

### **Annexure 3:**

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

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

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

## Annexure 4:

### Maharashtra's Innovative Procedure for the Verification of Rights

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

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

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

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

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

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

**Introduction**

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

**Government Decision**

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

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

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

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

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

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

## **2. With a view to ensure that**

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

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

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

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

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

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

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

- a. Governmental / Semi-Governmental documentary evidence / relevant evidence gathered by more than 3 members of the committee from a spot verification / the evidence of neighboring cultivators and of senior citizens of the villages/ and affidavit submitted in the village assembly by the encroacher / claimant.
- b. As lands encroached between 1/4/1972 and 31/3/1978 are available for release with a few exception and disputes, *vide* Government Decision of 12th September 1979. It is important that the committee definitively decides the period of the encroachment. While deciding eligible cases the following two points be kept in mind.
  - i. the claimant should fulfill all other conditions of Government Decisions of 27/12/1978 and 12/9/1979.
  - ii. While deciding the exact period of encroachment, the village level committee should pay attention to the following guidelines.
    1. All claims where the claimant has documentary evidence of the period between 1/4/1972 and 31/3/1978 should be accepted.

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

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

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

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

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

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

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

Sd/- Ramakant Asmar  
Jt. Secretary, Revenue and Forests Dept.  
Government of Maharashtra

means to address it. Consequently, for the first time, the guidelines under the Forest (Conservation) Act, 1980, showed the way for legal solutions to the long pending unresolved problem of settlement of rights of the tribals and other forest dwellers living on the forest lands since time immemorial. Side by side, recognition of the concept of sustainable forest management through participatory approach, in the National Forest Policy, 1988, brought to the fore mutual interdependence of forests and people. Unlike the 1952 Forest Policy which centred around production and commercial forestry, the 1988 Policy gives due regard to the traditional rights of the tribal people on forest land. While recognizing the symbiotic relationship between the tribal people and forests, it also safeguards the customary rights and interests of the tribal people and forest dwellers on forest lands.

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

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

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

After a critical examination of the issue of settlement of claims over forest lands and eviction of ineligible encroachers of forest lands, what emerges is that the State/UT Governments were not able to distinguish between the encroachers, and the original tribals and other forest

dweller living on forest lands since time immemorial. The Central Government is convinced that the difficulty in distinguishing between genuine tribals/ forest dwellers and ineligible encroachers by the State Governments / UT Administrations is the main cause of the problems of tribals. Therefore, some kind of interim measures are necessary to safeguard the interests of the tribals and forest dwellers who have been living in forests since long, and whose disputed claims are yet to be settled.

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

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

Yours faithfully,

Sgd.  
(N.K. Joshi)

Copy to:

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

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