



pocketful of forests

legal debates on valuating and
compensating forest loss in india

Kanchi Kohli • Manju Menon
Vikal Samdariya • Sreetama Guptabhaya

kalpavriksh



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I. INTRODUCTION

India's Constitution lists "Forests" in its Concurrent list, making it subject to the administration and management of both wings of a federal structure: the Central and State Governments. At the national level, there are a range of laws and policies that have determined forest ownership and have put forth mechanisms that restrict or release forests to its potential users. Each State has also had its own set of legal frameworks based on the national legislation on forests. In the last two decades, forest governance has also seen an active influence of the apex court of the country and expert committees. All this has had a significant and sometimes conflicting effect on how forests are viewed. These different ways in which forests are presented or represented in administrative and legal debates and processes have a profound effect on the lives and livelihoods of forest dwelling and tribal communities as well as on biodiversity and wildlife, all of which form part of the lived forest.

While the current study holds this context in the background, its emphasis is to understand the specific manner in which forests are sought to be diverted for non-forest uses and how such 'loss' is compensated for. The procedure for diversion of forests for non-forest use has been laid out in the Forest (Conservation) Act (FCA), 1980. The FCA makes a distinction between forest 'management' and what signifies 'non-forest purpose' such as industrial activities, infrastructure expansion or de-reservation of the land to another administrative category. In order to use forests for an explicit non-forest purpose or dereserve it (from its Reserved Forest status), an approval needs to be sought from the Ministry of Environment and Forests (MoEF).

The law defines non-forest purpose broadly as the breaking up or clearing of any forest land for the cultivation of tea, coffee, spices, rubber, palms, oil-bearing plants, horticultural crops or

medicinal plants and for any purpose other than reforestation. So despite stating upfront that the law is meant to be for conservation of forests, it has inbuilt mechanisms to facilitate the change of land use of an area conceived or recorded as a forest.

However, this change of land use is to be compensated for. The requirement for compensatory afforestation (CA) is considered to be one of the most important conditions stipulated when forests are 'diverted' for non-forest use or when felling of trees is to be done or forests are to be de-reserved. All proposals for diversion are made with a comprehensive scheme for compensatory afforestation. The Forest (Conservation) Rules, 2003 (the unamended version was in 1981) requires forms to be filled by the Forest Department, the agency that proposes diversion on behalf of the user agency. The MoEF has also issued specific guidelines related to how compensatory afforestation is to be carried out and monitored.

The form to be filled while seeking prior approval for forest diversion requires the Deputy Conservator of Forests to state details of the envisaged compensatory afforestation scheme. The non forest area/degraded forest area identified for afforestation needs to be indicated on maps along with the total financial outlay. The form also requires a detailing of the distance of the compensatory afforestation area from adjoining forests and the patches to be afforested. Information regarding the species to be planted, implementing agency, time schedule, and cost structure are to be provided. This information is placed alongside the historical record (since 1980) on the experience of compensatory afforestation and penal afforestation that was undertaken in the division or district where the non-forest use is located.

As stipulated by the MoEF, compensatory afforestation is to be done over an equivalent area of non-forest land. For example, for 100 hectares 'lost' to non-forest purpose, another 100 hectares of non-forest land is to be afforested. In case non forest land is not available, afforestation needs to be taken up on double the extent of degraded forest land. However, the non-availability of non-forest land needs to be certified by the Chief Secretary of the State/UT Government. Special provisions are stipulated for

certain categories of projects such as those undertaken by the Central Government and public utility projects. The guidelines also allow for other category of forests, which are recognised by the The Indian Forest Act, 1927 and on which FCA, 1980 is applicable, to be also used for compensatory afforestation. These lands maybe revenue lands or categories of land such as *zudpi jungle/Chhote/ Bade jhar ka jungle/ jungle-jhari land/civil – soyam lands*. These categories have their own unique ownership and management practices. However, no matter what kind of land, it needs to be identified contiguous to or in the proximity of an existing Reserved Forest or Protected Forest, primarily to enable the Forest Department officials to effectively manage the “newly planted area”. Looking for a distant site for afforestation outside the district or State should be done only if land in that particular State is not available.

Guidelines for Compensatory Afforestation are in Annexure 1.

Until the interventions of the Supreme Court on the subject of compensatory afforestation (full details in next chapter), the money for this exercise was to be deposited with the State Government. The guidelines allowed the setting up of a Special Fund for this purpose The responsibility of a person or project proponent responsible for forest land diversion would end once the amount required to carry out this activity was transferred to the State Government. This continues to be a bone of contention despite the fact that the money is being routed to the States through an Ad-hoc Compensatory Afforestation Planning and Management Authority (CAMPA). The setting up of this institution and the various debates that led to it form an important part of this study.

After the funds for compensatory afforestation are deposited with the concerned State Government and land for this purpose is transferred and mutated in favor of the forest department, a formal approval for diversion of forest land under Section 2 of the FCA, 1980 is given by the MoEF. This process involves an in-principal (Stage I) approval and subsequently final (Stage 2) approval, with

the in-principle approval setting the stage for the implementation of compensatory afforestation.

In the following chapters, there is a detailed scrutiny of how the Supreme Court dealt with the problem of the implementation of compensatory afforestation. This legal process, involving inputs from expert committees also established the method for the additional pricing of forests in the form of Net Present Value (NPV).

While the mechanisms that were devised through this legal process present a rather simple and unproblematic picture of how compensatory afforestation is to take place, it is not the case on the ground. In September 2010, the Gujarat High Court sought explanation from the Mundra Port & Special Economic Zone (MPSEZ), the Gujarat Forest Department, the Ministry of Defence, the National Biodiversity Authority and the district collector of Kutch about the allotment of 2000 hectares of land. This land was in possession of the Border Security Force (BSF) and was now marked for carrying out afforestation in lieu of the diversion for the company's operations in Mundra region of Kutch district in Gujarat (Anon, 2010). This land was to be acquired and transferred to the State Forest Department within six months of the grant of clearance. As a result of the controversy, no compensatory afforestation work could be carried out on the BSF land. Meanwhile it was reported that a total of Rs. 96,59,33,159 was paid by the company to the CAMPA Fund (*details in the next section*) (Anon 2010a).

The Comptroller and Auditor General (CAG) carried out a comprehensive scrutiny of the records of 17 forest territorial divisions in Madhya Pradesh where forest land was diverted for non-forest uses for ten years between 1997-98 to 2006-07. The CAG report of 2007 states that in this period, a total of 8915.21 hectares were diverted for 96 projects. It added that 7060.98 hectares land were stipulated for compensatory afforestation with Rs. 38.37 crore fund made available by user agencies. Out of 38.37 crores, only Rs. 2.31 crores were used for CA, which is only 6% of the total fund made available. CAG reported that 67 projects

and 5340.20 hectares were not at all covered under CA in this time period. The reasons for this shortfall were pointed out by the Divisional Forest Officer as lack of allotment of funds for 64 projects. Another reason was the non-transfer of non-forest land in one case and in two cases compensatory afforestation had not been carried out despite availability of funds with the divisions (CAG, 2007).

The CAG in its different reports states that the non allotment of funds is a serious reason for compensatory afforestation not taking place. The CAG report on the Andhra Pradesh Forest Department for the year 2003- 2004 mentions the statement of the Principal Chief Conservator of Forests (PCCF) on the fact that the afforestation for pending area was not taken up since funds were not released by the Government (CAG, 2004).

Newer projects continue to get approval from the MoEF and forest land diversion continues at a fairly consistent rate. The investigations on the actual practice of compensatory afforestation on the ground leave one with many questions that the Supreme Court process never asked.

II. INSTITUTIONALISING COMPENSATION

CREATING THE FOREST COFFER: The Genesis and the Structuring of the CAMPA

The Godavarman case and Compensatory Afforestation: The initial discussions¹

Since 1995, the Supreme Court of India began playing a proactive role in matters of forest policy and governance. This was the beginning of the ongoing matter being heard in the apex court as T.N. Godavarman Thirumulpad v/s Union of India [W.P. (Civil) No.202 of 1995], popularly known as the Forest Case or the Godavarman Case. Its history can be traced back to the time when the Supreme Court took action against large scale illegal felling of timber and denuding of forests in Gudalur Taluk, Tamil Nadu.

One of the initial orders in this case substantially changed the manner in which forests had been viewed and managed. The order of 12.12.1996 expanded the meaning of the word “forests” to its dictionary meaning in the Forest (Conservation) Act (FCA), 1980. Following this, any area which attracted this definition, whether officially recorded as forest or not, would need an approval under

¹ Compensatory Afforestation is one of the conditions stipulated by the Central Government while granting clearance to proposals for dereservation or diversion of forest land for non forestry purposes. It is essential that with all proposals related to forest land, a detailed scheme for compensatory afforestation is formulated and submitted to the Central Government.

the FCA and its corresponding Rules, if it were to be diverted for non-forest use. (Dutta and Yadav, 2005, ELDF and WWF, 2009. See also www.forestcaseindia.org).

The Godavarman case continues to issue interim orders and judgements around several aspects including tree felling, operations of saw mills, violations of approvals for forest diversion, de-reservation of forests and many other matters related to compensatory afforestation. The court in its 12.12.1996 order put a stop to all on-going activity like functioning of saw mills and mining within any forest in any State throughout the country that was being carried out without the approval of the Central Government, i.e. the Ministry of Environment and Forests (MoEF). It also suspended the felling of trees in all forests, except in accordance with the Working Plans of the State Governments, as approved by the Central Government.

In order to assist the court as well as monitor the implementation of the court's orders, the forest bench initiated the process of setting up an Authority in pursuance with the provisions of Section 3 (3), Environment (Protection) Act, 1986. On 9.5.2002, the court ordered the setting up of the Central Empowered Committee (CEC) with explicit functions of monitoring the implementation of the court's orders, look into cases of non-compliance including those related to encroachments, implementation of working plans, compensatory afforestation, plantations and other conservation issues. (*The role of the CEC in compensatory afforestation and CAMPA is described in detail in the next section*).

However, even prior to the setting up of the CEC and after, one of the issues which was being deliberated upon was the requirement of undertaking compensatory afforestation as a condition for diversion of forest land, and how it was being implemented across the country. As mentioned in section 1, the legislations and directions related to forest diversion had institutionalised the practice of compensatory afforestation and the creation of a special fund by State/UT Governments into

which the user agency² would deposit the amount required to carry out the mandatory afforestation. This procedure is laid out in the FCA, its corresponding Rules, 2003 (earlier 1981) and guidelines issued at different points of time.

Discussions in I.A. 419 and 420 filed by National Mineral Development Corporation:

The genesis of the Supreme Court's discussions around compensatory afforestation and CAMPA can be understood through a reading of two cases around mining on forest land. Following the 1996 order of the court, a case was filed by National Mineral Development Corporation (NMDC) (I.A. No. 419 and 420) for operating six leases in Bailadila, Madhya Pradesh which they had been operating for the last 20 years. In an order dated 17.12.1999 in this particular case, the court had observed that the Madhya Pradesh government had granted permission to NMDC on 20.8.1998. However, while granting permission they had stated that the company should take special care to implement the orders of the Supreme Court in the Godavarman case. In an earlier order of 7.8.1999, the court had also sought clarification from Madhya Pradesh as to how much money had been received from the NMDC for the purposes of afforestation and how that money was utilised.

In the 17.12.1999 order, the court also stated that by the time of the current hearing, NMDC had been granted permission by the Central Government for forest land diversion based on certain conditions. The court's observations and cautions and earlier orders were towards prohibiting any illegal cutting of trees without permission of the Central Government. It was also added that no one had pointed to the court that cutting of trees and carrying out mining operations in this particular case will be

² As per Forest Conservation Rules, 2003 under Forest Conservation Act, 1980, "User Agency" means any person, organisation, Company or Department of the Central or State Government making a request for diversion or de-notification of forest land for non-forest purpose or using forest land for non-forest purpose in accordance with the permission granted by the Central Government under the Act or the Rules.

environmentally hazardous or contrary to law. This was especially in the light of the fact that NMDC will have the responsibility of carrying out compensatory afforestation in an area larger than the one in question where trees are to be cut.

While disposing off the particular application with this order, the court left open the question on the manner in which compensatory afforestation is to be done. It asked the Ministry of Environment and Forests (MoEF) to submit a comprehensive proposal in this regard before the next hearing that was scheduled for the 2nd week of January 2000 along with I.A. 424 which was related to the regularisation of encroachments and compensatory afforestation in Damoh district of Madhya Pradesh. As can be gathered from the details that follow, this case opened up a range of issues pertaining to the compensatory afforestation scheme, its implementation and the associated funds which subsequently became the reason for the setting up of the CAMPA.

The Supreme Court order of 3.4.2000 in I.A. No. 419 and 420 brought to light that in NMDC's case, only 10% of the compensatory afforestation had been carried out. It said that although the rest of the area for afforestation was not in the close vicinity of the mining site, that should not be an excuse for the activity not to take place. The court fixed the responsibility of ensuring this on the MoEF and said that it is for them to monitor the clearance conditions stipulated at the time of grant of forest clearance. The order said that the Ministry "has clearly been remiss in this respect". NMDC was also issued a show cause notice where they were asked to clarify as to why their operations should not be suspended in the light of non-compliance of a condition laid down at the time of grant of approval.

As part of these discussions in court under I.A. 419 and 420 and as required by the Godavarman bench, Shri K.N. Raval, Additional Solicitor General on behalf of the Central Government, presented the position of cases approved for the diversion of forest land for non-forest use and the stipulation of compensatory afforestation, the extent of use of compensatory afforestation funds realised and yet to be received by State/Union Territories.

A mention of this appears in the court's order dated 17.4.2000, where the court decided to treat this submission as a separate Interlocutory Application (I.A. 566 of 2000).

In the same order, the Supreme Court stated: "*Rawal's statement reflects the positions as on 29th March, 2000 and provides dismal reading. In short after the total afforestation, compensatory and otherwise which was required to be done by all the states put together, there is short fall to the extent of 36 per cent*". This was followed by an observation that even though the states had received the money from the user agencies, they had not actually spent the money. This was in particular reference to the States of Arunachal Pradesh, Assam, Bihar, Haryana, Himachal Pradesh, Jammu & Kashmir, Madhya Pradesh, Orissa, Tamil Nadu and Mizoram, and the court sought an explanation from them. Other than these States, notices were issued to all others which had not submitted their quarterly performance reports as of September 1999.

On 17.4.2000, there were also deliberations around the unresolved compensatory afforestation issue related to NMDC who had been issued a show cause by the court earlier. The company's submissions attempted to explain that they had fulfilled their obligation to carry out compensatory afforestation over the next 10 years on 1300 acres. For the remaining 700 acres, a payment of Rs. 40 crores had been made to the State of Madhya Pradesh for afforestation in degraded forest land which NMDC did not have access to. The court sought details of this utilisation from the State Government.

Discussions in I.A. 574 filed by South Eastern Coalfields

The issue of compensatory afforestation was also dealt with in I.A. 574 with regard to the compensatory afforestation by M/s South Eastern Coalfields (SEC) Ltd for the purpose of mining operations on 160.23 hectares in Chirmiri Colliery and 9.6 hectare in West Chirmiri Colliery. These mines are located in Manendragarh district of undivided Madhya Pradesh.³ In this application M/s

³ In the year 2000, the state of Madhya Pradesh was divided into Madhya Pradesh and Chhattisgarh.

SEC Ltd. had sought permission to fell trees on the land that had been diverted for non-forest use in their favour. The applicants had submitted that as per orders dated 13.10.1998 and 25.1.2000, M/s SEC Ltd had been permitted to carry out open case mining in the above mentioned area.

The approval for the diversion of this land had come with a condition that compensatory afforestation is to be carried out on 89 hectares of degraded forest land and 125.74 hectares of non forest wasteland. The money for the same had been deposited with the State of Madhya Pradesh, which is taking steps to comply with this requirement. Therefore, M/s SEC Ltd. was given permission to fell trees to carry out mining.

In the order dated 8.9.2000, the court drew attention to the specific clauses of the Forest Conservation Rules, 1981 (later amended in 2003), which deal with the process of compensatory afforestation. The court order deliberated in detail on the pre-requisites of the FCA, 1980 and its corresponding Rules.

The same order made an interesting observation. It said that even though the proposal for de-reservation⁴ is mooted by the said State Government, as far as the Central Government is concerned, it is done because of an application for de-reservation which is received from an industry. Therefore a question to address is whether the present practice of the money being deposited with the State Government for carrying out compensatory afforestation is satisfactory and whether it is in compliance with the FCA and its corresponding Rules. At this point, the court felt that prima facie it should be the applicant's responsibility to carry out compensatory afforestation as it is the agency which is going to use the de-reserved area.

The order then referred to the submission of Mr. K.N. Rawal, the Additional Solicitor General who in his submission said that

⁴ The FCA, 1980 allows for the diversion of forest land for non forest purposes after following due procedure and scrutiny of the proposal submitted for diversion. However not all cases of diversion of forest land require the forests to be deserved from its Reserved Forest status. For de-reservation, the proposal requires an additional permission from the Supreme Court's Godavarman bench. Therefore, proposals are submitted for diversion, de-reservation and both in some cases.

the Rules and Guidelines on compensatory afforestation which the MoEF had framed would need to be upgraded in the light of the experience on compensatory afforestation. The court observed that it should not just be mandatory to follow the Rules prescribed, but the Central Government should also prescribe the time within which the afforestation should be completed. Furthermore, it emphasised the requirement of an environmental audit to ascertain the survival rate of saplings once they are planted; and that the government may consider asking the applicants to publish the results of such audits in newspapers and also submit them to the Central Government. Infact, if the survival rate is seen to be poor then the permission granted can be liable to be ceased and the non-forest activity stopped. Therefore, before granting permission the central government should be satisfied that the applicant is one who will be able to carry out compensatory afforestation as per requirements, said the court.

In many ways the court's position put the onus on the user agencies and not the concerned State Government to carry out compensatory afforestation. The 8.9.2000 order observed that non-compliance of a condition should cause the approval granted to be withdrawn. In the existing scenario, the liability of the user agency was limited to ensuring that the cash transfer to the State Forest Department takes place. There was no responsibility thereafter to ensure that the afforestation activity is actually carried out, and therefore no direct fear of revocation of forest clearance in case the afforestation works are not carried out.

The order went on to look at the guidelines stipulated for compensatory afforestation by the MoEF, according to which the State Governments were required to create a special fund into which individual user agencies make deposits for compensatory afforestation (paragraph 3.5 of the guidelines; See Annexure 1 for Compensatory Afforestation Guidelines). The court observed that if the primary responsibility to carry out compensatory afforestation is of the user agency then such a deposit might not be necessary and cases where the user agency cannot carry out afforestation, should be treated as exceptional cases and not the

norm. In such instances, the money should not be deposited in the general budget of the State but kept aside in a separate account which can be used when required without any formalities.

With this premise in mind, the court put the responsibility of carrying out the compensatory afforestation work on 20 hectares of degraded forest land on M/s SEC Ltd. For this purpose, the court gave the State Government the liberty to hand over the land to M/s SEC Ltd. for afforestation and its maintenance. In case the survival rate of the plantation was less than 75%, the Central Government was given the authority to cancel the approval granted. For the other 20 hectares which was not on forest land, M/s SEC Ltd. was asked do the compensatory afforestation through its agent. It was further directed that this I.A. be heard along with I.A. 566 in subsequent hearings.

I.A. 566 and its directives

The specific I.A.s relating to the NMDC and M/s SEC Ltd. brought to court the evidence to show the state of implementation of compensatory afforestation and thereby drawing the court's attention to remedy the situation. As per the court's directions these matters were heard alongside I.A. 566, which is the statement made by Shri K.N Rawal before the Supreme Court on 17.4.2000 and which the court took on board *suo moto* as a separate I.A. It was here that notices had been issued to different states who had shown poor progress in the utilisation of funds and not submitted their quarterly progress reports on compensatory afforestation to the MoEF.

On 23.11.2001, the Supreme Court separately and in detail heard the contentions which became part of I.A. No. 566. The affidavits filed by States on the current status of compensatory afforestation indicated that large of sums of money had been realized by th States from the project proponents to whom permission for diversion of forest land for non forest purposes was granted. The interim order of 23.11.2001 highlights that the monies were paid by the user agencies to the concerned State Government towards compensatory afforestation but the

utilisation for afforestation represents only about 83% of the funds collected. The shortfall was nearly 200 crores, amounting to the money which was yet to be deposited. The court therefore decided to consider a mechanism which will help make up for this shortfall (CEC, 2002).

On the same day, the court also asked the MoEF to formulate a scheme for compensatory afforestation. As per this scheme, whenever any permission is granted for diversion of forest land for non forest purposes and the condition for compensatory afforestation stipulated, it would be the responsibility of the user agency to ensure that the money is provided and the State Government would make possible the availability of land for reforestation. This land may have to be made available either at the expense of the user agency or of the State Governments, the decision of the which would be of the State Governments (*ibid*).

When the matter was heard again on 18.02.2002, the Supreme Court observed that the MoEF had failed to comply with the earlier order dated 23.11.2001. The MoEF had not developed a scheme to meet the shortfall in the utilisation of compensatory afforestation funds. The court's observation was, "*Nearly 11 weeks have elapsed and the scheme has not seen the light of the day, nor the Ministry of Environment & Forests has had the courtesy of filing any affidavit explaining the delay or asking for more time*". The court imposed a fine of Rs. 5000 against the non-compliance of its earlier order. Following this order, the MoEF proposed a scheme on 22.03.2002 through an affidavit before the court.

Central Empowered Committee on Compensatory Afforestation, CAMPA and the responses thereafter

The Central Empowered Committee (CEC) was set up by the Supreme Court's Godavarman bench on 9.5.2002 for a period of five years. Its tenure has been renewed twice since, though there have been some changes in its powers and functions over the years. One the issues the CEC almost immediately dealt with was that of compensatory afforestation (CA) and management

of CA funds, and the Committee filed its report in this matter on 9.8.2002.

The CEC report quotes the data submitted by the MoEF and concludes that out of the total funds recovered from user agencies towards CA was to be less than 60% was spent. And if land area over which CA to be undertaken is considered, then only 61% of the total target area had been covered. However, the report goes beyond just pointing to the problem by explaining what it sees as the causes for these low rates of recovery and expenditure. The report articulates the views of the State Forest departments that the existing practices of fund disbursement and the activities that are expected to be carried out under CA schemes do not allow effective afforestation.

It explains this situation by reiterating the inputs received from the States that the funds collected for CA are not made available to them without budgetary allocations. It is in this light that CAMPA was first suggested as a mechanism that would allow State Governments to access the funds collected from user agencies for CA as and when they are needed. The CEC stated *“the perception of the representatives of States is that unless and until the present system of the release of funds through budgetary provisions is changed, the pace and quality of compensatory afforestation cannot be increased significantly. Therefore it is desirable to create a separate fund ...The funds received from a particular State would be utilised in the same State”*. The CEC and State Governments believed that such a fund would *“ensure timely and adequate release of money and provide necessary flexibility in implementation of schemes.”* (CEC 2002).

In order to improve the effectiveness of CA, the CEC also made another recommendation that at once altered the administrative gaze on an activity such as CA as well as forests as an entity. They stated that protecting natural standing forests are also to be seen as legitimate activities under CA rather than just planting in degraded forests or new areas. This was almost a tacit confession that the forest department was raising plantations in the name of CA and not real forests. However, there is no supporting

explanation given by them to indicate why they viewed these plantations raised under CA as lesser forests.

Another recommendation of significance in this report that transformed the notion of forests, the bureaucratic understanding of their functions and therefore the method of enumerating their value is that of the 'Net Present Value'. This recommendation, its implications for forests and implementation are discussed in the following sections (See Annexure 2 for recommendations of the CEC in its 9.8.2002 report).

Following the recommendations of the CEC, I.A. 566 along with all other related cases continued to be discussed as part of the Godavarman case proceedings. CEC's recommendations were listed in court as I.A. 826 in I.A. 566 and heard accordingly. Though the MoEF's affidavits to the Supreme Court are not available to us, the Supreme Court order of 30.10.2002 order in I.A. 566, W.P. (Civil) No.202 of 1995 indicates that the MoEF agreed with the CEC on the desirability of a new, independent and direct mechanism for the collection and disbursal of CAF between Centre and States and accepted all their recommendations. The court order also refers to the report of the CEC dated 5.9.2002 which states that there should be a change in the manner in which funds related to compensatory afforestation are released to the State Governments. This agreement between the CEC and the MoEF in the Supreme Court on the matter of the creation of CAMPA is notable. Though these are two separate bodies, the individuals that constitute them are not distinct. Some members of the CEC are also officials of the MoEF, either current or erstwhile.

It was also in this order that the Supreme Court proposed that there will be a body for the management of CA in India which will include the Director General of Forests and Special Secretary who will be the ex-officio Chairman and Inspector General of Forests who will be the ex-officio Member Secretary. The court asked the MoEF to finalise a set of comprehensive rules for the constitution of a body and management of the compensatory afforestation funds (CAF) in concurrence with the CEC. These were directed to be placed before the Supreme Court within

eight weeks. Here, began the process to design what was finally designated as the CAF and the CAMPA.

A letter of the CEC dated 19.2.2004 reveals that the draft notification prepared by the MoEF on a proposed CAF was “*a reproduction of the minutes of the meeting*” between the MoEF and the CEC. The CEC was of the view that the CAF should be managed by a body comprised of forest officials as ex/officio members with one Inspector General of Forests (IGF) and one Additional IGF deputed as full time members. It felt that a Governing Body was not needed. The CEC envisaged a Steering Committee and a Management Committee at the State level, comprised again of forest officials. It however held that at the Central and State levels, NGOs should be involved “*to ensure proper utilisation of the funds*” (Letter No: F. No. 1-33/ CEC/ SC/2003) dated 19.4.2004).

The CEC, by basing its recommendations on the views of the State Governments also negotiated the relations between the Centre and State Governments and made possible a consensus or the appearance of a consensus on the view that leaving CA money in the hands of the State Governments is not desirable anymore. Though no State Governments filed affidavits in response to the CEC report, the Supreme Court took it that they did not have any objections. The stage was thus set for the establishment of CAMPA on the agreement (or lack of disagreement) of the Supreme Court, the CEC, the Central Government and the State Governments. The Central Government was ordered to frame rules for the creation of a body that would manage CA funds.

Constitution of CAMPA, delays and related directions

As mentioned earlier, the Supreme Court in its order dated 30.10.2002 directed that a body shall be constituted to manage funds received for the diversion of forest land for non forest purposes. The body was to manage the money being collected for compensatory afforestation, Net Present Value and any other money recoverable under the Forest (Conservation) Act, 1980 (69 of 1980) for non-forest uses of forest land. A notification to

this effect was issued by the MoEF under the sub-section (3) of Section 3 of the Environment (Protection) Act, 1986 (29 of 1986) on 23.4.2004. This is known as the CAMPA Notification 2004.

This notification mentioned that the CAMPA shall function through a Governing Body and an Executive Body at the national level. The Governing Body would consist of one chairman and 16 other members including an eminent professional ecologist from outside the government for a period of 2 years at a time. The Executive Body will consist of one chairperson and six other members including a professional ecologist from outside the government for a period of two years at a time. The Chief Executive Officer of the CAMPA would be of the rank of Inspector General of Forests. Powers and functions of the Governing Body and Executive Body have been mentioned in the said notification. The Governing Body has the powers to review the policy framework of the CAMPA and monitor the utilization of funds released by the CAMPA. The Executive Body is to take care of the day to day functions and administrative work of the CAMPA, such as receipt of funds, the investment of funds, expenditure on establishment and other overhead costs including office accommodation subject to the approval of the annual budget by the Governing Body.

As per the Notification, every State or Union Territory shall have a Steering Committee and a Management Committee. The Chairman of the Steering Committee is to be the Chief Secretary of the State and Principal Chief Conservator of Forests is to be the chairperson of the Management Committee. The Steering Committee of the State/ UT is to facilitate policy decisions and Management Committee of State/UT is to prepare the Annual Plan of Operation (APO) for various activities and submit before the CAMPA after consultation with the State Steering Committee.

The amount collected by the CAMPA is to be invested in the Reserve Bank of India, Nationalized Banks, Post Office, Government Securities, Government Bonds and deposits. Interest from the CAMPA deposit is to be used for the functioning of CAMPA. The money received for compensatory afforestation, additional compensatory afforestation, Net Present Value (NPV)

and for diversion of Protected Areas and other forest land for non forest purposes may be used for site specific schemes received along with proposals for diversion of forest land under the FCA. The CAMPA is authorized to disburse monies to the concerned State and Union Territory in predetermined instalments through State Level Management Committees' Annual Plan of Operation (APO).

The notification mentions that a mechanism will be set up for an independent monitoring and evaluation of works undertaken with CAMPA funds. However it does not mention what this system would be. The CAMPA establishes its right to inspect and audit works undertaken by the State and the Executive Body holds the power to withhold or suspend the disbursal of funds if the work is found unsatisfactory.

On 17.9.2004, four months after CAMPA had been notified, the court received the observations of the MoEF. A challenge to the notification was also reported. While the source of the challenge is not known, the point was the absence of NGOs in the composition of the committees. In the hearing of this I.A., the judges "questioned the necessity of NGOs to be represented on these bodies as the power and function don't demand it" (Dutta and Kohli, 2004). On an order issued that very day, the court said that the Amicus Curiae, the Solicitor General and "other concerned persons (to) examine grey areas if any" and place their joint recommendation to court "keeping in view that this is not an adversarial litigation".

The notification of CAMPA and the establishment of NPV (as discussed in the subsequent section) may have led to several individual project proponents appealing to the Supreme Court for exemptions, reductions or review of payments to be made by them for the diversion of forest land. In a hearing in April 2005, the Amicus Curiae suggested that the court hear only the matters of the State Government and the Union of India rather than of all affected persons for the (Dutta and Kohli, 2005).

Between 3.5.2005 and 5.5.2005, during detailed hearings on NPV and CA related issues, the State Government of

Kerala questioned the constitutional validity of the CAMPA on the grounds that the funds collected should go to the State Government. Its challenge was specifically to clause 6.4 that dealt with the disbursement of funds by the CAMPA (Dutta and Kohli, 2005a).

The above are only a few examples of the kinds of responses that the court faced on the question of the newly notified CAMPA. Discussions on these matters finally led to the judgement of the Supreme Court of 25. 9.2005. In this judgement, the court sought to lay to rest all the concerns and challenges to the notification of CAMPA and the justification, purpose and method of enumerating NPV. The ways in which the court addressed the issues of constitution, composition and validity of CAMPA are presented below, while the ways in which it dealt with the questions on NPV are presented in the following section.

On the subject of the composition of the CAMPA and the presence of NGOs, the court ordered that clause 2.2 which lays down the composition of the Executive Body, be amended to include “two more environmentalists, one of whom may be an expert in the field of forestry and the other in the field of forest economy development”. The compliance of this order would have meant that there would be a total of three non governmental members (though this does not mean that they are NGOs).

A significant change that the court made in terms of utilisation of CAMPA funds is with respect to freeing CA practices from State boundaries. Though the CEC report was of the view that CA funds “*received from a particular State would be utilised in the same State*”, the Court in its order elaborated on how the impacts of activities are not “limited to the place of origin”. It ordered that clause 6.2 be amended to suggest that the decision of the geographical areas which are to receive CA funds be left to the CAMPA’s discretion.

On the question of the constitutional validity of the CAMPA, the court reiterated some of the arguments made by the Amicus Curiae in court in May 2005. The contention made was that

the CAMPA lacks accountability as there is no parliamentary or legislative control over it. Also that, forests are government property and that the funds accruing from such property cannot be held by any person or authority on behalf of the government. To this contention, the court responded that the collection of monies by the CAMPA are for the purposes of conserving a “national”, “intergenerational”, “public” asset and not government property and that it is a fee that is levied to undertake some activities that are akin to economic and social planning. Rather than a revenue earned by the government for the sale or use of its property, the monies collected by the CAMPA are to “carry out the statutory and constitutional obligations” i.e. the protection of natural resources. The court clarified that the clauses in the CAMPA notification laid down measures to ensure “financial discipline, transparency and accountability” and that the system of double entry book-keeping would be used in accounting. Internal and external auditing are provided for at regular intervals (Supreme Court Judgment Dated September 26th 2005, I.A. No. 826 in I.A. No. 526 in W.P. (civil) 202, 1995).

Interim money collection mechanisms and the Ad-hoc CAMPA

From the time of the Supreme Court’s orders on 30.10.2002, the money collected for CA from some user agencies, was being deposited with the CEC. As per the order dated 9.5.2002 for the constitution of the CEC, the expenditure incurred on the working of the Committee, including salary / remuneration to the extent not payable by the Government to the members and supporting staff, was to be met out of income accruing to the Special Investigation Team (SIT), set up as part of the Godavarman case to look into matters of seizure and confiscation of timber following the 12.12.1996 order discussed earlier. Pending the setting up of the CAF, an amount of Rs.79 crore from the Power Grid Corporation of India, Kudremukh Iron Ore Company Limited, Karnataka Neeravari Nigam Limited and ONGC had also been deposited with the CEC. These

had been on the specific orders of the Supreme Court related to particular cases involving these agencies (CEC, 2004). All of these agencies were using forest land located within either a National Park or Wildlife Sanctuary set up under the Wild Life (Protection) Act, 1972. Another Rs.197.75 crores was also with the CEC in relation to orders of the Supreme Court on the defacing of rocks in Kullu-Manali, Himachal Pradesh. Companies such as Coca Cola, Pepsi, Grasim and Fena had deposited this amount in order to be able to clean up the rocks on which advertising had been done (order dated 23.9.2002 and 26.9.2002 in I.A. 780) (*ibid*).

The intent was that this money would be transferred to the CAMPA on its constitution following the SC orders within a period of 12 weeks. However, the delay in its constitution led to an amount of 79 crores lying with the CEC until 2005. This was reported by the CEC to the Supreme Court in June 2005 along with its audit reports for the years 2003 and 2004. In its audit report of the CEC account, the auditor stated “the reason for not returning this money to the CAFs even after a gap of more than two years may be examined and immediate steps be taken to transfer this money to the appropriate agency” (*Inspection reports for years 2002-2004 annexed to letter of CEC on May 25, 2005*). This matter was heard as I.A. 827 and I.A. 1337 in 827 in the Supreme Court and dealt with the receipt and utilisation of funds with the CEC.

Until May 2006, there was no conclusion on the matter of the setting up of the CAMPA. Therefore, on May 5.5.2006, the Supreme Court directed that an Ad-hoc CAMPA be constituted and all the money collected by States/UTs for CA be transferred to this Ad-hoc body (MoEF, 2009; Upadhyay, 2009). In an order dated 15.9.2006 in I.A. 1337 in 827, further details of the Ad-hoc CAMPA were specified. The order referred to an affidavit dated 21.8.2006 filed by the Director General of Forests and Special Secretary of the MoEF which stated that the Ad-hoc CAMPA had been set up by the Ministry and sought that it may be authorised to disburse funds for site specific schemes and incur

other expenditures. It also said that as of 19.8.2006, Rs.1094.88 crores were received by the Ad-hoc CAMPA from various States and UTs and an additional Rs.30 crores from the Singaneri Collieries Limited, Andhra Pradesh.

In the same order, while the court sought further details of the schemes pending with the Ad-hoc CAMPA, it allowed the MoEF to continue with the services of the Additional IGF even after the completion of his tenure with the MoEF. The MoEF was also allowed to appoint additional officials for the “*proper and efficient*” functioning of the Ad-hoc CAMPA. It is important to note that the setting up of this Ad-hoc body and its composition was directed by the court on 5.5.2006 based on the suggestion of the CEC in its report dated 21.1.2006 (CEC, 2008).

Further, in its order of 28.11.2006, the Court commented on the sluggish attitude of the MoEF towards the implementation of the CAMPA notification. It stated that the MoEF took 18 months instead of 8 weeks to promulgate the notification. Following that delay, it had been a period of two and a half years but a CEO was yet to be appointed. On not having received any reasonable explanation from the MoEF for these delays, the court ordered the MoEF to appoint a CEO before the next court hearing on December 15, 2006 (I.A.s 827, 1122, 1337, 1473, 1620 in W.P. 202 of 1995 dated 28.11.2006).

By the time the next hearing took place on 5.1.2007 (the matter had been deferred once on 15.12.2006), the acting CEO for the Adhoc CAMPA had been appointed. The MoEF had assured that a regular appointment shall be made once the CAMPA is fully constituted. (order dated 5.1.2007 in I.A. Nos. 827, 1122 & 1337, 1473, 1620 and 1693 in 1473 in Writ Petition (Civil) No. 202 of 1995). According to a press release of the MoEF dated 22.08.2007, the notification for the Ad-hoc CAMPA had not been approved by the Cabinet and the process was still underway in August 2007 (MoEF, 2007). Therefore the funds were lying unutilised.

On 11.1.2008, the Supreme Court took on board the report of the CEC regarding the non-utilisation of funds received for compensatory afforestation and Net Present Value and a proposed

mechanism for its utilisation as I.A. 2143 in I.A. 1413⁵ (dated 10.1.2008). The CEC had brought to the notice of the court that Rs.5600 crores was lying unutilised with the Ad-hoc CAMPA. In the same order, the court issued notices to the MoEF and sought a response from them as to why the money with the Ad-hoc CAMPA was not being utilised (CEC, 2008). The I.A. was heard inconclusively throughout 2008-2009.

It was through the order dated 10.7.2009 in I.A. No. 2143 that the court ordered for the release of funds available with the Ad-hoc CAMPA based on a scheme proposed by the CEC. The details of this order are discussed in Section III on implementation.

⁵ I.A. 1413 was one of the I.A.s related to temporary working permits and exemptions sought by 18 mining licensees from Goa. The details of this are discussed in the section on Net Present Value.

WHAT ARE FORESTS WORTH?

The Official Estimation of Net Present Value (NPV)

Background

The Supreme Court in its order dated 26.09.2005 (*in I.A. 566 with I.A. 932 IN 819-821, 955, 958, 985, 1001.1001a, 1013,1014, 1016-1018, 1019, 1046, 1047, 1135-1136, 1137, 1164, 1180, 1181 AND 1182-1183, 1196, 1208-1209, 1222-1223, 1224-1225, 1229, 1233, 1248-1249, 1253, 1301-1302, 1303-1304, 1312, 1313, 1314, 1315-1316, 1318 AND 1319 IN WP (C) NO. 202 OF 1995*) defined Net Present Value (NPV) as “*the present value of net cash flow from a project, discounted by the cost of capital*”. In simple terms, it is arrived at by deducting the cost of investment from the present value of all future earnings. If the cost of putting up a project is I and the value of earnings from the project from now till the end of the project is X, then NPV is X-I.

When applied to forest land diversion, NPV is understood as a value to compensate, in money terms, for the loss of tangible as well as intangible benefits flowing from the forest lands due to its diversion to non-forest use. The new user of the forest land is expected to bear the cost of these losses by the payment of NPV. The 2005 judgement concluded that the payment of NPV is for the protection of environment and not in relation to any “proprietary right.”

Discussions around NPV in addition to payment for compensatory afforestation were introduced in the Godavarman case through the report of the Central Empowered Committee (CEC) dated 9.8.2002, alongside other aspects related to compensatory afforestation, highlighted in the previous sections of this chapter. The CEC report highlighted that “*the States/UTs*

as well as Ministry of Environment and Forests are of the view that in addition to the funds realized for compensatory afforestation, the Net Present Value of forest land being diverted for non forestry purposes should also be recovered from the user agencies. The money so recovered could be utilized for undertaking forest protection, other conservation measures and related activities". The CEC also recommended putting into place, guidelines for collection of NPV from a user agency.

The practice of collection of NPV in addition to compensatory afforestation had been in place in the states of Madhya Pradesh, Chhatisgarh and Bihar even before it was debated in court. In fact these practices became the basis of discussions related to NPV in court as it moved towards setting into place mechanisms for determining and recovery of NPV based on quality and density of forests. According to the report of the 9.8.2002 report of the CEC, the underlying principle behind this practice was that plantations raised under compensatory afforestation scheme can never adequately compensate for loss of natural forests as plantations take much longer to mature and even then they are a poor substitute for natural forests. These States were recovering NPV at the rate of Rs.5.80 lakhs per hectare to Rs. 9.20 lakhs per hectare (CEC, 2002).

There were detailed discussions on compensatory afforestation related issues and NPV in court on 29.10.2002 and were carried forward to 30.10.2002. The Supreme Court examined the CEC's 9.8.2002 recommendations and after a prolonged debate, it was accepted that every user agency shall have to pay NPV for forest land diverted for non-forest use. This money was to be deposited in the Compensatory Afforestation Fund (CAF) along with payments for Compensatory Afforestation, Additional Compensatory Afforestation, Penal Afforestation and Catchment Area Treatment Plan funds. The calculations as suggested by the CEC based on the existing models in the above mentioned States were accepted (i.e. Rs. 5.80 lakhs per hectare to Rs. 9.20 lakhs per hectare) depending on the density and quality of forests.

The court in its order of 30.10.2002 clearly stated that the rate prescribed as NPV can be subject to upward revision by the MoEF in consultation with the CEC, as and when required.

In a subsequent order of 1.8.2003 in I.A. No. 826 and 859⁶ even though the MoEF had sought an adjournment of the hearing, the court allowed it only with an explicit mentioned that no approval for forest land diversion shall be granted without imposing NPV as a condition as indicated in its earlier order of 30.10.2002.

During the course of the hearing, in I.A. 1046, the MoEF sought directions that the NPV calculation should be part of the detailed project report submitted to it for forest clearance under the Forest Conservation Act, 1980. As highlighted in the 2005 judgment, although the MoEF stated that the format issued by the World Bank for calculation of NPV for the projects shall be the basis of its calculation, the Solicitor General stated that he was not relying upon that format.

The Supreme Court examined these issues and discussed the matter in detail and came up with certain views on NPV calculation, NPV fund and exemption criteria for certain projects which were highlighted in the 2005 judgment. Other than substantially detailing out the mechanisms of calculating and collecting NPV, the judgment also directed the processes that needed to be carried out like the setting up of an Expert Committee, calculation protocols, possible exemptions and so on. In many ways, this judgment was a culmination of the court's discussion on both compensatory afforestation and NPV, and thereby remains a milestone in the series of events, deliberations and decisions with respect to the NPV.

Establishing the NPV Practice: What the 26.9.2005 Judgment said

In its 2005 judgment, the court examined several issues related to NPV and raised five specific questions related to NPV which

⁶ I.A. 826 was the CEC's recommendations in I.A. 566 (based on the submission of Shri. K.N. Rawal, Additional Solicitor General for MoEF). I.A. 859 was not heard in Supreme Court beyond 8.9.2003 when it was disposed off for having become infructuous.

it stated needed to be examined in the context of the existing legislations around forests. These were:

- a) Should a user agency be required to make a payment for NPV for the diversion of forest land for non-forest use so as to utilise the amounts received to compensate for the long term benefits that might have been lost with such a diversion?
- b) What guidelines should be issued for the determination of NPV?
- c) Should these guidelines be uniformly applicable to all?
- d) How should NPV be calculated?
- e) Should some projects be exempted from the payment of NPV?

It gave further directions to all the the concerned stakeholders that the conclusions and observations of the judgment need to be complied with. The court's 2005 judgment indicates that there were substantial arguments on both the legal and jurisdictional basis to levy NPV as well as the guiding principles for NPV determination.

What was highlighted was that most of the State Governments (there is no mention of which ones) did not object to the recovery of NPV from user agencies, but had strongly argued that since the land under forest belongs to the State, the NPV amount should be paid directly to the State and not routed through the CAMPA. Interestingly, it was contended that no NPV should be charged on degraded forests and public utility projects should be exempted.

In response to this, the Amicus Curiae Shri Harish Salve argued that *"NPV is to be levied and collected not because property rights of the States are affected but on account of effect on ecology by conversion of forest land for non-forest purpose."* He further recommended that the NPV should be calculated on the basis of the economic value spread over a period of 50 years, which would be the "regeneration value for forest regeneration to be taken into account as opposed to restoration value, i.e. financial value." He

also added that there were several legislations which back the legal and jurisdictional validity of the concept of the NPV.

In a detailed description on how NPV should be calculated, the 29.5.2005 judgement states that NPV was sought to be a method by which “future expenditures (costs) and benefits are levelised in order to account for the time value of money.” With this principle in mind it is possible to calculate the present value of the revenues from the expected benefits of forest regeneration. The judgment states that the NPV method, *“discounts future costs and future benefits by use of appropriate discount rate and brings down such costs and benefits to the reference date which in the present case has been assumed to be the year 2005.”* This principle would need to be applied to the forestry sector where both tangible (timber maturity value) and intangible aspects (flood control, water or soil conservation benefits etc) exist. While deliberating on the several existing valuation methods in the forestry sector, the judgment built the case for NPV to be the best possible mechanism. Alongside several technical details and mechanisms for calculation, the 2005 judgment said that the principles and parameters for valuation of the damage have to be evolved keeping in view the likely impact of an activity on the future generation.

As mentioned above, just like in the case of the CAF, the State Governments had not per se objected that the NPV be levied; the bone of contention was on where it would be deposited. While the CEC and the directives of the Supreme Court were pointing to a centralised mechanism in the form of a CAMPA, State Governments had preferred that the monies come to them. The 2005 judgement in response to this and while referring to the 12th Finance Commission Report states that forests are national wealth and it is the responsibility of the country as a whole to protect them. The Commission had recommended a grant of Rs. 1000 crores for a period of 2005-2010 for the maintenance of forests which was distributed amongst States depending on their forest area. Therefore, said the order, it is not open to the State Government to contend that the NPV be handed over to them.

Seeking NPV Exemptions

Even before the 2005 judgement had been issued, the MoEF had presented a case that for mining projects, there had to be a difference in approach for minerals of high volume and low value and minerals of high value and low volume. The argument was that levying of flat rates of NPV per hectare basis will not be rational. In case of mining, the NPV should be calculated at the rate of 10% of the annual royalty for major minerals and 5% for minor minerals. The Ministry of Mines in I.A. 1047, emphasised on similar pleas as in I.A. 1046 with respect to calculation of NPV.

While we will discuss the details of this judgment and the processes that followed, it is important to note that in its order dated 15.09.2006 (in I.A. Nos. 1473 and 1620) the court ruled out any ambiguity on its previous orders dated 29.10.2002 and 30.10.2002 and 1.8.2003 and clearly stated that NPV is required to be recovered in all cases of forest land diversion for non forest use by the MoEF. This is for any project granted in principle or final approval after October 2002. The MoEF was also directed to recover the pending NPV from the user agencies in pursuance of its above-mentioned orders.

The 2005 judgement also discussed in detail whether certain category of projects should be exempted from the payment of NPV. The Solicitor General for the Government of India had argued prior to the issuance of the judgement that there are certain kinds of projects which are for public utility and public welfare. These also do not have adverse impacts on the environment and so should be granted exemptions. In this regard, the MoEF suggested that government hospitals, dispensaries, non- commercial government ventures like schools, rain water harvesting tanks, village roads etc. should be exempted for their public welfare and utility nature. The 2005 judgement indicates the agreement of the Amicus Curiae to this proposal. However, the Solicitor General had also suggested that irrigation and hydro electricity related projects also be treated as those for public welfare.

Taking a cue from this, counsels representing the interests of irrigation and hydro electricity attempted to further this argument and sought exemption from NPV payments. User agencies such as National Hydroelectric Power Corporation Ltd. (NHPC), Grid Corporation of Orissa (GRIDCO), the State Governments of Uttarakhand and Madhya Pradesh brought forward the arguments that their activities are in public interest and will not cause environmental pollution. Their revenue earning capacity should not place them differently from other public purpose projects.

In response to this, the Supreme Court had contended that the issue is not about pollution but the change of land use by its diversion. To quote the judgement, *“distinction has to be maintained between a project set up for providing public utility but which is revenue earning, the category to which the project of NHPC falls and the government projects of the nature above referred like hospitals, schools etc, non revenue earning projects. A balance is required to be maintained in the development has to be based on sustainability. If NHPC uses the forest land for non forest purposes, the payment of NPV is to protect the ecological and biodiversity having regard to the doctrines above referred.”* The same applied to GRIDCO and other State Government proposals.

The Federation of Indian Mineral Industries (FIMI) too urged to court that major and minor minerals should be treated differently.⁷ They suggested 10% for major minerals and 5% for minor ones. The court did not agree with this contention and stuck to the larger concern of diversion of forest land for mining activity and the application of the public interest logic when it came to any exemption.

It was therefore concluded that except government projects like hospitals, dispensaries and schools referred to in the judgement, all other projects shall be required to pay NPV. However, a final

⁷ Major minerals are those specified in the schedule appended in the MMDR Act, 1957 and the common major minerals are Calcite, Clay, Coal, Quartz etc. Minor Minerals are those specified in the schedule appended in Minor Mineral Concession rules and the common minor minerals are limestone, decorative stones etc. (<http://megdmg.gov.in/faqs.html>)

decision on this matter was to be taken after the receipt of the report to be prepared by an Expert Committee appointed by the Supreme Court. The judgment ordered the setting up of an Expert Committee comprising three experts including Dr. Kanchan Chopra, Institute of Economic Growth, to examine a range of issues with respect to NPV and submit its report.

Specifically with respect to NPV, the user agencies were asked to give undertakings that further payments would be made by them as determined by the Kanchan Chopra Committee report.

Kanchan Chopra Committee's Contentions

The Kanchan Chopra Committee was set up pursuant to the Supreme Court's judgement of 29.5.2005. The two other members of the Committee were Prof. Gopal K. Kadekodi, Director, Institute for Social and Economic Change, Bangalore and Shri V. B. Eswaran, Former Secretary to the Government of India.

The tasks of this Committee included identifying and defining parameters (scientific, biometric and social) on the basis of which the value of forest land should be estimated. The Committee was also asked to formulate a practical methodology for the estimation of the monetary values which would be applicable to different bio-geographical zones of India. Alongside, the Expert Committee was asked to present an illustrative application of this methodology so that it would be possible to obtain actual numerical values for different forest types in each bio-geographical zone in the country and thereby, on the basis of established principles of public finance, determine as to who should pay the costs of restoration and/ or compensation with respect to each category of forest.

Finally, the Committee was to also look at which projects deserve to be exempted from the payment of NPV.

The Committee submitted its report after five regional hearings (Delhi, Bangalore, Guwahati, Ahmedabad and Bhubaneswar) seeking comments and responses on the matter. This was to elicit the participation of government departments, representatives of industry, civil society organizations and individuals. The Committee

members in their report also state that they had consultations with ecologists, foresters and legal experts on the relevant parameters, definitions and methodology of forest valuation. Information was also sought from the MoEF on the definition of forest and forest lands, activity-wise conversion of forest lands and NPV collected by the CAMPA.

This Committee broadly understood NPV as a “*a compensation payable to stakeholders for diverting forest land to non-forest uses*” and to be deposited by the user agency in the CAMPA. Some key observations from this report are:

a) *Applicability of NPV:* NPV is payable only for forest areas under the ownership and management of the forest department and not to land which has not been finally notified as forest as per Section 4 of the Indian Forest Act, 1927. As per the FAO definition, land left fallow in a shifting cultivation cycle and on which some vegetative cover has emerged, is not a forest. In case of a renewal of non-forest use of land leased out prior to the 30.10.2002 order of the court, it will attract both NPV and related payments like ground rent.⁸ On fresh leases, all payments are applicable. If the forest department itself asks or initiates a move to exchange an originally leased land prior to 30.10.2002 they will not come under the purview of NPV.

b) *Site Specificity of NPV:* The Committee’s report emphasised that the NPV of a tract of forest and the claims by the stakeholders should be entirely site specific. Therefore, whenever a tract of forest land is to be diverted to non-forest use, the steps undertaken should include the determination of the value of NPV and the nature of rights, privileges and concessions of stakeholders on it. Simultaneously, public hearings should be organised to appraise all parties concerned of the intention to divert the forest land.

c) *Steps to determine NPV:* The Committee recommended 12 steps that should be followed in order to determine the value of NPV of the forest and claims by the stakeholders at the forest

⁸ As stated in the Kanchan Chopra Committee report, ground rent was defined as the price for the land as approximated by prevailing rents in the region, subject to a minimum of Rs. 10,000 per hectare.

range level. Steps 1 to 11 deal with the range level calculation of NPV and the listing of the claims of all relevant stakeholders for forest land to be diverted for non-forest use. These include the legal status of land involved, its classification, the kinds of products and services to be valued (such as timber, carbon storage, ecotourism and NTFP). Step 12 deals with the determination of compensation to major stakeholders. The major stakeholders include locals, State forest departments and Central Government and compensation to these stakeholders can be made as per predetermined norms.

d) Exemptions: The Committee examined the issue of exemptions for different categories of projects for which forest land diversion needs to take place. It presented a tabulated list of activities which should be given partial or full exemptions. For instance, full exemption was recommended for public works like schools, hospitals, children's play grounds using upto 2 hectares of forest land. Mining activities received no exemption. While, minor surface water run-of-river schemes and water harvesting for irrigation projects upto 10 hectares of storage area received full exemptions, major irrigation and hydel power received only 30% benefit and that too if no land is diverted from a Protected Area. Many other activities like municipal water supply, drinking water pipelines, relocation of villages from Sanctuaries/ National Parks and housing for rehabilitation of tribal communities received full exemption. However, the regularisation of eligible encroachments (those identified before 1980) got no exemption. Details of the other projects are listed in the Expert Committee's report (See Annexure 3). The Committee recommended 90% exemption to wind energy projects.

e) Frequency of Payment: It was recommended that all projects will be liable to pay ground rent irrespective of exemption levels with respect to NPV. If any project has reasons to deliver the project outcomes after 5 years from initiation, the project may be granted permission to make the payment of NPV in more than one instalment. For public utility projects and those with an NPV burden of more than 50% of initial project capital costs,

the frequency suggested was annual. In each instance a bank guarantee is required, states the report.

f) NPV deposits at various levels: The Committee recommended that different amounts collected as NPV be deposited in funds established at local, State and national levels. Different mechanisms for administering these funds were also stipulated.

The court referred this report to the CEC for its response. The CEC filed two reports in response, the first dated 16.10.2006 and subsequently a supplementary one on 2.1.2007, details of which are discussed in the next section.

Response of the CEC and thereafter

One key point of difference between the Kanchan Chopra Committee and the CEC was with reference to the recommendation that wind energy projects be given exemption on payment of NPV upto the extent of 90% and they be given clearance to start projects after payment of 10% NPV. The CEC recommended upto 50% exemption at minimum rate when no tree felling is involved in such projects. Finally the Supreme Court examined the recommendations by both committees on wind energy projects and accepted the CEC's recommendations. This was recorded in the order dated 24.4.2008 in I.A. Nos. 1135, 1136, 1224 and 1225, 1233 1385-1386 and 1438 with 1639, 1671, 2098.

On 2.1.2007, the CEC had filed its supplementary report (as was sought by the Supreme Court's order dated 28.11.2006) and gave its suggestions on how NPV is to be calculated. The report explained the rates for forest diversion based on the 'class' of forests. Within each class of forests like evergreen, moist, swamp or sub alpine forests, sub categories such as very dense, dense and open were made. When it came to Protected Areas (PAs) declared under India's Wild Life Protection Act, the CEC prescribed a strategy of avoiding diversion. Permission for diversion could be considered on payment of an amount ten times the NPV in the case of National Parks and five times in the case of Sanctuaries. For calculating the average NPV per hectare, the CEC accorded a monetary value to seven aspects that it considered to be either a

“good or service”. Foremost on this list of forest goods and services was the value of timber and fuel wood followed by value of Non Timber Forest Produce (NTFP), value of fodder, eco-tourism and bioprospecting. Ecological services of forests and value of flagship forest species was next. Interestingly the CEC also listed carbon sequestration as one of the services while calculating NPV.

The recommendations of the CEC were accepted by the court and also by the MoEF. On 28.3.2008, the court stated that the NPV rate fixed would hold good for a period of three years and would be subject to change after that. Based on the classification suggested by the CEC, the maximum NPV for class I and II, very dense forest was Rs. 10,43,000 (10.43 lakhs) per hectare. The minimum rate fixed for class IV, open dense forests was Rs. 4,38,000 (4.38 lakhs) per hectare (See Annexure 4 for classification).

Exemptions, Modifications continue to be sought

As mentioned earlier, the court had directed that States were to collect NPV ranging from 5.80 lakh per hectare to 9.20 lakh per hectare depending on the quality and density of land. In March 2008, this was revised to a range of 4.38 lakh per hectare to 10.43 lakh per hectare. The requirement for the payment of NPV also became one of the standard conditions imposed upon the user agency granted forest clearance for the diversion of forest land.

Even though the issue of NPV was settled in court after the CEC's recommendations were accepted, the court continued to hear petitions for the complete exemption of NPV payment by certain sectors. Many project authorities also approached the court for a reduction in payment of NPV. In the order of 29.5.2005, the court granted NPV exemptions to certain projects such as government hospitals, dispensaries, schools, rainwater harvesting tanks and other such non-commercial ventures.

Though these exemptions were only for non-revenue earning and non-commercial government welfare projects, a number of proponents of commercial projects filed applications in the

Supreme Court and the Central Empowerment Committee (CEC) asking for exemptions or reductions in the amount to be paid as NPV. In a number of instances, these requests were from public sector units (PSUs).

Some examples of how exemptions and objections around payment for NPV have continued are presented here:

- a) On 16.12.2005 in I.A. 1441, the court decided on a matter where the South Eastern Coalfields had pleaded for exemption on the ground that Rs.600 crore was a very large amount to pay for a PSU (Dutta and Kohli, 2005b). This was one of the I.A.s in which permission was being sought for temporary working permits for operating mines pending forest clearance. The company had pleaded for reduction in the amount to which the court did not agree. But it ordered that in the peculiar circumstances of this case and also in the larger public interest, the mine maybe allowed to continue operation rather than be stopped or its clearance withdrawn, subject to depositing the NPV with the CEC.
- b) In another case, the Ministry of Defence through its Director, Military Training (for Field Firing Ranges for training their members) asked for exemption from payment of NPV at a hearing on 5.5.2006. The argument given by the Counsel for the MoEF, A. D. N. Rao was that even if a large amount of forest land is given to the army, only 10% is converted for non-forest use (I.A.s 1387, 1434 & 1665). The court conceded and allowed the Ministry of Defence to carry out the activities in question with an exemption from NPV.
- c) Another instance that was granted an exemption was the construction of a reservoir and pipeline in the Chambal Ghariyal Sanctuary, Uttar Pradesh (I.A. 1480-82). The project proponents highlighted that they were expected to pay 5% of the total cost of the project as NPV for forest clearance. The project though large, involved only 1 kilometre of forest land. The request to the court was that the project proponents be asked to pay only 5% of the cost of construction that is to

take place within the Sanctuary. The court agreed to this as an exceptional case on 14.7.2006.

- d) Another case for exemption was filed by the State of Andhra Pradesh (I.A. 1609–1610, order dated 5.4.2007). It sought permission for the temporary diversion of 7 ha. of forest land in Rajiv Gandhi Wildlife Sanctuary to carry out the construction of a weir. The State Government was to pay Rs.1.5 crores to CAMPA towards NPV as 5% project cost and penalty amount. The Counsel for the State Government submitted that 5% of the total project cost would be a substantial amount and a further penalty of Rs.2 crores would put the State in a difficult situation. The court reduced the penalty to Rs. 1 crore and billed a total of Rs. 1.5 crore to the project.
- e) 18 temporary mining license holders of Goa submitted that they be allowed to continue mining as the entire NPV amount demanded by the Authority had been paid and compensatory afforestation work was underway (I.A.s 1413, 1414, 1426, 1428, 1440, 1454, 1459, 1460, 1662-1663, 1675, 1778, 1796, 2005-2006, 2121-2132 & 2133 in 1413). The CEC had examined the viability of the functioning of these mining activities and found that 16 licensees were working properly. It recommended that subject to fulfilment of certain conditions the mines can function. The court on 4.1.2008 ordered that mining activities could be carried out subject to the payment of NPV for the entire forest area included in the mining lease and the amount for carrying out compensatory afforestation on twice the forest area included in the mining lease. It also ordered that penal Compensatory Afforestation charges are payable by the lease holders for carrying out mining during the period from 1987 till the date on which the approvals under the FCA were accorded. Along with this, a realistic and effective plan for reclamation and rehabilitation of the mined area was to be drawn up along with specific time limits.

The Forest Department of Goa stated that there was no degraded forest land available for afforestation work and that

the State was finding it difficult to utilize the money received towards Compensatory Afforestation. In response, the CEC suggested that the money can be utilized for improving forests and mangroves, National Parks and Wildlife Sanctuaries. The CEC directed that a Society may be constituted with the Chief Secretary of Goa as the Chairman and senior forest officials as members of the Governing Body with a representative of the MoEF and one reputed NGO as members. The CAF could be transferred to the Society which could be utilized by the Goa Forest Department with the approval of the Governing Body. The court accepted the CEC's recommendations and the I.A. was disposed of on 5.5.2008.

- f) Another case for exemption of NPV charged to a wind power generation was extensively discussed before the CEC on 16.12.2010 (I.A. 2875). The Counsel for a wind energy company highlighted that on 21.7.2000, there was an agreement between the Government of Karnataka, CREDAI and the Company for the setting up of wind energy projects in different districts of Karnataka. The Counsel for the Company argued that when the project was approved in 2000 there was no concept of NPV for the diversion of forest land for non-forest use. The Supreme Court ruling in 2008 gave wind energy projects 50% exemption from NPV payment. Through subsequent court orders, the Company was asked to pay Rs. 13.89 crores which was further revised to Rs. 16 crores. In response to this, the CEC pointed out to the decision made by the MoEF regarding exemptions. For projects which had been granted 'in principle approval' (Stage 1) for forest land diversion before the order of 30.10.2002 of the Supreme Court, NPV would not be payable. The Supreme Court had already taken a view that in matters where 'in principle approval' was granted before 30.10.2002, but final or formal approval came after the said order, NPV would be payable. In this case, the final approval was granted only in 2003. They responded stating that they are not aware as to why the State had delayed indicating the final amount of the

NPV payable. However, that did not lead to the exemption from the payment of NPV.

The CEC was of the opinion that the Company has already got financial benefit because of an illegal act committed by the MoEF and the delay by the State forest department. They then referred to other instances where the same Company has argued for the refund of NPV in Supreme Court with respect to their other projects. The CEC took a position that they would recommend NPV exemption for this case only if the other projects of the Company are not allowed to move further. The CEC finally fixed the matter for 19.1.2011 and also asked the State Government to respond to the same. Further updates on this case were not available when this study was finalised.

THE PARLIAMENT SPEAKS: Deliberations on a Law for Compensatory Afforestation Funds (CAF)

Background

On 5.5.2008, the Indian Parliament saw the introduction of The Compensatory Afforestation Fund (CAF) Bill, 2008 in the Lok Sabha. Prior to this, the Union Cabinet had approved the same in March 2008 (MoEF, undated). Unlike other Bills, this one drew all its justification entirely from a court process.

This Bill sought to create the CAMPA by an Act of Parliament under Entry 17A (Forests) of the Concurrent List of the Constitution's Seventh Schedule. As envisaged by the Supreme Court, CAF would be built from amounts received for compensatory afforestation, additional compensatory afforestation, penal compensatory afforestation, Net Present Value, Catchment Area Treatment, those related to non-compliance of conditions of forest clearance and any other amounts paid by user agencies as defined under the FCA, 1980.

It is important to reiterate here that after the 24.4.2004 order of the Supreme Court regarding the constitution of the CAMPA, the MoEF had not operationalised this body even after two years of its notification by the court. The Supreme Court on 5.5.2006 had directed that an Ad-hoc CAMPA be constituted and the money lying with the States/UTs be deposited in it till the CAMPA comes into operation (Department Related Parliamentary Standing Committee on Science & Technology, Environment & Forests, 2008 and Supreme Court orders dated 24.4.2004 and 5.5.2006).

The CAMPA Bill came in as a mechanism to expedite this process. However, other than the setting up of the CAMPA and a CAF, the Bill also put forth some additional suggestions on where the money collected could be utilised. While the Bill proposed that the money collected would be towards undertaking artificial regeneration (i.e. plantations), assisted natural regeneration, protection of forests, infrastructure development, wildlife protection along with related activities, it also added that the funds be used for the Green India Programme being proposed by the Government of India. The Green India Programme was designed not as an altogether new programme. It had been mentioned in the 10th Five Year Plan as the National Afforestation Programme (Department Related Parliamentary Standing Committee on Science & Technology, Environment & Forests, 2008). The CAMPA Bill, 2008 explained the Green India Programme as one where degraded forest land of one acre or more was to be located (other than land meant for reforestation/afforestation) and where plantation of trees or other woody plants can take place utilising the CAF.

Today, the same programme has evolved as one of the Missions under the Prime Minister's National Action Plan on Climate Change (NAPCC), called the National Mission for Green India, a draft of which was finalised by the MoEF in 2010. CAMPA continues to be a key source of fund for this Mission. While the other definitions are essentially derived from the FCA, 1980 and the court's order, the Bill went on to describe what it sees as an 'environmental service'. It firstly included, wood, non-timber forest produce and fuel, and then benefits such as regulation of climate, disease control and flood moderation. Interestingly, the Bill also included in this definition, non-material benefits received from ecosystems such as recreational, aesthetic, inspirational, educational and symbolic.

The Bill proposed that the CAF be established under the Public Accounts of India and that it should be under the control of the Central Government and managed by the CAMPA. The details of the source of funds was largely as stipulated under the

29.10.2002 order of the Supreme Court, described in the earlier sections.

In its chapter on utilisation of funds, the Bill specified that the money collected will be released by the CAMPA to the concerned State/Union Territory in predetermined instalments through the State Management Committee as per the Annual Plan of Operation (APO) finalised by the concerned State/ Union Territory. Further, all the work at the ground level shall be executed through Joint Forest Management Committees unless the nature of work demands execution by other agencies.

Differences between the CAMPA Bill and the Supreme Court's CAMPA Notification

When it came to the composition of the CAMPA, the Bill mostly mirrored what was proposed by the Supreme Court. However, there was one crucial difference. The Governing Body of the 2004 Notification had in its composition an eminent professional ecologist as one of its members. However, the Bill proposed that there be three eminent NGO experts, one each in the field of forestry, wildlife and ecology. When it came to the Executive Body, the professional ecologist was replaced by three non-official experts from the field of forestry, forest economy development and wildlife. This change can be attributed to the discussions within the Supreme Court around the need to include non-governmental experts on the CAMPA.

The significant difference lay in the power and functions of the CAMPA as prescribed in the Bill, as this proposed law had expanded the scope of CAMPA's work in its preamble itself. The work of the Governing Body was envisaged as monitoring the Green India Programme and its utilisation of the CAMPA funds as well as mobilisation of additional resources from the market, development of partner associations, carbon credits, income from tree felling at ecologically appropriate intervals and service debts. The Governing Body was also entrusted with tasks of watershed development or forest conservation works in forest areas financed by the Fund; maintaining a separate account for wildlife protection

funds; and fund-raising and resource mobilization. They were also to approve rules for the management of CAF, and establish guidelines for its allocation. The submission of yearly progress reports on all programmes to the Parliament and the public was on the list of tasks. These had a much wider scope and jurisdiction than what was initially envisaged.

The functions of the Executive Body remained substantially unchanged. However, the 2004 CAMPA Notification did not have a separate monitoring group which the 2008 Bill introduced. The group was to be made up of 6 experts in the fields of environment, wildlife, forest and social sector and were to create a system for monitoring and evaluating projects by the States as well as the Green India Programme. They had powers to inspect and audit projects as well as devise measures for transparency and accountability.

The Parliamentary Committee's observations

[**Note:** The details of this section are largely based on the report of the Department Related Standing Committee on Science & Technology, Environment & Forests]

After its introduction in the Lok Sabha on 5.5.2008, the Bill was referred to the Department Related Standing Committee on Science & Technology, Environment & Forests, Rajya Sabha. The Committee considered the Bill in its meeting held on 21.8.2008 and adopted the draft report in its meeting held on 3.10.2008. The Committee presented its 194th report in the Rajya Sabha on 22.10.2008.

In order to carry out its task, the Committee decided to issue a press release dated 4.6.2008 in leading national dailies in English, Hindi and other regional languages inviting memoranda on the subject matter of the Bill from the interested organizations/institutions/individuals. The Committee also decided to give wide publicity through All India Radio and Doordarshan. In response to this, 13 submissions were received which were sent to the MoEF as well as State Governments for their responses. In addition, the Committee also heard the views of four experts on the subject on 6th June and 3rd, 14th and 29th July, 2008.

The Committee started its work with an enquiry as to when the FCA, 1980 and Forest (Conservation) Rules, 2003 provided for Compensatory Afforestation, what amounts were deposited by the user agency and what was the utilization. It further investigated as to what prompted the Supreme Court to issue directions for the creation of the CAMPA.

The final report of the Committee states that from 1980 to 2001, State Governments used to collect money to take up Compensatory Afforestation works from the user agencies and data available points that only approximately 30 per cent of the funds collected were utilized for the purpose. Further, it observed that some State Governments had even used the fund for non-forestry purposes and that is why the Supreme Court had to intervene.

In a critical observation, the Committee's report states *"the Ministry had not presented the real and complete picture of diversion of funds before the Supreme Court or before this Committee, nor did it take pains to suitably defend the case. The Ministry also admitted that at some stage or the other the directions of the Supreme Court should have been contested, but the same had not been contested."* (Department Related Parliamentary Standing Committee on Science & Technology, Environment & Forests. 2008).

The report further mentions that, based on checks conducted by State Accountant Generals to ascertain diversion of funds, misappropriation and other related issues (not elaborated in the report) the MoEF could furnish the list of five States namely: Andhra Pradesh, Maharashtra, Haryana, Punjab and Karnataka. The total alleged diversion in these States amounted roughly to Rs.475 crores. "The nature of such diversion ranged from loss of interest by not keeping the funds in fixed deposits; non-recovery of amounts due from user agencies; diverting of amount to Government's Accountant; remitting of amount into treasury instead of keeping in fixed deposits and depositing of an amount of Rs. 197.79 crores collected during 1993-94 to 2004-05 as Karnataka Forest Development Fund", said the report with reference to Karnataka.

The Committee strongly objected to the CAMPA Bill on the following grounds:

- a) It cannot be believed that the extent and proportion of diversion of compensatory afforestation funds by States was so huge and so alarming as to warrant a sweeping and sea change in the mechanism which was in existence for over twenty years ie. 1980–2002.
- b) By creating a super body such as CAMPA the effort is being made to centralize everything which goes against the federal character of the Constitution. The report suggested that the States generate funds and utilize the same.
- c) The MoEF did not make adequate efforts before 2002 to effectively handle the funds accumulated by State Governments.
- d) MOEF has been negligent and the Bill was prepared without examining all aspects of the matter and alternatives available under the Forest (Conservation) and the Environment (Protection) Acts.
- e) The Bill gave an impression that it is a step in the direction of legitimising monetary compensation for diversion of forest land. Further, it is based on the assumption that collection of more and more monetary compensation and tree plantation is the answer to forest conservation. But this assumption proves to be totally false if seen in the light of the pace of diversion of forest land for non-forest purposes which has gained momentum since 2002 when the Supreme Court direction came. The figures in the report substantiate the same.
- f) Since the Bill has clearly bypassed all State level institutions of elected representatives and local elected bodies like Panchayats and Gram Sabhas, it undermines the very concept of federalism.
- g) The collection of Net Present Value (NPV) in addition to existing compensatory afforestation has no legal sanction and

had started only on the directions of the Supreme Court, based on the recommendations of the Central Empowered Committee. There is no legislation or rule that has been framed so far and placed before the Parliament, regarding the collection of NPV.

- h) The Bill is silent on the issue of how the land and livelihoods of tribal forest dwelling communities will be impacted when the forests are acquired for afforestation. These affected communities have not been consulted, informed or compensated. While rights of these communities are being affected, forests are being allotted to serve the interests of the industry.

In a crucial observation, the Parliamentary Committee stated that no amount of monetary compensation can replace the irreparable loss caused to forests by diversion. Therefore, the main thrust of the proposed Bill should have been on checking the indiscriminate diversion of pristine forest land while striking a fine balance with developmental activities which was at the heart of the FCA, 1980.

It also reiterated that since there is a difference between compensatory afforestation and massive afforestation, the Green India Programme should be run separately by the MoEF.

Suggestions of the Parliamentary Committee

The Standing Committee made a number of suggestions for the consideration of the Government of India. These included the need for involvement of States in the formulation of a Bill of this nature. It added that the existing National Afforestation and Eco-development Board (NAEB) of the MoEF should be made the nodal agency to deal with the CAMPA funds. Moreover, the funds received till date and in the future should be divided into two separate units of accounting. The first part should contain funds collected from user agencies as compensatory afforestation, penal compensatory afforestation deposits, catchment area treatment works fund, buffer zone development, soil and

moisture conservation related money and funds received for the protection of diverted areas. The second part should consist of amounts collected from user agencies as NPV and the partial use of Protected Areas like Sanctuaries and Tiger Reserves.

In its concluding remarks, the Committee brought to light the important issue of the system of current land diversions. It mentioned that the present system of forest land diversion is non-transparent and undemocratic. It is actually a tool in the hands of the powerful to buy rights and destroy forests.

The Committee suggested to the MOEF to overhaul the existing system and bring in more rigorous democratic processes ensuring the participation of tribals and forest dwellers in decision-making.

CAMPA Bill back in the Lok Sabha and the Rajya Sabha

Despite the strong observations of the Standing Committee and recommendations that the Bill be withdrawn, the Bill was passed in the Lok Sabha on 23.12.2008. It was one of the 12 bills passed by the Lok Sabha tabled that very day with absolutely no discussion on the contents of the Parliamentary Committee's observations or any other comments. This lack of detailed engagement of the Parliament with the Bill raises substantial questions in the process of law making, especially when the issues involved are as complex as land rights, environmental loss and impacts on marginalised communities (Kohli and Menon, 2009).

The Bill came up for discussion in the Rajya Sabha on 25.2.2009 and saw some strong protests from some of the Members of Parliament (MPs) based on the Standing Committee report (Nagi, 2009 and Awasthi and Narayan, 2009).

On 27.1.2009, the members of the Committee had also written to the Prime Minister Manmohan Singh, Rajya Sabha Chairman Hamid Ansari and Lok Sabha Speaker, Somnath Chatterjee to convey their disappointment with the passage of the Bill in the Lok Sabha. The letter was sent by V. Maitreyan, the AIADMK MP and Chairperson of the Parliamentary Standing Committee (D.O. No.R.S.10/2/2008-S&T).

The letter states that the Committee in its meeting held on 20.1.2009 “*deliberated on issues and expressed its disappointment over the passing of the Compensatory Afforestation Fund Bill, 2008 in the Lok Sabha on 23.12.2008 without giving due consideration to the recommendation of the Committee.*” The letter raised serious concerns over some prominent issues. The letter reiterated several caveats raised in the earlier report on issues of centralisation of powers, impacts on lives and livelihoods of communities and concerns with respect to the commercialization of forests instead of its conservation.

The Committee members made it clear that the concerns expressed by them are serious in nature and the recommendations are of ‘persuasive value’. Further, in the larger interest of the environment and the principles of participative democracy, the Rajya Sabha had not passed the Bill and therefore the Committee was making a collective representation.

It was reported that the day the Bill was being debated in the Rajya Sabha, the Supreme Court asked all State Governments to submit proposals for using CAMPA funds that were available with the Ad-hoc CAMPA. On the same day, the Amicus Curiae Harish Salve pointed out in court that the Bill went against the apex court’s order. While the stated objective of the CAMPA and CAF is compensatory afforestation, the Bill encroaches into areas that are clearly outside its objective, for instance, the Green India Programme. The court had observed that it would not intervene in the matter till the Bill becomes an Act (Awasthi and Narayanan, 2009).

The Rajya Sabha did not give its consent to the Bill and it finally lapsed (Anon, 2009).

III. COLLECTING THE DUES

The Accumulation and Disbursal of the Funds from Forest Diversion

Expediting the Institutional Framework and Disbursals

The Supreme Court in its order dated 25.2.2009 (I.A. 2143 in W.P. (Civil) No. 202 of 1995) had observed that a large amount was deposited with the Ad-hoc CAMPA which has been collected from various user agencies. The court also stated that 23 proposals have come from various States and Union Territories and are pending with Ad-hoc CAMPA for approval. It directed the Ad-hoc CAMPA to scrutinize the feasibility of the proposals and submit a report to the Court within six weeks so that further orders could be issued for its utilization.

This was the time when the CAMPA Bill was defeated in the Rajya Sabha based on the report of the Department-Related Parliamentary Standing Committee on Science and Technology, Environment and Forests.

At this stage, the Principal Secretary to Prime Minister held a meeting to constitute State-level CAMPAs along the directions of the Standing Committee and the MoEF was asked to prepare a set of guidelines and circulate it to the States. It was also decided that the MoEF will seek concurrence from the Supreme Court towards this arrangement (MoEF, 2009). This meeting was held on 6.3.2009 with a clear purpose to resolve the deadlock with respect to the setting up of the CAMPA (Ref. No.5-1-2009-CAMPA, Background Note on Compensatory Afforestation by the MoEF). These draft guidelines including the idea of setting up State CAMPA were sent to the Chief Secretaries of all States on 28.4.2009 seeking their responses.

Almost immediately after this, a letter dated 4.5.2009 was issued from the PMO to the States to put the draft guidelines into effect to avoid the loss of the upcoming planting season. It also indicated that the review of the decisions taken at the meeting on 30.3.2009 will take place subsequently.

Following national elections, Shri Jairam Ramesh took over as the new Minister of State (Independent Charge) Environment and Forests on 29.5.2009. One of the matters that the MoEF took up for immediate review under his tenure was the status of the CAMPA, CAF and its implementation. The Minister consulted the Attorney-General along with the Chairman and Member Secretary of the Central Empowered Committee (CEC) in this regard. The CEC's suggestion was to activate the 23.4.2004 CAMPA Notification issued by the Supreme Court. However, the Minister opined that this structure was too centralized while the guidelines drafted by the MoEF in consultation with the PMO had no role for the Central Government (MoEF, 2009).

On the day the Minister of Environment took charge, he held a meeting of all senior officers of the MoEF. One of the points for action which emerged from this meeting was the reintroduction of the CAMPA Bill, 2008 in the budget session of the Parliament. An amended draft that would satisfy the recommendations of the Parliamentary Standing Committee was to be submitted to the Minister by 6.6.2009. The Minister had agreed to speak to the Chairperson of the Parliamentary Standing Committee. Soon after this meeting, a note for the Cabinet dated 1.6.2009 was prepared and circulated along with the comments of the MoEF on the recommendations of the Parliamentary Standing Committee (F.No.5-1/2009-FC (Pt) dated 1.6.2009).

On 11.6.2009, a note was issued by the Prime Minister's Office (PMO) to the MoEF which clearly stated that there is a need for a *"consensual approach to reconcile the Supreme Court's direction for setting up a ring fenced fund and the concerns of the Department Related Parliamentary Standing Committee and States with adequate flexibility was worked out at the meeting held with the State Chief Secretaries and draft guidelines formulated in consultation with the*

Law Secretary have since been circulated among States for setting up of the State Compensatory Afforestation, Green Management and Planning and Management Authority (State CAMPA)." The note also directed the MoEF to approach the Supreme Court for concurrence with the arrangement and expedite the process to achieve this concurrence (PMO ID no. 250/31/C/6/07-ES-II).

The MoEF felt that the process of implementing the CAF and the CAMPA needs to have a meaningful role for both the Centre and the States. So, the guidelines needed to be revised on these grounds alongside addressing the question of protection/ regeneration of natural forests and development of degraded forest, which the current practice did not prioritise (MoEF, 2009).

After consultation with the Ministry of Law and the CEC, it was agreed that the Ad-hoc CAMPA as constituted by the Supreme Court order of 5.5.2006 would be activated and go beyond the collection of funds and would consider the 23 pending proposals of the State and Union Territories. It was also decided that the MoEF would seek approval from the Supreme Court based on the decisions taken in the first meeting of the Ad-hoc CAMPA. The MoEF issued the State CAMPA Guidelines on 2.7.2009 and explained the roles and functions of the State CAMPA and also the setting up of the National CAMPA Advisory Council. (The details on the structure and functions of the Advisory Council are discussed in the subsequent section).

The Ad-hoc CAMPA held its first meeting on 3.7.2009 where the revised guidelines for the implementation of the CAMPA was considered and approved by the Minister of Environment and Forests. These guidelines proposed a greater role for the Central Government in planning and monitoring and the States were to work out the operational details. The pending 23 proposals were also considered.

On 8.7.2009, the CEC submitted its report to the Supreme Court in I.A. 2143 which deals with the use of funds lying with the Ad-hoc CAMPA. The report stated that the Ad-hoc CAMPA in its report dated 7.7.2009 to the Supreme Court observed that

the “sudden release and utilization of a very large sum in one go may not be appropriate and may cause its improper use and improper control on expenditure”. It therefore, recommended the release of Rs. 1000 crore per annum (in proportion to 10% of the principal amount pertaining to each State or Union Territory) for the next five years to the State CAMPAs. It also suggested that once the schemes were reviewed by the State level Executive Committee and the Annual Plan of Operation approved by its Steering Committee, the NPV amount and the amounts for Protected Areas (as declared under the Wild Life (Protection) Act, 1972) may be released.

The report also states that the Ad-hoc CAMPA had recommended that upto 5% of the amount released to the State CAMPA be utilized by the National CAMPA Advisory Council for monitoring and evaluation of the implementation of the schemes. It stated that it should also be left to the discretion of the National CAMPA Advisory Council whether it wants to spend the money directly or through the Ad-hoc CAMPA. The release of additional funds would be determined after the progress of the State level CAMPA is assessed. The report also stated that till an alternative system is worked out, the amounts from compensatory afforestation, NPV and other payments will be continued to be deposited with the Ad-hoc CAMPA. Its release may continue to be made as per the existing orders of the Supreme Court (CEC, 2009).

CEC further stated in its report that they were in full agreement with the Ad-hoc CAMPAs recommendations and suggested to the court that these recommendations be accepted.

All these documents were subsequently placed before the Supreme Court on 10.7.2009 for consideration and directions. The court approved the MoEF's proposal and directed the notification and implementation of the State CAMPA guidelines. The Court also accepted the recommendations made by the Ad-hoc CAMPA, the MOEF and the CEC and permitted the disbursal of the money accumulated with the Ad-hoc CAMPA to begin. To start with, 10% of the accumulated principal amount was directed to be

released per year (for the next five years) by the Ad-hoc CAMPA based on the APOs submitted by the State Governments. It also stated that the work carried out while utilizing the fund should be in accordance with the broad guidelines of the National Rural Employment Guarantee Act (NREGA) and an effort should be made as far as possible to allot work to rural unemployed people at the minimum wage level. The CEC was also asked to file reports on implementation every six months.

State CAMPA and its Guidelines

Institutional framework of State CAMPAs

The guidelines of the MoEF on State Compensatory Afforestation Fund Management and Planning Authority (State CAMPA) dated 2.7.2009 provides that every State level CAMPA will consist of a Governing Body (GB), a Steering Committee (SC) and an Executive Committee (EC). The GB has 10 members with the Chief Minister as the Chairman. This body is to frame the broad policy for functioning of the State level CAMPAs and review the work periodically (MoEF, 2009a).

The SC has the Chief Secretary as the Chairman. It also has two eminent NGOs as members nominated by the State Government. The functions include the framing of rules and procedures for the functioning of the SC and EC in accordance with the core principles and objectives of the State CAMPAs. It is to approve the Annual Plan of Operation (APO) prepared by the EC, monitor the utilization of funds released by the State CAMPA and approve annual reports and the audited statement of the State CAMPA.

The EC consists of 6 members with the Principal Chief Conservator of Forests (PCCF) as the Chairperson. It is to prepare the APO and submit it to the SC for approval and supervise the work to be carried out with the funds released from State CAMPAs. The Committee also has the task of reporting to the SC, conduct audits and prepare annual reports (*ibid*).

Recommended Utilization of the funds:

The MoEF guidelines of 2009 state that the funds with the State CAMPAs need to be utilized for development, maintenance and protection of forests and wildlife management as per the APOs. Expenditures can also include salaries and allowances payable to officers and other employees from the interest generated on the funds invested by the State CAMPA but excluding any funds generated from the diversion of land in Protected Areas. Expenditure can also take place as disbursement to such other projects related to forest conservation and 2% of the total fund spent in a year can be utilized for monitoring and evaluation.

National CAMPA Advisory Council

The National CAMPA Advisory Council was set up by an order of the MoEF (F.No.13-1/2009-CAMPA) on 13.8.2009 in compliance to the Supreme Court order dated 10.07.2009 (I.A. 2143 in W.P. (C) No. 202 of 1995). This Advisory Council has 11 members with the Minister of Environment and Forests as its Chairperson. The other members include the PCCFs of six States; that of Orissa, Assam, Andhra Pradesh, Maharashtra, Uttarakhand and Chhattisgarh and the Director General of Forests & the Special Secretary (MoEF). 2 NGOs have been appointed as non official members with two year terms which expire on 12.8.2011. The two appointed representatives from NGOs are Prof. N.H Ravindranath, Centre for Sustainable Technologies, IISc, Bangalore and Dr. D. Suryakumari, Centre for People's Forestry, Secunderabad . The Inspector General of Forests (Conservation), MoEF has been appointed as the Member Secretary of the National Advisory Council of the CAMPA.

The function of the Advisory Council is to lay down the broad guidelines of the State CAMPA and also undertake monitoring of the State CAMPAs and give recommendations on projects to be undertaken by them. It is to also provide technical and scientific assistance to the State CAMPAs as required and evolve

mechanisms to help the State CAMPAs address inter-state and Centre-State issues.

Their role would be to approve schemes including those related to the monitoring and evaluation of schemes implemented in the States or the UTs utilizing the CAMPA funds, setting up of institutes, societies centres of excellence in the field of forest and wildlife, pilot schemes and standardization of codes/guidelines for the sector.

The Ad-hoc CAMPA would retain a suitable amount for this from the interest received on the money available with Ad-hoc CAMPA. The permission of the Supreme Court would be required for this.

The existing Ad-hoc CAMPA is to act as the secretariat of the National CAMPA Advisory Council and their expenditure would be met out of the provision kept for the monitoring and evaluation of the programme.

The Supreme Court order of 10.7.2009 had directed that the National CAMPA Advisory Council could receive upto 5% of the amount released to the State CAMPA for monitoring and evaluation purposes (See the section on monitoring and evaluation).

Responses from States

A number of States especially those with high forest cover were dissatisfied with the decision to release 10% of the funds to the States as suggested by the Ad-hoc CAMPA. States like Chhattisgarh regarded this as a violation of the federal system. It was believed that this was an attempt to bring the CAMPA Bill back through the back door given that the bill did not make it through the Rajya Sabha (Anon, 2009a).

In the meeting held between State Government representatives and the Principal Secretary to the Prime Minister, T.K Nair, on 6.3.2009, it was agreed that the Central Government would seek permission from the Supreme Court to transfer the funds to the States as per the guidelines. In the same meeting, the States had agreed to utilize it specifically for afforestation and not for any other purpose. The States felt that it was a unilateral decision

by the MoEF and the Centre had backtracked on the previous agreement (Goswami, 2009).

By 30.06.2009 the principal amount that was deposited and available in the Ad-hoc CAMPA was Rs. 9932.12 crores. Rs. 5284.16 crores came from Orissa, Chhattisgarh, Jharkhand, Andhra Pradesh and Maharashtra which amounted to 53% of the total contribution. Clearly these States were unhappy with a 10% release. The 10% release in the case of Orissa roughly amounted to Rs. 130 crores on the principal amount⁹. (Data compiled from the balance sheet as provided on the MoEF website on 19.5.2011).

The Chief Minister of Orissa, Shri Naveen Patnaik expressed his dissatisfaction to the media. He stated that the State had planned on utilising Rs. 1,379 crore in the next five years. However, the 10% release, was inadequate, especially when compared to the annual deposit of Rs. 300-400 crores to the CAMPA. Therefore he was of the opinion that States should be allowed to spend the amount which they annually collect for diversion of forest land for non-forest purposes. The Minister of Environment, Shri Jairam Ramesh had assured that if implementation was smooth, the Ministry would go back to the court to seek permission to transfer the entire amount due to the States and this would be done by August 2010. While the Chief Minister of Orissa was unhappy over the the amount of funds released, reports also suggested that the State forest department was apprehensive as it was not equipped to handle such large amounts. With the depletion of staff in the department it were unsure if the utilization could be achieved (Anon, 2009).

Mechanism for State proposed disbursements

From 10.7.2009, as envisaged by the MoEF and the CEC as well as directed by the Supreme Court, the Ad-hoc CAMPA processed and released funds to a number of States as per their Annual Plan of Operations (APO). As per practice, following the receipt of funds,

⁹ Data compiled from 'All details related to disbursements since June 2009 till February 2011', released by the MoEF under Financial Statements and Balance Sheets of CAMPA, Source <http://moef.nic.in/modules/recent-initiatives/campa/>

the State CAMPAs disbursed funds to their forest department's field officers in predetermined installments as envisaged for specific activities in the APO. This method of fund disbursement was spelt out in the 2009 guidelines issued from the MoEF. The money received by the Compensatory Afforestation Fund (CAF) was to be spent in a period of one year or two growing seasons after project completion, as may be appropriate (MoEF, 2009a).

According to the 2.7.2009 guidelines, the State CAMPAs are to disburse funds for compensatory afforestation, additional compensatory afforestation, penal compensatory afforestation, Catchment Area Treatment Plan and for any other site specific scheme submitted by the State along with the approved proposals for diversion of forest land under the Forest (Conservation) Act, 1980. This was how it was envisaged through the Supreme Court's orders described in previous chapters. The money received on account of NPV needs to be directed towards only "*natural assisted regeneration, forest management, protection, infrastructure development, wildlife protection and management, supply of wood and other forest produce saving devices and other allied activities.*" These guidelines have further emphasised that the money realized from the user agencies in pursuance of the specific Supreme Court's orders or decision taken by the National Board for Wild Life (NBWL, set up under the WLPA, 1972) involving cases of diversion of forest land from PAs shall form a distinct corpus and shall be used exclusively for undertaking protection and conservation activities in the PAs of the State (MoEF, 2009a).

Status of total funds received and released

As of 30.11.2010, the total amount received by the Ad-hoc CAMPA from all the States and Union Territories was Rs. 15037,86,49,161.71 (Rupees fifteen thousand thirty seven crores eighty six lakhs forty nine thousand one hundred and sixty one and seventy one paise) and the interest earned was Rs. 2397,92,62,691.25 (Rupees Two thousand three hundred and ninety seven crores ninety two lakhs sixty two thousand six hundred and ninety one and twenty five paise only).

The total release during 2009-10 was Rs. 9,828,092,000 to 29 states/UTs (not released to Dadar Nagar Haveli, Daman and Diu, Jammu & Kashmir, Mizoram, Pondicherry, Nagaland and Lakshdweep). In 2009-2010, the State of Orissa received the maximum ie. Rs. 1,310,618,00 followed by Chhattisgarh, Rs. 1,232,135,000, Jharkhand, Rs. 950,028,000 and Maharashtra that got Rs. 893,549,000. For the same period, Meghalaya received Rs. 9,67,000 followed by Chandigarh, Rs. 1,76,5000, Manipur, Rs. 7,456,000 and Sikkim, Rs. 80,09,2000.

In 2010-11, Rs 9,987,119,000.00 was released to 25 States/UTs. No money was released to Dadra Nagar Haveli, Daman and Diu, Jammu & Kashmir, Kerala, Meghalaya, Mizoram, Pondicherry, Uttar Pradesh, Nagaland and Lakshwadweep. This financial year, Orissa once again received the maximum ie. Rs. 1,401,753,000 followed by Chhattisgarh, Rs. 1,341,066,000 and Andhra Pradesh, Rs. 207,444,000. In the same year, Chandigarh received Rs. 1,296,000 followed by the Andaman and Nicobar Islands, Rs. 7,869,000, Manipur Rs. 13,350,000 and Delhi Rs. 13,991,000.

A total of Rs. 496,606,494.00 has been transferred to the National CAMPA Advisory Council towards the monitoring and evaluation tasks as per the separate budget head that has been created in the Ad-hoc CAMPA funds. The total balance available with the Ad-hoc CAMPA as on 30.11.2010 was Rs. 154,046,094,358.96 as per data from the MoEF's financial statement and balance sheets as available on <http://envfor.nic.in> on 19.5.2011).

Fund Disbursement status within the States after State CAMPA guidelines

After the issuance of the CAMPA guidelines, the Ad-hoc CAMPA disbursed the first installment of funds to 8 States on 17.8.2009 as per their approved APOs. These States were Assam, Chandigarh, Chhattisgarh, Goa, Haryana, Madhya Pradesh, Sikkim and Uttarakhand.

The State of Andhra Pradesh had asked for a total fund of Rs. 1,50,895 lakhs through the APO for the year 2009-2010

but received only Rs. 8978 lakhs from the Ad-hoc CAMPA on 28.8.2009 (APO received by the MoEF from Andhra Pradesh for year 2010-2011, Source: <http://moef.nic.in/modules/recent-initiatives/campa/> as available on <http://envfor.nic.in> on 19.5.2011).

The Andhra Pradesh State CAMPA received Rs. 2277.00 lakhs in 2009-2010 for compensatory afforestation and Rs. 6541.73¹⁰ lakhs as NPV as approved amount from the Ad-hoc CAMPA. The State CAMPA subsequently disbursed the CA related money to the forest department's field offices for activities which included CA, additional CA, Safety Zone (this subhead was used under the CA head of Andhra Pradesh APOs for 2009-10 and 10-11 without any specific breakups), biodiversity conservation and extraction of tree growth for diverted forest area. Another Rs. 2103.38 lakhs from the sum received from the NPV head was disbursed for approved activities such as Natural Forest Management, Forest and Wildlife Protection, Forest Fire Management, Biodiversity Conservation, Research and Development, Capacity Building, Infrastructure Development and Office Support. The rest of the money remain unutilized for the period 2009-10.

Out of the total disbursed amount to the forest department's field offices under CA and NPV, only Rs. 354.17 lakhs and Rs. 727.39 lakhs have been utilized under the respective heads during 2009-10. 84.5% of the money remained unutilized by the forest department's field offices for approved activities under compensatory afforestation. This is despite the fact that the entire disbursement as sought by the Forest Department under the CA head was released by the Ad-hoc CAMPA and the State CAMPA in 2009-10. Under the NPV head only 32.6% out of the total approved money as per APO for 2009-10 was released by the State CAMPA and out of this only 34.6% was utilized.

¹⁰ Breakup for fund allocation, releases and expenditure under Compensatory Afforestation and Net present Value heads mentioned separately in the table for the year 2009-10.

Table: Status of allocation of funds for Andhra Pradesh as per Annual Plan of Operation (APO) during 2009-10 and expenditure incurred under CA and NPV.

Figures in Lakhs

| Sl. No. | Components | Fund Allocation under APO for 2009-2010 ¹¹ | Amount released By State CAMPA for 2009-2010 ¹² | Expenses Incurred during 2009-2010 ¹³ |
|-----------------------------------|--|---|--|--|
| Compensatory Afforestation | | | | |
| 1 | CA | 1030 | 1030 | 268.45 |
| 2 | Additional CA/ Penal CA | 69 | 69 | 18.27 |
| 3 | Safety Zone | 71.00 | 71 | 18.27 |
| 4 | Biodiversity | 1016 | 1016 | 13.31 |
| 5 | Extraction of tree growth for diverted forest area | 91 | 91 | 46.51 |
| | Total | 2277 | 2277 | 354.17 |
| Net Present Value | | | | |
| 1 | Natural Forest Management | 349 | 90 | 14.38 |
| 2 | Forest and Wildlife Protection | 3571.73 | 761.08 | 323.65 |
| 3 | Forest Fire Management | 126 | 96 | 23.50 |
| 4 | Biodiversity Conservation | 715 | 715 | 100.48 |

¹¹ Amounts approved by the Ad-hoc CAMPA in utilization for the period 2009-2010.

¹² Total amount released by the State CAMPA for approved heads out of the approved total fund for these heads during 2009-2010.

¹³ Total fund utilized under each head during 2009-2010.

| | | | | |
|---|----------------------------|---------|---------|--------|
| 5 | Research and Development | 140.00 | 78.20 | 25.78 |
| 6 | Capacity Building | 80 | 65.90 | 41.77 |
| 7 | Infrastructure Development | 930 | 109.70 | 1.50 |
| 8 | Office Support | 540 | 187.50 | 196.34 |
| | Total | 6451.73 | 2103.38 | 727.39 |

Source: APO received by MoEF from Andhra Pradesh State for year 2010-2011, <http://moef.nic.in/modules/recent-initiatives/campa/>.

Other than the Andhra Pradesh State CAMPA, no other State's report on utilization of money disbursed through the Ad-hoc CAMPA is available in the public domain. From June 2009 to February 2011, the Ad-hoc CAMPA released two installments for all the 35 States/UTs. The first installment was released to 29 States and second installments for the year 2010-2011 was released to 25 States who submitted APOs for fund release. A statement released by the MoEF on the status of fund released for the period June 2009 to February, 2011 is attached as Annexure 5.

Observations on Annual Plan of Operation (APOs) of 2010-11 (Also See Annexure 6)

As mentioned above, 25 States submitted their APOs for the year 2010-11. An analysis of some of the State APOs show that a number of States seek a large chunk of their budget heads under NPV towards creation of infrastructure, such as construction of offices, hostels and purchase of vehicles computers and laptops.

The State of Goa, in its APO had budgets for infrastructure under various subheads. Analysis shows that about 69% of its NPV budget head is for expenditure on infrastructure related activities like construction of offices and training halls, purchase of vehicles and other equipment like laptops and computers (See Annexure 6.1 for details). Similarly Andhra Pradesh has proposed for 42.45%, Sikkim has 53%, Himachal Pradesh, 52.56% and Tamil

Nadu has budgeted 67.4% of its expenditure of NPV outlay for construction activities (See Annexure 6).

The State of Uttarakhand has allocated Rs. 62.5 lakhs for plantations through local Joint Forest Management (JFM) committees. Karnataka, in its APO, has also proposed for monoculture plantations including commercial plants like biofuels. These plantations are to be taken up in places near the existing JFM committees with a total budget of Rs. 1379.25 lakhs under the head of assisted natural regeneration. (<http://www.moef.nic.in/downloads/public-information/Karnataka-APO-STATE-CAMPA-2010-11.pdf>, Page17-18) Similarly Madhya Pradesh has proposed 38.8% and Himachal Pradesh has proposed 28.4% for plantations out of their total proposed NPV budget for 2010-2011 (See Annexure 7).

In States like Uttarakhand, Karnataka, Madhya Pradesh and Himachal Pradesh, the NPV budget was allocated for plantations under different heads specifically through JFM despite it being explicitly mentioned in the State CAMPA guidelines, 2009 that this money should only be used for natural regeneration.

In the third meeting of the National CAMPA Advisory Committee held on 24.6.2010, the issue of a large portion of funds being spent on infrastructure was pointed out. The Chairman raised an objection regarding this and stated that the funds cannot be used for the creation of infrastructure at the headquarter level but can be utilized for building infrastructure at the range or lower level.

The minutes of the meeting indicate that M.K Jiwrajka, Member Secretary, CEC had pointed out that the Supreme Court's order did not permit the utilization of NPV money for plantations. Stating the example of Orissa, he also clarified that the utilization of CAMPA funds should take place based on the NREGA module as accountability cannot be ensured through schemes like the VSS. Any departure from the court's order could have "dangerous portents", he said (Minutes of the 3rd Meeting of the National CAMPA Advisory Council held on 24.6.2010).

It was also pointed out in this meeting by the Minister that a number of proposals that had been granted Stage 1 forest clearance under FCA, 1980 were not followed up on by the project proponents for final approval. Some of these were stated to be as old as two decades. A report on this was sought by the Minister within ten days of the meeting.

A news report of March 2011 quotes the Minister Jairam Ramesh being “horrified” by the reports of implementation coming in from the State Governments. Having disbursed Rs. 2000 crores to the States, the Minister is keen to review how this money has been spent (Anon, 2011).

NPV funds for Rehabilitation from Protected Areas

In a meeting of the Chief Conservator of Forests of all States/UTs held on 3.3.2010, it was discussed that the NPV fund should be utilized for the rehabilitation of communities from Protected Areas declared under WLPA, 1972. As a result of this discussion, a guideline was issued on behalf of the CEO, Ad-hoc CAMPA & IGF, Ansar Ahmed on 18.3.2010 (F.NO.15-1/2010-CAMPA) indicating the decision that NPV money can be used towards expenditure related to rehabilitation from PAs. This will require an approval as per the APOs submitted by the States.

This was affirmed through a press release by the MoEF dated 29.10.2010 which states that the MoEF has advised the States that the money allocated for NPV under CAMPA can be utilised for various activities including the rehabilitation of people from Protected Areas (MoEF, 2010).

It is also interesting to note here that while the 2009 guidelines for the State CAMPA provides for the utilization of NPV funds for the protection and conservation of forest and wildlife, it has not specified that the money could be used for rehabilitation. The decision to do so was taken in a meeting on 3.3.2010. It is also to be noted that this was the same day that the National CAMPA Advisory Council held its second meeting and it was confirmed in the minutes that CAMPA money should not be used for land acquisition but in case of relocation/rehabilitation

of villages from National Parks and Tiger Reserves, the money can be used as per existing guidelines issued on 18.3.2010.

Monitoring and Evaluation

The State CAMPA guidelines have stipulated a mechanism for monitoring and evaluation for works undertaken by the State CAMPA. As per the guidelines, for effective and proper utilization of funds allocated by the Ad-hoc CAMPA, an independent system for concurrent monitoring and evaluation of the works should be implemented in the States. Powers of special inspection and financial audit of utilization of money and works carried out by the State CAMPA have been given to the National CAMPA Advisory Council (MoEF 2009a). As mentioned earlier, the Supreme Court order of 10.7.2009 allows for upto 5% of the money released to the State CAMPA to be transferred to the Advisory Council to carry out monitoring and evaluation functions.

After inspection and financial audit, the National CAMPA Advisory Council and the State Level Steering Committee have powers to withhold the money in case they are not satisfied with the utilisation of funds released. The Steering Committee of State CAMPA is liable to monitor the progress of utilization of funds released by the State CAMPA. Proper financial provision has been made for monitoring and evaluation work as per the guidelines. Expenditures incurred on monitoring and evaluation is subject to overall ceiling of 2% of the amount to be spent every year (*ibid*).

States Governments have started to allocate money for monitoring and evaluation work through their APO. For the year 2010-11, the Madhya Pradesh State CAMPA proposed Rs. 23 lakhs, Himachal Pradesh proposed Rs. 20 lakhs and Sikkim proposed 2% of the total NPV proposed expenditure i.e. Rs.12.66 lakhs for monitoring and evaluation. These proposed financial allocations from the States are subject to final approval from the Ad-hoc CAMPA (Annual Plan of Operation Received by MOEF for 2010-11 from Madhya Pradesh, Himachal Pradesh and Sikkim, Source: <http://moef.nic.in/modules/recent-initiatives/campa/>).

IV. CONCLUSION

The Godavarman case has been one of the longest running cases in the history of judicial activism in India. It has spanned over 15 years and the Green Bench constituted to hear the cases have meet every week (and more recently twice a week) to hear thousands of Interlocutory Applications (I.A.) related to forest and wildlife matters. This includes a very wide range of issues such as forest protection, grant of clearances for the use of forest land by mining, industry and dam builders, management of funds that have been collected for forest and wildlife protection and management, use of cut timber, establishment of saw mills and paper industry and many others.

The procedure of diverting forest land for ‘non forest purposes’ was established under the FCA, 1980 and has resulted in the diversion of 11,37,686 hectares of forest land for non-forest use between 1980-2009. (Kohli et al, 2010) In all of these cases, the conditions of forest clearance included the specific task of undertaking of Compensatory Afforestation. For all hydropower projects, the clearances also involves the condition of undertaking Catchment Area Treatment (CAT) in the river’s catchment area. Since 2005, all clearances have also involved the payment of Net Present Value as a pre-requisite for the use of forest land for purposes other than those of forest protection, management and regeneration.

In the present study, we have looked at the journey that began with a crucial problem: while forest land was systematically and officially being diverted for non-forest use, the condition by which this loss was to be compensated for remained largely in-operational. This was as of 1999, almost two decades after the FCA was put into place with a set of compensatory practices that sought to maintain forest cover by the conversion of revenue land into forest

land. The revenue land which was to be forested would already have had multiple human and ecological uses in place.

The years of debate around compensatory afforestation, setting up institutional mechanisms for funds and new mechanisms for pricing forests needs to be looked at to understand how the agencies involved dealt with the question of loss of forests and its compensation. In an attempt to attend to the core problem at hand, the apex court, the executive and parliamentary processes led to some specific outcomes:

1. Pricing of forest goods and services: From the time the practice of compensatory afforestation (CA) was put into place, it appears that the the only quantifiable parameter that was needed for the decision on CA was the “area” of forest land involved. It was based on this that the extent of CA to be undertaken was determined. Questions of biodiversity loss, livelihood and cultural impacts were not in question in the initial days and only peripherally later. The calculations that went into determining the cost of such CA were more or less fixed, with the cost of seedlings, cost of labour and other such items being known due to its regular practice.

However, through the deliberations in the I.A.s of the case, these calculations became more and more complex as newer parameters for tangible forest goods and intangible forest ‘services’ were identified. After identification they also had to be translated into units that would make billing of such goods and services in money terms possible. The deliberations between the court, Central and State Governments and experts in the area of forest economics reveal the manner in which the price of forests, forest goods and services was arrived at.

2. Identifying the conserver: From the deliberations, it appears that the valuation models for compensatory afforestation, NPV and such schemes neatly and somewhat disingenuously identifies the conservers and users of forests into two distinct groups. While the users are all those who seek to change the nature of the forest through construction or deforestation, the conservers are the forest departments, thereby making them eligible to receive

the funds for CA and NPV to carry out afforestation activities. While none of the reports necessarily comment on this, their recommendations are implicit in the conclusion. The only report which differs and broadens the scope of conservers and users, almost uniting them is the Kanchan Chopra Committee report, many of whose recommendations have not found a place in the institutional arrangement that was finally set in place. This Committee broadly understood NPV as “*a compensation payable to the stakeholder*”, where the stakeholders include a range of people and not just the State forest department.

3. Multiple Institutions: The most unique and stunning effect of the legal intervention on CA has been the number of institutions it has spawned towards a singular purpose of management of funds collected from the user agencies that require forest land for setting up their projects. In the current system, there are three sets of institutions set up, starting with the Ad-hoc CAMPA which collects and disburses the money for diversion of forest land. In every State now, there is a State CAMPA exclusively set up for the purposes of seeking and further distributing the money to State Forest Departments. Finally there is the CAMPA Advisory Council which is set up to monitor the entire collection and disbursement exercise.

4. The Afforestation question remains: The deliberations on CAMPA and NPV have reduced the questions on implementation of CA to one that is essentially about the collection and disbursement of funds. During the course of the debates, the core point about afforestation not taking place and the reasons for the same are almost entirely missing. None of the agencies, be it the forest departments, the CEC, the Supreme Court, the MoEF or the Parliamentary Committee paid attention to the social nature of an activity such as afforestation. The factors that make it necessary to bring more and more area under afforestation, the reactions and responses to such schemes by communities dependent on or living in these areas and the social consequences of such schemes have hardly been considered. We are therefore back to a situation where despite collections of huge amounts of money for CA and

the establishment of mechanisms for disbursements, the factors that limit the scope of CA still remain.

5. Participation in the approval and determination of compensation: Over time, several suggestions have been made to include forms of public participation in the process of decision making of forest clearances. Even during these deliberations on CAMPA and NPV, the Kanchan Chopra Committee had suggested that public hearings should be organised to appraise all parties concerned of the intention to divert forest land. The FCA process has absolutely no public interface and this could have been an important inclusion. The CEC in its 19.2.2004 report had also suggested that three NGOs be nominated on the CAMPA which is the body where fund allocation would be approved. The MoEF did not take this on board in the final CAMPA Notification.

6. The forgotten recommendations: At the initial stage of these discussions in court, it had been stated that it was important to set timelines for the completion of compensatory afforestation. These were never put into place. The court had also said that there is a need to expand the responsibility of carrying out afforestation on the user agency rather than the forest department. In an earlier system, the user agency would deposit the money with the State Government, now it does so with the Ad-hoc CAMPA. Their responsibility ends here and the onus once again is on the State Forest Department to carry out compensatory afforestation and any other conservation related activity using the NPV funds. The court had also made a crucial mention of the need for a public environmental audit before the grant of forest clearance. This too was never followed through.

Back to the beginning?

The entire discussion in 1999 started around the fact that CA funds were not being collected and not being utilised by the States. With all this institutional reform, we have created a new form of administering funds. But the woes of disbursement and proper utilisation of these funds remain with NPV funds are being used for plantations and CA funds being used for

infrastructure building. In recent times, both the judiciary and the executive have made observations about CA not being done in a satisfactory manner. Despite these observations, the core issue of the extent of diversion of forests through forest clearance has never been addressed. Availability of land for afforestation, social and economic factors determining the possibilities of afforestation, conflicting land tenure and various other ground realities are left to the field level staff to deal with entirely, as directives are issued from above.

Can the problem of Compensatory Afforestation be dealt with without any reference to the forest clearance process itself? Without bringing the process of approvals to the drawing board and addressing the questions of basic forest governance, we are likely to remain with the problem and stay focussed only on the monetary aspect of this issue.

ANNEXURE 1
Guidelines for Compensatory Afforestation
(MoEF, 2004)

3.1 Compensatory Afforestation. –

- (i) Compensatory afforestation is one of the most important conditions stipulated by the Central Government while approving proposals for de-reservation or diversion of forest land for non-forest uses. It is essential that all such proposals, a comprehensive scheme for compensatory afforestation is formulated and submitted to the Central Government.
- (ii) The comprehensive scheme shall include the details of non-forest/degraded forest area identified for compensatory afforestation, map of areas to be taken up for compensatory afforestation, year-wise phased forestry operations, details of species to be planted and a suitability certificate from afforestation/management point of view alongwith the cost structure of various operations.
- (iii) Sometimes the compensatory afforestation schemes are being submitted at such a cost structure, which is at variance with the cost norms for the same area. The compensatory afforestation schemes, no doubt has to be site specific and thus per hectare rate will vary according to species, type of forest and site. In this regard, it has been decided that henceforth the compensatory afforestation schemes which are being submitted alongwith the proposals for forestry clearance, must have technical and administrative approval from the competent authority and should be in conformity with cost norms based on species, type of forest and site.

3.2 Land for Compensatory Afforestation. –

- (i) Compensatory afforestation shall be done over equivalent area of non-forest land.

Clarification:- As a matter of pragmatism, the revenue lands/zudpi jungle/Chhote/ Bade jhar ka jungle/ jungle-jhari land/civil – soyam lands and all other such categories of land, on which the provisions of Forest (Conservation) Act, 1980 are applicable, shall be considered for the purpose of compensatory afforestation provided that lands on which compensatory afforestation is proposed shall be notified as FR under the Indian Forest Act, 1927.

- (ii) As far as possible, the non-forest land for compensatory afforestation should be identified contiguous to or in the proximity of Reserved Forest or Protected Forest to enable the Forest Department to effectively manage the newly planted area.
- (iii) In the event that non-forest land of compensatory afforestation is not available in the same district, non-forest land for compensatory afforestation may be identified anywhere else in the State/Union Territory as near as possible to the site of diversion, so as to minimise adverse impact on the micro-ecology of the area. Where non-forest lands are not available or non-forest land is available in less extent to the forest area being diverted, compensatory afforestation may be carried out over degraded forest land being diverted and available non- forest land, as the case may be.
- (iv) Where non-forest lands are not available or non-forest land is available in less extent to the forest area being diverted, compensatory afforestation may be carried out over degraded forest twice in extent to the area being diverted or to the difference between forest land being diverted and available non-forest land, as the case may be.
- (v) The non-availability of suitable non-forest land for compensatory afforestation in the entire State/Union Territory would be accepted by the Central Government only on

the Certificate from the Chief Secretary to the State/Union Territory Government to that effect.

- (vi) An exception to 3.2(i) above, compensatory afforestation may be raised over degraded forest land twice in extent of the forest area being diverted/deserved in respect of following types of proposals:
 - (a) For extraction of minor minerals from the river beds. (However, if forest area to be diverted is above 500 hectares, compensatory afforestation over equivalent area of degraded forest shall be required to be done instead of twice the area being diverted subject to a minimum of 1000 hectare compensatory afforestation).
 - (b) For construction of link roads, small water works, minor irrigation works, school building, dispensaries, hospital, tiny rural industrial sheds of the Government or any other similar work excluding mining and encroachment cases, which directly benefit the people of the – in hill district having forest area exceeding 50% of the total geographical area, provided diversion of forest area does not exceed 20 hectares.
 - (c) For laying of transmission lines upto 220 KV.
 - (d) For mulberry plantation undertaken for silk-worm rearing without any felling of existing trees.
 - (e) For diversion of linear or 'strip' plantation declared as protected forest along the road/ rail/canal sides for widening or expansion of road/ rail/ canal.
 - (f) For laying of telephone/optical fibre lines.
- (vii) The field firing ranges, which are used temporarily by the defence establishments for arms practice, comprises, of safety zone encompassing the field firing range and danger area/ impact zone. Keeping in view that the impact area is only a small portion of the entire firing range and as an exception to 3.2 (i) above, compensatory afforestation may be raised

over equivalent degraded forest land of the forest area being diverted for impact zone of the field firing range.

(viii) No compensatory afforestation shall be insisted upon in respect of the following:-

- (a) For clearing of naturally grown trees in forest land or in portion thereof for the purpose of using it for reforestation.
- (b) Proposals involving diversion of forest land upto one hectare. (However, in such cases, plantation of ten times the number of trees likely to be filled will have to be carried out by way of compensatory afforestation or any number of trees specified in the order).
- (c) For underground mining in forest land below 3 metres. (However, in respect of forest area required for surface right, compensatory afforestation shall be required as per relevant provisions).
- (d) Cases of renewal of mining lease, for the forest area already broken/used for mining, dumping or over burden, construction of road, ropeways, buildings, etc. For the balance area, compensatory afforestation shall be required to be done as stipulated, provided that no compensatory afforestation had been stipulated and done in respect of this area at the time of grant/renewal of lease earlier.

(ix) Special provisions for Central Government/Central Government Undertaking Projects. –

- (a) Compensatory afforestation may be raised on degraded forest land twice in extent of forest area being diverted. Certificate of Chief Secretary regarding non-availability of non-forest land for compensatory afforestation will not be insisted.
- (b) The user agency will deposit the amount for compensatory afforestation with the concerned State Govt. on receiving the demand and the actual transfer/use of forest land

will be effected only after the receipt of the demanded amount.

- (c) The State Governments will identify 'blank forest' or degraded forest lands for compensatory afforestation. The State Governments of Madhya Pradesh and Rajasthan will identify such degraded forest land in their States for compensatory afforestation of Central Projects in their respective States as indicated by the Chief Secretaries of the two States in the meeting of Committee of Secretaries held on 15-11-1996.
- (d) The pool of degraded forest land in Madhya Pradesh and Rajasthan will also be available for the Central Government projects of other States if the concerned State Government fail to identify the requisite land, as mentioned at (a) above, for compensatory afforestation in its own territory within one month of the submission of the proposal to the State Government.
- (e) While identify the pool of degraded forest land, blank forest lands in reserved forests in compact/ sizeable blocks should be identified as first priority as "plantation bank". As appropriate treatment plan with choice of species should be prepared by the beneficiary States. Only when such areas are not available, the choice of compensatory afforestation will fall on protected, unprotected forests and unclassified forests in declining order of priority.
- (f) The Nodal Officer (Forest Conservation), State Forest Department will identify the pool of such degraded forest lands in consultation with concerned Chief Conservator of Forests (C), Regional Offices of the MOEF.

Clarification: The provisions of the above guideline would be applicable only Central Sector projects and not on State Sector projects which are being undertaken by Central PSUs on turnkey

basis. In such cases, Compensatory Afforestation on equivalent non- forest land/a certificate of Chief Secretary regarding non-availability of equivalent non-forest land anywhere in the State shall be insisted upon.

3.3 Elements of Schemes for Compensatory Afforestation. –

- (i) The scheme for compensatory afforestation should contain the following details:-
 - (a) Details of equivalent non-forest or degraded forest land identified for raising compensatory afforestation.
 - (b) Delineation of proposed area on suitable map.
 - (c) Agency responsible for afforestation.
 - (d) Details of work schedule proposed for compensatory afforestation.
 - (e) Cost structure of plantation, provision of funds and the mechanism to ensure that the funds will be utilised for raising afforestation.
 - (f) Details of proposed monitoring mechanism.

3.4 Lands identified for Compensatory Afforestation to be Transferred to the Forest Department. –

- (i) Equivalent non-forest land identified for the purpose are to be transferred to the ownership of the State Forest Department and declared as reserved/protected forests, so that the plantation raised can be maintained permanently. The transfer must take prior to the commencement of the project.
- (ii) The compensatory afforestation should clearly be an additional plantation activity and not a diversion of part of the annual plantation programme.
- (iii) In each case where the afforestation target is over 500 hectares in plans, and 200 hectares in hill, a Monitoring

Committee shall be established with a nominee of the Central Government to oversee that the stipulations, including those pertaining to compensatory plantation are carried out.

3.5 Special Fund. –

- (i) The State / Union Territory Government should create a special fund to which the individual user agency will make its deposits for Compensatory Afforestation. The Forest Department, or any other technically competent agency which is assigned the job of compensatory afforestation should fully utilise this amount for implementation of the afforestation scheme approved by the Government of India, and keep separate and meticulous account thereof.
- (ii) in order that a uniform procedure is followed by all departments, the Controller General of Accounts, Department of Expenditure, Ministry of Finance vide letter No. T-14018/14/90-Codes/485 dated 23.06.1992 has informed that the aforesaid deposit may be booked under the head “J- Reserve Fund(b) Funds not bearing interest – 8235 – General and Other Reserve Funds – 200 – Other Funds – Special Fund for Compensatory

Afforestation”. *Clarification* : The Supreme Court has passed orders on 30-10-2002 in I.A. No. 566 in Writ Petition (Civil) No. 202 of 1995, regarding creation of a body for management of compensatory afforestation fund. Annexure – II B may be referred to. In compliance with the orders, creation of body namely, “Compensatory Afforestation Management & Planning Agency (CAMPA)” is under consideration. As soon as this body comes into existence, all the funds received by the State/Union Territory Governments towards Compensatory Afforestation, Additional Compensatory Afforestation, Penal Compensatory Afforestation, Net Present Value of forest land, Catchment Area Treatment Plan Funds, Wildlife Management Plan etc. for the conditions stipulated by the Central Governments, shall be transferred to the CAMPA. Further Compensatory Afforestation Funds which have not yet

been realised as well as the unspent funds already realised by the States shall be transferred to the said body within six months of its constitution by the respective States and the user-agencies.

Further, Supreme Court in its order dated 1.8.2003 in I.A. No. 826 & 859 in I.A. No. 566 in Writ Petition (Civil) No. 202 of 1995 reiterated that no approval shall be granted without imposing the condition indicated in this Court's order dated 30.10.2002 relating to the payment of net present value of the forest land. Annexure – II C may be referred to.

Note: Compensatory Afforestation Fund Management and Planning Authority (CAMPA) has been notified in Official Gazette on 23rd April, 2004.

- (iii) Guidelines for collection of Net Present Value (NPV) of forest land in compliance to the orders of the Supreme Court have been issued vide letter No. 5-1/98-FC (Pt-II) dated 18-9-2003 & 22-9-2003 (Appendix). In this regard, a clarification has also been issued by the Ministry of Environment and Forests vide letter No. 5-1/98-FC (Pt. II) dated 25.5.2004.**

ANNEXURE 2

Recommendations of the Central Empowered Committee in its report dated 9.8.2002

1. In addition to fund realized for compensatory afforestation, net present value of the forest land diverted for non forestry purposes shall also be recovered from the user agencies, while according approval under the Forest (Conservation) Act, 1980.
2. A 'Compensatory Afforestation Fund' shall be created in which all the monies received from user agencies towards compensatory afforestation, additional compensatory afforestation, net present value of forest land, catchment area treatment plan funds, etc. shall be deposited. The rules, procedures and composition of the body for management of the compensatory afforestation fund shall be finalized by the MoEF with the concurrence of CEC
3. The funds received from the user agencies in cases where forest land diverted falls with in protected areas i.e. area notified under Section 18, 26A or 35 of the Wildlife (Protection) Act, 1972 for under taking activities related to protection of biodiversity, wildlife etc., shall also be deposited in this fund. Such monies shall be used exclusively for undertaking protection and conservation activities in protected areas of the respective States/UT.
4. The amount received on account of compensatory afforestation but not spent or any balance amount lying with the state/ UT or any amount that is yet to be recovered from the user agency shall also be deposited in this fund.
5. Besides artificial regeneration (plantations), the funds shall also be utilized for undertaking assisted natural regeneration,

protection of forests and other related activities. For this purpose, site specific plans should be prepared and implemented in time bound manner.

6. The user agencies especially the large public sector undertakings such as power grid corporation, NTPC etc. which frequently required forest land for their projects should also be involved in undertaking compensatory afforestation by establishing Special Purpose Vehicle (SPV).
7. Whereas private sector user agencies may be involved in monitoring and most importantly, in protection of compensatory afforestation. Necessary procedure for this purpose would be laid down by the MoEF with the concurrence of the CEC.
8. Plantation must use local and indigenous species since exotics have long term negative impacts on the environment; and
9. An independent system of concurrent monitoring and evolution shall be evolved and implemented through the Compensatory Afforestation Fund (CAF) to ensure effective and proper utilization of fund.

ANNEXURE 3
Exemptions from NPV in the
Kanchan Chopra Committee report

| List of Activities/ Projects | Exemption Levels for NPV (as percentage of full chargeable NPV) | Remarks |
|---|--|--|
| Public Works: schools, hospitals, children play grounds (non-commercial) | Full exemption | Only up to 2 hectares |
| Public Welfare Projects: Community centers in rural areas | Full exemption | Only up to 2 hectares |
| Minor Minerals and Quarrying | No exemption | To be charged only for proportion of land broken in accordance with pre-submitted mine plan |
| Mining : Open cast mining | No exemption | To be charged only for proportion of land broken in accordance with pre-submitted mine plan |
| Mining: Under ground mining | No exemption | To be charged only for impacted area which is likely to experience strain greater than 10 mm per meter |
| Water Resources Projects | | |
| Irrigation: Minor surface water run-of river schemes and water harvesting | Full exemption | Up to 10 hectares of storage area |

| | | |
|--|----------------|---|
| Major Irrigation and Hydel Power | 30% exemption | Exemption due to consideration as in 4.2 above |
| No diversion of land from Protected Areas and National Parks | | |
| Municipal Water Supply | Full exemption | |
| Drinking Water Supply Pipelines through Forest Area | Full exemption | |
| Rural Infrastructure and Basic services: construction of overhead tanks, village road etc. | Full exemption | |
| Relocation of Villages from Sanctuaries/ National Park | Full exemption | Provided R& R is provided for appropriately |
| Housing for rehabilitation of tribals | Full exemption | |
| Activities necessary for Ecological Management or Wildlife Management | Full exemption | |
| Regularisation of eligible encroachments (Pre 1980) | Full exemption | |
| Regularization of encroachment other than pre 1980 | No exemption | |
| Overhead Power Transmission lines | Full exemption | Forest protection to be ensured with bank guarantee |
| Thermal Power plants | No exemption | |
| Laying of underground fiber optic cables | Full exemption | |
| Laying of pipelines for underground gas transportation (ie. IOC) | Full exemption | |

| | | |
|---|----------------|--|
| Non-conventional energy | 50% exemption | |
| Infrastructure for temples and religious centers. | No exemption | |
| State Highways | No exemption | |
| National Highways | No exemption | |
| District and Rural roads | Full exemption | With care taken to ensure appropriate, non-invasive technology |

ANNEXURE 4

Cec Recommendations Regarding the Calculation of Net Present Value (NPV) payable on use of forest land of different types for non-forest purposes

- (i) For non-forestry use/diversion of forest land, the NPV may be directed to be deposited in the Compensatory Afforestation Fund as per the rate mentioned below. (in Rs.)

| Eco-Value class¹ | Very Dense Forest | Dense Forest | Open Forest |
|------------------------------------|--------------------------|---------------------|--------------------|
| Class I | 10,43,000 | 9,39,000 | 7,30,000 |
| Class II | 10,43,000 | 9,39,000 | 7,30,000 |
| Class III | 8,87,000 | 8,03,000 | 6,26,000 |
| Class IV | 6,26,000 | 5,63,000 | 4,38,000 |
| Class V | 9,39,000 | 8,45,000 | 6,57,000 |
| Class VI | 9,91,000 | 8,97,000 | 6,99,000 |

- (ii) The use of forest land falling in National Parks/Wildlife Sanctuaries will be permissible only in totally unavoidable circumstances for public interest projects and after obtaining permission from the Hon'ble Court. Such permissions may be considered on payment of an amount equal to ten times in the case of National Parks and five times in the case of

¹ **Class I-** Consisting of Tropical Wet Evergreen Forests, Tropical Semi Evergreen Forests and Tropical Moist Deciduous Forests. **Class-II-** Consisting of Littoral and Swamp Forests, **Class-III-** Consisting of Tropical Dry Deciduous Forests, **Class-IV-** Consisting of Tropical Thorn Forest and Tropical Dry Evergreen Forests, **Class-V-** Consisting of Sub-Tropical Broad Leaved Hill Forests, Sub-Tropical Pine Forests and Sub-Tropical Dry Evergreen Forests, **Class-VI-** Consisting of Mountain Wet Temperate Forests, Himalayan Moist Temperate Forests, Sub Alpine Forests, Moist Alpine Scrub and Dry Alpine Scrub Forests.

Sanctuaries respectively of the NPV payable for such areas. The use of non-forest land falling within National Parks and Wildlife Sanctuaries may be permitted on payment of an amount equal to the NPV payable for the adjoining forest area. In respect of non-forest land falling within Marine National Parks/Wildlife Sanctuaries, the amount may be fixed at five times the NPV payable for the adjoining forest area;

- (iii) These NPV rates may be made applicable with prospective effect except in specific cases such as the Lower Subansiri Project, mining leases of SECL, Field Firing Ranges, wherein pursuant to the orders passed by this Hon'ble Court, the approvals have been accorded on lump-sum payment/no payment towards the NPV; and
- (iv) For preparation and supply of district level maps and GPS equipments to the concerned State/UT Forest Departments and the regional offices of the MoEF, the Ad-hoc CAMPA may be asked to provide an amount of Rs. 1.0 crore to the Forest Survey of India out of the interest received by it (CEC, 2007).

ANNEXURE 5

Statement of the MoEF on the status of funds released for the period of June 2009 to February 2011

| Sl. No | Name of State/UT | Total amount received from States/UTs as on 30. 11. 2010 | Interest Earned as on 30. 11. 2010 | Principal Amount as on 30. 06. 2009 | Releases during the year 2009-10 (@ 10% of col.5) | Date of releases | Principal Amount as on 30. 06. 2010 (in Rs.) | Releases during the year 2010-11 (@ 8% of col.7) | Date of releases | Transferred to NCAC (@ 5% of col.6) | Total balance with Ad-hoc CAMPA on 30. 11. 2010 (Col. Nos. (3 + 4) - (6+ 9+ 11)) | Status of receipt of APO for 2010-11 |
|--------|---------------------------|--|------------------------------------|-------------------------------------|---|------------------|--|--|------------------|-------------------------------------|--|--------------------------------------|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 |
| 1 | Andaman & Nicobar Islands | 90,497,602.00 | 34,049,383.68 | 109,906,133.00 | 10,990,000.00 | 28.08.2009 | 98,366,602.00 | 7,869,000.00 | 01.10.2010 | 549,531.00 | 105,138,454.68 | Received |
| 2 | Andhra Pradesh | 17,676,144,523.48 | 2,519,725,110.02 | 8,978,325,371.48 | 897,832,000.00 | 28.08.2009 | 15,093,052,447.48 | 1,207,444,000.00 | 01.10.2010 | 44,891,628.00 | 18,045,702,005.50 | Received |
| 3 | Arunachal Pradesh | 2,235,092,968.74 | 480,915,359.09 | 1,636,763,088.74 | 163,676,000.00 | 03.04.2010 | 2,223,529,278.74 | 177,882,000.00 | 22.11.2010 | 8,183,815.00 | 2,396,266,512.83 | Received |
| 4 | Assam | 1,323,278,240.00 | 135,279,702.14 | 671,749,049.00 | 67,174,000.00 | 17.08.2009 | 1,306,096,630.00 | 104,487,000.00 | 01.10.2010 | 3,358,745.00 | 1,283,538,197.14 | Received |
| 5 | Bihar | 1,095,878,807.00 | 196,349,364.09 | 775,448,381.00 | 77,300,000.00 | 20.11.2009 | 1,063,433,629.00 | 86,674,000.00 | 18.01.2011 | 3,867,245.00 | 1,084,986,926.09 | Received |
| 6 | Chandigarh | 17,149,199.00 | 5,596,616.70 | 17,652,067.00 | 1,765,000.00 | 17.08.2009 | 16,209,925.00 | 1,295,000.00 | 01.10.2010 | 88,260.00 | 19,388,555.70 | Received |
| 7 | Chhattisgarh | 15,723,460,118.39 | 3,848,539,455.18 | 12,321,350,743.39 | 1,232,135,000.00 | 17.08.2009 | 16,763,328,071.39 | 1,341,065,000.00 | 01.10.2010 | 61,606,754.00 | 16,737,211,819.57 | Received |
| 8 | Dadra & Nagar Haveli | 31,863,359.00 | 4,042,148.00 | 16,629,000.00 | 1,662,000.00 | 04.09.2009 | 33,262,359.00 | | | 84,145.00 | 34,193,362.00 | Not received |
| 9 | Daman & Diu | 7,110,100.00 | | | | | 7,728,100.00 | | | | 7,110,100.00 | Not received |
| 10 | Delhi | 160,807,546.00 | 23,916,165.00 | 1,224,523,363.00 | 18,471,000.00 | 21.01.2010 | 174,898,546.00 | 13,991,000.00 | 18.01.2011 | 6,122,617.00 | 146,239,094.00 | Received |
| 11 | Goa | 1,220,699,611.58 | 290,050,602.56 | 1,211,970,919.58 | 121,197,000.00 | 17.08.2009 | 1,289,851,153.58 | 102,468,000.00 | 01.10.2010 | 6,059,855.00 | 1,281,025,359.14 | Received |
| 12 | Gujarat | 3,867,171,155.00 | 528,444,318.39 | 2,496,471,445.00 | 249,647,000.00 | 19.08.2009 | 3,644,601,948.00 | 291,568,000.00 | 01.10.2010 | 12,482,357.00 | 3,841,918,116.39 | Received |
| 13 | Haryana | 2,518,451,195.59 | 299,056,265.50 | 1,911,413,386.79 | 191,141,000.00 | 17.08.2009 | 2,361,364,182.59 | 188,909,000.00 | 01.10.2010 | 9,557,067.00 | 2,427,900,424.09 | Received |
| 14 | Himachal Pradesh | 7,905,763,337.60 | 739,680,586.40 | 3,667,719,848.60 | 366,771,000.00 | 21.08.2009 | 7,570,707,066.60 | 421,656,000.00 | 01.10.2010 | 18,338,599.00 | 7,838,678,325.00 | Received |

ANNEXURE 6
**Compilation of budget heads for Infrastructure
Development under different heads of NPV
funds for 2010-11 from State APOs**

Annexure 6.1 : GOA (69% for infrastructure development under different heads of total NPV budget)

| Budget heads | Expenditure (in Rs. lakhs) |
|---|---------------------------------------|
| Conservation of wild life | |
| Infrastructure for Patrolling station | 24 |
| Computers | 3 |
| Motor boats | 10 |
| Communications which include motor vehicles, utility vehicles, motor cycle etc | 46.7 |
| Improvement of zoo infrastructure | 100 |
| Infrastructure for protection and energy saving | 185.3 |
| Human Resource | |
| Construction of training hostels | 25 |
| Maintenance of school and Campus | 12 |
| Infrastructure and Development (including office accomodation and housing facilities) | 290 |
| Monitoring and Evaluation | |
| Computers, l aptops. maintenance of office, purchase of vehicles etc | 31.8 |
| Total | 727.8 |
| Total NPV budget | 1052 |

Annexure 6.2 : Sikkim (53% of total NPV budget is for infrastructure development)

| Budget Head | Expenditure (in Rs. lakhs) |
|----------------------------|---------------------------------------|
| Infrastructure development | 337.67 |
| Total Budget of NPV fund | 632.87 |

Annexure 6.3: Tamil Nadu (67.64% for infrastructure development including permanent boundary cairns for demarcation of forest land.)

| Budget Heads | Expenditure (in Rs. lakhs) |
|---|---------------------------------------|
| Infrastructure Facilities to GIS labs for Forest Academy Coimbatore | 15 |
| Formation of State CAMPA cell which involves purchase of computers, furniture, other hardware and software for office purpose | 8 |
| Construction of training Hall | 12 |
| Purchase of Staff cars | 21 |
| Demarcation of forest boundary by constructing 3000 cairns | 36 |
| Total | 92 |
| Total NPV budget | 136 |

Annexure 6.4 : Himachal Pradesh (52.5% of total NPV budget for expenditure on infrastructure)

| Budget heads | Rs (in Lakhs) |
|---|----------------------|
| Forest management and Protection | |
| Procurement of GPS/PDA Instrument | 25 |
| Reconstruction of Permanent boundary | 100 |
| Forest Infrastructure Development | |
| Provision of Computer Center in FTI Chail | 10 |
| Repair of forest infrastructure, Maintenance of housing for field staff below the rank of forest ranger | 175 |
| Construction of Gang Hut at Malana | 7 |
| Modification/development of NTFP interpretation cum education centre in research building at Sunder nagar | 7 |
| Other Allied Activities | 220 |
| Computers with accessories for Ranges | 25 |
| Provision of internet facility | 3 |
| Total Amount | 572 |
| Total NPV | 1088.35 |
| Percentage of total NPV | 52.5 |

Annexure 6.5 : Andhra Pradesh (45.61% of total NPV budget for infrastructure development)

| Budget heads | Expenditure (in Rs. lakhs) |
|---|-------------------------------|
| Forest and Wildlife Protection | |
| Establishment and Maintenance of Base Camps | 577.500 |
| Establishment and forest Check Post | 155.000 |
| Fuel Charges and Repairs for dept. Vehicles including hire charges for Vehicles | 460 |
| Construction of Protection Ball for Urban Forest Block | 699.720 |
| Biodiversity Conservation | |
| Improvement of Zoological Parks | 126 |
| Improvement of Deer Parks and animal complex | 108 |
| Development of Breeding and orphanage homes | 60.500 |
| Capacity Building | |
| Construction of Hostel for Frontline Staff | 300 |
| Purchases of Mini buses for Field visit | 23.250 |
| Maintenance of existing infrastructure | 102.680 |
| Information and Communication Technology | |
| Improvement of infrastructure and Communication | 150 |
| Infrastructure Development | |
| Construction of Frontline staff Residential quarters | 1480 |
| Construction of residential quarters at State Headquarters | 630 |
| Infrastructure maintenance such as office buildings, Vehicles, water and electricity Charges, office support, rates and taxes | 1350 |
| Total Amount | 6222.65 |
| Total NPV | 13641.14 |
| Percentage of total NPV | 45.61 |

ANNEXURE 7
Budgets for plantation for 2010-11 as in
State APOs

| State | Budget Heads | | Budget (in Rs. Lakhs) |
|------------------|---|----------------------|--|
| Uttarakhand | Strengthening of VSS Plantations | | 62.5 |
| Karnataka | Assisted natural regeneration Raising and advanced works | | 1379.25 |
| Himachal Pradesh | Assisted Natural Regeneration To clear areas of invasive species and planting pf bamboo/tall plants in low laying Divisions (Norm Includes Max. Rs. 6000/- per ha. For maintenance in 3rd year) | | 250 (Percentage of budget under plantation to total NPV budget is 24.8) |
| Madhya Pradesh | Fuel wood Plantations | Rs 1968(in lakhs) | 4144.72 24.04% of total budget of NPV is for plantation |
| | Urban plantations | 1359 | |
| | Economic Plantations | 817.72 | |
| | Total | Rs 4144.72 lakhs | |

List of Interlocutory Applications (I.A.s) discussed in this Study

| I.A. Nos. | Subject |
|-----------------|--|
| 295 | For directions regarding the State of Assam on orders of the Court dated 12.12.1996 and 15.01.1998 not been properly implemented |
| 419 & 420 | Filed by National Mineral Development Corporation (NMDC) for the purpose of getting permission to work the mines |
| 424 | Relating to regularisation of encroachments and compensatory afforestation in Damoh district of Madhya Pradesh. |
| 566 | Suo moto action on Shri K.N. Rawal's statement on status of compensatory afforestation fund and charging of NPV of forest land diverted for non forest purposes. |
| 574 | Relating to the compensatory afforestation by M/s South Eastern Coalfields (SEC) Ltd for the purpose of mining operations Chirmiri Colliery and West Chirmiri Colliery, Madhya Pradesh |
| 780 | Related to defacing of rocks in Kullu-Manali, Himachal Pradesh due to corporate advertising |
| 826 in I.A. 566 | Recommendations of the CEC in I.A. No 566 |
| 827 | Report of the CEC regarding transfer of funds and related issues |
| 1337/15.09/2006 | Direction on the filing of the Schemes received by Ad-hoc CAMPA |
| 1122 | Report of Special Investigation Team (SIT) regarding use of illegal timber |
| 1473 | CEC Report dated 24.1.2006 on constitution of the Ad-hoc body till CAMPA becomes operational |

| | |
|--------------------------------|--|
| 1620, 1693 in 1473 | Related to constitution of a body and management of Compensatory Afforestation Fund, in concurrence with the CEC and appointment of Chief Executive Officer |
| 2143 in 1413 | CEC report dated 1.01.2008 regarding funds lying with Ad-hoc CAMPA |
| Net Present Value (NPV) | |
| 819, 820 and 821 | Related to the felling of trees in Tehri and Rajaji National Park for construction of 800 KV transmission line by Power Grid Corporation of India Ltd. |
| 932 | Filed by Power Grid Corporation, Uttarakhand in response to I.A. 819-821 |
| 955 | For modification of order dated 30.10.2002 in I.A. 566 on behalf of the State of Assam regarding NPV |
| 958 | For modification of order dated 30.10.2002 in I.A. 566 on behalf of the State of Madhya Pradesh related to the report of the CEC regarding NPV |
| 985 | For direction/modification on behalf of Federation of Indian Mineral Industries on NPV |
| 1001 and 1000A | For modification of order dated 30.10.2002 in I.A. 566 and permission to file application on behalf of the State of Rajasthan related to the report of CEC regarding NPV |
| 1013 and 1014 | For impleadment and clarification/direction on behalf of Mahavir Trading Company, Udaipur, Rajasthan related to NPV matters in I.A. 566 |
| 1046 | Application filed by MoEF seeking direction that the NPV calculation shall be part of the detailed project report for clearance under FCA |
| 1047 | Filed by Ministry of Mines seeking direction that in mining NPV may be calculated at the rate of 10% and 5% |
| 1016-1018 | Filed on behalf of Thane Quarry owners for direction, impleadment and exemption from NPV in I.A. 566 |

| | |
|---|--|
| 1019 | Application by State of Uttaranchal seeking exemption from paying NPV for development projects such as hospitals, dispensaries, school, transmission lines etc |
| 1137 | Report of the CEC in I.A. 1137 filed by the State of Kerala seeking exemption from paying the Net Present Value in respect of 7693.23 ha of forest land diverted for resettlement of landless tribals in the State |
| 1164 | For modification of order dated 30.10.2002 in I.A. 566 on behalf of the State of Orissa regarding NPV |
| 1180-83, 1196, 1208-1209, 1222-1223, 1229, 1248-49, 1253, 1194-95, 1313, 1315, 1318, 1319 | Impleadment and modification of Court's order 30.10.2002 related to NPV in I.A. 566 |
| 1135-1136, 1224-25, 1233, 1385 1386, 1438, 1639, 1671, 2098 | Indian Wind Turbine Manufacturers Association and other applications who are engaged in the production of wind energy seeking NPV exemption of 50% |
| 1301-1304 | Payment of NPV for temporary working permits for public sector undertaking |
| 1312 | State of Uttarakhand seeking NPV exemption for construction of rural kutcha roads |
| 1314,1316 | State of Bihar seeking exemption from paying NPV for Public Utility Projects |
| 859 | Filed by MOEF in I.A. 826 in I.A. 566 for extension of time; disposed off by the Court as having become infructuous on 8.09.2003 |
| 953 | For direction, impleadment and exemption from filing NPV on behalf of <i>Koshi Shilp Evam Kasth Kala Kalyan Samiti</i> , Bihar |
| 1441 | Filed by South Eastern Coalfields seeking exemption from payment of NPV |
| 1434, 1665 | Ministry of Defense through Director Military Training for field firing ranges for training members seeking NPV exemption |

| | |
|--|---|
| 1480-82 | Filed by Power Grid Corporation of India for seeking exemption from NPV for laying of transmission line in Chambal Ghariyal Sanctuary |
| 1609-10 | Filed by State of Andhra Pradesh seeking exemption from paying of NPV for diversion of forest land in Rajiv Gandhi Wildlife Sanctuary |
| 1413, 1414, 1426, 1428, 1440, 1454, 1459, 1460, 1662-1663, 1675, 1778, 1796, 2005-2006, 2121-2132 and, 2133in 1413 | Application by the 18 temporary mining license holders for permission to continue mining after payment of NPV |
| 2875 | Related to wind power generation companies in Karnataka seeking exemption from NPV |

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*D*iversion or dereservation of forest land for non-forest uses such as mining and industry comes with the mandatory condition of compensatory afforestation. This is to be undertaken as per the guidelines of the Ministry of Environment and Forests. Over the years, the poor implementation of this condition has come under scrutiny. Initiated by the Supreme Court, the debates and deliberations drew in the Central Empowered Committee, the Ministry of Environment and Forests and several legal and forestry experts to find a way to improve implementation. This process put into place a standardised system of valuating forests that are proposed for diversion, based on the 'goods and services' provided by them. It has also resulted in the creation of an institutional network comprising forest officials, experts and politicians at the Centre and the States for the collection and disbursement of funds collected on account of diversion or dereservation.

This study examines the steps that led to the setting up of the Compensatory Afforestation Planning and Management Authority (CAMPA) and the method of calculating the Net Present Value (NPV) of forests. The arguments that have taken place between the judiciary, the executive and the Parliament since 1999 are valuable material for those interested in matters of forest conservation and forest governance. They touch upon Centre-State relations, the political, administrative and technical notions of forests and the role of negotiation in policy-making.