

# Exploring the Road to REDD in India

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AN EQUATIONS REPORT

# The Study

- An Independent Monitoring Report
- Undertaken by the EQUATIONS in collaboration with the Global Forest Coalition (GFC) in 2009

# Terms of Reference

- should include a brief description of the most important policies and programs the national government is developing to Reduce Emissions from Deforestation and forest Degradation as part of its commitments under the Framework Convention on Climate Change.
- a brief description of the national government's main policies to implement the UN Declaration on the Rights of Indigenous Peoples (UNDRIPs) and the Expanded Program of Work on Forest Biodiversity (CBD FWP)
- include an analysis on the coherence between existing and proposed REDD policies with existing and proposed policies to implement UNDRIPs and the CBD FWP.
- may include additional observations on the potential impact of existing and proposed REDD policies on the rights of Indigenous Peoples, local communities and women, and the potential impact of these policies on biodiversity.
- should include a brief analysis of the rights, needs and role of women regarding policies to reduce deforestation and forest degradation in the respective country and whether proposed and existing national REDD policies address these gender aspects.
- may not include a text box describing a successful, socially just and environmentally sound forest restoration initiative by Indigenous Peoples or local communities, including a brief analysis of the incentive systems that have supported this initiative

# What is REDD?

- Reducing Emissions from Deforestation and Forest Degradation in Developing Countries
- Providing positive incentives to developing countries to slow down their rates of deforestation and forest degradation.
- A range of domestic actions that could help to reduce emissions from deforestation and degradation include
  - ✓ clarification and enforcement of land and forestry rights
  - ✓ establishment of reserves or parks
  - ✓ ensuring compensation or incentives for avoiding deforestation and
  - ✓ altering policies that make deforestation attractive, such as agricultural subsidies
- At the international level, political discussions on REDD have mostly been taking place under the auspices of the UN Framework Convention on Climate Change (UNFCCC)
- Part of Bali Action Plan on post 2012 negotiations
- REDD is being considered in a range of other fora too.

# REDD in UNFCCC

- first discussed under the UNFCCC in 2005 at the eleventh Conference of the Parties (COP 11)
- Key issues discussed have included
- the *causes* of deforestation;
  - *policy* tools for REDD, including bilateral and multilateral cooperation;
  - ways to provide *incentives* for REDD, including
  - financial mechanisms; and
  - *technical issues* associated with measuring REDD and implementing policies for REDD.

# Policy tools for REDD

- market-based and market-linked mechanisms, such as:
  - inclusion of REDD projects in the CDM and Joint Implementation; or
  - establishment of a dedicated REDD trading mechanism, separate to the CDM and Joint Implementation with a limit on the amount of developed country emissions reductions that could derive from REDD or
  - introduction of a new emissions trading unit to be used by developed countries in partial fulfilment of their emissions targets
- non-market financial mechanisms, such as:
  - the required purchase of a proportion of each developed country's emissions target (rather than free allocation), with the revenue used to support REDD and other activities; or
  - — establishment of a financial mechanism or fund, linked to the UNFCCC, to provide access, directly or indirectly, to financing for REDD activities;
- simple commitments by developing countries to reduce their emissions across the entire domestic forestry sector with credits generated for each tonne of avoided CO<sub>2</sub>
- a focus on the domestic capacity (technical skills and institutions) needed to implement and monitor REDD activities.

# India's forests

- Is home to 1.8% of the world's forests.
- Indian forests are home to around 100 million people and provide sustenance to them
- more than 45,500 flowering plants and 91,000 animal species found in 16 major forest types
- forests meet nearly 40% of the country's energy needs and 30% of its fodder needs
- Forest Survey of India Report 2009 shows a forest cover of 69.09 million ha which is 21% of India's geographical area
- total recorded forest area comes out to be 769,512 sq. km or around 23%
- According to the National Forest Commission (2006), about 41% of the country's forest cover has already been degraded and dense forests are losing their crown density and productivity continuously
- 70% of forests have no natural regeneration and 55% are prone to fire.

# Forest Policy & Governance

- Pre-colonial era  
there was no formal forest policy  
various princely states had different approaches to managing the forestry resources available in their areas
- British rule, brought 'scientific' forest management, with a narrow agenda focused on sustained commercial timber production
- Management practice based largely on conjecture and blindly copied European production-based forestry models
- basic colonial approach was to declare forests as state property and curtail the rights of the forest dwellers to areas with commercially valuable species
- Clear-felling of vast tracts of forest was the favored method of 'forest operations', followed by complete closure to grazing and other human activities, such as the collection of firewood, fodder, medicinal plants, bamboo, etc
- The Forest Department (FD) was created in 1864 to oversee these operations
- This assertion of state monopoly right and the exclusion of forest communities, a process by which the British gradually appropriated forest resources for revenue generation, thus shaped the organizing principles of forest administration in modern India.
- Towards the end of the 19th century, almost 80% of the forests was owned by communities and private individuals
- Today, state ownership has increased to more than 80% of the recorded forest area.



# Policy & Governance (Contd)

- The colonial forest policy marked a significant shift in consolidating the state's property rights regime over forests
- The forest communities were not only denied their traditional rights and privileges but were given no role in preserving and managing India's forests
- Permanent Settlement of 1757 and the 1894 forest policy resulted in rebellions and revolts of the forest and Indigenous tribal communities that started in 1784 and continued until the first quarter of the 20th century
- primarily directed against the new land and forest policies of the British
- British crushed them ruthlessly, bringing fresh areas under their control and formulating new legislation to legitimize the transfer of property rights from the community/individual to the state
- The Forests Acts of 1878 and 1927 and the forest policy of 1894 facilitated the strengthening of this new order.

# Chronology of forest policies and legislation in India

- British Colonial Period
  - The Indian Forest Act, 1865
  - The Indian Forest Act, 1878 (modified)
  - The Indian Forest Policy, 1894
  - The Indian Forest Act, 1927 (amended and modified)
- Independent India
  - National Forest Policy, 1952
  - Wild Life Protection Act, 1972
  - National Commission on Agriculture, 1976
  - Forest Conservation Act, 1980
  - National Forest Policy, 1988
  - Joint Forest Management Circular, 1990
  - The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006

# Forests for whom?

- India's Forest Policy of 1952 and the 1976 National Commission on Agriculture (NCA) report also stressed the importance of production forestry
- The 1952 policy called for the protection of wildlife and the preservation of fauna by demarcating forests for sanctuaries and national parks.
- The 1988 forest policy recommendations include
  - Maintaining environmental stability through preservation and restoration of the ecological balance.
  - Conserving the country's natural heritage by preserving its remaining natural forests.
  - Increasing forest/tree cover through afforestation and social forestry programs on denuded, degraded and unproductive lands.
  - Meeting the requirements of rural and tribal populations for fuel wood, fodder, minor forest produce and small timber.
  - Increasing the productivity of forests to meet essential national needs.
  - Encouraging efficient utilization of forest produce and maximizing substitution of wood.
- Paved the way for the implementation of Joint Forest Management (JFM)
- Government of India circular to all states and union territories giving guidelines for the "involvement of village communities and voluntary agencies in the regeneration of degraded forests."

# Forests for whom? (Contd)

- The Indian Forest Act of 1927 is the legislative foundation
- Derived from the 1865 and 1878 Colonial Acts
- enables the government to severely curtail traditional rights (called concessions in the Act) in Reserved Forests and Protected Forests
- people's rights were found interfering with the clear felling of commercially valuable forests
- the Act gave state governments the power to divert forest land for other uses
- The 1927 Forest Act does not support people's participation in forest protection and management

# Injustice to forest people

- The **Wildlife (Protection) Act 1972 (WLPA)** gives primacy to conservation
- justifies curtailing the legitimate survival activities of forest-dependent people in wildlife habitats, evicting them forcibly without proper resettlement, centralizing the management of these habitats in the hands of a callous bureaucracy
- has not been effective in fending off the pressure of commercial and industrial interests
- criminalized forest people and took away their traditional NTFP and fishing rights in protected forests, while poaching continued unabated
- 96 National Parks and 509 Wildlife Sanctuaries, covering 15.7 million ha, about 4.78% of the geographical area of the country
- About 20% of India's forests fall within the Protected Areas network

# Legitimising Eviction

- The **Forest Conservation Act (FCA) of 1980** was a legislative attempt to slow deforestation
- limited the power of state governments to de-reserve Reserved Forests or divert forest lands for non-forest purposes without the permission of the central government
- Brought in the concept of compensatory afforestation in lieu of diversion of forest land
- While large parts of protected NPs and WLS still get de-notified regularly for destructive activities like mining, quarrying and building of large dams
- Villages are routinely denied basic amenities like roads and water supply pipelines, forest and taungya villages are denied schools and health centers
- rendered more than 20 million forest people as encroachers

# Facilitating deforestation

- Between 1951 and 1980 4.3 million ha of forests were lost
- Between 1980 and 2007, 1,140,177 ha of forest land were diverted for non-forest purposes
- a whopping 311,220 ha were cleared recently between 2003 and 2007
- 2003 Forest Survey assessment points out decrease in dense forest cover to the tune of 26,245 km<sup>2</sup> (6.30%) and the open forest cover has increased by 29,040 km<sup>2</sup> (11.22 %)

# Joint Forest Management

- The JFM circular was issued on 1 June 1990, by the MoEF
- merely a government order with no force of the law behind it
- most states have passed resolutions to introduce JFM and comply with the order because they were also faced with threats of curtailment of centrally-sponsored schemes
- areas where traditional forest management practices still exist JFM is undermining and commercializing traditional systems and bringing community-protected forests under the control of the forest department
- Was imposed on the forest dwellers without appropriate consultation and used for eviction of encroachers
- There were 56 JFM project-related police firings in Madhya Pradesh during the five-year JFM period under the World Bank Forestry Project, some of which resulted in the death of tribals.
- JFM committees were formed undermining Gram Sabhas and even panchayats



# The Forest Rights Act 2006

- The Indian Government, in the preamble to the **Scheduled Tribes and the Other Traditional Forest Dwellers (Recognition of Forest Rights), Act (2006)** admitted that “forest rights on ancestral lands and their habitat were not adequately recognized in the consolidation of State Forests during the colonial period as well as in independent India resulting in historical injustice to the Scheduled Tribes and other traditional forest dwellers who are integral to the very survival sustainability of the forest ecosystem.”
- The Act was passed to recognize and vest the forest rights and occupation of forest land in forest-dwelling scheduled tribes and other traditional forest dwellers, who have been residing in such forests for generations but whose rights could not be recorded.

# FRA (Contd)

The Act provides

- Tenurial security and access rights to forest dwellers.
- The right to hold and live in forest land under individual or common occupation for habitation or for self-cultivation for livelihood.
- The right of ownership access to collect, use and dispose of minor forest produce that has been traditionally collected within or outside village boundaries.
- Other community rights of uses or entitlements such as fish and other products of water bodies, grazing and other traditional resources accessed by nomadic or pastoralist communities.
- Rights of settlement and the conversion of all forest villages, old habitation, unsurveyed villages and other villages in forests (whether recorded, notified, or not) into revenue villages.
- The right to protect, regenerate, conserve or manage any community forest resource that they have been traditionally protecting or conserving for sustainable use.
- The right of access to biodiversity and community rights to intellectual property and traditional knowledge related to biodiversity and cultural diversity.
- empowers the Gram Sabha to play the pivotal role in ensuring the rights of forest dwellers, decision-making, planning and management

# FRA (Contd)

- forest rights recognized in critical wildlife habitats in National Parks and Wildlife Sanctuaries are violated unless it is clearly established that co-existence is not possible and there is no other alternative
- free and informed consent of the Gram Sabha will also be necessary in relation to any resettlement and other consequences
- Provides for protecting, conserving and ensuring the sustainable use of the forests and its ecosystem
- passed in December 2006, implementation has so far been very poor, primarily due to covert opposition from the Forest Department and overt campaign by the wildlife lobby
- FD and the MoEF still recognizes the JFM Committees – the FPCs in their official documents and reports

# UNDRIPS & India

- Passed in the UNGA in September 2007
- India voted in favour
- However, Government of India and its administrative authorities do not recognize or use the term Indigenous
- through provisions of Article 366 and 342 of the Indian Constitution some tribal communities are referred to as “scheduled tribes”
- defines them as "such tribes or tribal communities or parts of or groups within such tribes or tribal communities as are deemed under Article 342 to be Scheduled Tribes.”
- indications of primitive traits, distinctive culture, geographical isolation, shyness of contact with the community at large, and backwardness
- These criteria are not spelt out in the Constitution itself but have become well established in practice
- They subsume the definitions contained in the 1931 Census, the reports of the first Backward Classes Commission 1955 and the Advisory Committee on Revision of SC/ST lists (Lokur Committee)
- Indian Representative in the UN, Ajai Malhotra said his country had consistently favored the promotion and protection of Indigenous Peoples’ rights: the fact that the working group had been unable to reach consensus was only reflective of the extreme complexity of the issues involved

# UNDRIPS

Chief Justice of Supreme Court, Y K Sabharwal while speaking in the International Law Association Conference (2006) in Toronto clarified:

- Firstly, it is argued that it is not easy to identify indigenous peoples in India. For there have been continuous waves of movement of populations with different language, race, culture, religion going back centuries and millennia. Tribal communities have been a part of this historical process. In the circumstances the question arises as to how far back in history should one go to determine the identity of “indigenous peoples”? Whatever the nature of determination it is likely to be extremely arbitrary and controversial.
- Secondly, tribal and non-tribal peoples have lived in India in close proximity for over centuries leading to, as one author puts it ‘much acculturation and even assimilation into the larger Hindu Society.’
- Thirdly, in the case of India some tribes are no longer tribes but have become, as the eminent sociologist Andre Betteile puts it, ‘castes or something else’.
- Fourthly, tribal peoples in many cases may have settled in India long after some non-tribal peoples in other parts of India.
- Finally, attention has been drawn to the serious national sovereignty issues involved revolving around question of “self-determination” and ownership of lands.

# UNDRIPS

- India has a history of cultural assimilation even while we agree to some communities maintain their distinct identity within the nation. India always presented a unity in diversity and diverse cultural identity is no insignia of the existence of indigenous group.
- True to its tradition of cultural assimilation and spirit of accommodation the Indian constitution presents the picture of the larger system of permitting the smaller political systems of tribal populations to be part of the system to remain distinct culturally but to be part of the larger system politically with sufficient autonomy wherever necessary and possible.
- Schedules V and VI of the Constitution of India specifically make provision for safeguarding the interests of the tribal people in India located in what is called tribal areas.

# PESA 1996

Provides

- Autonomy over customary law, social and religious practices and traditional management practices of community resources.
- A village community to manage its affairs in accordance with traditions and customs.
- A Gram Sabha to safeguard and preserve the traditions and customs of the people, their cultural identity, community resources and the customary mode of dispute resolution.
- That the Gram Sabha should *approve* of the plans, programs and projects for social and economic development before they are taken up for implementation by the Panchayat at the village level.
- That the Gram Sabha or the Panchayats at the appropriate level shall be consulted before making the acquisition of land in the Scheduled Areas for development projects and before re-settling or rehabilitating persons affected by such projects.
- For the recommendations of the Gram Sabha or the Panchayats at the appropriate level to be made mandatory prior to the granting of prospecting licenses or mining leases or concessions.
- Panchayats at the appropriate level and the Gram Sabha are also specifically endowed with:
  - The power to enforce prohibition or to regulate or restrict the sale and consumption of any intoxicant.
  - The ownership of minor forest produce.
  - The power to prevent alienation of land in the Scheduled Areas and to take appropriate action to restore any unlawfully alienated land of a Scheduled Tribe.

# PESA and FPIC

- Act does not expressly recognize the *sole* rights of the tribal village council or their traditional self governance institutions
- allows the 'Panchayats at appropriate level' to usurp these powers
- provisions of PESA are restricted only to the communities living within Scheduled Areas
- PESA, the Land Acquisition Act, the Rehabilitation & Resettlement Policy, environmental decision-making processes and clearances for development projects in Scheduled Areas do not reflect the spirit of 'free and prior informed consent'



# Draft Tribal Policy

- only addresses India's Scheduled Tribes: it does not represent other tribal and Indigenous communities or all adivasis
- though the draft policy talks of mandatory consultation with the Gram Sabha and the Tribal Advisory Council, it is conspicuously silent on the issue of consent of the communities and the safeguard and protection of ancestral lands and sacred groves of the tribal population
- draft policy states “PESA requires the State Governments to change their existing laws, wherever these are inconsistent with the central legislation

# India and CBD

- India's Fourth Report on the Convention on Biological Diversity was officially released in June 2009
- Takes pride in formulation of Biological Diversity Act (BDA), 2002, National Wildlife Action Plan (NWAP) (2002-2016), National Environment Policy (NEP) 2006, National Biodiversity Action Plan (NBAP), 2008 and National Action Plan on Climate Change (NAPCC), 2008
- They are, however, not without controversies and severe criticisms

# India and CBD

- The Report claims the enactment of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act (2006), the establishment of the Wildlife Control Bureau, the integration of biological diversity concerns into the Environment Impact Assessment Notification (EIA, 2006), the draft Coastal Management Zone Notification (2008) and the National Tiger Conservation Authority are all measures taken to strengthen implementation mechanisms in policy, legislative and administrative measures targeted at biodiversity conservation and management
- More than 300 mega hydro projects, oil exploration, cement plants, chemical plants and extensive mining activities are proposed in the states of J & K, Himachal, Uttarakhand, Sikkim and Arunachal Pradesh
- The last two are part of Indo-Myanmar Biodiversity Hotspot
- Thousands of hectares of pristine forests are diverted for non-forest activities and destroyed, much subsequently replaced by monoculture plantations in the name of afforestation.
- Similarly, the forests and habitats of tribal communities are cleared and given to global mining and steel giants in the central Indian states of Madhya Pradesh, Chhattisgarh, Orissa and Andhra Pradesh.

# India and REDD

- India has championed the concept of 'Compensated Conservation' since negotiations in Nairobi, in 2006 (in particular through a workshop in Cairns, and a Subsidiary Body for Scientific and Technological Advice (SBSTA) meeting in Bonn.
- At the COP-13 negotiations in Bali, in December 2007, the Indian delegation claimed a breakthrough in putting forth India's concern with forest conservation as central to negotiations on REDD

# India and REDD (CONTD)

- Indian proposal on forest conservation and the sustainable management of forests, and incremental increases in forest cover, put forward as a policy approach to enhance carbon stocks, found place not only in the preamble but also in the operative part (paragraphs 3 and 7) of the COP's decision on REDD
- the Bali Action Plan contains references, *inter-alia*, to policy approaches and positive incentives relating to the role of conservation, the sustainable management of forests and the enhancement of forest carbon stocks.

# India's approach to REDD

- India's two main approaches to REDD are 'compensated reduction' and 'compensated conservation'
- it says that carbon is saved from reducing deforestation and degradation
- carbon is added through conservation, the sustainable management of forests and increases in forest cover (afforestation and reforestation).
- both have to be compensated equally.

# Low deforestation country

- India's arguments rest heavily on the claim that India is a low deforestation country.
- loss of dense to moderately dense forests within the recorded forest area is being hidden under the garb of increasing forest and tree cover
- forest cover has been taken as comprising all lands more than one hectare in area, with a canopy density of more than 10 per cent, irrespective of land use and ownership
- All perennial woody vegetation (including bamboos, palms, coconut, apple, mango, neem, peepal, etc.) has been treated as tree
- all lands with tree crops, such as agro forestry plantations, fruit orchards, tea and coffee estates with trees, etc. have been included as forest cover since 2001

# Compensated conservation: The PAs

- India's conservation regime is extremely controversial, displacing and violating the basic human rights of the forest people
- little basic data of the number of forest dwellers being displaced by the PAs or practically imprisoned in them without basic amenities and rights over NTFP, fuel wood or fodder
- Large scale displacement of forest people and loss of usufruct rights have been reported in the National Parks of Tawa, Nagarhole, Pench, Kanha, Buxa, Palamau, Rajaji, and Tadoba and scores of Wildlife sanctuaries during the last 35 years
- GEF funded India Eco-Development Project, which emphasized conservation by reducing dependence of forest communities on forests, itself contributed to the displacement of more than 200 villages in the NPs of Nagarhole, Pench, Kanha and Buxa
- The National Forest Commission (2006) indicates that an estimate of around 4 million are imprisoned within the Indian PAs



# Omissions, exclusions & concerns

- Bali text does not address the rights of the forest communities and UNDRIPS
- what about unclassified forests, community conservation areas managed and controlled by the communities - in the north east, Khutkatti areas of Jharkhand, forests under Van Panchayats in Uttarakhand or the community conserved forests of Orissa?
- REDD will provide financial incentives only to the national government
- REDD text does not include any mechanism whereby the incentives could be shared by the forest communities or benefit them

# A set of questions...

- In the wake of the FRA, how will REDD recognize the legally binding rights of the forest communities, and their contribution to conservation and sustainable management of forests and biodiversity?
- Who can claim the incentives for reducing deforestation and degradation?
- Will REDD undermine the community conservation efforts and rights of the forest communities and strengthen a centralized form of forest governance practiced by countries like India, eroding the recent gains that forest communities have snatched at a great cost?
- Will REDD be the nemesis for the Forest Rights Act, 2006 in India?
- Will a market based or fund based model really contribute to reducing emissions?

# Conclusions

- REDD and other forest-related funds will only promote an artificial greening of the country, whilst increasing the financial clout of the forest bureaucracy and thereby undermining the rights and entitlements of the forest people
- market or fund-based financial mechanisms like REDD may tend to act as a disincentive towards the decentralization of forest governance
- The majority of the forest people in India have already shifted to areas which are of less intrinsic value and considered uneconomic.
- REDD could be the final straw for forest dependent communities, if both the state and private sector actors are then tempted to stake their claims to these 'uneconomic' areas
- REDD fund in India is unlikely to lead to the conservation of natural old growth forests, or regeneration of forests, or improvements for the life and livelihood of the forest people
- The commodification of India's forests may well be completed, at the cost of its protectors – the forest people and forest communities