Subject: Early warning intervention for prevention of violations of the rights of indigenous peoples of India who are facing severe threats to their rights and survival through adoption of new racial discriminatory policy the Draft National Forest Policy currently being drafted by the Government of India that envisages encroachment on the traditional lands of indigenous peoples or forced removal of these peoples from their lands, in particular for the purpose of exploitation

Dear Sirs/Madams,

The International Working Group for Indigenous Affairs (IWGIA) is writing to seek intervention of the UN Committee Against Elimination of All Forms of Racial Discrimination under its Early Warning Procedures for prevention of violations of the rights of indigenous peoples of India through the Draft National Forest Policy, 2018 being drafted by the Ministry of Environment, Forest and Climate Change (MoEF), Government of India at present. The Draft National Forest Policy envisages “(c) adoption of new discriminatory legislation” in violation of the existing laws recognizing the rights of indigenous peoples, and “(h) encroachment on the traditional lands of indigenous peoples or forced removal of these peoples from their lands, in particular for the purpose of exploitation of natural resources”, two grounds identified by the CERD Committee for interventions under the Early Warning Procedures.

So far, we have not been able to get into a dialogue with the Government of India about the draft policy. We have submitted a Memorandum, but have not even got a response, which is rather unusual, and indicates to us, that the Government of India is not interested in a dialogue with us.

I. Summary of the complaint

The Ministry of Environment, Forest and Climate Change (MoEF) of the Government of India published the Draft National Forest Policy of 2018 on 14 March 2018 inviting comments/suggestions/views of stakeholders including public/private organizations, experts and concerned citizens within one month i.e. 14 April 2018. The Government of India is expected to finalise the Draft National Forest Policy soon.
This draft National Forest Policy provides for adoption of a completely new legal framework discriminatory towards the indigenous peoples and further it seeks to take away the rights of the indigenous peoples already recognized under the existing laws, “in particular for the purpose of exploitation of natural resources” i.e. an estimated 10,941,652 acres or 4,429,818 hectares of “community forest” for which titles have been issued to the indigenous peoples under the Forest Rights Act (FRA) as of August 2018¹ and 22,938,814 hectares of forest area² covered under the Joint Forest Management (JFM) Committees since 1990. The area constitutes about one-third of India’s total forest cover.

It is pertinent to mention that the Ministry of Environment and Forest of India had established the Joint Forest Management Committees (JFMCs) under executive orders in 1990. As these Committees were established under executive order, the JFMCs have no legal basis.

In 1996, Section 4(m)(ii) of the Provisions of the Panchayats (Extension to the Scheduled Areas) Act of 1996 (PESA) recognized the powers and authority of the Panchayats and the Gram Sabhas (Village Councils) in the Scheduled Areas i.e. areas inhabited by indigenous peoples and notified by the President of India, with respect to “the ownership of minor forest produce”. The Panchayats and the Gram Sabhas of indigenous peoples however could not take control over “the ownership of minor forest produce” under the PESA Act as the implementation of the PESA Act required adoption of the PESA Rules by the State Assemblies and the State Governments simply had not framed the PESA Rules to implement the PESA.³ Andhra Pradesh⁴ was the first state to publish the PESA Rules in 2011, 15 years after the promulgation of PESA.

In the meanwhile, in 2006, the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act of 2006 (herein after known as the FRA) was enacted and it recognized that “the Gram Sabha shall be the authority to initiate the process for determining the nature and extent of individual or community forest rights or both that may be given to the forest dwelling Scheduled Tribes and other traditional forest dwellers within the local limits of its jurisdiction under this Act by

³. The 10 States having tribal dominated areas requiring protection and recognition under the Fifth Schedule to the Constitution of India are Andhra Pradesh, Chhattisgarh, Gujarat, Himachal Pradesh, Jharkhand, Madhya Pradesh, Maharashtra, Odisha, Rajasthan and Telangana.
receiving claims, consolidating and verifying them and preparing a map delineating the area of each recommended claim in such manner as may be prescribed for exercise of such rights and the Gram Sabha shall, then, pass a resolution to that effect and thereafter forward a copy of the same to the Sub-Divisional Level Committee.” As the FRA was a federal legislation and the Rules were framed immediately, the implementation of the FRA became in earnest.

The JFM Committees without legal basis had become irrelevant and the JFM were brought under the jurisdiction of the Gram Sabhas under the FRA Rules of 2012.

But, the Ministry of Environment, Forest and Climate Change has been taking measures to undermine the FRA and the rights of the indigenous peoples.

It is submitted that the proposed Draft National Forest Policy 2018 authorizes “encroachment on the traditional lands of indigenous peoples or forced removal of these peoples from their lands, in particular for the purpose of exploitation of natural resources” as provided in the Guidelines of the Early Warning Procedures of the CERD Committee in the following ways:

**First,** the Draft National Forest Policy 2018 seeks to seize the powers of the Gram Sabhas under the PESA Act and the Forest Rights Act i.e. control over the community forest resources and JFM by launching a “National Community Forest Management (CFM) Mission”. To achieve the same, it provides that “Appropriate laws, rules and regulations, as per requirement, will be put in place and existing ones suitably amended for effective implementation of this policy. Institutionalized legal support will form an integral part of the forest administration and management”. This usurping of powers of the Gram Sabhas is being proposed despite the non-obstante clause provided under Section 4(1) of the Forest Rights Act, 2006 which provides that “Notwithstanding anything contained in any other law for the time being in force, and subject to the provisions of this Act, the Central Government hereby recognises and vests forest rights in – (a) the forest dwelling Scheduled Tribes in States or areas in States where they are declared as Scheduled Tribes in respect of all forest rights mentioned in section 3(b) the other traditional forest dwellers in respect of all forest rights mentioned in section 3.” Once the Draft National Forest Policy is adopted, the Forest Department officials will abuse the powers to bring the forest and forest dwellers at present under the control of the Gram Sabhas within the ambit of the National Community Forest Management (CFM) Mission.

**Second,** the Draft National Forest Policy 2018 also provides for creation of institutional framework i.e. “A National Board of Forestry headed by the central minister in-charge of forests and State Boards of Forestry headed by state minister in-charge of forests” to “be established for ensuring inter-sectoral convergence, simplification of procedures, conflict resolution and periodic review”. The Draft National Forest Policy of the MoEF already decided to exclude the Ministry of Tribal Affairs’ mandated to ensure implementation of the FRA, from the proposed institutional framework.
Third, the Draft National Forest Policy 2018 further overrules the FRA by declaring that “as far as community forest resources management under Forest Rights Act is concerned, the new policy will address the same under participatory forest management and the same will be addressed through the proposed community forest management mission”. Only in India, the policy can prevail over the law!

This must be read with Section F(i) of the Draft National Forest Policy which unequivocally states that “legal and administrative measures for protection of biodiversity against bio-piracy will be taken, in sync with National Biodiversity Act”. It is clear that the Draft National Forest Policy complies to respect the National Bio-diversity Act but with respect to “community forest resources management” under Forest Rights Act, the new draft policy proposes to acquire the community forest resources through “the proposed community forest management mission”.

Finally, the Draft National Forest Policy 2018 seeks to promote “industrial plantations for meeting the demand of raw material”. It states that “4.4 There is a need to stimulate growth in the forest-based industry sector. This sector being labor intensive can help in increasing green jobs. Forest corporations and industrial units need to step up growing of industrial plantations for meeting the demand of raw material. Forest based industries have already established captive plantations in partnership with the farmers. This partnership needs to be further expanded to ensure an assured supply of raw material to the industries with mutually beneficial arrangements. Further a forum for interaction and collaboration would be set up for Forest based industries with forestry institutions and concerned stakeholders so that a demand for trained professionals is created in the sector”. It further states that “4.1.2(a)(iv): “Suitable location specific Public Private Partnership models will be developed involving Forest Departments, Forest development Corporations, Communities, Public limited companies etc for achieving the target of increased forest & tree cover in the country”.

This is in complete contrast to the existing National Forest Policy 1988, which unequivocally states that “Natural forests serve as a gene pool resource and help to maintain ecological balance. Such forests will not, therefore, be made available to industries for undertaking plantation and for any other activities.”

There is apprehension that the commercialization of the forest is being proposed “in particular for the purpose of exploitation of natural resources” among others to utilize about US$ 15 billion deposited with the Compensatory Afforestation Fund Management and Planning Authority (CAMPA) of India, exclusively for undertaking afforestation programmes which is explained below.

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5. Para 4.4, Draft National Forest Policy, 2018
6. Para 4.1.2(a)(iv), Draft National Forest Policy, 2018
Concerned about the reduction of forest cover because of diversion of forest for non-forest purposes, the Supreme Court in its order in *T.N. Godavarman Thirumulpad vs. Union of India and Others [Writ Petition (Civil) No. 202 of 1995]*, dated the 30th October 2002 directed the Government of India to create a Compensatory Afforestation Fund in which all the funds received from the user agencies towards compensatory afforestation, additional compensatory afforestation, penal compensatory afforestation, net present value of the diverted forest land or catchment area treatment plan shall be deposited and the funds cannot be diverted. Under this programme, if an industrial activity such as mining is undertaken and certain area of forest is diverted/destroyed for the said industrial activity (which is a non-forest activity), the agency/authorities undertaking the industrial activity shall deposit assessed funds to undertake afforestation activities equivalent to the forest diverted/destroyed. The afforestation activities are undertaken to protect the environment and ensure environmental balance. The Forest Department of the Government of India is responsible for implementing the afforestation programmes.

As the funds for compensatory cannot be diverted and can solely be used for afforestation, it has been growing. Initially, the MoEF notified ad hoc Compensatory Afforestation Fund Management and Planning Authority (CAMPA) in April 2004 for the management of the Compensatory Afforestation Fund. It continued to function on ad hoc basis until the enactment of the Compensatory Afforestation Fund Act, 2016 (No. 38 of 2016).

The Comptroller and Auditor General of India CAG\textsuperscript{8} after audit of the period from 2006 to 2012 found that the Compensatory Afforestation Funds with Ad-hoc CAMPA grew from Rs 12,000 million to Rs 2,360,767 millions. It is pertinent to mention that as on 31.03.2018, about Rs. 14,418 crore\textsuperscript{9} was released to different State Governments/Union Territories from the CAMPA funds and the same has not been fully utilized either. In the meanwhile as of 31.03.2018, the CAMPA funds available with various State /UT for afforestation programmes stood at Rs. 66,298 crore including interest.\textsuperscript{10} As per the media reports, by April 2018, CAMPA funds increased to Rs 900,000 million\textsuperscript{11} i.e. over US$ 15 billion. The funds will further increase as the CAMPA Act has been enacted and diversion of forest lands are taking place on regular basis requiring deposit of more funds by the user agencies for compensatory afforestation.


\textsuperscript{9} 1 crore is equal to 10 million

\textsuperscript{10} Lok Sabha, Unstarred Question No.3938, answered on 10.08.2018

\textsuperscript{11} Supreme Court pulls up Centre for not using Rs 90,000 crore meant for environment, Down To Earth, 11 April 2018, https://www.downtoearth.org.in/news/environment/supreme-court-pulls-up-centre-for-not-using-rs-90-000-crore-meant-for-environment-60149
It is pertinent to mention that compensatory afforestation activities cannot be undertaken in forest areas. It can be undertaken mainly in the “degraded forests” currently under mainly JFMC or communities under the Forest Rights Act. It is for this purpose that the commercialization of the forest and bringing entire forests including those over which rights under the Forest Rights Act had been recognized are being brought under the National Community Forest Management (CFM) Mission as envisaged in the Draft Forest Policy.

Further, the Forest Departments also do not have the capacity to undertake large-scale afforestation programmes and non-utilisation of Rs 90,000 million (about US$ 15 billion) explains the absolute lack of capacity. This had been recognized by the Government of India itself. In August 2015, the Ministry of Environment, Forest and Climate Change sent the guidelines to the states for “participation of private sector in afforestation of degraded forests” as “ongoing national afforestation programmes have not been able to make the desired impact in improving productivity and quality of forest cover due to a lack of sufficient investment, capacity, technological upgradation and adequate skilled manpower.”

The CAMPA funds shall continue to grow as India diverts/destroys more forest for industrial activities and more funds are deposited for afforestation but the Forest Department admittedly is incapable and unable to undertake afforestation programmes and as the CAMPA funds are non-divertible for other purposes except afforestation under the direction of the Supreme Courts, interests on the deposited amounts also grows. The afforestation programmes remains a potential area of corruption by the officials of the government of India, which can be facilitated by participation of industries in the afforestation programmes.

If the Draft National Forest Policy 2018 is adopted and implemented, it shall sound the death knell for the Scheduled Tribes and other traditional forest dwellers of India. Therefore, the urgent interventions of the UN CERD Committee are being sought under the Early Warning Procedure.

For ease of reference of the CERD Committee, the following relevant documents are being attached:

- Draft National Forest Policy of 2018 of the Government of India
- National Forest Policy of 1988
- The Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996 (no.40 of 1996)

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II. Details of the complaint

1. Historical background

The indigenous peoples, commonly known as the Scheduled Tribes in India, have been inhabiting in the forest areas from time immemorial and their symbiotic relationship has been recognized in national and international human rights standards.

In 1927, the colonial British enacted the Forest Act and took control over the forests. Independent India continued with the same policy until the enactment of the Forest Conservation Act of 1980 on 24 October 1980 to make dwelling in forest area a criminal offence under the Act. Hundreds of thousands of the Scheduled Tribes who had been living in the forest areas from time immemorial were declared as encroachers on the midnight of 24 October 1980. The National Commission on Scheduled Castes and Scheduled Tribes reported that in Madhya Pradesh alone, 1.48 lakh persons, mainly tribals, occupying 1.81 lakh hectares of lands in forest areas suddenly became encroachers from 25 October 1980, and thus liable for eviction.\(^{13}\)

The Forest Conservation Act of 1980 nonetheless provided the mechanisms to regularise tribal villages in the forest areas under certain strict guidelines. However, the State governments and Central government sat over the regularisation processes.

In 1988, the Government of India launched the National Forest Policy\(^ {14}\) and recognised ‘the symbiotic relationship between the tribal people and forests’ and further asserted that “a primary task of all agencies responsible for forest management, including the forest development corporations should be to associate the tribal people closely in the protection, regeneration and development of forests as well as to provide gainful employment to people living in and around the forest”.

2. Joint Forest Management

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\(^{13}\) Forest Encroachments: *Guidelines and Implications of Recent Orders*, People’s Democracy, Weekly Organ of the Communist Party of India (Marxist), Vol. XXVII, No. 01, January 05, 2003

\(^{14}\) National Forest Policy of 1988 is available at [http://envfor.nic.in/legis/forest/forest1.html](http://envfor.nic.in/legis/forest/forest1.html)
As part of the National Forest Policy, on 1 June 1990, the Ministry of Environment and Forests (MoEF) issued guidelines for initiating Joint Forest Management (JFM) in “degraded forest” areas.\(^{15}\) Under the JFM, the villagers form Joint Forest Management Committee (JFMC) which signs Memorandum of Understanding (MoU) with the State’s forest department for safeguarding of forest resources through protection and management with the participation of the local communities. However, the JFMCs were established through executive orders and did not have legal basis.

Nonetheless, as of 2015, a total of 118,213 JFMCs had been set up across the country which are involved in the joint management of 22,938,814 ha of forest area\(^{16}\) which is about a third of the country’s forested landscape.

3. Rights of the Indigenous Peoples over forest resources recognised under law

The government of India gradually enacted laws to codify the rights of the Scheduled Tribes over forest management.

i. Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996 (PESA)

In 1996, the Government of India enacted the Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996 (PESA) to extend local governance powers to Gram Sabhas in Scheduled Areas as referred to in Clause (1) of Article 244 of the Constitution. Under Section 4(m)(ii) of the PESA, the Panchayats and the Gram Sabhas in the Scheduled Areas were endowed with powers and authority as may be necessary to enable them to function as institutions of self-government specifically with “the ownership of minor forest produce”.

The Panchayats and the Gram Sabhas however could not take control over “the ownership of minor forest produce” simply because the State governments had not framed the PESA Rules to implement the Act.\(^{17}\) Andhra Pradesh\(^{18}\) was the first state to publish the rules in 2011, 15 years after the


\(^{16}\)http://www.frienvis.nic.in/Database/JFM-Committees-and-Forest_Area_2243.aspx

\(^{17}\)The 10 States having tribal dominated areas requiring protection and recognition under the Fifth Schedule to the Constitution of India are Andhra Pradesh, Chhattisgarh, Gujarat, Himachal Pradesh, Jharkhand, Madhya Pradesh, Maharashtra, Odisha, Rajasthan and Telangana.

promulgation of PESA followed by Himachal Pradesh\textsuperscript{19} and Rajasthan\textsuperscript{20} during the same year. Gujarat\textsuperscript{21} published Gujarat Provisions of the Panchayats (Extension to the Scheduled Areas) Rules, dated 17 January, 2018 while Maharashtra\textsuperscript{22} published the PESA Rules in 2018. Telangana has since adopted the Andhra Pradesh Panchayats Extension to Scheduled Areas (PESA) Rules, 2011.\textsuperscript{23} Jharkhand, Chhattisgarh, Madhya Pradesh and Odisha have not framed the PESA Rules. Therefore, the conflict between the Forest Department and the Panchayats/Gram Sabhas for control over minor forest produce had not intensified as the Forest Department had full control over the minor forest produce. Nonetheless, December 2002, the MoEF issued guidelines for setting up conflict resolution mechanism with Panchayat Raj Institutions to ensure their support in forest management.\textsuperscript{24}

ii. Forest Rights Act, 2006

The conflict between Gram Sabhas and the Forest Department grew after the government of India enacted the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (hereinafter referred to as the Forest Rights Act of 2006) to regularize the tribal villages in the forest areas prohibited by the Supreme Court. Section 6(1) of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (hereinafter referred to as the Forest Rights Act of 2006) provided that “the Gram Sabha shall be the authority to initiate the process for determining the nature and extent of individual or community forest rights or both that may be given to the forest dwelling Scheduled Tribes and other traditional forest dwellers within the local limits of its jurisdiction under this Act by receiving claims, consolidating and verifying them and preparing a map delineating the area of each recommended claim in such manner as may be prescribed for exercise of such rights and the Gram Sabha shall, then, pass a resolution to that effect and thereafter forward a copy of the same to the Sub-Divisional Level Committee.”

\textsuperscript{22} http://pesadarpan.gov.in/documents/30080/0/Maharashtra+PESA+Rules+2014.pdf/aeac197c-5c6c-435a-b582-569e7c79af93
\textsuperscript{23} http://pesadarpan.gov.in/documents/30080/0/AP+PESA+Rules+.2011.pdf/5a03b369-981f-4cf3-b9e3-1b63b7366df4
\textsuperscript{24} http://www.frienvis.nic.in/Database/Joint–Forest–Management_1949.aspx
Section 5 of the Forest Rights Act of 200 also empowered the Gram Sabha inter alia to “(a) protect the wild life, forest and biodiversity; (b) ensure that adjoining catchments area, water sources and other ecological sensitive areas are adequately protected; (c) ensure that the habitat of forest dwelling Scheduled Tribes and other traditional forest dwellers is preserved from any form of destructive practices affecting their cultural and natural heritage; and (d) ensure that the decisions taken in the Gram Sabha to regulate access to community forest resources and stop any activity which adversely affects the wild animals, forest and the biodiversity are complied with.”

3. Draft National Forest Policy 2018 – An instrument to usurp the powers of the Gram Sabhas of the Scheduled Tribes and mis-use the CAMPA funds?

The Forest Department exercised exclusive control over the forest since 1927 and it has been the primary oppressor of the Scheduled Tribes. Its Joint Forest Management (JFM) programme initiated since 1990 is not based on any law but established on executive orders. Following the enactment of the Forest Rights Act, the power to recognise rights including over “community rights” has been bestowed upon the Gram Sabha under Section 6(1) of the FRA.

Community rights are defined as “the rights listed in clauses (b), (c), (d), (e), (h), (i), (j), (k) and (l) of sub-section (1) of Section 3” which are elaborated below:

“Section 3(1)

For the purposes of this Act, the following rights, which secure individual or community tenure or both, shall be the forest rights of forest dwelling Scheduled Tribes and other traditional forest dwellers on all forest lands, namely:-

(a) community rights such as nistar, by whatever name called, including those used in erstwhile Princely States, Zamindari or such intermediary regimes;

(b) right of ownership, access to collect, use, and dispose of minor forest produce which has been traditionally collected within or outside village boundaries;

(d) other community rights of uses or entitlements such as fish and other products of water bodies, grazing (both settled or transhumant) and traditional seasonal resource access of nomadic or pastoralist communities;

(e) rights including community tenures of habitat and habitation for primitive tribal groups and preagricultural communities;
(h) rights of settlement and conversion of all forest villages, old habitation, unsurveyed villages and other villages in forests, whether recorded, notified or not into revenue villages;

(i) rights to protect, regenerate or conserve or manage any community forest resource which they have been traditionally protecting and conserving for sustainable use;

(j) rights which are recognised under any State law or laws of any Autonomous District Council or Autonomous Regional Council or which are accepted as rights of tribal under any traditional or customary law of the concerned tribes of any State;

(k) right of access to biodiversity and community right to intellectual property and traditional knowledge related to biodiversity and cultural diversity; 

(l) any other traditional right customarily enjoyed by the forest dwelling Scheduled Tribes or other traditional forest dwellers, as the case may be, which are not mentioned in clauses (a) to (k) but excluding the traditional right of hunting or trapping or extracting a part of the body of any species of wild animal;”

The National Committee on Forest Rights Act, a Joint Committee of the Ministry of Environment and Forests and the Ministry of Tribal Affairs in its report submitted to the Government of India in December 2010 stated that there was a widespread assumption amongst officials (especially forest department) that Community Forest Rights need not be applied for under the Forest Rights Act, since people were already benefitting from existing arrangements such as Joint Forest Management (JFM) committees. In some cases, Community Forest Rights claims were either not accepted because “land is under JFM” or only land under JFM was being permitted for Community Forest Rights claims.\textsuperscript{25} The Committee made broad recommendations with respect to community based forest governance and the recommendations were reflected in the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Rules, 2012 reaffirming the powers of the Gram Sabha over the community forest.

Rule 4 of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Rules, 2012 defines the functions of the Gram Sabha. The functions of the Gram Sabha under Rule

4(e) is to “(e) Constitute Committees for the protection of wildlife, forest and biodiversity, from amongst its members, in order to carry out the provisions of Section 5 of the Act.” Under Rule 4(f), the functions of the Gram Sabha is to “monitor and control the committee constituted under clause (e) which shall prepare a conservation and management plan for community forest resources in order to sustainably and equitably manage such community forest resources for the benefit of forest dwelling Scheduled Tribes and other Traditional Forest Dwellers and integrate such conservation and management plan with the micro plans or working plans or management plans of the forest department with such modifications as may be considered necessary by the committee”.

As the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Rules, 2012 entrusted the responsibility to the Gram Sabhas with respect to community forest rights, it is pertinent to mention that as per the Ministry of Tribal Affairs, a total of 4,210,378 claims (4,064,741 individual and 145,637 community claims) were received from across the country under the FRA up to 31 August 2018. Out of these, 1,879,372 titles (1,808,819 individual and 70,553 community) i.e. 44.6% were accepted while 1,940,492 claims or 46.1% were rejected. The extent of forest land for which titles have been distributed is 15,523,868 acres i.e. 4,582,216 acres for individual claims and 10,941,652 acres as community forests which the Forest Department have been seeking to include under the JFM.

As stated earlier, though the PESA of the 1996 recognised the powers of the Panchayats and the Gram Sabhas over the “minor forest produce”, the control over the same had not intensified because of the non-implementation of the PESA by the State. The implementation of the FRA monitored by the Ministry of Tribal Affairs brought the conflict between the Forest Department in one hand and the Panchayats and Gram Sabhas on the other came to the fore.

The Draft National Forest Policy 2018 is nothing but an attempt by the Forest Department to establish its authority especially over the Community Forest Resources under the FRA and the forests under the JFMCs.

3.1 An instrument to take away the powers of the Gram Sabhas and the Ministry of Tribal Affairs on minor forest produce

The Draft National Forest Policy 2018 seeks to take away the powers of the Gram Sabhas run by the Scheduled Tribes in the following ways:

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i. National Community Forest Management Mission – a means to usurp the powers of the Gram Sabhas and the Ministry of Tribal Affairs

At the heart of the conflict is the control over the “community forest resources” which under Section of 2(a) of the FRA defined as “customary common forest land within the traditional or customary boundaries of the village or seasonal use of landscape in the case of pastoral communities, including reserved forests, protected forests and protected areas such as Sanctuaries and National Parks to which the community had traditional access”.

As the Joint Forest Management is not based on any law, there is little doubt that forest under the JFM falls under the jurisdiction of the Gram Sabhas under the FRA. This shall imply that the Gram Sabhas legally speaking at present shall have control over 10,941,652 acres or 4,429,818 hectares of “community forest” for which titles have been issued under the FRA as of August 2018 as well as 22,938,814 ha of forest area which had already been covered under the JFM since 1990. It means that over one third of the total forest cover in India i.e. community forest and the JFM are under effective control of the Gram Sabhas.

As the JFM has no legal basis, the Draft National Forest Policy 2018 actually does not use the term “Joint Forest Management” but refers to “National Community Forest Management (CFM) Mission” to take control over the community forest and the JFM. Under strategy “4.1.1(h) relating to “Sustainable Management of Forests”, the Draft National Forest Policy 2018 makes it obvious that it is seeking to usurp the powers of the Gram Sabhas over community forest rights in the name of ensuring synergy between Gram Sabha and the JFMC. It states

“(h) Strengthen participatory forest management

India has rich and varied experience in participatory forest management. There is a need to further strengthen this participatory approach, for which a National Community Forest Management (CFM) Mission will be launched. This mission will have a legal basis and an enabling operational framework. The national, state and local level development programmes shall be converged in these villages. All efforts to ensure synergy between Gram Sabha & JFMC will be taken for ensuring successful community participation in forest management”. 29

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29. Para 4.1.1 (h) of the Draft National Forest Policy, 2018
As the Forest Department has no legal control including on the JFMCs at present, the Draft National Forest Policy proposes to subsume the role of the Gram Sabhas through a legal basis, which means enacting a new law overriding the Forest Rights Act and a new operational framework by excluding the Ministry of Tribal Affairs. Under 4.8 Legal and institutional frameworks”, the Draft National Forest Policy provides the following:

“4.8 Legal and institutional frameworks

Appropriate laws, rules and regulations, as per requirement, will be put in place and existing ones suitably amended for effective implementation of this policy. Institutionalized legal support will form an integral part of the forest administration and management. A National Board of Forestry headed by the central minister in-charge of forests and State Boards of Forestry headed by state minister in-charge of forests will be established for ensuring inter-sectoral convergence, simplification of procedures, conflict resolution and periodic review.”

Para 4.8 of the Draft National Forest Policy makes it obvious that “appropriate laws, rules and regulations” including the Forest Rights Act, as per requirement, will be put in place and existing ones suitably amended for effective implementation of this policy.

Further, it provides an operational framework in the form of “a National Board of Forestry headed by the central minister in-charge of forests and State Boards of Forestry headed by state minister in-charge of forests will be established for ensuring inter-sectoral convergence, simplification of procedures, conflict resolution and periodic review.” This implies that the Ministry of Tribal Affairs which has been monitoring the implementation of the Forest Rights Act shall have no role.

The Draft National Forest Policy 2018 under “Para 4.11 Harmonization with other policies and laws” makes it clear that “As far as community forest resources management under Forest rights Act is concerned, the new policy will address the same under participatory forest management and the same will be addressed through the proposed community forest management mission”. This is nothing but an illegal attempt to usurp the powers of the Gram Sabhas.

ii. FRA not given the same status as the National Biodiversity Act

As the Draft National Forest Policy 2018 is a means to nullify the FRA, it does not give the FRA the same status as the National Biodiversity Act.

On “Biodiversity Conservation”, the Draft National Forest Policy 2018 under Section F(i) unequivocally states that “legal and administrative measures for protection of biodiversity against bio-piracy will be taken, in sync with National Biodiversity Act”. However, with respect to
“community forest resources management” under Forest Rights Act, the new policy states that will address through “the proposed community forest management mission”.

This is despite the fact that the Forest Rights Act is a special law and includes non-obstante clause i.e. Section 4(1) of the Forest Rights Act, 2006 to prevail over all other Acts.

3.2 Privatization of natural forests for commercial purpose – an instrument to abuse the funds of the CAMPA

i. Prohibition of commercialization of “forest” under the existing laws and the National Forest Policy of 1988

The Forest (Conservation) Act of 198030 (amended in 1988) restricts the dereservation of forests or use of forest land for non-forest purpose.

30."2. Restriction on the dereservation of forests or use of forest land for non-forest purpose. Notwithstanding anything contained in any other law for the time being in force in a State, no State Government or other authority shall make, except with the prior approval of the Central Government, any order directing—
(i) that any reserved forest (within the meaning of the expression "reserved forest" in any law for the time being in force in that State) or any portion thereof, shall cease to be reserved;
(ii) that any forest land or any portion thereof may be used for any non-forest purpose;
(iii) that any forest land or any portion thereof may be assigned by way of lease or otherwise to any private person or to any authority, corporation, agency or any other organisation not owned, managed or controlled by Government;
(iv) that any forest land or any portion thereof may be cleared of trees which have grown naturally in that land or portion, for the purpose of using it for reafforestation.
Explanation – For the purpose of this section, "non-forest purpose" means the breaking up or clearing of any forest land or portion thereof for—
(a) the cultivation of tea, coffee, spices, rubber, palms, oil-bearing plants, horticultural crops or medicinal plants;
(b) any purpose other than reafforestation; but does not include any work relating or ancillary to conservation, development and management of forests and wildlife, namely, the establishment of check-posts, fire lines, wireless communications and construction of fencing, bridges and culverts, dams, waterholes, trench marks, boundary marks, pipelines or other like purposes."
Considering the dire consequences of commercialization of the natural forest, the National Forest Policy 1988 has banned private plantations in all types of natural forests, irrespective of their density. At para 4.9, the National Forest Policy of 1988 provided the following:

“4.9 Forest based Industries

The main considerations governing the establishment of forest-based industries and supply of raw material to them should be as follows:

- As far as possible, a forest-based industry should raise the raw material needed for meeting its own requirements, preferably by establishment of a direct relationship between the factory and the individuals who can grow the raw material by supporting the individuals with inputs including credit, constant technical advice and finally harvesting and transport services.

- No forest-based enterprise, except that at the village or cottage level, should be permitted in the future unless it has been first cleared after a careful scrutiny with regard to assured availability of raw material. In any case, the fuel, fodder and timber requirements of the local population should not be sacrificed for this purpose.

- Forest based industries must not only provide employment to local people on priority but also involve them fully in raising trees and raw-material.

- Natural forests serve as a gene pool resource and help to maintain ecological balance. Such forests will not, therefore, be made available to industries for undertaking plantation and for any other activities.

- Farmers, particularly small and marginal farmers would be encouraged to grow, on marginal/degraded lands available with them, wood species required for industries. These may also be grown along with fuel and fodder species on community lands not required for pasture purposes, and by Forest department/corporations on degraded forests, not earmarked for natural regeneration.

- The practice of supply of forest produce to industry at concessional prices should cease. Industry should be encouraged to use alternative raw materials. Import of wood and wood products should be liberalised.”
The existing National Forest Policy of 1988 devotes an entire section on the diversion of forest lands for non-forest purposes. It has specifically banned mining, quarrying in forest land and diversion of forest land for non-forest purposes.\(^{31}\) At Para 4.4.1, the National Forest Policy of 1988 states,

> "Forest land or land with tree cover should not be treated merely as a resource readily available to be utilised for various projects and programmes, but as a national asset which requires to be properly safeguarded for providing sustained benefits to the entire community. Diversion of forest land for any non-forest purpose should be subject to the most careful examinations by specialists from the standpoint of social and environmental costs and benefits. Construction of dams and reservoirs, mining and industrial development and expansion of agriculture should be consistent with the needs for conservation of trees and forests. Projects which involve such diversion should at least provide, in their investment budget, funds for regeneration/compensatory afforestation".

Further, Para 4.4.2 of the existing National Forest Policy of 1988 says, “Beneficiaries who are allowed mining and quarrying in forest land and in land covered by trees should be required to repair and re-vegetate the area in accordance with established forestry practices. No mining lease should be granted to any party, private or public, without a proper mine management plan appraised from the environmental angle and enforced by adequate machinery”.

Under Section 3(2) of the FRA, 2006, notwithstanding anything contained in the Forest (Conservation) Act, 1980, the Central Government may divert forest land for some facilities managed by the Government which involve felling of trees not exceeding seventy-five trees per hectare, namely (a) schools; (b) dispensary or hospital; (c) anganwadis; (d) fair price shops; (e) electric and telecommunication lines; (f) tanks and other minor water bodies; (g) drinking water supply and water pipelines; (h) water or rain water harvesting structures; (i) minor irrigation canals; (j) non-conventional source of energy; (k) skill up-gradation or vocational training centers; (l) roads; and (m) community centers. But “the clearance of such developmental projects shall be subject to the condition that the same is recommended by the Gram Sabha”\(^ {32}\).

The Draft National Forest Policy 2018 acknowledges that “As a result of the implementation of the 1988 policy prescriptions, there has been an increase in forest and tree cover and reduction in the diversion of forest land for other land uses despite compelling demands from the increasing population, industrialization and rapid economic growth”\(^ {33}\). However, the draft National Forest

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\(^{31}\) Section 4.4 of National Forest Policy, 1988, available at [http://envfor.nic.in/legis/forest/forest1.html](http://envfor.nic.in/legis/forest/forest1.html)

\(^{32}\) Section 3(2) of the Forest Rights Act, 2006

\(^{33}\) Section 1.4 of Draft National Forest Policy, 2018
Policy of 2018 does not outrightly prohibit diversion of forest land for mining and industrial projects. At Para 2.7 it only mentions, “2.7 Safeguard forest land by exercising strict restraint on diversion for non-forestry purposes, and strict oversight on compliance of the conditions.” Clearly, this is not enough safeguards against diversion of forests for non-forest purposes.

ii. Promotion of “commercialization of forest” by the Draft National Forest Policy of 2018

The Draft National Forest Policy 2018 seeks to promote “industrial plantations for meeting the demand of raw material” by stating the following:

“4.4 There is a need to stimulate growth in the forest based industry sector. This sector being labour intensive can help in increasing green jobs. Forest corporations and industrial units need to step up growing of industrial plantations for meeting the demand of raw material. Forest based industries have already established captive plantations in partnership with the farmers. This partnership needs to be further expanded to ensure an assured supply of raw material to the industries with mutually beneficial arrangements. Further a forum for interaction and collaboration would be set up for Forest based industries with forestry institutions and concerned stakeholders so that a demand for trained professionals is created in the sector”.

The Draft National Forest Policy 2018 also proposes “Public private participation models” for undertaking “Afforestation and reforestation activities” and in the management of trees outside forests. At Para 4.1.1 (d), the draft policy states, “(d) Productivity of the forest plantations are poor in most of the States. This will be addressed by intensive scientific management of forest plantations of commercially important species like teak, sal, sisham, poplar, gmelina, eucalyptus, casuarina, bamboo etc. The lands available with the forest corporations which are degraded & underutilized will be managed to produce quality timber with scientific interventions. Public private participation models will be developed for undertaking Afforestation and reforestation activities in degraded forest areas and forest areas available with Forest Development Corporations and outside forests”.

Further, at Para 4.1.2(a)(iv), the draft National Forest Policy with regard to management of trees outside forests provides that “Suitable location specific Public Private Partnership models will be developed involving Forest Departments, Forest development Corporations, Communities, Public limited companies etc for achieving the target of increased forest & tree cover in the country”.

34. Para 4.4, Draft National Forest Policy, 2018
35. Para 4.1.1 (d), Draft National Forest Policy, 2018
36. Para 4.1.2(a)(iv), Draft National Forest Policy, 2018
As stated, this is in complete contrast to the existing National Forest Policy 1988, which unequivocally states that “Natural forests serve as a gene pool resource and help to maintain ecological balance. Such forests will not, therefore, be made available to industries for undertaking plantation and for any other activities.”

iii. Are over 15 billion-dollar CAMPA funds the raison d’etre for promoting commercialization of forest in the Draft National Forest Policy 2018?

Commercialisation of natural forest is being promoted with the sole aim to use/ misuse/ abuse the funds raised for the compensatory afforestation programmes.

According to the State of Forest Report 2017, India has 708,273 sq km (or over 70 million hectares) forest cover, out of which 301,797 sq km (or over 30 million hectares) i.e. 43% is categorised as open forests, also called “degraded forests”, which have less than 40% canopy cover. In addition, scrub, defined as “degraded forest land with canopy density of less than 10 per cent,” constitutes 45,979 sq km area in the country.

a. Scale of diversion of forest for non-forest purposes

Diversion of forest for non-forest purposes has been reducing forest cover in India. According to the Ministry of Environment, Forest and Climate Change, a total of 4.135 million hectares of forest land was diverted for non-forest purposes (i.e. 1.65 lakh hectares per annum) “without any mitigative measures” from 1951-52 to 1975-76 i.e. prior to enactment of the Forest (Conservation) Act, 1980. Following the enactment of the Forest Conversation Act in 1980 till 2014, the Central Government accorded approvals under the Act for diversion of 1,178,195 hectares of forest land for non-forest purposes (i.e. 35,702 hectares per annum). Further, 21,179 hectares of lands were diverted during

2015-16\textsuperscript{42}, 7772.6 Ha diverted during 01.04.2016 to 31.12.2016,\textsuperscript{43} and 12,055.84 Ha of lands were diverted during the period of 01.04.2017 to 23.01.2018.\textsuperscript{44}

\textbf{b. Mandatory allocation of funds for afforestation in case of diversion of forest land for non-forest purposes}

From 1995, the Supreme Court of India began playing a proactive role in the matters of forest policy governance. In a case \textit{T.N. Godavarman Thirumulpad v/s Union of India (W.P. (Civil) No. 202 of 1995)}, the Supreme Court took action against large scale illegal felling of timber and denuding of forests in Gudalur Taluk, Tamil Nadu. Through the Godavarman case the Supreme Court continued to issue interim orders and judgements on 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 order dated 12 December 1996 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 Central Government.\textsuperscript{45}

The Supreme Court in its order in \textit{T.N. Godavarman Thirumulpad vs. Union of India and Others [Writ Petition (Civil) No. 202 of 1995]}, dated the 30th October 2002 directed the Government of India to create a Compensatory Afforestation Fund in which all the monies received from the user agencies towards compensatory afforestation, additional compensatory afforestation, penal compensatory afforestation, net present value of the diverted forest land or catchment area treatment plan shall be deposited.

The Supreme Court order on the Compensatory Afforestation Fund can be summarized below:

\begin{itemize}
  \item \textsuperscript{44} Ministry of Environment, Forest and Climate Change, Annual Report 2017–18, P.52, http://www.moef.gov.in/sites/default/files/22–03–18.pdf
\end{itemize}
• Government of India, in consultation with Centrally Empowered Committee\(^{46}\) (CEC) should frame the rules regarding constitution of a body and management of the Compensatory Afforestation Fund.

• Compensatory afforestation funds that had not yet been realised as well as the unspent funds already realised by the States should be transferred to the said body within six months of its constitution by the respective States and the user agencies.

• For getting permission for diverting forest land for non-forest purposes, under Forest (Conservation) Act, 1980, the user agency should also pay into the said fund the net present value of the forest land so diverted.

• Site specific plans for artificial regeneration, assisted natural regeneration, protection of forests and other related activities should be prepared and implemented in a time bound manner.

• The funds received from the user agency in cases where forest land diverted fell within Protected Areas should be used exclusively for undertaking protection and conservation activities in protected areas of the respective States/Union Territories.

• An independent system of concurrent monitoring and evaluation should be evolved and implemented through the Compensatory Afforestation Fund to ensure effective and proper utilisation of funds.\(^{47}\)

The Ministry of Environment and Forests (MoEF) accordingly notified the Compensatory Afforestation Management Funds Management and Planning Authority (CAMPA) in April 2004 for the management of the Compensatory Afforestation Fund.\(^{48}\)

\(^{46}\), On 9 May 2002, the Supreme 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, plantation and other conservation issues.


The Supreme Court however observed on 5th May 2006 that CAMPA had still not become operational and ordered the constitution of an Ad-hoc CAMPA till CAMPA became operational. It also directed that all the funds deposited on behalf of CAMPA to other departments/state governments would be transferred to the account managed by the Ad-hoc CAMPA.  

The Ministry of Environment and Forests introduced ‘The Compensatory Afforestation Fund Bill, 2008’ in the Parliament. The Bill was passed in Lok Sabha but could not come up for voting in Rajya Sabha and lapsed with the dissolution of Lok Sabha in May 2009.  

On 8 May 2015, the Compensatory Afforestation Fund Bill 2015 was introduced by the government in Lok Sabha and the bill was sent for examination under a standing committee. It was passed by Rajya Sabha on 28 July 2016 On 3 August 2016, the Government of India notified the Compensatory Afforestation Fund Act, 2016 (No. 38 of 2016) in the Gazette of India.  

c. Findings of the Comptroller and Auditor General about the afforestation scam  

The Audit of the “Compensatory Afforestation in India” during the period 2006 and 2012 conducted by the Comptroller and Auditor General (CAG) of India reveals the scale of the scam with the compensatory afforestation program i.e. undertaking compensatory afforestation on equivalent area of non-forest land to be received by the Government.  

The CAG stated that the MoEF’s “records revealed that against the receivable non-forest land of 10,3381.91 hectares, 28,086 hectares was received during the period 2006-12 which constituted only 27 per cent of receivable non-forest land. The compensatory afforestation done over the non-forest land received was an abysmal 7,280.84 hectare constituting seven per cent of the land which ought to have been received. The afforestation over the degraded forest land was done only on 49,733.76 hectare and 49 km out of 101,037.35 ha and 54.5 km identified which worked out to 49 per cent (in area). Seven States viz. Gujarat, Haryana, Kerala, Maharashtra, Meghalaya, Punjab and Rajasthan carried out no compensatory afforestation either over non-forest land or over degraded forest land. By contrast the States of Assam and Odisha showed a high level of achievement with regard to compensatory afforestation, both over non-forest land and over degraded forest land.”

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49. CAG Report No.: 21 of 2013,  
http://www.indiaenvironmentportal.org.in/files/file/Compensatory%20Afforestation%20in%20India.pdf

50. CAG Report No.: 21 of 2013,  
http://www.indiaenvironmentportal.org.in/files/file/Compensatory%20Afforestation%20in%20India.pdf

The CAG further stated, “The record with regard to transfer of ownership to the State Forest Department is equally dismal. Information made available by State/ UT CAMPA revealed that of the 23,246.80 hectare of non-forest land received by them only 11,294.38 hectare was transferred and mutated in the name of the State Forest Department. Of this 3,279.31 hectare was declared as Reserve Forest/ Protected Forest which was only 14 per cent of non forest land so received”.

The CAG also stated,

“Receipt of non-forest land is the starting point for undertaking compensatory afforestation. Yet on this critical element there was no meeting ground on the data maintained by the Ministry and State Governments. The variation in data on forest land diverted and non-forest land received was as much as 3.5 per cent and 17.3 per cent respectively between the data maintained by the regional offices of the Ministry and the State Forest Department. Poor quality and unreconciled data will compromise the quality of planning, operations and decision making.

In case of non-availability or short-availability of forest land, to be duly certified by the Chief Secretary, compensatory afforestation was to be undertaken over the degraded forest twice to the extent of the forest land diverted. It was observed that compensatory afforestation was allowed over an area of 75,905.47 hectare without any certificate of the Chief Secretary, in almost all the states except Delhi, Himachal Pradesh, Meghalaya and Sikkim. Only in two State/ UTs viz. Chandigarh and Uttrakhand, equivalent or more non-forest land was received.”

On diversion of forest lands in clear violations of the orders of the Supreme Court of India, the CAG further stated,

“Audit also observed instances where express orders of the Supreme Court were flouted by Andhra Pradesh State Electricity Board where the diversion of forest land in Nagarjunasagar Dam was allowed without seeking prior permission of the Supreme Court. In five other cases unauthorised renewal of mining leases in Rajasthan and Odisha were noticed, where the approval of Central Government was not obtained by the State Government as was directed by the Supreme Court.

Numerous instances of unauthorized renewal of leases, illegal mining, continuance of mining leases despite adverse comments in the monitoring reports, projects operating without environment clearances, unauthorized change of status of forest land and arbitrariness in decisions of forestry clearances were observed. In six States where information was available, encroachment of 155,169.82 hectare of forest land was noticed but MoEF did not take time bound action for eviction despite directions of the Supreme Court.”

There is absolute impunity. The CAG stated “Absence of MIS/ consolidated database permitted individual cases of irregularities to remain unchecked. MoEF failed to appropriately discharge its responsibility of monitoring of compliance of conditions of the Forest (Conservation) Act, 1980 relating to diversion of forest land”. 54

The CAG noted, “Despite such gross non-compliance with statutory conditions and orders of the Supreme Court, no action was initiated by MoEF. In fact, MoEF had invoked penal provision only in three cases during the period August 2009 to October 2012 and even this action was only limited to issue of show cause notices. In our opinion penal clause prescribed in the Forest (Conservation) Act, 1980, was largely inadequate and ineffective to put any deterrence towards illegal and unauthorised practices”. 55

Collection of Compensatory Afforestation Funds

The CAG stated that “The Ad-hoc CAMPA was ineffective in ensuring complete and timely transfer of all monies collected by States/Union Territories (UTs) towards Compensatory Afforestation Fund to the Ad-hoc CAMPA accounts. There is no assurance that all the monies collected for compensatory afforestation funds by States/UTs have been deposited in the Ad-hoc CAMPA Compensatory Afforestation in India accounts. This could have been ensured only if a centralised data base indicating project wise amounts due, collected, remitted (or utilised by States/UTs prior to formation of Adhoc CAMPA) and balance lying with States/UTs was created. Divergence in data of transfer of funds available with Ad-hoc CAMPA and collected from States/UTs was Rs 6,021.88 crore which was 26.32 per cent of the principal amount with Ad-hoc CAMPA. Non-reconciliation of the same over years not only indicates laxity in controls but also raises doubts on the reliability and completeness.

of the data provided by all agencies concerned. Our test check also revealed that 23 State/UTs had, at the least not transferred Rs 401.70 crore of compensatory afforestation fund to Ad-hoc CAMPA”.

For the period 2006 to 2012, the CAG on the basis of a test check in audit found non receipt of Rs 5,311.16 crore which constituted 23 per cent of the total principal amount with Ad-hoc CAMPA as on 31 March 2012. In some of the States where the amounts of non/short recovery were significant include Odisha (Rs 1,235.26 crore), Jammu & Kashmir (Rs 861.80 crore), Madhya Pradesh (Rs 512.84 crore), Tripura (Rs 333.19 crore), Assam (Rs 223.28 crore), Uttarakhand (Rs 207.51 crore), Gujarat (Rs 176.02 crore), Jharkhand (Rs 116.18 crore), Manipur (Rs 106.45 crore) and Chhattisgarh (Rs 111.29 crore). MoEF/Ad-hoc CAMPA/State CAMPA did not have any system to monitor the correct assessment and collection of dues before giving final clearance for diversion of forest lands.

Utilisation of Compensatory Afforestation Funds

Out of Rs 2,925.65 crore of the compensatory afforestation funds released by Ad-hoc CAMPA during the period 2009-12 for compensatory afforestation activities, only Rs 1,775.84 crore were utilised by the State/UTs leaving an unutilised balance of Rs 1,149.81 crore. The percentage of overall utilisation of released funds was only 61 per cent. In 11 of the selected 30 State/UTs utilisation ranged between zero to 50 per cent which indicated poor absorptive capacity of the State/UTs. Some of the States with very poor utilisation were Meghalaya (100 per cent), Arunachal Pradesh (91 per cent), Bihar (77 per cent), Tripura (68 per cent), Chhattisgarh (67 per cent), Andaman & Nicobar Islands (63 per cent) and Delhi (63 per cent). Most State/UTs were unable to spend the monies released to them by Ad-hoc CAMPA due to delay in preparation of Annual Plan of Operations, delayed release of funds resulting in setting in of a process of accumulation of compensatory afforestation funds in the States which was the problem sought to be addressed by the Supreme Court. The under utilisation of funds indicates non-implementation of various Net Present Value/Compensatory Afforestation schemes proposed in the Annual Plan of Operation by these State/UTs.

Nonetheless, during the period 2006 and 2012, the Compensatory Afforestation Funds with Ad-hoc CAMPA grew from Rs 1,200 crore to Rs 23,607.67 crore.

d. Are Rs 90,000 crore funds for afforestation programmes as of April 2018 promoting commercialization of forest?

Because of the non-implementation of the afforestation programmes for diversion of forests for non-forest purposes, the funds of the CAMPA are increasing by the day given that the funds cannot be diverted and deposited into accounts.

Minister of State in the Ministry of Environment, Forest and Climate Change Dr Mahesh Sharma informed the Lok Sabha on 10 August 2018 that as on 31.03.2018, the total amount available with various State /UT for afforestation programmes was Rs. 66,298 crore while only Rs. 14,418 crore was released upto 31.03.2018. By April 2018, the CAMPA funds increased to Rs 90,000 crores i.e. over 15 billion US dollars.

The details of the Unstarred Question No.3938, answered on 10.08.2018 in the Lok Sabha are reproduced below:

<table>
<thead>
<tr>
<th>S.No.</th>
<th>State/UT</th>
<th>Amount including Principal and interest (in Rs.)</th>
<th>Amount released to State/UT CAF till 31.03.2018 (in Rupees)</th>
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<td>Gujarat</td>
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</table>

59. Lok Sabha, Unstarred Question No.3938, answered on 10.08.2018
60. Supreme Court pulls up Centre for not using Rs 90,000 crore meant for environment, Down To Earth, 11 April 2018, https://www.downtoearth.org.in/news/environment/supreme-court-pulls-up-centre-for-not-using-rs-90-000-crore-meant-for-environment-60149
<table>
<thead>
<tr>
<th></th>
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<th>Afforestation Funds (in crores)</th>
<th>Compensation Funds (in crores)</th>
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<td>West Bengal</td>
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</table>

|   | Grand Total    | 6,62,98,58,03,669            | 144,18,05,24,533               |

As stated above as per the CAG, during 2006 to 2012, the Compensatory Afforestation Funds with Ad-hoc CAMPA grew from Rs 1,200 crore to Rs 23,607.67 crore. If only Rs. 14,418 crore was released upto 31.03.2018, it implies that only 60% of the funds deposited by 2012 could be utilized.

This implies that India’s compensatory afforestation programmes have failed. However, the CAMPA funds have the potential to become the source of another major scam and the involvement of the private sector increases the possibilities.

e. Are there enough lands and human resources to carry out the afforestation worth over Rs 90,000 crores?

The proper utilization of CAMPA funds i.e. afforestation requires both non-forest/ degraded forest lands to conduct the afforestation activities under certification from the State Government and capacity to utilize the resources.

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61. Lok Sabha, Unstarred Question No.3938, answered on 10.08.2018
Obviously, compensatory afforestation for diversion of forest land cannot take place in forest areas. Therefore, the lands for afforestation are available mainly in the “degraded forests” covered under the JFM or community forests recognized under the Forest Rights Act which are under the control of the Gram Sabha.

Further, the Forest Department also does not have the capacity to undertake large-scale afforestation programmes and non-utilisation of Rs 90,000 crores\(^6\) explains the absolute lack of capacity and unwillingness.

As the Ministry of Environment, Forests and Climate Change does not have the capacity, in August 2015, it sent the guidelines to the states for “participation of private sector in afforestation of degraded forests”, as a means to outsource to commercial entities. It argued that “ongoing national afforestry programmes have not been able to make the desired impact in improving productivity and quality of forest cover due to a lack of sufficient investment, capacity, technological upgradation and adequate skilled manpower.”\(^6\)

The guidelines of the Ministry laid out a process of leasing out degraded forest lands to private parties for afforestation and extracting timber through open competitive bidding. The government had planned to first lease out the patches of forests with less than 10% canopy cover and then extend the scheme to forests with up to 40% canopy cover. The guidelines stated that tribal communities would be allowed to access non-timber forest produce from just 10% to 15% of the leased-out area. The government however had not put the guidelines in the public domain but they were leaked to the media.\(^6\) Tribal rights activists opposed the move as they feared the plan would lead to the leasing out of forest lands traditionally used by forest dwellers to private companies in violation of the Forest Rights Act, 2016.\(^6\)

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\(^6\) Centre seeks to change forest policy to promote industrial plantations in natural forests, Scroll.in, 22 March 2018, [https://scroll.in/article/872579/centre-seeks-to-change-forest-policy-to-promote-industrial-plantations-in-natural-forests](https://scroll.in/article/872579/centre-seeks-to-change-forest-policy-to-promote-industrial-plantations-in-natural-forests)

\(^6\) Centre seeks to change forest policy to promote industrial plantations in natural forests, Scroll.in, 22 March 2018, [https://scroll.in/article/872579/centre-seeks-to-change-forest-policy-to-promote-industrial-plantations-in-natural-forests](https://scroll.in/article/872579/centre-seeks-to-change-forest-policy-to-promote-industrial-plantations-in-natural-forests)
The CAMPA funds have turned out to be another curse for the Scheduled Tribes.

4. Violations of international standards on sustainable forest management

For the first time climate change mitigation and adaptation has been inculcated in the Draft National Forest Policy 2018. The Preamble of the Draft National Forest Policy 2018 says that there is a need to revise the National Forest Policy, 1988 “in order to integrate the vision of sustainable forest management by incorporating elements of ecosystem security, climate change mitigation and adaptation, forest hydrology, participatory forest management, urban forestry, robust monitoring and evaluation framework and establishment of mechanisms to oversee multi-stakeholder convergence in forest management, while building on our rich cultural heritage of co-existence and relying on our rich and diverse forest resources”.

One of the goals of the proposed National Forest Policy is to “integrate climate change mitigation and adaptation measures in forest management through the mechanism of REDD+ (Reducing Emissions from Deforestation and Forest Degradation plus) so that the impacts of the climate change is minimized”. At para 4.2.5, the draft policy refers to strategies to “integrate climate change concerns & REDD+ strategies in forest management”.

The REDD+ mechanism agreed by Parties at Cancun COP (Decision 1/CP.16) provides for “the full and effective participation of relevant stakeholders, inter alia indigenous peoples and local communities” in the implementation of the components of REDD+ namely (a) Reducing emissions from deforestation; (b) Reducing emissions from forest degradation; (c) Conservation of forest carbon stocks; (d) Sustainable management of forests; and (e) Enhancement of forest carbon stocks.

The Draft National Forest Policy 2018 however does not provide for the participation of the indigenous peoples and local communities in the decision making processes. It has also failed to address the drivers of deforestation and forest degradation with a view to reducing emissions from deforestation and forest degradation and thus enhancing forest carbon stocks due to sustainable management of forests.

Looking forward to the kind interventions of the UN CERD Committee to urge the Government of India:

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66. Para 2.13 of the Draft National Forest Policy, 2018
67. Para 72, Cancun Agreements (Decision 1/CP.16),
   https://unfccc.int/resource/docs/2010/cop16/eng/07a01.pdf
68. Para 70, Cancun Agreements (Decision 1/CP.16),
   https://unfccc.int/resource/docs/2010/cop16/eng/07a01.pdf
- To abandon the Draft National Forest Policy of 2018

- To not adopt any policy that undermines the PESA Act or the Forest Rights Act including rights and management over the minor forest produce; and

- To involve indigenous peoples in the Compensatory Afforestation Programme.

With kind regards,

IWGIA

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