

Ms. Sonia Gandhi
Chairperson, NAC
2, Moti Lal Nehru Marg,
New Delhi

20th October, 2004

Sub: Towards a Resolution of the Eviction threat affecting 1.5 million tribal families

Dear Ms. Gandhi,

We would like to bring to your attention a matter that needs urgent attention of the Government of India on behalf of 200 people's organizations working among the tribal people in the states of MP, Chattisgarh, Andhra Pradesh, Orissa, Rajasthan, Gujrat, Tamil Nadu, Karnataka and Maharashtra. There are approximately 1.5 million tribal families that face the threat of eviction from their forest homelands.

We enclose a letter from the "Campaign for Survival and Dignity" that highlights the threat that these tribal families are facing.

Given the firm commitment made in the CMP that "eviction of tribal communities and other forest-dwelling communities from forest areas will be discontinued", we request you to kindly direct that immediate steps be taken to address the situation that threatens to undermine the well being of millions of tribal families in the country. In particular we strongly recommend the following steps:

(1) That immediate clarifications be issued by the Ministry of Environment and Forests to discontinue the present eviction drives, and to spell out the due process to be followed in settling disputed claims over forest land.

(2) That a "dialogue" between concerned parties (including representatives of Campaign for Survival and Dignity as well as of the Ministry of Environment and Forests) should be initiated as soon as possible by the NAC.

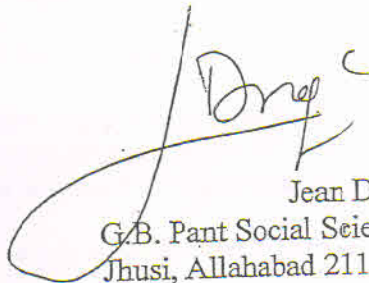
With regards,

Yours sincerely,



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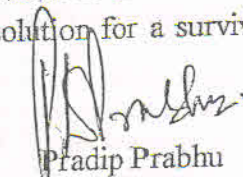
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Towards a Resolution of the Eviction Threat Affecting 1.5 Million Tribal Families

Respected Chairperson & Members of the NAC

On behalf of the 200 peoples organizations working among the tribal people in the states of MP, Chattisgarh, AP, Orissa, Rajasthan, Gujarat, Tamilnadu, Karnataka and Maharashtra, we crave leave to place before you our feeble efforts to find a way to meet the threat of eviction of 1.5 million tribal families from their forest homelands. While the Supreme Court has not expressly ordered or directed eviction, most officials go by the wrong impression created by the IG of forests in his order dated 3rd May 2003. It is unfortunate that when the rights of the better off and politically articulate sections have been resolved decades ago, the rights of those who live below the poverty line and are politically marginal, but have consistently supported the Congress Party and have looked up to it as a beacon of hope have remained unresolved for over half a century. Today they are pushed to the brink of survival. We hope and pray that you will find a just, fair and equitable solution for a survival issue of the most marginalized communities of this nation.



Pradip Prabhu

National Convenor

Roots of the Problem

The primary roots lie in the failure to implement the law for the past five decades.

1. The first is the failure to complete the Settlement Process before declaring an area as Reserved Forest.
 - a. Post independence, notification under section 4 of the Indian Forest Act (IFA) was extended to forested areas in the hands of the erstwhile princely kingdoms.
 - b. Large areas of un-surveyed forest areas also merged into the Reserved Forest.
 - c. But the Settlement Process stipulated by the IFA, consisting of settling rights, including land rights, of individuals and communities, was largely defective or incomplete. (one good example is MP where only 2411 forest compartments (17.1%) have been settled while 11759 (82.9%) remain unsettled).
 - d. In several states defective or non-existent settlement of rights has been waived by amending the IFA to introduce Sec. 20(a) – Deemed Reserved Forest.
 - e. Thereby the existing rights of over a half a million tribal families have been extinguished and they are now 'encroachers'.
2. The second is the refusal to honour prior commitments made by governments by way of leases and pattas variously known as ek Sali, dalhi, teram etc stating the ban imposed by the FC Act.
 - a. Some state governments like Maharashtra passed orders way back in 1969 converting the leases into permanent titles.
 - b. Courts like the Bombay High Court in the Vishwanath Jadhav case (WP 503/1984) have upheld them.
 - c. But these processes languish at different stages thereby extinguishing legitimate title to hundred of thousands of tribal families.
3. The third is the failure to implement time bound programs of regularisation of encroachments of subsistence tribal and dalit families living below the poverty line.
 - a. Various states like MP, Maharashtra, Gujarat, Rajasthan had passed orders to regularize encroachments on forest land.
 - b. These have been forestalled by the introduction of the FC Act.
 - c. In other states the forest bureaucracy had not deemed it expedient to regularize encroachments.

A National Front constituted by Bharat Jan Andolan, National Front for Tribal Self Rule, Soshit Jan Andolan (Mah), Adivasi Mahasabha (Guj), Adivasi Jangal Jeevan Jan Andolan (D&NH), Jangal Jameen Jan Andolan (Raj), Jan Sangarsh Morcha (MP), Jan Sangarsh Samiti (Chat), Jan Sangharsh Morcha (Orissa) Campaign for Survival & Dignity (Ori), Orissa Adivasi Manch, Adivasi Aikya Vedike (AP), Bodhigattu Krishikara Sangha (Kar), PUCL (TN)

- d. The Supreme Court in the Pradip Prabhu case (WP 1778/1986) has directed regularization of encroachments.
- e. The Supreme Court had also directed in Pradip Prabhu's case that claims be inquired into even when documentary proof in the form of fine receipts and certificates of imprisonment are not available.
- f. Taking serious note of the untold harm being done to the landless adivasis, MoEF (GOI) in its order of 5-2-2004 has extended the cut off for regularization of encroachments to 31st December 1993, but on an IA filed by the Amicus Curiae the Supreme Court has stayed the operation of the order.
- g. But the process is stalled at different stages thereby criminalizing hundred of thousands of tribal families and threatening them with eviction.
4. The fourth is the failure to convert forest villages into revenue villages.
 - a. These villages were set up by the Forest Department to ensure labour for forestry operations.
 - b. The forest department had provided them land for residence and agriculture.
 - c. Most states had issued orders to convert forest villages into revenue villages as long as 1935 in the case of MP.
 - d. But the process of conversion has been delayed for so long that in effect title is being extinguished and the villages are left to the mercy of the forest bureaucracy, a problem that affects several thousands of surveyed and un-surveyed villages.
5. All these issues were presented in detail by the Commissioner for Sch. Castes and Sch. Tribes in the XXIXth Report.
 - a. Following the Report of the Commissioner, a CoS prepared a detailed cabinet note which was approved by Cabinet in September 1990.
 - b. Following Cabinet approval MoEF issued 6 Guidelines on 18th September 1990 providing a solution to these problems.
 - c. The Supreme Court upheld the validity of the Guidelines in Pradip Prabhu's case (WP 1778/1986) on 7th March 1995.
 - d. The Govt. of Maharashtra by its order of 10.10.2002 has created a transparent, participatory and legally consistent frame to verification of claims.
 - e. The Guidelines have either not been implemented effectively or not at all leaving a legal stalemate that affects a majority of the tribal population of Central India.
 - f. The condition of compensatory afforestation for lands brought under cultivation in cases over a century ago has rendered the Guidelines of MoEF infructuous.
6. The issue of shifting cultivators has not been addressed in an efficacious and equitable manner.
 - a. The absence of 'individual private property ownership' traditions among shifting cultivators has negated the recognition or settlement of their rights.
 - b. Shifting cultivators are treated as a threat to the forest environment and regularly evicted, their villages burnt, their crops destroyed.
 - c. Their eviction results in double jeopardy for the forest environment because a new area is cleared for cultivation, while the old area is deserted.
 - d. No serious or scientific effort has been made to involve the shifting cultivators in forest regeneration and linking conservation with sustainable livelihoods.
 - e. As a result both the community of shifting cultivators, numbering approx 2 lacs, hover between decimation and despair.
7. The orders of the Supreme Court in the Godhavarman, WWF and Rajeha Writ Petitions has materially affected the right to life, livelihood and dignity of a very large section.
 - a. The definition of forests adopting the dictionary meaning
 - b. The merging of large tracts of revenue or traditionally non forest land, where a fairly large population live and pursue legitimate livelihoods, but where the word forest is used either as orange areas, chote jad-mote jad ka jangal, revenue jungal, into Reserve Forests effectively preclude resolution of myriads of disputes.
 - c. The ban on change on the legal character of forest lands will preclude access of tribal communities to access developmental schemes.
 - d. The condition of Net Present Value of Rs. 5.8 to 9.2 lacs per acre to be obtained from the beneficiaries will effectively negate any land rights or entitlements.

- e. The ban on access to MFP in protected areas has pushed hunting food gathering communities to starvation and death as is taking place with the Chenchus in AP.
8. The initiative taken by the Supreme Court had a salutary effect in conserving the forest environment, but at the same time it has several unintended effects which have far reaching effects for an effective democracy.
 - a. The judiciary has assumed the mantle of the legislature in making laws weakening the democratic frame
 - b. The elected legislature which is responsive to and is held responsible by the people is replaced by judiciary who are distant from conditions prevailing on the ground
 - c. The resolution of issues is taken out of the hands peoples representatives and centralized in the hands of the forest bureaucracy.
 - d. The creation of an extra-constitutional judicial authority like the Centrally Empowered Committee converts the forest bureaucracy into a judicial body.
 - e. The access of the poor and marginalized to justice is closed as they have neither the means or the opportunity to know at the doors of the Supreme Court and their access through the elected representatives to resolve their issues is infrutuous.
9. The widespread dis-satisfaction in the tribal areas has several critical effects
 - a. Attraction of the far left, who have a strong hold among the disaffected communities in the states of AP, Maharashtra, MP, Chattisgarh, Orissa and Jharkhand.
 - b. Entry of the far right into these areas as is evident from election results in Gujarat, Maharashtra, MP, Chattisgarh, Orissa and Jharkhand.
 - c. Attraction of the illegal timber trade who use the conditions of extreme deprivation and starvation of tribal groups to their advantage and their nefarious activities.
 - d. Alienation of the traditional conservationists preventing their involvement in forest conservation.
 - e. Closure of the option of linking survival and livelihoods with effective conservation through carefully designed community forest management.
 - f. The Forest Conservation Act is projected as the obstacle to
 - g. A demand to withdraw the application of the Forest Conservation Act from the Scheduled Areas (as made by the CMs of Naxal affected states) which will be counter-productive to conservation.

In the light of the above submissions we make our humble recommendations that the UPA Government

1. *Stop all evictions of adivasis and other forest dwellers from forest areas.*
 - The MoEF's orders of September 1990 and the clarificatory order of the IG of Forests of 30th October 2002 admit that forest areas are riddled with disputed claims and disputes related to pattas, leases, etc. which should be settled with due urgency.
 - MoEF's order of February 5, 2004 further admits that at the time of bringing many tribal areas under forestry legislation, the rights of tribals were not settled, making them 'encroachers' in the eyes of law and asks all state governments/UTs to undertake proper settlements within 1 year.
 - Millions of adivasis displaced for 'development projects' without rehabilitation, have rehabilitated themselves in the forested area for a long time.
 - Several lakh hectares of so called 'forest' lands under occupation prior to 1980 and eligible for regularization even under the FCA are yet to be regularized.
 - The Common Minimum Programme of the UPA government states that "Eviction of tribal communities and other forest dwelling communities from forest areas will be discontinued. Cooperation of these communities will be sought for protecting forests and for undertaking social afforestation".
 - Yet brutal evictions, without giving due notice or an opportunity to be heard, as required by law and as per the Supreme Court judgement in the Pradip Prabhu case, are being reported from many states, including Assam, MP, Gujarat, Tamil Nadu, Rajasthan, Kerala, and Chhattisgarh.
 - MoEF in reply to a Parliamentary Question on 16.08.2004, admits that 'encroachers' have been evicted from 1,52,400 hectares since May 2002 alone.

- In the absence of resolution of long standing claims and regularization of pre-1980 encroachments, a situation of extreme insecurity and distress prevails among communities of forest dwellers, which is harmful both to the people and the forest.

We Strongly Urge the Government of India to Ensure that

1. No subsistence cultivators and occupants of un-surveyed, disputed forest lands or deemed forests, should be treated as 'encroachers' and evicted till their rights, including CPR rights, have been inquired into through an open and transparent process and final notifications under sections 20 or 29 of the IFA have been issued.
2. No forest dwellers who have filed their claims for consideration by the authorities under the Guidelines of MoEF dated 18th September 1990 or the Order of MoEF dated 5th February 2004 should be evicted unless their claims have been inquired into and all relevant evidence has been examined in an open, unbiased and transparent process.
3. An effective mechanism for preventing illegal evictions be put in place immediately by the GoI.

2. *Compensate all those forcibly evicted following MoEF's May 2002 order*

- Notwithstanding the fact that the problems currently experienced in the forest areas have their root cause in the failure of the forest administration to fulfil the requirements of the Indian Forest Act 1927 in a just and fair manner.
- And further, pursuant to the XXIX Report of the Commissioner for Sch. Castes and Sch. Tribes, Government of India constituted a Committee of Secretaries to evolve effective solutions to the problems faced by forest dwellers and the COS prepared a detailed note which was accepted by the Cabinet. Following which MoEF prepared guidelines. But the forest administration has not implemented its own guidelines from 1990.
- And the Supreme Court in Pradip Prabhu V/s State of Maharashtra gave clear indications that claimants should not be evicted until a fair and just inquiry is conducted into their claims.
- MoEF admits 'encroachments' have been evicted from 1,52,400 hectares since May 2002 alone
- During the public hearing, a large number of cases of people even having longstanding legal land titles being evicted were reported.

We Earnestly Urge the Government of India and the State Governments

1. To ensure that Adivasis and other forest dwellers who have been victims of forced evictions in the wake of the May 3, 2002 letter of the IGF should be given back their land and be compensated adequately for the destruction of all their moveable and immovable property.
2. We also urge that Punitive action must be taken against all those forest officials who have forcibly evicted forest dwellers from land, the ownership of which is disputed as per the MoEF's own admission or for which they had legal titles.

3. *Action against powerful lobbies.*

- The IG of Forests in his directions to the Chief Secretaries, Forest Secretaries and Principal Conservators of Forests of all States and UTs dated 3rd May 2002 clearly states that "Such encroachments are generally done by powerful lobbies and cause great harm to forest conservation, particularly when they are carried out in the remote areas in a honeycomb pattern."
- Instead of targeting and taking stringent action against powerful real estate and other commercial/plantation lobbies grabbing forest land, MoEF and the State Forest Departments have taken action against impoverished forest dwellers who have encroached for subsistence on small clearings in degraded forest lands as well as cultivators having longstanding legal land titles. Given this Scenario, where the rich and powerful go scot free, we urge the Government and the Forest Administration desiring to rid the forests of encroachments, to prove their bonafides by targeting and taking stringent action against powerful real estate and other commercial/plantation lobbies who are grabbing forest land.

4. *Complete resolution of all conflicts within a fixed time frame*

- Notwithstanding that the Guidelines of MoEF were issued in 1990 and the Order of MoEF dated 5th February 2004 to find speedy resolution of long standing problems and conflicts. There has

been no efforts of the forest administration to implement the same for the past 14 years causing serious insecurity and disturbances in the forest areas resulting in political violence and conflict.

- The non recording and recognition of the numerous rights of forest people which have been covered by the Guidelines of 18th September 1990, also debar persons with valid but unrecognized entitlements from access to development schemes.
- Further, the Supreme Court in IA 703 has not placed any bar on the implementation of the 1990 guidelines and has only restrained the Central Government from regularizing encroachments without its consent on grounds that rich and powerful lobbies will get their encroachments regularized by the Central Government.
- The directions of the MoEF, issued by the I. G. of Forests on 30th October 2002 reiterate the commitment of Government to implement the guidelines of 1990 in a time bound manner.
- The order of MoEF of 5th February 2004 has extended the cut off date for regularization of encroachments to 31st December 1993.

We urge the Government of India to Undertake with the Utmost Urgency

1. *Resolution of all conflicts related to forest lands, disputes resulting from defective Settlements, leases/pattas etc, regularization of encroachments till the cut off date of 31st December 1993 and conversion of all forest villages into revenue villages in accordance with the MoEF circulars of September 18, 1990 and 5th February 2004 within a frame for resolving tribal-forest conflict within a fixed but realistic timeframe. For this, a transparent and open process involving teams of Tribal, Revenue and Forest officials together with gram sabhas and respected local elders, CBOs and NGOs, must be ensured.*
 2. *The process of Inquiry into all claims be formulated by the Government, laying down the procedure for verification of claims, elaborating on relevant evidence to be adduced in support of claims, providing the claimants the opportunity to adduce evidence, laying down the criteria for acceptance and rejection of claims and an opportunity for appeal.*
 3. *The Order of the Government of Maharashtra No. Sankim 2002/372/J-1 dated 10th October 2002 can be a good model which lays down an open, transparent, participative and comprehensive process with clear guidelines as to the nature of evidence to be adopted and the criteria for acceptance of claims should be extended to the whole country.*
5. **Cut off date – conditional pattas, forest protection and agro-silvi cultivation.**
- It is recognized by both the forest administration and other competent authorities that encroachments of the poor on degraded lands in the forest are, with a few exceptions, for sheer subsistence and in the absence of other livelihood alternatives.
 - It is observed that evictions of such encroachers result in hunger, starvation and malnutrition deaths on the one hand and fresh encroachments by the evicted encroachers in another area of the forest on the other resulting in loss of forest cover in two locations rather than one.
 - Accordingly Guideline FP (1) dated 18/9/1990 concerning Regularization of Encroachments in para 3.1 directs that “the State/ UT Governments may, however provide alternate economic base to such persons by associating them collectively in afforestation activities”
 - The IG of Forests in his Letter to the Chief Secretaries, Forest Secretaries and Principal Chief Conservators of Forests of all States/UTs recommends “the States may consider ‘in situ’ economic rehabilitation by involving the ineligible encroachers in forestry activities through Joint Forest Management.
- In a situation where it will be counter-productive to evict encroachers who are cultivating for subsistence in the forest, we strongly urge the Government of India and the State Governments to:*
1. *Undertake insitu rehabilitation of post 1980 tribal and other poor forest land occupiers through granting them heritable but inalienable conditional pattas through a Community Managed Forest Conservation Program by gram sabhas under PESA Act 1996 and permitting them to practice agro-silvi operations pursuant to their protecting mutually demarcated forest areas.*
 2. *Place the responsibility of the Tribal Welfare Department to involve peoples’ organisations and NGOs in training the tribals in appropriate agro-silvi practices that can provide adequate tree cover as well as sustainable livelihoods to the poor.*

6. *Strengthen the Forest (Conservation) Act for Survival of Forest & Forest Dwellers*
 - Recognizing the serious infirmities in the processes by which large areas have been declared state forests, Parliament should review rigid enforcement of the FCA on all such lands.
 - Rigid enforcement of this provision is leading to new displacements through evictions and also cancellation of existing land titles, elimination of extant entitlements on lands recorded as 'forest'. We strongly urge GOI to qualify the application of the Forest (Conservation) Act to ensure that
 1. No lands 'recorded' as forests in government records should be brought under the purview of the FCA without verification of their actual use and status on the ground.
 2. Purview of the FCA should be restricted to areas with real forest cover and only to lands, which have been notified as RF under the Indian Forest Act after completing the due legal process of settlement and clear demarcation of boundaries.
 3. The application of the FCA should be excluded from all areas that did not earlier come under the regime of the Forest Department but which were converted into forest lands by virtue of the definition of the Supreme Court in the Godavaman Case.
 4. Community grazing and forest lands, even if recorded as 'forests,' should be left under local community management and control in accordance with existing rights instead of being transferred to FDs for 'scientific forestry', thereby further undermining local livelihoods and food security.
 5. A category of "village forests" needs to be created to be given to forest dwelling communities for conservation and their livelihood.
 6. Under no circumstances should additional tribal and other community lands, including jhum lands, be declared state forests on grounds of meeting the 33% forest cover objective or for 'compensatory afforestation' as such lands have been disproportionately appropriated in the past.
 7. In states with minimal forest cover, incentives for landowners and communities to increase forest cover on their lands should be developed.

7. *Compensatory Afforestation and Net Present Value*

- It is an accepted fact that the lands under cultivation have been bereft of tree cover for a long time, ever since the land was brought under the plough.
 - It is admitted that the poor do not clear standing forests but occupy degraded lands.
 - The overwhelming majority of cultivations or occupations (termed encroachments) are for subsistence and not for commerce or profit.
 - Disputed claims, pattas/leases in various forms have been in existence even before the area was declared as RF and became part of the forest regime.
 - Recognizing the legal principle that entitlements are presumed to have been legally recognized on the date that the government or the legislature has approved of the law, order or regulation.
 - And by inference that the lands covered under the entitlements have been legally dis-forested on the day that the entitlement was created in law.
 - That the entitlement holder should not be punished for the failure of the authorities to recognize and record the entitlement.
 - The creation of such entitlements has been a welfare measure for the poor and the Net Present Value is greatly in excess of the cost of land in tribal areas and imposition of such a condition will effectively negate the implementation of a Welfare measure for the adivasis.
 - The requirement of compensatory afforestation and recovery of Net Present Value will be retrospective in nature, and by the same logic compensatory afforestation and New Present Value should be obtained from all parties who may have been given contemporaneous entitlements.
- We place before the consideration of the competent authorities the following for their consideration.*
1. *Compensatory afforestation and recovery of Net Present Value should not be required for the lands to be regularised after the settlement of disputed claims, conversion of forest villages to revenue villages and the regularisation of pre-1980 or pre 1993 encroachments because*
 - a) these lands did not have 'forests' on them at the time of the FCA enactment and were recorded as forest land only on paper. In any case, isolated patches of 'compensatory afforestation' on other lands

do not contribute in an ecologically meaningful way towards replacing the destruction of natural forests comprising complex ecosystems and the habitats of diverse flora and fauna.

b) And because technically the forest land covered by legitimate claims was already "disforested" on the day the government order for regularization was passed and title was created in favour of the legitimate claimant. The delay in implementation cannot be a ground for the legal presumption that the land is forest till such time the Forest Department has disforested such land.

2. While industry and other 'development' projects should be made to pay for compensatory afforestation and the Net Present Value of the diverted forestland, the involvement of the poor in a conservation strategy in lieu of validation of their entitlements as envisaged in the guidelines of MoEF of 1990 should be accepted as payment of NPV
3. Additional non-forest land should not be notified as RF or PF in lieu of the diverted land. Instead, compensatory afforestation should be done on the large degraded lands already notified as 'forests'.
4. In the case of community owned jhum lands in the North East, instead of the MoEF granting clearance for their diversion to other uses due to their also being categorised as 'undlassed forests', the prior informed consent of the jhumming communities should be obtained. In the same vein the Net Present Value of such lands should be paid to the communities instead of to CAMPA.

8. Implement holistic land reforms for both private and public/common lands.

- Post-Independence, land reforms were primarily focussed on redistribution of private land for cultivation with a particular emphasis on land to the tiller and the landless, though the implementation of land reform left much to be desired.
- However, in clear contrast to the goals of a welfare state, huge areas of tribal and other common lands were declared state property, either as forests or revenue 'wastelands' without even recognizing the rights of the forest dwellers and other pre-existing users.
- In the above process, some of the poorest people were rendered landless and homeless or made illegal occupants of their customary lands. A wide diversity of livelihood systems based on use of common lands were simultaneously made unviable.

We recommend that

1. The government must implement both private and public land reform. While distribution of surplus private land to the landless should be speeded up, a comprehensive public lands reform must also be initiated which recognises the role of the uncultivated common lands in diverse livelihood systems instead of treating them as 'wastelands' to be diverted to other uses or state 'forests' to be managed exclusively by the FDs.

9. Harmonise Constitutional provisions for tribal welfare and Forestry legislation

- Any government intervention in tribal areas (both designated under Schedules V and VI of the Constitution and otherwise) needs to be in harmony with the Constitutional provisions and other policy directives regarding the resource rights and livelihoods of tribals and the governance of tribal areas.
- Accordingly most states with large tribal populations have enacted laws forbidding the transfer of private tribal lands to non-tribals to prevent its moving out of tribal hands, although these have been poorly enforced.
- Restoration of lands of tribals even when lawfully alienated has been upheld by the Supreme Court when challenged that such laws are unconstitutional.
- However, in total dissonance with the constitutional protection for tribals, the Indian Forest Act (IFA), Forest (Conservation) Act (FCA) and Wildlife Protection Act (WLPA) continue being used to hound forest dwellers even in Schedules V areas.
- The concept of "wilderness" to promote flora and fauna, must be replaced with a concept of "stewardship", that recognises that both the forest and forest dwellers depend upon each other for their own survival.
- The government itself has been the biggest violator of the spirit of the constitutional provisions through indiscriminate notification of customary tribal lands as state forests or protected areas, often without settling their rights, converting them into 'encroachers' on their ancestral lands.

- The poor recognition of communal tenures in India (except in the Schedule VI areas) has decimated their economies and livelihood security by stripping them of their communal lands.

We strongly recommend that-

1. *The President of India and State Governors should be asked to exercise their powers for withholding the application of forestry laws in scheduled areas with due modification to suit the specific conditions of the areas and the communities living therein.*
2. *The President of India and State Governors should ensure that laws, like PESA, which recognize alternative self governance systems and which recognize the competency of the gram sabha to safeguard common property resources of the community should be respected and implemented by the State governments and the administration.*

10. *Recognise the communal property rights of shifting cultivators and PTGs*

- The present policy de-legitimizes rights of shifting cultivators; resulting in double jeopardy for these fragile communities. On the one hand their agricultural practices are considered to be ecologically harmful without adequate scientific validity, while on the other hand their areas have been systematically reduced making the practice unsustainable and have made shifting cultivators effectively landless by declaring them as state forests without any settlement of their rights.
- Communities of shifting cultivators are also being wrongly categorized as people who do not have love for the land and only use it and desert it. The charge appears to be grounded on a belief that persons enjoying the right to private property have greater love for the land, not on the basis of any ecological arguments but presumably on the basis of the multiplicity of property disputes.
- The present Constitutional Frame does not recognize any legal regime of ownership other than private property by a legal person (whether an individual, company, corporation or the state) except in areas covered under the VIth Schedule of the Constitution. This legal regime effectively denies rights to millions of people who have a different relationship to land not as property but as a basis for human and ecological survival.

We recommend that

1. *A specific approach for recognizing and recording the communal property rights of pre-agricultural Primitive Tribal Groups and shifting cultivators, who, under no circumstances should be treated as 'encroachers' on their ancestral lands, should be developed.*
2. *Instead of classifying their customary lands as 'forests', the FAO's practice of classifying shifting cultivation lands as 'forest fallows' should be adopted. A different governance system for these lands needs to be evolved which enables combining their livelihood uses with maintaining ecosystem integrity (as attempted by the Government of Nagaland).*