law, it is the attitudes and principles with which they are implemented which will help in the recognition and support of CCAs in the country.

## **7. RESISTANCE AND ENGAGEMENT**

Ever since the colonial times, followed by post-independence era and more so since India adopted an open economy in 1991, there has been a paradoxical situation, whereby on the one hand areas are being cordoned off for wild life protection, and on the other hand many other areas have been facing tremendous development pressures. For example, over 70% of forest land in India cleared for mining since 1981 has been in the period 1997-2007.

Forest dependent communities are suffering on both counts as their resource base is shrinking both from being declared closed areas and because of being diverted for development. Together, these two processes have displaced over 60 million people from the country, mostly disprivileged and ecosystem dependent. This model of conservation and development has rejected the role of natural ecosystems in sustaining local economies. This model of aggressive development at the expense of nature and centralised conservation at the expense of local people has forced more and more people to share resources from smaller and smaller areas. This also has had serious impacts on people's traditional systems of resource management and use, often causing inter-community conflicts. Traditional systems of management have also suffered from take-over of land and resources by the governor statement thus negating people's rights and responsibilities towards managing their own resources. Even when legal and policy measures towards decentralisation are taken, they are not really with an intention of bringing about socio-political changes but about turning the state-people relationship to that of benefactor-beneficiary relationship.

Laws related to environmental clearances have been systematically diluted or seriously violated by the state and state supported companies. In the last few years, processes like public hearings for large development/industrial projects (meant to take into account the opinions of the local people) have been held in ways that are doctored to suit the project proponents. In

states like Jharkhand, Orissa, Chhattisgarh and Maharashtra, many tribals and cultivating communities have been losing their lives in struggles against such development projects.

Given the above scenario, it is not surprising therefore that through the history of development of forest related legislation mentioned above there have been constant uprisings and struggles of local communities opposing the same. Depending on the level of disempowerment and/or support received, these struggles have ranged from organized networks lobbying for a change through peoples movements (*dharnas* and *andolans* on ground), to silent, unorganized disobey of the laws. Over the decades there have been movements and agitations against the forest policy, Wildlife Protection Act, Forest Conservation Act, the Joint Forest Management policy and the Ecodevelopment programme. Grassroots movements have stood up in arms against huge amounts of loans that the government has often taken for the above mentioned programmes from international institutions such as Environment Monitory Fund (EMF) and the World Bank (WB). The net result of all these movements have been occasional changes in the policies or slight amendments in the existing laws to “accommodate people’s issues”. Amendments in the existing laws are unlikely to be able to take into account people’s issues as these laws are based on very different fundamentals. The roots of most of the forest laws in India, as explained earlier, lie in appropriating resources for commercial use of the colonial government or the elitist views on conservation. It is this understanding at the grassroots movements which led to the implementation of rights based legislations such as the Forest Rights Act 2006 and Panchayat (Extension to Scheduled Areas) Act 1996. However, the struggles and movements will continue and with much more fervour (as shown in the case study on Mendha below), if the real change as envisaged by these laws is to be realised on the ground.

## **8. LEGAL AND POLICY REFORM**

Many groups in India believe that if CCAs are to be *truly* supported and communities’ concerns are to be *truly* reflected in conservation laws and policies, then piecemeal amendments will not work because most existing conservation laws and policies fundamentally violate the principle of local governance. However, it may not be practical to frame a single law that provides adequate legal cover for the wide range of CCAs in India. Indeed, a single law of this sort may not even be desirable, given the diversity of objectives, ecosystems, species and management practices involved. It is perhaps more important to ensure that key provisions required to support and strengthen CCAs are included in the legal framework, and that provisions which undermine the operation of CCAs and the rights of communities are not legally sanctioned. This may need to be done through both specific amendments to existing statutory instruments and by framing new laws where they do not exist, for example for marine tenure systems. Some specific suggestions on changes in the protected areas laws have been mentioned above. What is important for the law and policy makers to keep in mind are certain principles while drafting laws and policies towards empowering local communities for attaining conservation as well as

strengthening their livelihoods. Principles of good governance are now internationally accepted and these include<sup>93</sup>:

- a. Recognition of diverse knowledge systems;
- b. Openness, transparency, and accountability in decision making to encourage fair and just governance;
- c. Inclusive leadership;
- d. Mobilizing support from diverse interests, from within the community;
- e. Sharing authority and resources and devolving/decentralizing decision-making authority and resources where appropriate; and
- f. Constant open and transparent dialogues with and within the community leading to informed decision-making process and capacity building.

In addition, all laws must be based on some broad understanding and lessons learned that are set out in the following sub-sections.

### **8.1 Recognition of Rights**

Formal recognition of a community's rights to land, water and other natural resources is critically important. This may take various forms including:<sup>94</sup>

- Formal ownership for communities and title deeds to land or resources, as is now possible for forest ecosystems through FRA;
- Recognition of a CCA as an indigenous reserve, indigenous territory or ancestral domain, implying inalienable communal rights;
- Legal recognition of use rights for communities;
- Legal recognition of community management institutions and practices;
- Recognition of a community's declaration of a CCA as a protected area, to be formally linked to the national protected areas system and offered support; or

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<sup>93</sup> G. Borrini-Feyerabend, A. Kothari and G. Oviedo, *Indigenous and Local Communities and Protected Areas: Towards Equity and Enhanced Conservation*. (Gland, Switzerland and Cambridge, UK, IUCN, 2004).

<sup>94</sup> G. Borrini-Feyerabend, et. al. 2008. Governance as Key for Effective and Equitable Protected Area System: Implementing the CBD Programme of Work on Protected Areas (Briefing note 8<sup>th</sup> February, 2008). IUCN. [www.iucn.org/themes/ceesp/tger.html](http://www.iucn.org/themes/ceesp/tger.html)

- Recognition as an area where indigenous peoples prefer to remain in voluntary isolation.

Legal backing for community rights is not a prerequisite for conservation to be initiated. But for the initiative to be sustainable, particularly in the face of growing internal and outside threats and challenges, community rights and conservation systems must be secure. It is also important to ensure that communities cannot be deprived of legal recognition, and that changes to the status of the area are not made without consultation. The FRA has already provided for an opportunity to do so in forest ecosystems. There is an urgent need to harmonise all legislation dealing with forests with the provisions of the FRA, which recognises and establishes rights of Scheduled tribes and other forest dependent communities over the forests and the resources therein that they have been traditionally using. Provisions for establishment of rights for other ecosystems do not currently exist and need to be enacted.

## **8.2 Attitudes of the State Agencies**

As is clear from the case study on implementation of the FRA (case study 1, below) and the fate of the PESA (as explained in case on Mendha below), however revolutionary the legal provisions, they would bring about little change on the ground unless the conventional methods of working and attitudes, deeply entrenched in the existing government machinery, are significantly changed. Since laws like the FRA and PESA can potentially change the existing power structures there is often resistance from those in power in implementing those. If such legal provisions are to realise their full potential much change in the attitudes of all concerned, particularly government officials will need to be brought about through sustained efforts. There are many individuals within the system who have helped bring about major changes, but they are few in number and the changes that they bring about often only remain for as long as their own tenure. The real difference can only be made once the institutional system as a whole changes.

Lack of political will and strong economic vested interests have resulted in constant violations of legal provisions, court judgements, and government notifications for clearing development projects in ecologically and culturally sensitive areas. At the same time the conventional mindset those in charge of formulating conservation policies and implementing them result into not exploring the options of CCAs and co-existence in Tiger Reserves and other protected areas and relocating people without giving them the option of establishing their rights over their territories. Same attitudes prevent Tiger Reserves such as BRT from becoming a Tiger Reserve governed and conserved by the local people as demanded by them (see case study on BRT below).

## **8.3 Law Must Recognise Site-specific and Decentralised Management**

Uniform and straitjacketed systems, institutions, rules and regulations cannot sustain CCAs. As is clear from the preceding discussion, community initiatives are decentralised, site-specific and varied in their objectives and approaches. This is in contrast to many government or urban NGO efforts, which have been centralised, top-down and working under uniform legal and

management prescriptions, not taking site specificities into account. Where government officials or NGOs have taken time to understand the local situation and tailor their approaches accordingly, they have achieved more success. However, making laws and policies flexible as well as firm and strong against misuse of the flexibility is a difficult balance to strike, and will involve serious debates and explorations. In general, a broad framework of conservation and social justice is important, within which there can be room for a range of site-specific approaches.

One way of building in greater flexibility into the PA system would be to expand the number of categories of protected or conservation areas, to include a range of different ecological and socio-economic situations and governance types. The site-specific planning strategy for zoning of the landscape, the CCA or protected areas for socio-ecological landscapes could be then undertaken based on participatory research with the local communities.

#### **8.4 Recognition of Customary Law**

The strength of long-standing CCAs in India comes in large part from the customary laws and rules or more contemporary local laws and rules. Where statutory law has provided backing to local rules, this has been an effective means to secure the continuity of conservation initiatives. But in general the statutory regime governing conservation in India does not recognize or endorse customary law. This is one area where legal amendments or implementing regulations are urgently needed. Meanwhile, laws such as the Forest Rights Act contain broad provisions for the recognition of customary practices (Section 3 (1) j), similar provisions need to be enacted for non-forest ecosystems as well.



**Youth involved in conservation of Tzula (Dikhu) Green Zone in Nagaland using their customary law. © Neema Pathak Broome**

It is also important to keep in mind that not all customary laws necessarily ensure equity or social justice, such as traditional rules that exclude women from decision making. Issues of equity and fairness, where they arise, will need to be resolved case by case, in consultation with the communities concerned.

### **9.5 Site-specific Approaches**

A uniform system of institutions, rules and regulations cannot be applied to CCAs in India, since community initiatives in this country are decentralized, highly site-specific and varied in their objectives and approaches.

In the past, government entities and non-government agencies have in general favoured a centralized, top-down approach, working under uniform legal and management prescriptions, and failing to taking into account site-specific needs. This approach has not always been successful. But where the local context has been understood and approaches tailored accordingly, conservation efforts have achieved far greater success.

The law must recognize the importance of site-specific management, and allow for the existence of variety of institutions and practices. Systems of management and community institutions that are already in place and operating successfully, should be strengthened and supported rather than supplanted by new statutory arrangements. In general, a broad framework enabling conservation and ensuring social justice is important, within which there should be room for site-specific variations. The law must also allow for measures to create innovative financing mechanisms.

An important common theme that emerges from the Indian experience of CCAs is that the regulatory system for a particular area works best when it is devised locally, with the full participation of local communities. The more closely such regulations are tied to local cultural, religious and economic values, the less likely it is that use regimes will require external monitoring.

### **8.6 Landscapes, Buffer Zones, Connectivity**

The category of conservation reserves created under the Wildlife Act is broad enough to encompass a range of conservation objectives not covered in other statutory designations. Conservation reserves may be created in areas adjoining national parks and sanctuaries, in land that links one protected area with another, or to protect landscapes and seascapes. This in effect allows for the creation of buffer zones, connectivity corridors and protected landscapes. This will need to be implemented in such a way that it does not end up becoming as restrictive as have been other protected area provisions and keeping in mind the provisions of the Forest Rights Act 2006.

The purpose for which biodiversity heritage sites may be declared under the Biodiversity Act is also defined broadly to cover areas of biodiversity importance, without specific criteria for assessing “importance”. Criteria for the establishment of ecologically sensitive areas under the

Environment Protection Act are equally broad, encompassing the preservation of biological diversity as well as the proximity of a site to an established protected area, a designated ancient monument or archaeological site, or a site protected under international treaty. In addition, environmentally compatible land use and any other factors may also be taken into consideration under this Act.

The statutory framework established under these laws appears already to be addressing concerns related to landscape protection, buffer zones and the creation of connectivity between protected areas. For CCAs, therefore, the issue is to ensure that communities are able to take maximum advantage of these provisions, especially by linking them, to obtain legal recognition for community-conserved areas, using the principles and suggestions mentioned above.

Similarly, CCAs are vulnerable to the impact of activities taking place outside their perimeters and in most cases they do not have the machinery of the state operating in their favour. Provisions in the law already provide for some measure of control over such harmful activities, such as the provisions under the Forest Rights Act and the notifications by the government about seeking consent of the local people prior to giving forest clearance for development projects. Here, too, the issue for CCAs is to be able to make use of these provisions effectively, which would require amendments in the law to facilitate the participation of people and provide recognition for CCAs and major changes in the manner the act is implemented.

### **8.7 Livelihood Issues**

For many communities, conservation is not an isolated activity but encompasses an entire way of life, and includes the carefully managed use of resources for subsistence purposes. In fact, the success of many CCAs across India comes from the fact that community conservation efforts take place in tandem with livelihood activities. Conversely, experience has shown that in many statutory protected areas conservation efforts have failed because the livelihood needs of local communities have been neglected.

Many communities also invest a great deal of time and effort in carrying out conservation activities, often at the expense of income they could earn from other activities, including employment. This makes it all the more important to ensure that communities engaged in conservation are able to derive some measure of benefit from these activities. A legal regime for CCAs must ensure that, in providing legal backing for community conservation, community livelihoods are not sidelined. Or where possibilities exist to link with other existing provisions such as Employment Guarantee Scheme, these are utilised.

### **8.8 Technical and Other Support**

Given the diversity of CCAs in India and the variety of landscapes in which they exist, it is essential for the law to make provisions for mandatory coordination between various government agencies. This would include, for example, measures to improve coordination between wildlife and forest departments, and agencies responsible for land administration. It

would also include a mechanism to ensure that development or conservation projects implemented by the government do not undermine conservation efforts and institutions that are already operating in such areas.

The law must also take into account financial mechanisms and technical support. The kind of support provided must be decided in consultation with communities and with their consent. Similarly, where funding is involved, systems of accountability and transparency need to be developed at all levels, in consultation with communities. Where a need is identified by the communities, implementation mechanisms must provide for a participatory system of monitoring as well as for external evaluation.

As the analysis above has shown, limited provisions already exist in the law to support CCAs. But with the exception of a few communities, knowledge about legal provisions and the rights that communities may claim is generally poor. Procedures allowing rights to be claimed are difficult to navigate, and it is likely to be especially difficult for traditional forest-dwelling tribes and indigenous communities to claim rights without an informed facilitating agent. In implementing legal provisions for ICCAs, it is also important that efforts are made to develop or strengthen community leadership.

### **8.9 Law Must Facilitate Coordinated Action and Support**

Considering that ICCAs are as much about all aspects of community living as about conservation, it is essential that any the legal landscape is connected and that there is coordination among various government agencies functional in that area. Invariably laws and schemes applicable for and implemented by different departments become contradictory to each other or remain difficult to be implemented because of lack of coordination between various departments. A perfect example of that is the current lack of clarity about jurisdiction overlap between institutions established under the Forest Rights Act of 2006 when rights under this are claimed in existing protected areas.

### **8.10 Law Must Facilitate Effective Local Leadership**

Considering that a large amount of the local community's time must go into earning a livelihood, it is sometimes difficult to sustain the fervour for protection activities, especially if there are no immediate threats. In circumstances such as these, an individual or a group of individuals from within the community plays an extremely important role in motivating the community, carrying out important tasks and guiding the entire initiative. Often the initiative itself is a result of mobilisation by such social leaders. Sometimes there appears to be a heavy dependence on these leaders, with no one to take over in their absence. In some areas efforts are being made towards including the youth in the village processes. In developing a decentralised conservation law or policy it is important that efforts are invested in developing or creating circumstances for such leadership within the community to continue and elements of the same to be passed on to the next rung of leadership. Often such leaders have to pay an enormous personal price to play the required role, a phenomenon that can at times be a hurdle towards a smooth transition to the second line of leadership. It is important to bear in mind

that such leaders, working largely for the social cause, cannot be replaced by leadership emerging out of financial, political, and other selfish motives.

### **8.11 Law Must Respect and Trust Communities**

Legal status of the CCA should not be changed unless the community wishes it to, and is fully aware of the implications of such a change and the implications of not changing. The existing system (institutions, rules and regulations) should be accepted, if need be with some modifications in cases where such institutions are not inclusive and just. The kind of support to be provided (social recognition, legal backing, funds, technical inputs, etc) must be decided only in consultation with and the consent of the community. Similarly the community should also specify, where appropriate:

- A system for accountability of funds provided; and
- A system of monitoring the impact of help provided, and mechanisms of modifying this if need be.

## **9. OTHER KINDS OF SUPPORT REQUIRED BY ICCAS**

Communities often realise the difficulty of managing natural resources on their own, especially given the internal and external social dynamics and political and commercial pressures. A great amount of time and effort is spent by the villagers protecting and patrolling the forests. This is at the cost of wages that they would have earned, opportunities for which are otherwise few and far between. Because of their remote location and lack of awareness and knowledge, villagers are not in a position to find out about any beneficiary schemes that may be available from the government. Remoteness of the area means that there are few other employment opportunities. There is no existing system by which such information can easily reach the villagers. Villagers, therefore, often express a need for outside agencies to help them in exploring employment opportunities, and also guide them towards a sustainable conservation effort.

An active role of the state as a partner in the management of resources is often envisaged by local communities, but on equal terms and in the capacity of a facilitator and guide rather than a ruler or policeperson, as is the current practice. For example, see the case study on Mendha below where villagers had requested the forest department for help in establishing systems for sustainable harvest and marketing of Bamboo. Such support either never comes or comes with conditions of greater power being exercised by the government agencies.

If government interventions are made with a serious intention of helping the local communities achieve conservation then such official intervention will have to be very carefully thought out and implemented. Based on the experience so far it appears that the external agencies can play an important role in the following way:

- Making information available to the conserving communities on a regular basis to help

them take informed decisions;

- Helping them resolve conflicts when they so desire, particularly when pitted against powerful outsiders;
- Helping in reducing traditional social inequities, attempting to ensure greater transparencies in local institutions, greater participation from all sections of the community, and so on;
- Providing financial, technical, ecological, legal and any other help that may be required on a regular basis;
- Helping in gaining recognition, appreciation, pride and thus encouragement and support by bringing their efforts to the larger society;
- Helping in dealing with exploitative markets as even remotely located communities are linked to markets and dependent on them to a varying degree for cash income. However, the markets with which these communities interface are often highly exploitative, and government policies often end up supporting the exploitation (see the case of Mendha in the case study on Gadchiroli district below). Most communities need help with such interface, whether it is to do with marketing of non-timber forest produce, produce from other ecosystems, developing eco-tourism packages or any other; and
- Bringing in ecological concerns (which they may not be aware of) more centrally into their efforts, developing inventories of ecological elements and local knowledge, conducting impact studies, devising systems for effective management of red sources and wildlife therein, and so on.
- Through effective laws and policies helping protect traditional knowledge, facilitating the interaction of the local communities with the resources where the knowledge lives and evolves. Above all devising such support systems in consultation with and through free prior informed consent of the concerned communities.

For any agency interested in a positive intervention in ICCAs, it is important to understand that:

- Any negotiations at the start of the intervention need to be done at the level of the village or hamlet assembly/community council (involving all adult members, irrespective of caste, class, gender, etc.) or community groups, and not any representative/executive body selected by the intervening agency (although such bodies could be approached to help organise the larger meeting);
- Any decision-making bodies that are established need to be transparent and acceptable to all in the community;

- Along with a decision-making body it is important to have an open forum for discussion that will lead towards well-informed decisions by the community. External agencies could play a critical role at these discussion forums and bring in the larger perspectives often not so easily perceived by the villagers. In turn, outsiders could learn from the detailed site-specific information that the local people have; and
- Decentralised decision-making systems need to be supported by decentralised supra local systems, along with a central (state and national) framework (including legal and policy regimes) that facilitates such a system. Such support structures have organically emerged in many states or sub-state levels, like the CFM federations in Orissa or Nagaland states. In areas where such structures do not yet exist, but where there is a potential, the government or NGOs could provide need-based support. Many multi-stakeholder groups already exist at the national and state level but their mandates and representativeness are currently falling way short of what is required.

In areas where there is currently no possibility of such systems developing organically, intervening agencies may need to create such forums with complete participation of the local people and taking into account local dynamics and politics. Such a forum, if created, should be well represented by government line agencies, non-government agencies, individuals associated with the initiative, and members of the concerned community. It is important that any such forum:

- Gains an understanding of the local systems in operation in the community conservation sites in the area;
- Carries out an independent assessment of the strengths, weaknesses, needs, and limitations of these initiatives;
- Creates a mechanism for regular interaction and information/experience sharing;
- Encourages and supports the community to overcome its limitations, constraints and weaknesses, appropriately taking into account local sensitivities;
- Organises capacity building programmes whenever necessary;
- Helps communities monitor the impacts of their activities; and
- Helps communities create an appropriate and non-exploitative market link.

While doing all of this the forum should be careful about not creating a dependence on itself and to remember that communities must be trusted and treated as equals and with respect.

## **10. CASE STUDIES**

### **Case Study 1**

## **Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006, - Issues of Implementation**

### ***A Case study from Gadchiroli district in Maharashtra***

**Reshma Jathar and Neema Pathak<sup>95</sup>**

#### ***Background***

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (hereafter called FRA) came into force in January 2008.

The FRA attempts to recognise and vest the forest rights and occupation in forest land in forest dwelling Scheduled Tribes and other traditional forest dwellers. The Sec 3 (1) of FRA includes the rights for habitation and cultivation, community rights such as *nistar* (customary rights legally recognised in some parts of India) or those used in intermediary regimes such as *Zamindari* (use rights allowed by the feudal lords in the past), right of ownership i.e. access, use and disposal of non-timber forest produce (NTFP), rights over the products of water bodies and grazing grounds amongst other rights (details given in annexure 1). These rights can be claimed both as individuals and as a community. Sec 3 (2) authorizes the government for diversion of forest land to provide the communities with the basic facilities towards education, health, connectivity. Section 3 (1) i and section 5 FRA address the Scheduled Tribes and other traditional forest dwellers' responsibilities and authority for sustainable use, conservation of biodiversity and maintenance of ecological balance and thereby strengthening the conservation regime while ensuring livelihood and food security for them. The latter are known as Community Forestry Resource (CFR) Rights. Despite the various known benefits of community rights for the people, till very recently the focus on civil society as well as the government agencies has been towards facilitating individual titles over land rather than community rights over territories and resources therein. This case study focuses on the process in Gadchiroli district where the focus has been on implementation of CFRs and explores various hurdles faced by the communities in while filing the claims and afterwards.

#### ***Gadchiroli - An Introduction***

Gadchiroli district is situated in the state of Maharashtra between 18.43' to 21.50' north latitude and 79.45' to 80.53' east longitude. The district is spread over 14,412 sq km and according to 2011 Census, total population of the district is 10,91,795. Approximately, 34% of the population belongs to scheduled tribes. 75.95% of the geographical area of the district is under forest cover, majority of which is under the jurisdiction and management of the forest department. Forests have contributed Rs 683.43 crore to the district's revenue in 2009-2010. Forest produce includes timber, fuel wood, bamboo and other NTFPs. Revenue generated in

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<sup>95</sup> This case study was first written for a national study on implementation of Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006, by Kalpavriksh and Vasundhara, with support from Oxfam-India, March 2012; Forthcoming.

2009-10, from timber was Rs 179.03 crore, Rs 0.99 crore from bamboo and that from Tendu leaves was Rs 13.96 crore.<sup>96</sup> Agriculture (with paddy as the main crop), wage labour and NTFP collection are the main sources of livelihood for majority of the population. They also depend on forests for fuel, fodder and some NTFPs for household purposes.

### ***Community Forest Rights (under FRA) in Gadchiroli district – A background***

Gadchiroli has a high number of CFRs filed and titles received. As per the information issued by the District collector's office it was 737 villages in November 2011. These include districts like Wadsa where all villagers have filed CFR claims and received community titles for the forests around them. This is likely to be the highest number of CFRs filed and titles received in the country. Notably Mendha-Lekha and Marda, arguably the first villages to receive CFR titles in the country are also located in this district.

### ***History of community mobilization in Gadchiroli***

The reasons that the district has such high CFR claims and titles seem to have their roots in events that took place as far back as in 1978, when a few youth including Mohan Hirabai Hiralal, Dr. Satish Gogulwar, Subhada Deshmukh and others were part of the *Chatra Yuva Shangharsh Vahini* (student's movement) initiated by Jayaprakash Narayan, a motivating political leader of those times. Moved by the condition of tribal and non-tribal communities in Gadchiroli, these youth decided to intervene by trying to address the issue of local livelihoods and access to forest resources and exploitation by the system. They used the Employment Guarantee Act of 1977 with the focus on helping the communities. A study circle was formed in each village to understand the Act, and, formed a legally registered *Bandhkam va Lakud Kamgar Sanghatna*. Many civil society activists and village leaders today have had an association with this collective in the past.

Given its history of a struggle and move towards tribal self-rule and forest conservation<sup>97</sup> Mendha-Lekha village under the leadership of Devaji Tofa, Dukku Dugga, Mahangi Dugga and other elders and guided by Mohan Hirabai Hiralal, decided to implement the Joint Forest Management scheme in their village in 1991. Their hope was that this would lead to a greater sharing of decision-making power and benefits from the forests between the forest department and the local people. Disappointed about this not happening even after years of implementation of the scheme, the village was initially not very hopeful that the FRA will be very different. Over many years of interaction with the government system in general they felt disillusioned, yet they decided to give it a try to use the FRA to establish their rights over their traditionally protected forests (1800 ha). Because of maintaining a continuous pressure and regular follow up, Mendha (along with Marda) became among the first villages in India to receive their community title on the 15<sup>th</sup> of August 2009 (see case study 2 below).

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<sup>96</sup> (Source: [http://mahades.maharashtra.gov.in/ppUpdateView.do?publication\\_id=DSA-2010-0010](http://mahades.maharashtra.gov.in/ppUpdateView.do?publication_id=DSA-2010-0010))

<sup>97</sup> Pathak, N. and Gour Broome Vivek. 2001. *Tribal Self-Rule and Natural Resource Management: Community Based Conservation at Mendha-Lekha, Maharashtra, India*. Kalpavriksh and IIED. London and Pune.

During this time a national debate on lack of implementation of CFR provisions of the FRA was gaining momentum among the civil society organizations and groups working in the country. Having gained the experience of successfully filing the CFR claims Mendha villagers supported by Mohan Hirabai Hiralal, Subodh Kulkarni, and National Centre for Advocacy Studies (NCAS) organized a national workshop for understanding and implementing the CFRs in April 2010. This workshop was attended by groups working in Maharashtra and other states.

### ***District level processes and its results***

On the occasion of Maharashtra day, May 1, 2008, the government of Maharashtra directed the Gram Panchayats to start with the implementation of FRA in the district. Accordingly, official meetings were held in 65 Gram Panchayats, and Forest Rights Committees (FRCs) were formed. These FRCs were not able to take the process forward as there was no clarity among the villagers about the Act. Even where the process moved ahead it focused exclusively on individual land claims and not on community rights.

Mid-2008, the Wainganga Aghyas Gat and all other groups working in different parts of the district, decided to come together for a study circle session on FRA in Mendha-Lekha village. This network of NGOs also worked closely with the government officials involved in the process. The then Collector of the district, Mr. Niranjankumar Sudhanshu was supportive of the process and issued a circular asking all the departments to come together and help communities for effective implementation of FRA. Members of this network such as Srushti, in November 2010, were asked by the Government to organize a Sub District Officer (SDO) level meeting in Wadsa. Implementation of the FRA in Kurkheda, Wadsa and Armori talukas were discussed in great detail in this meeting. This was followed by training sessions at panchayat samiti and prabha levels. The study circles of the youth from the villages were established to discuss the implications of filing the claims. With all the experience gained, Vrikshamitra developed a format (which was not available till then for filing community rights) for filing CFRs, which was used by all the members of the network to sit in the concerned villages and file the claims. The format thus developed was almost foolproof and the evidences were collected meticulously giving no chance to the committees to reject the claims.

This coordinated civil society action at all levels from Collector to sub divisional level to gram sabha level is one of the main reasons why such high number of claims were filed, official support received and claims granted. According to the civil society network members, this kind of process is essential for a number of reasons, including the fact that often local villagers are not aware of what this Act contains, or they do not immediately realize the importance of CFR provisions and finally even if convinced that they must file the claims the paper work involved and evidences to be provided are often too daunting for them to take on without any external help.

*After claiming rights under the FRA*

**Titles received but conditional:** Mendha and Marda villages were the first ones to receive their titles. After receiving their titles Medha village decided to harvest the bamboo in its forests, they also developed a working plan and then requested to be given the transit permit for transporting the bamboo. Since this was a major shift in the manner in which forest produce and bamboo in particular was harvested and sold thus far (through the Forest Department), this generated much controversy and debate (for details please see a section on ‘Transport permit for bamboo and other NTFP’ below). As a result, the subsequent titles were granted more cautiously and with conditions to ensure that conventional systems of forest working are not impacted. This also indicated that within the government now there was a greater understanding of the potential these provisions had to upturn the conventional methods of forest management and governance. Some of these conditions included, “villagers cannot obstruct any activity already approved by the state or the central government in the claimed forest”, “villagers cannot take up new construction work in the area over which other traditional rights have been granted”, “all the notifications and rules issued by the Government from time to time would be mandatory for all”.

The FRA itself does not allow for the conditional grant of rights. Once such titles were received in the district the civil society network became active again and provided a coordinated help and facilitated the process of filing an appeal against these grants to the state Monitoring Committee. As on January 2012, it had already been over a year in some villages since these appeals had been filed but no action had been taken. In addition, in some villages the titles received are over much less area than what had been claimed, which included a combination of nistar forests, JFM forests and revenue forests which the village has traditionally been using. In March 2012 in a meeting held in Gadchiroli, with the state Forest Secretary, it was decided that a committee, with member representatives from Revenue Department, Forest Department, Tribal Department and Civil Society Organizations, would be formed. This committee would prepare a format for CFR titles. All the villages, including those which have already been given conditional titles, would be given CFR titles again as per the new format.

### ***Conflicts as a result of the claims***

As mentioned above claiming of these rights and gaining titles have impacted the conventional ways of forest management and governance. As there was little preparedness for this situation, it has led to some conflicts arising from villagers demanding their rightful benefits and government yet not ready to relinquish power and take on the role of facilitation and support alone. Some of the examples below illustrate this point:

1. **Government leases for harvest of Bamboo from the forests being claimed:** Some villages in Dhanora taluka have filed for CFR claims over their surrounding forests. The claims are currently under consideration and hence villagers have not received titles yet. In some cases the titles have been received but the transit permits for the bamboo have not been received. The spirit of the Act would suggest that no harvesting of forest produce should be undertaken by the government agencies without the consent of those who have filed claims over these forests. The forest department, however, has continued with the leases given to

paper industry for harvesting bamboo from these forests. Many villagers have raised an objection against this action, and some villages have physically stopped bamboo being harvested, leading to a situation of conflict.

2. **Transport permit for bamboo and other NTFP:** Mendha-Lekha received the CFR titles on December 15, 2009 over 1800 hectares of forest. Around April 2010 village gram sabha approached the forest department for transit passes to allow them to cart bamboo out of the forest. The officials refused saying that CFR are nothing but confirmation of already existing Nistar rights, i.e. rights to collect NTFP for personal use, and, harvesting and marketing bamboo is not included in the rights of gram sabhas. Pointing out that villagers have got management rights through CFR, they suggested that forest department buy the bamboo from them and deposit funds it gets from bamboo harvest with the gram sabha. Forest department did not reply to villagers' suggestion. The department then claimed that transit passes cannot be issued as the village is not ready to follow the department's working plan for harvesting bamboo. The department invited villagers to participate in department's bamboo felling activity and accept wages for it. The gram sabha replied to this offer by citing various sections of FRA, which have granted them ownership over bamboo and other NTFPs. After struggling for almost a year to get transit passes, villagers decided to stage a protest by organizing bamboo sale in the village. In February 2011, an adult member from each of the village family went to the forest, felled a bamboo pole from the coupe that was due for felling in 2011. Next day, on February 15, a sale was organized. The then Union Minister of Environment and Forests Mr Jairam Ramesh took a serious note of this protest and issued a letter on March 21, 2001. The letter directed the states to ask their forest departments to treat bamboo as a minor forest produce. It also stated that Gram Sabhas will develop a management plan for commercial harvesting of bamboo in consultation with the forest department. However, in Mendha, the forest department did not co-operate or help the villagers. After their first commercial harvest in April 2011, villagers managed to harvest and sell bamboo worth Rs. one million. In a step, which could be considered as a consequence of Mendha-Lekha process, the Wadsa forest division has prepared a list of 21 villages in their jurisdiction, which would be given Transport permits for harvesting bamboo.

3. **Timber struggle at Ghati:** Ghati village had claimed CFR rights over 913 hectares, however, titles have been granted only over 521 hectares. After the titles were granted, the forest department in accordance to their working plan felled timber trees from their CFR, without either informing or consulting the villagers. Angered by this the villagers physically stopped the felling operation and did not allow the timber to be transported out. They also fined the association that had taken the contract to fell the trees. Villagers' point out in their arguments in support of their actions that though CFR doesn't give them rights over timber, it has given rights over NTFPs, besides they also have the right to protect and conserve their forest. The department had been felling NTFP trees, which is illegal according to the CFR. Their demand is that no such operations are carried out in their forest without consultation with them and without their consent. For the trees which have already been felled the villagers demand that the timber should be first used to meet the bonafide requirement of the villagers (for which otherwise they would have to again cut some trees in near future) and 50% benefit from the sale of the remaining timber. The department in the meanwhile has continued to push

for taking possession of the felled timber. To resolve the conflict a meeting was held at the district collector's office where along with the district officials, foresters and villagers were called on April 19, 2004. In this meeting officials agreed to the idea of setting up a timber depot in the village for meeting their bonafide needs, however, in early January 2012, villagers received a letter, which only informed that forest department is planning to move the timber out of the forest. This letter did not mention the agreement reached during the April 19 meeting. Villagers wrote back to the forest department reminding about agreement; as a result later in January 2012 they received a letter, in which the department proposed to set up a depot and offered 20% benefit sharing on the basis of JFM GR of October 5, 2011. However, in a Gram Sabha held on January 26, villagers discussed that as per the *nistar patrak* they should be given timber free of cost for their bonafide needs; while CFR titles have granted them 100% rights over management. And, hence they have been thinking of writing to the department and ask for the same.

4. **Proposed mining in Korachi tehsil:** In Korchi taluka the government has excluded the forests that are under proposed mining while settling the claims, the villagers have started a movement against this. Sohale village had claimed CFR rights over 335 hectares, however, the village has been given titles over 20 hectares of land, while areas, on which Jhendepar and Nandali villages have been practicing their *nistar* rights are curtailed. Villagers, with the help from civil society organizations, have later found out that the areas that have been denied to them under CFR is leased out to Ajanta Minerals for iron ore mining. Villagers have been protesting against the decision of leasing out their CFR area for mining. With the help from Civil Society Organizations they have also been writing to the concerned departments, and considering the possibilities of taking the matter to the court. However, detail information is not available as these villages could be visited during the survey because of Maoist activity.

### **Conclusion**

The sections above clearly indicate that in the last two years Gadchiroli has become one of the few districts in the country to have filed for and received a large number of CFR claims under the Forest Rights Act 2006 and Rules 2008. Over 400 of these claims pertain to section 3 (1) including 3 (1) i of the Act, namely, "Right to protect, regenerate or conserve or manage any community forest resource which they have been traditionally protecting and conserving for sustainable use". Various factors have contributed to this high number of claims and grants, including coordinated civil society efforts and supportive government machinery. Although the forests thus claimed as community forests are still a small fraction (a little over one percent) of the total forest area of the district, they are facing many challenges. This study during various consultations with the village communities and civil society groups clearly indicated that a different approach towards forest governance is currently the need of the hour. There are few examples in the country where village communities have a right to manage, govern and conserve their own forest resources. This unprecedented situation also calls for a fresh and new approach that must be well thought out and discussed locally and at the district level.

While a number of villages in the district are empowered and supported from well-wishers to guide them on how to deal manage and govern CFR forests for conservation and village development there are many others which currently feel at a cross roads not very clear on which direction to take. Additionally, while some CFR areas are rich in economically valuable species such as bamboo, *tendu patta* and others, other villages have CFR areas which are highly degraded or do not have major NTFP to earn revenues from. Currently there are two kinds of situations that need urgent attention in the district:

1. Procedural issues related to title deeds not being proper, appeals not being heard, pending claims not moving ahead, area granted being much less than the area claimed, leasing out CFR areas to papermills and mining companies and so on.
2. Management and governance of the CFRs where the rights have been granted.

Towards the first the relevant district agencies, can take some immediate steps, such as:

1. Transport Permit (TP) for all NTFP must be given to all gram sabhas which have received CFR titles.
2. In all areas where CFRs have been recognized, any existing leases and contracts should stand terminated immediately. This would include the extraction of bamboo by Ballarpur Industries Ltd (BILT) and working plan operations by the Forest Department (FD).
3. Existing working plans of the FD are to be suspended in areas granted CFR titles. New working plans to be developed by the gram sabha for such forests, with appropriate technical support from the FD and others (if villagers so request).
4. All the CFR titles issued on certain conditions should be revised and reissued as conditional grant of rights is illegal.
5. In areas where CFR titles have been granted, institutions for the management of the forest should be constituted by the gram sabha (under section 5 and rule 4e of the Act). Any village accepting to be part of the Joint Forest Management of the Forest Department should have a right to dissolve any existing JFM committees and constitute their own institutions. Gram sabha should also decide whether or not any forest official should be the member secretary of committees formed by them.
6. Government should establish a purchase mechanism for the NTFP that the villagers would want to sell and declare a support price for NTFP from the CFR forests. This would help avoid exploitation of those gram sabhas which may not be able to strong enough to fight of the contractors lobby in adverse situations.

7. The government and the civil society should help communities in developing working plans if they so desire. The community working plans should be incorporated in the working plan for the relevant forest division.
8. Training for all villages which have received CRF titles along with relevant government officials on effective management and conservation of CFRs, which would involve livelihood generation and biodiversity conservation.

Subsequent to this study and somewhat as a consequence, in March 2012 a meeting was organized at the behest of Forest Secretary of Maharashtra. The meeting was attended by the forest department, district administration, civil society groups and representatives of the villages where CFR rights have been granted, to understand and resolve some of the challenges faced by these communities. This meeting is also expected to deliberate on ways of effectively supporting these communities such that they are able to conserve and manage their forests as also derive sustainable livelihoods.

Some of the decisions agreed on during this meeting included the following:

1. Transport Permit (TP) for all NTFP to be issued by the Gramsabha (GS). A common format for the T.P. to be developed and handed over to the GS.
2. The GS can print this T.P on their own and can also charge a fee for the T.P.
3. Forest Department (FD) has been issuing T.P. to the gram sabha till now and charging Rs. 100 per T.P. FD should return this money to the GS.
4. In all areas where CFRs have been recognized , any existing leases and contracts should stand terminated immediately.
5. Training for all villages which have received CRF titles along with relevant government officials to be organized in Mendha on effective management and conservation of CFRs.
6. Existing working plans of the FD are to be suspended in areas granted CFR titles. New working plans to be developed by the GS for such forests, with appropriate technical support from the FD and others (if villagers so request).
7. It was clarified that GS for all implementation purposes would mean GS as defined by the recognition of the Forest Rights Act 2006.
8. All the CFR titles issued on the conditions will be revised to withdraw the conditions and issue corrected titles. A standard title format for the district will be developed by the committee constituted of the Additional Collector, FD and Tribal Department officials, NGOs and village representatives.
9. In areas where CFR titles have been granted, institutions for the management of the forest will be formed by the gram sabha. GS can also dissolve the existing JFM

committees and constitute their own institutions. GS will also decide whether or not the forest official should be the member secretary or not.

10. The state will provide a minimum support price for sale of NTFP including bamboo in the district.

Subsequently, the Rural Development Minister Mrs Jairam Ramesh visited the district in March 2012 and further announced that gram sabhas will be issued T. P. for all NTFP including Bamboo (see <http://www.indianexpress.com/news/jairam-bats-for-villagers/928062/1> for details).

While NTFP and Bamboo would generate resources both to ensure local livelihoods and forest management and conservation activities in many villages in Gadchiroli, there will still be many villages which either have degraded forests or do not have commercially important NTFP or bamboo. In case of latter resources will need to be generated by using integrated approach of effectively using funds from various available government and non-government schemes, funds can also be made available for biodiversity conservation by the State and Central government in the same manner as Forest Department would be provided. The processes and systems by which communities can access such resources and manage them will need to be systemized in areas where systems do not exist already.

On the issue of governance and management of CFR forests detailed discussions and thinking needs to be done by communities, civil society groups and relevant government agencies to arrive at a transparent and effective support mechanism. This could be in the form of a diversely represented support group at the district level which will support and help communities which are for the first time taking charge of their forests. Such a support group would help communities set systems in place as well as socially and ecologically monitor the impacts of their governance practices.

Agencies such as the forest department which have till now exclusively managed many of these forests will then be an important part of this support/extension system. Years of experience, information and documents if shared with the new governing bodies of these forests, will be of immense value to these communities. The role of the forest department in this case may be politically and administratively less powerful but would gain confidence and respect of the people because of the positive support that it would extend. Can the department bring about systemic changes to play this role, is yet to be seen?

We hope that local communities, civil society and government agencies will continue to work in tandem to find path-breaking solutions and paving a way towards a new paradigm for forest governance, not only in the district but also for the rest of the country.

## **Case Study 2**

## **Mendha-Lekha village, Gadchiroli District, Maharashtra- A Community Conserved Area Successfully Fighting for its legal rights<sup>98</sup>**

**Neema Pathak and Reshma Jathar, with inputs from Devaji Tofa and other villagers of Mendha-Lekha, Mohan Hirabai Hiralal, and Subodh Kulkarni**

### **Introduction**

Mendha-Lekha village is located in Dhanora taluka of Gadchiroli district in the state of Maharashtra, a district which is otherwise known for anti-establishment Maoist Movement also called Naxalism. In the recent times however, the district is better known by path breaking events that have been taking place in Mendha Lekha village. The struggle of this self-empowered village which has taken on many of the disempowering policies of the state and managed to change them to their advantage has become legendry. Sometimes it is difficult to believe that many monumental decisions towards local people's rights and decentralization have been made in the state policies because of this small village of 90 households with a total population of 400 odd people. All local inhabitants belonging to a Scheduled Tribe, called the Gonds.

Farming, collection and sale of forest produce and working as wage labour in various government and private forestry and development projects have been the main sources of livelihood for the villagers. The total area of the village is about 1900 ha of which 80 per cent is forest. Villagers heavily depend on the forest for food, fodder, fuel, medicinal plants, timber and NTFP. Forests, on which these villagers depend, however, belonged to the government and till 2010, the local villagers had only certain restricted use rights.

The situation in this village before the late 1980s was like any other typical village in this region, disempowered, disprevidged, uninformed, and exploited by all including traders and government officials. In the late 80s as the government planned a huge dam in this region, social activists aware of the impacts of large dams, particularly for such forest dependent tribal communities attempted to mobilize the people to stand for their rights. This resulted into a huge local movement against the dam and eventual shelving of the plan. These mobilized villagers became aware of their vulnerability as well as their resilience. Movements towards tribal self-rule started in many villages including Mendha, which today stands as a model of self-

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<sup>98</sup> This case study has been written based on 'CCA/Maharashtra//Gadchiroli/Mendha-Lekha/Forest Protection and Self Rule' please see for details ([http://www.kalpavriksh.org/images/CCA/Directory/Maharashtra\\_CaseStudy\\_Mendha\\_LekhaVgeGadchiroli.pdf](http://www.kalpavriksh.org/images/CCA/Directory/Maharashtra_CaseStudy_Mendha_LekhaVgeGadchiroli.pdf)) and

A case study on Mendha-Lekha for state level report on implementation of Forest Rights Act 2006 written by Reshma Jathar and Neema Pathak for the national study on implementation of Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006, by Kalpavriksh and Vasundhara, with support from Oxfam-India, March 2012; Forthcoming.

rule and self-reliance in the country. The situation as described above was a result of numerous open and transparent discussions in the village gram sabha (village assembly including women and youth) for over five years. These discussions, facilitated sometimes by friends from outside the village and led by Devaji Tofa, a village youth along with the wise women and men elders of the community led to several decisions, some of which include:

- Transparent, informed and consensus based decision-making on all issues with participation of all adult members in the village gram sabha.
- Transparent accounting systems for all funds received by the village
- Interaction with government and non-government agencies on issues related to the village and surrounding natural resources as a community and in the village (not as individuals and in offices away from the village).
- No brewing and consumption of liquor, to enable participation in village processes
- Protection, management and use of the surrounding 1800ha forests by the village institutions,
- No fresh encroachments in the village (accepted when critically needed and only after gram sabha permission).
- All decisions in the village would be taken with consensus in the gram sabha, and all government and non-government members who want to initiate programmes in their village or forest will need to come to the village and discuss their plans with the villagers openly. Without their consent no programmes will be allowed to be implemented.
- All domestic requirements of the village would be met from the surrounding forests without paying any fee to the government or bribes to the local staff (which they needed to do till then to meet their daily requirements),
- Approval of a set of rules for sustainable extraction,
- No outsider, including government contractors and agencies, would be allowed to carry out any forest use activities without the permission of the Gram Sabha in the forests, which legally belonged to the forest department but were actually the traditional forests of the village.
- If someone was caught doing so (even if they had permission from the government), the material would be seized by the village and the offender would have to accept any punishment decided by the village.
- No commercial exploitation of the forests, except for NTFP, would be allowed even for the villagers themselves,
- Villagers would regularly patrol the forest,
- Villagers would regulate the amount of resources they could extract and the times during which they could extract resources from the forests.

To implement these and other minor decisions regulating extraction, an unofficial *van suraksha Samiti* (forest protection committee) was formulated, including at least two members from each household in the village. Originally, a procedure for collecting fines from those who did

not adhere to the village forest protection rules was established, but this failed to work because people did not want the responsibility of collecting fines and, most often, fines were not paid. As a result, the system for applying sanctions to Mendha village members became one of peer pressure, creating family shame and social ostracism. In the commercial sphere, the *gram sabha*—representing a strong and united village —succeeded in stopping the paper industry’s bamboo extraction from their forest in the late 1980s/early 90s.

Despite all the forest management and protection effort of the village, in 1992 a large part of Mendha forests were declared Reserved Forests on paper asserting a greater authority and right of the forest department. After much resistance and many movements, Mendha ensured that things did not change much on the ground and continued to consider the entire 1800 ha as ‘belonging’ to them. Around the same time the government initiated the Joint Forest Management scheme in the state, seeing this as the only official space available for asserting control over their forests, the villagers insisted that they be included in the programme even though the programme was meant for regeneration of “degraded” forests with participation of the local people. After convincing the state with the argument that “Mendha should not be “force” to degrade their standing forests before being considered for JFM”, it became among the first few villages with standing forests in the country to be included in the scheme. The implementation of JFM, however, was done on the terms and conditions of transparency, consensus decision-making, and equitable benefit sharing among others. Till very recently the villagers were still struggling to get their promised share of 50% of the profit from the harvest of bamboo from their forest. They were only paid labour wages. In addition, JFM was only a government scheme, without any legal backing and could be stopped at any time, if the state so wished.

Sale of non-timber forest produce, particularly, *tendu patta* (leaves of *Diospyros melanoxylon* used for making *bidi* (a local cigarette), was one of the main sources of cash income in a year for the villagers. This sale, however, is completely controlled by traders and contractors. The villagers only received nominal collection charges and no part of the huge profits that the contractors received. Villagers attempted many times to break out of this by trying to sell their produce in the open market to get better profits but were constantly led down by the unsupportive government policies in trying to break out of the contractor lobby in *tendu patta* marketing.

In 1996 the Government of India amended its Constitution and enacted the Panchayati Raj (Extension to Scheduled Areas) (PESA) Act. This Act was seen as a big leap towards decentralised governance in India. PESA confers ownership rights of NTFP onto the local tribal communities. However, like most state governments, when Maharashtra Government adopted this Act they retained official ownership over two most important NTFP, namely, bamboo and *tendu patta*. These NTFP are important sources of revenue for both the state and the tribals. The Act, therefore, has not much helped the tribals in Mendha (Lekha). People in Mendha (Lekha) had already fought against the low wages paid by the contractors for collection of *tendu patta*. Conferring the ownership on bamboo and *tendu patta* would have had important

implications on the villagers, the Act, therefore remained toothless and non-empowering for the tribal communities.

While the village through its own sheer power had established its local institutions, informed decision-making process and hence self-rule; had been successful in ensuring that this was informally accepted by all concerned from outside the village; they just could not move ahead with any formal acceptance of this empowerment. They had not succeeded in getting their 50% share of the benefit from JFM; they had failed in getting the government to implement the PESA Act of 1996; there were constant conflicts with the neighbouring villagers while protecting the forests, often fueled by government officials. This constant resistance from the state despite available legal and administrative spaces disillusioned the villagers and they lost faith in the government.

Finally, after much struggle from the civil society and local movements, when the **Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006**, was enacted there was little interest in the village to claim for their rights under this Act. Encouraged by the friends and guided by Mohan Hirabai Hirala (who has been a constant support and guide for the village from the beginning of its initiative), villagers once again decided to claim for its community forestry resource (the 1800 ha of forests that they had been protecting and using) under section 3 1 (i) of the Act. In a landmark decision, Mendha became the first village in the country to received CFR rights on 15<sup>th</sup> August 2010. Given their history of interactions with the government, the villagers continued to be skeptical about much changing on the ground. Their skepticism was proven right when it was time to harvest bamboo from February 2011 onwards. The forest department first tried to deny that they had a right to harvest bamboo even through the rights *patta* (title document) states "rights to Nistar and MFP" (rights for bonafide subsistence needs and minor forest produce). From then on Mendha became the platform from where a number of path-breaking decisions related to the Forest Rights Act would be taken. Harvesting bamboo from the forests of Mendha became a symbol of local empowerment, and a national debate on whether or not Bamboo is a non-timber forest produce, ensued. After much argument clarifications were issued by the Ministry of Forests and Environment (MoEF), that bamboo was indeed an NTFP and it was established that Mendha was right in exercising their right to harvest and sell bamboo. Villagers sent a number of requests to the forest department (considering their years of experience with selling bamboo) to help them with floating tenders, finding good buyers and price, and a management plan for harvest and conservation. Their requests were not responded to, villagers went ahead and with the help from Mohan H.H. and others, managed to get forms for floating tenders and a good buyer (who believed in fair trade). Once the bamboo had been harvest, the forest department refused permission for transporting it by not giving he required Transit Permit (TP) (which is meant for timber and nationalized forest resources). This despite the fact that bamboo has been defined as a Minor Forest Produce (MFP) in the FRA over which villagers could establish rights, hence not requiring TP! The FD maintained its position as the villagers became more and more desperate. Support came pouring in from all corners of the country for the village leading to a letter from the Minster of Environment and Forests (MoEF) to the chief minister (CM) of Maharashtra on 21<sup>st</sup> March 2011 clearly stating that bamboo has been defined as a MFP and

should be treated such, also that in areas where CFR rights have been granted to the community the TP should be given by the gramsabha and the forest department should take all relevant steps to ensure that this happens. The letter failed to move things on the ground, finally the stalemate was resolved when the Minister MoEF and the CM of Maharashtra visited the village on the 27<sup>th</sup> of April 2011 and personally handed over the TP to the gram sabha. This small step did much to restore a little faith in the government among a community that had never shied away from fighting for a right cause. This also paved the way for thousands of tribal and non-tribal local communities, who would be filing claims for rights under this Act and could become owners and managers of their forests.

Since April 2010, Mendha villagers have been harvesting bamboo from their forests. They have established a set of rules and regulations for the sustainable extraction and conservation of the forest, some of these include:

- Extraction would be carried out as per the guidelines decided in the gramsabha.
- Respectable elders in the village would be appointed as supervisors to ensure that harvesting is sustainable and forests are not harmed.
- Only the matured poles would be extracted by cutting each of them at one foot height from the ground, and without harming the other poles which are often closely packed around.
- At least eight matured poles would have to be retained in each *Ranjhi* (one clump of bamboo), and area around it cleared and clump neatly restored for it to grow well.
- One person would extract not more than 50 poles per day.
- No activity that could harm water bodies and wild life would be allowed inside the forest.
- Each villager while working in the forest would keep check on forest fires.

Villagers have planned to continue with their earlier system of managing and conserving community forest and will continue to follow old rules and regulations. In the meanwhile, the village also became an example of economic self-reliance by selling bamboo worth Rs. one million. As per the village plan part of this money will be spent on development and conservation of the forests, part for village development, including alternate education for village children, and part will be divided among the villagers as profit.

Mendha emerges as a village which has taken a lead in initiating the process of filing the claims, following up. Post receiving the claims they have continued to fight for getting the real benefits of the rights that they have received, clarifying issues for future implementation of the Act and to the benefits of thousands of village communities across the country. They have also put in place many systems for sustainable harvest and sale of bamboo from their forest and use of resources thus generated for livelihood development and forest governance and conservation. There is much to learn from the experience of the village both for the local communities which have received CFR titles and the government agencies. A series of workshops in Mendha for community members towards putting systems in place for marketing of NTFP, accounting and management of forests have been planned by the local civil society groups. Government

officials can also be trained for understanding how such processes can be facilitated in other villages and communities are helped towards empowerment.

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**Case study 3:**

**Lack of *de jure* tenure rights over fishing grounds and resources, affecting *de facto* fishing communities in protected areas.**

**Ramya Rajagopalan<sup>99</sup>**

***Gulf of Mannar (Marine) National Park and Biosphere Reserve***

Tamil Nadu, a state in the southeast of India, has three Marine Protected Areas: the Point Calimere Wildlife Sanctuary, the Pulicat Wildlife Sanctuary (1980), and the Gulf of Mannar National Park and Biosphere Reserve. The Gulf of Mannar National Park (GOMNP), though proposed by scientists in 1976 to prevent the destruction of coral reefs by the construction industries, was officially declared as a national park in 1986 to conserve marine ecosystems. Though the area was declared a national park now more than two decades ago, the settlement of the rights of the communities within the park area is yet to be completed, and the final legal notification as per the WLP requirements, is to be issued. The National Park forms the core area of the Gulf of Mannar Biosphere Reserve (GOMBR), declared in 1989, which is the first marine biosphere reserve in India (Melkani *et al.* 2006). There is a complete restriction on the use of resources from inside the National Park area. Communities are denied the right to access the fishing grounds around the 21 islands that form part of the national park, nor are they allowed to use any of the resources from this area. This has affected about 150,000 people, of which around 35,000 are small-scale fishers. This includes 5,000 fisherwomen collecting seaweed and 25,000 divers. Efforts to provide alternative livelihoods are not considered

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<sup>99</sup> This case study has been compiled based on the following documents:

- International Collective in Support of Fishworkers (ICSF) (2009) Report of the workshop on 'Social dimensions of marine protected area implementation in India: Do fishing communities benefit?' 21-22 January 2009, Chennai. ICSF, Chennai, 74pp
- Melkani VK, Edwad JKP, Murugan A, Patterson J, Naganathan V (2006) Capacity building in marine biodiversity conservation. Gulf of Mannar Biosphere Reserve Trust, Ramanathapuram, India, 132pp
- Rajagopalan, R. 2009. Social Dimensions of Sea Turtle Protection in Orissa, India:

effective by fishing communities. The social consequences faced by fishers range from loss of livelihoods due to reduced access to fishing grounds, arrests of fishers and confiscation of vessels and catch (ICSF, 2009).

Fishermen from these villages use non-motorized plank-built canoes, propelled by rows and sails, to fish in the nearby seven islands. Current restrictions by the Forest Department prohibit the practice of staying overnight on the islands and returning the next morning with the catch. Lack of access to traditional fishing grounds has robbed the communities of their sources of daily livelihoods. Restrictions on the number of days and area for seaweed collection has particularly affected the women of the communities, as their incomes have apparently reduced from US\$ 40 per month to almost US\$ 20 per month, thus pushing households below the poverty line.

Limited participation of local communities in decision-making processes is one of the main issues facing the management of this MPA. Communities play very little or no role in the formulation of plans, but are expected to cooperate in their implementation. Multiple restrictions and regulations enforced by different authorities leave very few options for small-scale fishers. Dislocated from their traditional fishing grounds, these communities now try to fish in areas beyond the islands, which are often unsafe for fishers using small fishing craft. Multiple institutional structures and legal regulations for governance result in confusion

### ***Gahirmatha (marine) Wildlife Sanctuary***

In Gahirmatha (Marine) Wildlife Sanctuary, Orissa, which was set up in 1997, the fisherfolk are restricted from entering and fishing especially in the core area of the sanctuary that is located very close to the landing centres. While fishing is allowed in the buffer area, fishers argue that they have to cross the core area to reach the buffer. The designation of the area as a wildlife sanctuary has affected over 50,000 fishers directly by the restrictions and regulations on fishing put in place to protect turtle habitats. The number of fishing days has been drastically reduced from 240 a year to fewer than 100 days a year, and fishers' access to near-shore fishing grounds has also been greatly restricted, without proper compensation or provision of other livelihoods. The fishing grounds for mechanized and motorized fishing vessels have been reduced by almost 50 per cent. This has led to considerable hardship for already economically-disadvantaged fishing communities. The situation is marked by considerable conflict and there is little indication that the sanctuary is meeting either biological or social goals. (Rajagopalan 2009)

However, though these restrictions are currently in place, fishing communities continue to fish (il)legally in these waters. This has led to considerable confiscation of fishing vessels and gear, and in certain cases even arrest of fishers. In two instances, accidental firing had led to death of two fishers in Orissa—a fisher on board a gillnetter from Kharinasi and a fisher on board a trawler<sup>100</sup> from Kakdwip were the unfortunate victims. An inquiry into the incident revealed

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<sup>100</sup> The judgement says 'trawlers' but uses 'gillnets' at one point; newspaper reports use the term 'trawler'.

that these fishers were, in fact, on board fishing vessels exercising their right of innocent passage through the sanctuary.

The lack of trust, communication and co-ordination between the authorities and communities has led to ineffective conservation measures, having an impact on resources. This is often because communities are not part of the decision-making process.

There is a strong relationship between secure access to resources and livelihood security, a denial or restriction of resource rights, can, and does lead to considerable conflict between fishing communities and management authorities and to impoverishment of local populations. Fishers often are also willing to take higher risks when denied their fishing rights, The antagonism generated by denial of access rights often pitches communities against conservation efforts, with instances of violations and illegal fishing commonly reported (a process of 'criminalizing' of local populations). Enforcement measures, such as fines and arrests, can often make the situation volatile.

It is important that environmental justice, equity and participation are considered as important principles for Marine Protected Area practice and implementation, with the empowerment of the local communities to claim their rights and fulfill their responsibilities towards sustainable conservation and management of resources. It is critical that the tenure rights of local communities are recognized for sustainable use of resources. Communities need to be seen as equal partners for conservation and management for long-term results.

#### **Case study 4**

#### **Case studies relating to traditional knowledge, intangible heritage & culture**

##### **Shalini Bhutani**

Since this legal review is being done in the context of the Convention on Biological Diversity (CBD) and the forthcoming COP-MOP Meetings to be held in India; it is only pertinent to pick up and more closely examine the real life stories that highlight CBD-related concerns. Marine and coastal biodiversity is a key theme of COP11. On the other hand, agricultural biodiversity and biosafety are other relevant concerns of peoples on the ground engaged in conservation. Therefore, the choice of the two illustrative stories below:

##### ***Gulf of Munnar Biosphere Reserve (GoMBR) off the State of Tamil Nadu***<sup>101</sup>

This area is already 'protected' under law as a National Park (NP) since 1986. In 1989 the NP

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<sup>101</sup> Unfair share, uncertain futures

<http://www.themalaysianinsider.com/mobile/breakingviews/article/unfair-share-uncertain-futures-shalini-bhutani-and-kanchi-kohli/>

*Of Brackets and Brass Tacks*

[www.cbd.int/ngo/square-brackets/square-brackets-2010-10-en.pdf](http://www.cbd.int/ngo/square-brackets/square-brackets-2010-10-en.pdf)

and the 10 km buffer zone around it, which also includes the coastal population areas, was designated as a Biosphere Reserve. It is one of the richest coastal areas in Asia. Local communities and artisan fishers understand the critical need of its conservation for their very existence. They are aware of the coral reefs that feed them. So the local population walks a tightrope for meeting their livelihood needs and keeping the reef. Indigenous shell divers only take mature shells from the area. But there will be many in such a setting that oppose such areas being declared as Marine Protected Areas; for that imposes real restrictions on their movements and access to the coasts/waters. In such a scenario the concept of ICCAs could perhaps offer a way out.

When the Biodiversity (BD) Act came into being and began to be implemented 2004 onwards, it was hoped that it would safeguard local and indigenous people's knowledge, innovation and practices. For marine-based and coastal communities the BD Act is yet to mean anything positive. Moreover, the threat of marine 'biopiracy' looms large. The Act does not make any declaration whatsoever on the legal status of people's resources or their everyday know-how related to the biological world. It ought to have unambiguously spelled out very clearly that the biological resources and related people's knowledge are all a collective heritage. In fact, in a post-BD Act phase, new challenges have emerged. The NBA itself could have inadvertently introduced an invasive species by encouraging seaweed cultivation in the area. This in fact is also an area from where the NBA allowed PepsiCo India to access a type of dry sea weed (*Kappaphycus alvarezii*). PepsiCo signed a year-long agreement with the NBA to export this to Indonesia, Malaysia and the Philippines for commercial utilisation in the food and cosmetics industry.

The area also faced and continues to face serious threats to its conservation by government's own 'development' policies. In 2005 the Government of India took preliminary steps to go ahead with the Sethusamudram Shipping Canal Project, which would create a deep channel linking the Gulf of Mannar to the Bay of Bengal. The Supreme Court order of 2010 prevented the Project from going through. But new challenges have arisen for both the conservation and communities in the area. The Koodankulam Nuclear Power Plant (KNPP) has been given the green signal by the Chief Minister of the State. Reportedly no EIAs have taken place for reactors 1 & 2 to assess the likely impacts of KNPP on the biodiversity and peoples around the GoMBR. The State Biodiversity Board is yet to become fully functional. Until then local conservation is left to local people who find themselves swimming against the tide.

### ***Pending BHS in Medak District in the State of Andhra Pradesh<sup>102</sup>***

This is a developing story where local people are seeking official recognition of their area as a Biodiversity Heritage Site (BHS). The work of conservation of agricultural biodiversity in this

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<sup>102</sup> Row over declaring Medak villages as biodiversity heritage site

<http://www.thehindu.com/todays-paper/tp-national/article3430846.ece>

Farmers disappointment on the process of declaring Zaheerabad Region as Biodiversity Heritage Site

<http://www.ddsindia.com/www/pdf/Press%20Release,%20May%2023,%202011.pdf>

District is primarily being done by local women. They have been saving, growing and reviving traditional seeds. The local communities spread over 59,759 acres of farmland annually plant over 100 varieties of crops on their marginal lands and also actively preserve over 80 seed varieties. This is an oasis of diversity in a state where lands and lives of small farmers have otherwise been wrecked by genetically engineered Bt cotton.

They are now hoping that the State Biodiversity Board (SBB) facilitates the process towards the BHS notification for the seed heritage being kept alive. But the SBB is insisting that Biodiversity Management Committees (BMCs) be formed in the area as a pre-condition to a BHS declaration. This suggestion is being resisted by the local communities who do not find it either necessary or useful to re-organise themselves into an institutional structure – the BMC, to further their seed work. On the contrary they fear that such local structures would trap them into a top-down regime that does not guarantee protection from 'biopiracy' by both the public or private sector. NGOs supporting their work also decry the misinterpretation of the BHS Guidelines by the Andhra Pradesh SBB.

### **Case Study 5**

#### **Convergence of customary and local level statutory provisions in Sendenyu village, Nagaland<sup>103</sup>**

##### **G. Thong, Sendenyu Village**

Sendenyu village is located about 50 km from Kohima in Kohima district in the state of Nagaland. The total population of the village is 2507, with mostly privately or community owned land. Older members of the village recount the presence of species such as Hoolock Gibbons (*Hylobates hoolock*) and Great Hornbills (*Buceros bicornis*), which are no longer found in the village. A wildlife reserve was created by the villagers in 2001 with the objective of reviving the declining or lost wild animal populations as a result of discussions initiated in the Village Council (VC) by some village members who had studied outside the state and are currently serving as government officials. The VC selected 10 sq. km. area for the reserve based on its low productivity, high gradient and rocky geology. The land belonged to the individual owners and was used for timber and firewood collection. The owners originally objected to the plan but were persuaded by the VC to donate the land for the larger cause. In return, the owners received Liquefied Petroleum Gas (LPG) connections from the forest department under Forest Development Authority (FDA)<sup>104</sup> funds. Similar other benefits for the landowners are being considered by the VC. Subsequently, the VC has passed a Sendenyu Village Council Act, 2001. The declaration of 'Sendenyu Village Wildlife Protected Area' was announced in a written

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<sup>103</sup> Case study on Sendenyu by G. Thong, in Pathak, N. (ed) *Community Conserved Areas in India-A Directory*, Kalpavriksh, Pune, 2009

<sup>104</sup> Forest Development Authority (FDA) is a fund created by the central government on the lines of District Development Authority (DDA) where funds come directly to the district level and can be given directly to the concerned villages, such that it eventually leads to forest development.

resolution on 1 January 2001, along with a map specifying the boundaries of the Protected Area (PA). The Act specifies that the PA will be managed by a committee consisting of one chairman and one secretary, with *gaon buras* (village elders) and presidents of the Youth Organisation, Sendenyu VC and New Sendenyu VC as the ex-officio members of the committee. The committee also has some advisers. The Act is subject to make amendments from time to time with the approval of the maximum representation of Sendenyu general public. This system is a good example of customary and local practices getting statutory support from decentralized laws.

## Case Study 6

### Conservation law negatively affecting community initiative in Nellapattu and Vedurupattu Villages, Andhra Pradesh<sup>105</sup>

#### S. Srinivas

Nellapattu and Vedurapattu are two villages situated Nellore district of Andhra Pradesh. Since time immemorial these villages have played hosts to a diverse species of birds such as Asian open-billed stork (*Anastomus oscitans*), black-headed ibis (*Threskiornis melanocephalus*), cranes (*Grus spp.*) and coromorants (*Phalacrocorax spp.*) that visit these villages between the months of October and May for nesting. The villagers protect these birds as an old tradition. The villagers believe that the advent of the birds in their village is a good omen and a forecast for good monsoons. The villagers also use bird droppings (*guano*) as a fertilizer to enrich their soils. In the event of any accidental fall of the young ones from their nests, the village women nurture them and, if required, send them to the neighbouring Tirupati National Park for treatment (which has a rescue centre). There have been instances of confrontation faced by the villagers with the neighbouring villages that have attempted poaching.

The Nellapattu tank itself has been a traditional irrigation tank for the villagers, and the surrounding area is traditionally used for grazing livestock. In 1997 the Forest Department took over the protection of the Nellapattu tank by declaring it a sanctuary. The intention to declare the sanctuary was notified on 15 September 1997 vide notification G.O. Ms. No. 107 and the completion of procedure took a period of about two years. The area of the sanctuary is 4.58 sq. km. It is now one of the 11 protected areas in Andhra Pradesh. The government did not consider the utility of the tank for the villagers while declaring it a sanctuary. The people of Nellapattu were not aware of this decision taken by the government. When they did find out they immediately submitted their concerns to the Mandal revenue officers and forest officials. On declaration of the Sanctuary, the entire tank area of Nellapattu was fenced off. The entry was restricted only to those visitors who would come for bird-watching within a specified time during the day. These restrictions imposed by the FD have caused many hardships to the local villagers.

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<sup>105</sup> Case study on Nellapattu, Andhra Pradesh by Satya Srinivas, in Pathak, N. (ed), *Community Conserved Areas in India-A Directory*, Kalpavriksh, Pune, 2009

Subsequently, Nellapattu village was selected as one of the eco-development sites under the World Bank-supported Andhra Pradesh forestry project. The scheme provided some benefits to a select few but failed to address the fundamental issue of people's access to the tank and their traditional relationship with the birds. This has led to discouragement among local villagers towards conservation. Nellapattu is a classic example of conservation authorities not understanding the local circumstances and social issues related to conservation. The villagers had been protecting the birds in Nellapattu for generations. This heronry had gained fame among bird-watchers much before it was declared a sanctuary. Due to the villagers' efforts, the tank became a heronry and was declared a sanctuary. The sanctuary was declared without consulting or informing the villagers and this has strained the relationship between the people and the birds. The birds, which were once considered as harbingers of good fortune, are now considered to be a symbol of misfortune by the villagers. In the long run the apathy and indifference among the villagers caused by this situation is bound to threaten the security of the birds themselves.

### **Case Study 7**

#### **Community Forest Rights in Biligiri Rangaswamy Temple Tiger Reserve, Karnataka<sup>106</sup> Shiba Desor**

On 2nd October 2011, Soliga adivasis of 25 Gram Sabhas within Biligiri Rangaswamy Temple Tiger Reserve were granted community forest rights under Forest Rights Act 2006, making it the first tiger reserve where such recognition of rights had happened.

Soligas were motivated to claim rights under FRA primarily due to the ban on NTFP collection that was implemented in 2006 following the 2002 amendment to the WLPA. The ban had led to unemployment and increase in migration for working as labourers or daily wage earners. With support from ZBGAS (Budakattu Zilla Girijana Abhivruddi Sangha), Gram Sabha meetings were held and the process of filing of rights under FRA was initiated. The community members listed out details regarding the NTFPs and their collection areas, the daily use vegetables, tubers and fruits, , geographical aspects like names of the water tanks used, sacred sites worshipped, and information regarding their livestock and grazing areas. Range-wise mapping of community forest resource was done since the collection of NTFPs for the past many years had also been in correspondence with forest ranges. While filing for claims, Soligas proposed a plan of collaborative management with Forest Department to conserve and manage forests through activities such as removal of hemiparasites from amla trees, removal of invasive *lantana camara*, providing information to forest department about poaching incidents and animal deaths encountered and controlling forest fires with the help of FD.

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<sup>106</sup> Based on: Desor S., Rai N. and Madegowda C. 2012, 'On community forest rights in Biligiri Rangaswamy Temple Sanctuary (BRT)', *People in Conservation*, Vol. 4, Issue 2, June 2012.

Filled claim forms for community rights were sent to SDLC in 2008 by 25 gram sabhas. After three years of wait, in October of 2011, CFR titles were issued to 25 Gram Sabhas formed by 35 *podus*. The rights that have been granted are

- for ownership and collection of Minor Forest Produce and products such as fish from water bodies,
- of access to grazing and customary rights and seasonal resources,
- to protect, regenerate or conserve or manage any community forest resources for sustainable use,
- of access to biodiversity and community right to intellectual property and traditional knowledge related to biodiversity and cultural diversity
- to visit, access and worship at the 489 sacred sites by Soligas

The need to have an alternative which reconciles people's livelihoods with conservation objectives as opposed to the exclusion based model of conservation, has been long felt by the soligas. A workshop for formulating details of a collaborative management plan was organised in BRT in July 2011 in which around 200 Soligas participated and exchanged ideas on forest governance, conservation and management with each other and other NGOs. To take the plans forward there will be an attempt to organise another such workshop at BRT in 2012. Because of granting of CFRs, the Soligas have been able to access forest resources for subsistence and their sacred sites for cultural purposes without fear of punishment or fines from the Forest Department. The collaboration among Soligas, researchers and civil society groups in BRT has produced a unique long-term effort that can form the basis for a collaborative management of protected areas based on local and scientific knowledge.