

FOREST CASE UPDATE

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Overview of the Godavarman Hearings in July 2008

8-8-08 is an interesting date. Some regard it as lucky and some unlucky. Well this is proved right. While forest dwelling communities, conservationist, environmentalist, NGO's, were shocked to learn about the approval granted for mining in some of our last remaining forests, for the project proponents and governments it is surely was a lucky day. This month saw the approval being granted to POSCO to undertake mining related activities in Orissa, Sterlite/ Vedanta being granted approval under the Forest (Conservation) Act, 1980 for mining in the Sacred forests of Niyamgiri and to National Mineral Development Corporation (NMDC) to mine in the Panna Forests in Madhya Pradesh.

8th August saw an end to a case started nearly four years back before the CEC and after many ups and down, finally ended on the 8th. This relates to the mining of the Niyamgiri Hills in Orissa. Perhaps none of the cases before the CEC and Supreme Court (SC) saw as much national and international interest as this case has. The Supreme Court finally granted approval for diversion for 660 hectares of reserved forest land for mining. However, the approval only concerns the provisions of the Forest (Conservation) Act, 1980 and is not to be seen as a green signal for approval under the EIA Notification. In a departure from the usual trend, the SC refused to accept the CEC report: first while passing the November, 22nd 2007 judgment wherein CEC had specifically recommended that no mining should be allowed in such an ecologically fragile area and second while passing the 8-8-2008, the Supreme Court refused to accept the fresh report of CEC on how to ensure that the benefits of mining should lead to inclusive growth. As per the SC order, the method suggested by CEC is too complicated. We are including the copy of the order passed by the SC on the Vedanta case in this issue. We are yet to receive a copy of the POSCO and Panna judgement and would comment as share it with readers once we get access to it.

The battle to save India's forest is getting increasingly tough every passing day. It was a golden moment of judicial activism and of the *Godavarman* case when the SC ordered for the Closure of the Kudremukh Iron Ore Company in Karnataka on the grounds of violation of forest and wildlife laws. The opening words of Justice Arijit Pasayat who delivered the judgment (2002) 10 SCC 606 was "By destroying nature we are committing matricide having in a way killed Mother earth". Further, the Court stated that in deciding such a matter it had to choose between two approaches: "an eco friendly Approach" or "dollar friendly approach".

The disturbing question being asked today is will short term economic benefit override ecological consideration by deciding such issues by the Court specially when the world is more concerned than ever about climate change and shrinking forests ?

At least in this issue we cannot say "happy reading" !

Highlights of the Central Empowered Committee Hearing on 11th July 2008

The CEC heard a series of matters on 11th July 2008 in its Chanakya Bhawan premises. Presented below are highlights of these, which were both applications filed before the CEC as well as Interlocutory Applications (IA) referred by the Supreme Court's Godavarman bench.

One of the first applications to be heard was from the state of Haryana filed by Ekta Parishad and organization based in Bhopal. The application sought directions to prevent illegal herbal plantations on private land. At the outset the members of the CEC asked for certain clarifications on the status of the land. According to the advocate for the applicant the land was jointly owned by 73 persons but was under common use. He drew direct linkages to this land as *shamlat bhoomi*, category of forest land. The CEC clarified as to whether all 73 persons would need to sign in agreement in case the land had to be sold, the answer to which was yes. The CEC observed that it did not see any malafide in the action of the government to transfer it for the herbal plantation. The advocate, argued that for the kind of land in question there is a policy that incase there is an availability of alternate land then it is not to be used. However, the state government has taken a different position. The advocate for the respondent highlighted that the record of customary rights has been procured from the Revenue Department. This *jamabandi* has to be read along with the record of customary rights. The land in question was used for drinking water and other purposes. The advocate for Ekta Parishad brought to light that if a land is common use property it is not necessary that it is not necessarily recorded officially as common property. There is a distinct difference in land use, ownership and transfer of each of the lands. The CEC took notice of this point and sought further clarifications, as well as asked the applicant to file a response indicating the details of land ownership. At this point the representatives of the respondent indicated that the record of customary rights also exist wherein it is clearly stated what this land would be used for. They agreed to submit these before the CEC. The advocate of applicant stated that the land in question is not *shamlat land* which is legally a common property. This is under private ownership but handed over for the herbal plantations in a consolidated manner. The CEC enquired as to whether the names of the owners with details are identifiable, the answer to which was a yes from the applicant side. A question was then raised as to how a panchayat give off private land for the plantation. While the applicants claim that it was private property, the respondents countered it. The CEC clarified that they are only looking at a very limited issue in this case as to whether there was a malafide intention in the transfer of this land, otherwise they are not concerned. The member secretary clearly stated that the CEC is not a disciplining authority. Under normal instances such an application would not have been admitted, but the CEC has done so to investigate whether there was any malafide. The

last hearing in this matter was fixed for 4th August 2008 with the option of submitting additional documents for all parties.

The next matter was Special Leave Petition (SLP) 21322 of 2007 against the final judgment and order dated 26-06-7 passed by the High court of Uttarakhand at Nainital (Uttarakhand) in WP 993 of 2004. The applicants were Rajpal Singh Pundir and M/s Gupta Builders. The CEC held that the matter has not been referred to them by the Supreme Court. They asked for more evidence and more details to verify that the matter was referred by the court to the CEC.

Following this was I.A. No. 2186-2187 filed by Airtech Pvt. Ltd seeking permission for setting up wood based manufacturing unit in Uttar Pradesh. The CEC opined that they are sending their report to the Supreme Court and cannot ask for any relaxations in the stipulated provisions. The CEC will be recommending that the State of Uttar Pradesh make an observation in this case and also asked for more submissions in case the applicant or respondent wanted to file any.

I.A.2244 from Uttar Pradesh was heard next. This application was filed by the General Secretary of Plywood and veneer Manufacturers Welfare Association seeking to reopen their units falling in category IV. The CEC advised the applicants to wait for a month as the Supreme Court is taking a larger view on the matter of wood based manufacturing units in Uttar Pradesh, whereby the units in question might be eligible to reapply. However, the CEC left the decision for the same to the applicant's consideration. The matter was to be listed after four weeks on 4th August 2008.

I.A.1378-80 from Madhya Pradesh was filed by Ekta Parishad seeking enquiry on permission granted for a mining lease/license to a firm/concern of person named Anand Goenka. One of the respondents sought time to file their response. The advocate of another applicant sought permission to file an IA in the same matter as well as documents to assist the case. The CEC allowed for only filing of the documents. The CEC also stated that before a decision on the review petition in this case, can the government take a view on the issue of permission for mining. This is important to determine whether there has been a preconceived decision herein. The CEC sought a response from the state government on the various nexus involved in the matter.

I.A.2062-63 from Madhya Pradesh seeking permission for repair, resurfacing and maintenance of all existing roads passing through sanctuaries and National Parks was postponed. The application has been filed by the State of Madhya Pradesh.

The next case heard was I.A.2245-46 from Andhra Pradesh which was filed by R.Lokanandha Naidu, M/s Tirumala Granite seeking permission for the continuation of the mining lease. The CEC stated that they are sending their report in this case and no reply is needed.

In the following matter, i.e. I.A. 2247 the CEC indicated that they will carry out a site inspection. The issue is regarding a golf course run by Ootacamund Gymkhana club, Tamil Nadu. The application has been filed by the Secretary of the said club. The CEC mentioned that they will not be able to take a view on the matter but only state that is urgent. They will also look at the fact as to whether forest land is involved and if it has gone to the forest bench of the Supreme Court. The applicant opined that they would be fine if the matter is also heard stand alone in the Supreme Court and not before the forest bench.

Another case that was heard was I.A.No.3 & 4 in W.P.No.314/06 from Meghalaya. The application was filed by Meghalaya Adventurer's Association regarding the protection of environment and ecology of an area in question. The advocate for the applicant argued that the area whose protection is being sought from mining activity is the 7th largest cave in Cherapunji. The representative of the state of Meghalaya stated that copies of the application were not served to them. The counsel for the respondent also highlighted that there is an order of the High Court dated 24.7.06 which states that they will not be stay on the mining activity. The CEC asked for a copy of

that order. The applicant stated that they had not asked for a stay on the activity and CEC asked whether this statement can be recorded. The issue was also raised as to whether the CEC has the technical capability of dealing with the issue irrespective of the status of the land in question. A.D.N.Rao, Amicus Curiae in the Godavarman case stated that this matter has been referred to the CEC by the Supreme Court. Further it is important to look at the original writ petition. The CEC asked for the same and also additional details. The matter was listed on 4th August 2008.

The last case of the hearing was Application No. 1099 filed by Goa Foundation alleging illegal mining been under taken by Dr. Hede. In this case the CEC has written to the Chief Secretary of state citing a media report by CNN-IBN Journalist Bahar Dutt. The Chief Secretary constituted an Inquiry Committee and found the allegation to be true as working of the mine did take place after the closure order was issued. However, the pursuant to the inquiry teams visit, the mining has been stopped and penal action in the form of planting of additional number of trees has been undertaken by the mine owner. The CEC appreciated that the violation was detected due to timely intervention by NGO's and the media and also swift action by the State. However, the CEC refused to dispose off the application but rather kept it pending so that no future violation can take place.

Supreme Court's Final Order in the Niyamgiri Mining (Orissa) Case

On 25th July 2008 the final hearing in the case related to mining in Niyamgiri Hills. The forest bench granted permission to M/s Sterlite Industries India Ltd pursuant to its earlier November 2007 order. The order was reserved which was issued on 8.8.2008 and directed that forest clearance for mining be granted to the above company. Presented below is the actual text of the order. For more details on this case please see past issues of Forest Case Update available on www.forestcaseindia.org

I.A. NO. 2134 of 2007

Mining in Niyamgiri Hills, Orissa by M/s Sterlite Industries India Limited.

ORDER

This Interlocutory Application preferred by M/s Sterlite Industries (India) Ltd. (SIIL) is a sequel to our order dated 23-11-07 in I.A. No. 1324 and 1474 in Writ Petition (C) of 1995 etc. In the case of T. N. Godavarman Thirumulpad Vs. Union of India and Ors. And in the matter of Vedant Alumina Ltd. reported in (2008) 2 SCC 222. We need not repeat the context of our Order dated 23-11-07 except to state that in our Order which suggested a Rehabilitation Package and modalities to subserve the Principle of Sustainable Development.

2. For the shake of convenience we quote hereinbelow the suggestions made in our earlier order dated 23-11-07, which read as under:

- (i) State of Orissa shall float a Special Purposes Vehicle (SPV) for scheduled area development of Lanjigarh Project in which the stakeholders shall be State of Orissa, OMC Limited and M/s SIIL. Such SPV shall be incorporated under the Companies Act, 1956. The accounts of SPV will be prepared by the statutory auditors of OMC Ltd. and they shall be audited by the Auditor General for State of Orissa every year. M/s SIIL will deposit, every

year commencing from 1.04.2007 5% of its annual profits before tax and interest from Lanjigarh project or Rs. 10 crores whichever is higher for scheduled Area Development with the said SPV and it shall be duty of the said SPV to account for the expenses each year. The annual report of SPV shall be submitted to CEC every year. If CEC finds non-utilization or mis-utilization of funds the same shall be brought to the notice of this Court. While calculating annual profits before tax and interests M/s SILL shall do so on the basis of the market value of the material which is sold by OMC Ltd. to M/s SILL or its nominee.

(ii) In addition to what is stated above, M/s SILL shall pay NPV of Rs. 55 crores and Rs. 50.53 crores towards Wildlife Management Plan for conservation and management of wildlife around Lanjigarh Bauxite mine and Rs. 12.20 crores towards tribal development. In addition, M/s SILL shall also bear expenses towards compensatory afforestation.

(iii) A statement shall be filed by M/s SILL with CEC within eight weeks from today stating number of persons who shall be observed on permanent basis in M/s SILL including land-losers. They shall give categories in which they would be permanently absorbed. The list would also show particulars of persons who would be employed by the contractors of M/s. SILL and the period for which they would be employed.

(iv) The State Government has the following suggestions on this issue:-

1. The user agency shall undertake demarcation of the lease area on the ground using four feet high cement concrete pillars with serial number, forward and back bearing and distance from pillar to pillar.
2. The user agency shall make arrangements for mutation and transfer of equivalent non-forest land identified for compensatory afforestation to the ownership of the State Forest Department.
3. The State Forest Department will take up compensatory afforestation at project cost with suitable indigenous species and will declare the said area identified for compensatory afforestation as " **protected forest**" under the Orissa Forest Act 1972 for the purpose of management.
4. The user agency shall under take **Rehabilitation** of Project affected families, if any as per the Orissa Rehabilitation and Resettlement Policy 2006.
5. The user agency shall undertake **Phased reclamation** of mined out area. All overburden should be used for back filling and reclamation of the mined out areas.
6. The user agency shall undertake **fencing of the safety zone** area and endeavor for protection as well as regeneration of the said area. It shall deposit funds with the State Forest Deptt. for the protection and regeneration of the safety zone area.
7. Adequate **soil conservation measures** shall be undertaken by the Lessee on the overburden dumps to prevent contamination of stream flow.
8. The user agency should undertake comprehensive **study on hydrogeology** of the area and the impact of mining on the surrounding water quality and stream flow at regular interval and take effective measures so as to maintain the pre mining water condition as far as possible.
9. The user agency should undertake a comprehensive study of the wildlife available in the area in association with institute of repute like Wildlife Institute of India, Dehradun, Forest Research Institute, Dehradun etc. and shall prepare a **site specific comprehensive wildlife management plan** for conservation and management of the wildlife in the project impact area under the guidance of the Chief Wildlife Warden of the State.
10. The user agency shall **deposit the NPV** of the forestland sought for diversion for undertaking mining operation.
11. The user agency shall prepare a comprehensive plan for the **development of tribals** in the project impact area taking into consideration their requirements for health, education, communication, recreation, livelihood and cultural lifestyle.

12. As per the policy of the state Government, the user agency shall earmark 5% of the net profit accrued in the project to be spent for the development of health, education, communication, irrigation and agriculture of the said schedule area within a radius of 50 Kms.

13. **Controlled blasting** may be used only in exigencies wherever needed to minimize the impact of noise on wild life of the area.

14. The User Agency shall undertake **development of greenery** by way of plantation of suitable indigenous species in all vacant areas within the project.

15. **Trees shall be felled from the diverted area only when it is necessary** with the strict supervision of the State Forest Dept. at the cost of the project.

16. The forestland diverted shall be **non transferable**. Whenever the forestland is not required, the same shall be surrendered to the State Forest Deptt. under intimation to Ministry of Environment and Forests, Government of India.

3. By our Order dated 23-11-07n we made it clear that if SILL is agreeable to the suggested **Rehabilitation Package** they were at liberty to move this Court by way of interlocutory application. Consequently, the present I.A. No. 2134 of 2007 has been preferred by SILL.

4. In the present I.A. SILL, State of Orissa and Orissa Mining Corporation Ltd. (OMCL) have unconditionally accepted the terms and conditions and modalities suggested by this Court under the caption "Rehabilitation Package" in its order 23.11.2007. However, CEC has filed its report-dated 24.04.2008. the report contains response/counter suggestions on certain aspects. In our Order dated 23.11.2007 we inter alia suggested formation of SPV for Schedule Area Development of Lanjigarh Project in which we suggested that the stakeholder shall be State of Orissa, OMCL and SILL. We also inter alia suggested that the said SPV shall be incorporated in the Companies Act 1956.

5. CEC in its response has suggested that SPV should work the Niyamgiri Bauxite Mine in a business like manner and that the Mining lease of Niyamgiri may be assigned to the SPV from OMCL. In other words CEC wants that the State of Orissa should participate in the mining operation and it has further suggested that the state of Orissa should transfer or assign the mining lease from OMCL to SPV.

6. There are serious problems in the above suggestion made by CEC. At the outset, it needs to be stated that under our order dated 23.11.2007 we suggested, as a part of rehabilitation package, formation of SPV for Scheduled Area Development of Lanjigarh project. We wanted the State of Orissa to be associated with SPV in order to ensure implementation of proper scheme for the development of the tribal area and in our order it has not been suggested for incorporation of SPV to take over the mines which have been leased out by State of Orissa to OMCL (lessee). The reason is obvious we cannot change leases/MoUs/ Joint Venture Agreement signed between the parties at the earlier point of time which have been approved by the Ministry of Mines, Government of India and other authorities. The object for passing the order dated 23.11.2007 was to strike the balance between development and environmental protection. The Lanjigarh Tehsil in District Kalahandi, are stated in our order dated 23.11.2007, faces abject poverty. At the same time the area is eco sensitive area. We have tried to strike a balance in order to subserve the principal of sustainable development. Under our Order we suggested Rehabilitation Package, under which apart from NPV, SILL is also required to deposit 5% of annual profits before tax and interest from Lanjigarh project or rupees 10 crore which ever is higher. The said project covers both mining and refinery. The amount is required to be deposited by SILL with SPV every commencing from 1.04.07. This condition has been accepted by SILL. Moreover, by reasons of acceptance of suggested Rehabilitation Package, 2090 persons (displaced persons) would get employment as indicated in the charts annexed to the report of CEC. In addition, 2400 more persons would earn income by support services. However, we cannot change the existing structure in its entirety. If we were to accept the said counter suggestion of CEC, namely, that the mines be taken over by SPV then we would be violating the terms and conditions of the joint venture agreement dated 5.10.04 between OMCL and VAL (now substituted by SILL). Moreover, it may be noted that the joint venture agreement dated 5.10.2004 was executed

because the Government of Orissa wanted its Undertaking, namely, OMCL to earn revenue on its own account. Therefore, we cannot direct a complete changeover. Under the joint venture agreement, the OMCL was a lessee from Government of Orissa. We cannot modify that lease. We cannot direct the lease to be assigned by the Government of Orissa to SPV as it would amount to substitution of Lease earlier execute by Government of Orissa in favour of OMCL.

7. CEC has further suggested pre-determined mechanism for price fixation. Under the suggested new price fixation mechanism CEC has suggested as follows:

“The price of the Bauxite Ore in the market is not ascertainable since there is no market for this ore as such of significance, but its price can be ascertained by reducing the normative cost of conversion plus profit from the market price of Aluminium. The CEC also examined the feasibility of determining the price of the Ore by reducing the cost of conservation (plus profit) from the price of Alumina, but did not consider this an advisable option since the price of Alumina shows a great degree of variation from supplier (...).

This method of calculating price is in effect a mirror of image of the Cost plus Return basis adopted for determining tariff.”

8. We may state that price discovery/ mechanism is complicated exercise. Moreover, on account of economic factors, a price variation takes place through out the year. We do not wish to rule out the formula suggested by CEC. Ultimately, as stated in our order dated 23.11.2007, SIIIL is required to deposit 5% of its Annual profits before tax and interest from Lanjigarh project or rupees 10 crores which ever is higher as contribution for Scheduled Area Development. This contribution is made every year commencing from 1.04.07. Under clause (i) of Rehabilitation package SPV has to account for Scheduled Area Development. Further under the said package SIIIL is also required, to contribute rupees 12.20 crores towards tribal development apart from payment of NPV and apart from contribution to the management of wildlife around Lanjigarh Bauxite mine (See: Clause ii of the Rehabilitation Package). While allocating CAMPA Funds the said amount of 12.20 crores shall be earmarked specifically for Tribal Development. Therefore, we are of the view that at pre operational stage, we need not apply the price mechanism suggested by CEC. If at end of the accounting year of SIIIL, CEC finds that the annual profits before tax and interest is depressed by the pricing mechanism mentioned in joint venture agreement dated 5.10.2004 vide clause 2.3.3 (a) then it would be open to CEC to move this Court with the suggested price mechanism in its report. In fact, in our dated 23.11.2007 we have directed that the accounts of SPV to be audit by Auditor General for State of Orissa after they are prepared by statutory auditors of OMCL as well as CEC to inform this Court at end of the accounting year whether annual profit before tax and interest stands depressed for any reason and at that stage we will certainly consider the price mechanism suggested by CEC in its report placed before us.

9. Fore the above reasons and in the light of the affidavits filed by SIIIL , OMCL and the State of Orissa, accepting the rehabilitation package suggested in our order date 23.11.2007 we hereby grant clearance - to the forest diversion proposal for diversion of 660.749 ha of forest land to undertake Bauxite mining on Niyamgiri Hills in Lanjigarh. The next step would be for MoEF to grant its approval in accordance with Law.

10. I.A No. 2134 of 2007 is disposed of accordingly.

Dated: 08-08-08

Compensatory Afforestation Fund Bill, 2008: An Article

Institutionalising Compensation for Lost Forests

In May this year, the Indian Parliament saw a very interesting Bill introduced in the Lok Sabha. Titled as The Compensatory Afforestation Fund Bill, 2008, it seeks to institutionalise and legislate a mechanism to collect and manage the huge amounts of money collected from projects cleared under the Forest Conservation Act (FCA), 1980. Section 2 of the FCA sets out a procedure under which permission needs to be sought from the Union Ministry of Environment and Forests (MoEF), in case any activity or project seeks to divert forest land for non-forest use. In official and popular parlance this procedure has come to be known as forest 'clearance'.

A little over a decade back, this procedure saw judicial intervention; on 12 December 1996 the Supreme Court of India passed an overarching order through which the definition of forests was expanded from officially declared forest land to its dictionary meaning. This implied that an area in the country which satisfied the dictionary meaning of forests would come into the purview of the Forest Conservation Act. This order was passed under the *T N Godavarman Thirumulpad v/s Union of India*, a case still ongoing in the court.

Over the last 12 years, judicial activism in the Godavarman case - which is also known as the 'forest' case - has led to the passing of several other interim orders and judgements, both project specific as well as those setting the policy discourse around forest management. One such critical judgement was issued by the Supreme Court on 26 September 2005, which to a large extent created a basis for the draft Bill to be introduced in Parliament. The judgement raised a question. It asked whether "before diversion of forest land for non-forest purposes ... should not the user agency of such land be required to compensate for the diversion? If so, should the user agency not be required to make payment of the Net Present Value (NPV) of such diverted land so as to utilise the amounts so received for getting back in long run the benefits which are lost by such diversion?"

In other words, whatever the value of the benefit from the forest that is taken away by a new project, the promoters would need to compensate this loss.

Establishing the CAMPA

The 2005 judgement contained the essence of the discussions and decisions which had taken place in the court room and in the corridors of bureaucracy since early 2000. That year, the MoEF had provided to the court data on cases approved for diversion of forest land - for which compensatory afforestation was required - and also the funds to be collected and utilised from project promoters. The Ministry had also provided the actual afforestation figures and funds collected, and the Court noted a shortfall of 36 per cent in afforestation. The court also noted that although the states had received funds from project authorities, a very large number of them had spent less than 50 per cent or less on afforestation. Therefore, the court demanded to know why the money collected had not been spent on carrying out afforestation.

Once the states had filed their responses, it became clear that project authorities or 'user agencies' had paid the state governments for compensatory afforestation, but the utilisation of this money was incomplete. As a result, the MoEF was asked to develop a scheme, wherein payment would need to be made by the concerned agency seeking diversion of forest land and the state government would alongside need to make land available for afforestation. The MoEF submitted its scheme in March 2002. Following detailed deliberation on the scheme, the stage was set for setting up of the Compensatory Afforestation Management and Planning Authority (CAMPA) which would manage the

funds received as part for payment of compensatory afforestation, and Net Present Value (NPV) for the diversion of forest land. (see [here](#)).

In April 2004, an order had been issued for the setting up of the CAMPA, the validity and scope continued to be debated in the Supreme Court. Some of the final recommendations of the 2005 judgement justified the reasons both for setting up of the CAMPA as well as why all payments need to be made to this centralised body rather than the state governments. Many states had actually demanded that payments be made to them, especially as the 'forest' sector is in the concurrent list of the Constitution, giving both the Centre and the States jurisdiction. But the 2005 judgement held, "we hold that the natural resources are not ownership of any one State or individual, [the] public at large is its beneficiary and, therefore, the contention ... that the amount of NPV shall be made over to the State Government cannot be accepted."

Until May 2006 there was no conclusion on the matter and the CAMPA had not been set up. Therefore, on 5 May 2006, the Supreme Court directed that an ad hoc CAMPA be constituted, and all the money collected by States and Union Territories on behalf of the CAMPA should be transferred to this ad hoc body. The 2008 Bill in Parliament observes that following this order, over Rs.5000 crores have since been placed under the ad hoc CAMPA, and deposited in nationalised banks.

Inadequacy of current approach

While the nitty-gritties of the Bill are important, along with the fact that state governments can now seek money from the authority for natural regeneration, afforestation and conservation measures in the state; there are some critical trends that need to be understood. The introduction of the 2008 Bill in Parliament towards the management of the huge amounts of money is symbolic of a fast-strengthening monetised regime of management for the loss of natural forests. The notion of 'compensation' is itself deeply disputed within the conservation and livelihoods discourse. There is a larger issue of whether the intrinsic value of an ecosystems can ever be measured or the loss of livelihoods quantified. Spiritual and cultural associations are clearly out of this economic paradigm.

There are four factors contributing the inadequacy of this approach:

- MoEF has been granting permission for conversion of forest lands at a furious pace of late. Of the 11,40,176 hectares of forest land cleared for conversion this 1980, more than a quarter - 3,11,220 hectares - has been diverted in the last four years (See [here](#)). One begins to understand now why this has become known as the 'clearance' process; permission is hardly ever denied, even for projects that would have huge impacts.
- The NPV determined for compensation is invariably very low compared to the profits sought by project promoters. Not too long ago, Rs.300 crores as compensation was not a deterrent for National Hydro Power Corporation executing the construction of the Lower Subansiri Hydro Electric Project in Arunachal Pradesh.
- Project promoters routinely ask for NPV amounts to be waived or re-determined. Every month there are several orders passed in the court asking the project authorities to pay the requisite NPV. At the same time there are arguments by Public Sector Undertakings (PSUs) and private players to re-determine, reduce or wave off the NPV costs (see [here](#)).
- The issues around environment impacts invariably remain unaddressed. The latest in the list is the permission granted to Sterlite Industries in the controversial Niyamgiri Mining case, Orissa. The court in its final order dated 8.8.2008 has stated that, "M/s SILL shall pay NPV of Rs.55 crores and Rs.50.53 crores towards Wildlife Management Plan for conservation and management of wildlife around Lanjigarh Bauxite mine and Rs. 12.20 crores towards tribal development. In addition, M/s SILL shall also bear expenses towards compensatory afforestation." The impacts of the project and its tarred history are internationally known today, and the above mentioned amounts are a paltry compensation for the loss of a

extremely fragile ecosystem and the cultural and livelihood of the Dongaria Kondh tribals of the area (see [here](#)).

Encroaching beyond compensation

There is another deep malaise in the Bill. While the stated objective is afforestation, in important ways the Bill encroaches - an apt pun, perhaps - into territories that are clearly outside this objective. For instance, the Bill specifies that funds collected by CAMPA will be used for the implementation of the Green India Programme, a massive afforestation exercise proposed for the degraded forest lands in the country. But apart from CAMPA providing part of the funds, it is also proposed that the rest of the funds will be "mobilised from the market, development partner associations, carbon credits, income from tree felling at ecologically appropriate intervals and to augment funds, and service debts."

These are hardly within the realm of afforestation itself; instead these measures introduce market mechanism and public-private partnerships to the management of forests in the country. It would not be an exaggeration to state that market instruments will look at commercially viable species, trade and profit interests embedded within the noble agenda of greening India. Any Bill that explicitly set out to do that would face tremendous opposition from conservationists, local communities, and many other quarters, but with this intent now being pushed under the umbrella of compensatory afforestation, some of that opposition is sought to be diluted.

It is almost a double whammy. First, the country loses vast tracts of natural forests to industrial or infrastructural (supporting industry) take-over. Then the loss of these pristine environments are sought to be 'compensated' through small amounts spent on afforestation of degraded areas. And to cap this off, market mechanisms will be explored to profit from even this afforestation.

The Bill has been referred to the Parliamentary Standing Committee on Science & Technology, Environment and Forest headed by Dr V Maitreyan (an AIADMK Rajya Sabha MP from Tamilnadu) for its examination and report (see [here](#)). What logic this esteemed body will follow remains to be seen.

And finally, here's a quick look at the proposed governing body of CAMPA, as envisioned in the Bill - apart from token representation outside government, it is a who's-who of bureaucrats who should have protected the forests in the first place, but are instead now being asked to watch over 'compensatory afforestation'.

PROPOSED GOVERNING BODY OF CAMPA IN THE 2008 BILL

Minister of Environment and Forests- Chairperson;
Minister of Finance - Member;
Minister of Science and Technology - Member;
Minister of Rural Development - Member;
Minster of Panchayati Raj - Member;
Deputy Chairman, Planning Commission- Member;
Secretaries of the Ministries of Environment and Forests, Finance, Department of Expenditure), Science and Technology, Rural Development, Panchayati Raj, Government of India - Members;
Director General of Forests and Special Secretary, Ministry of Environment and Forests, Government of India - Member;
Additional Director General of Forests (Wild Life) Ministry of Environment and Forests, Government of India - Member;
Financial Advisor, Ministry of Environment and Forests, Government of India - Member;
Principal Chief Conservator of Forests, one from six regions, to be nominated every year by the Ministry of Environment and Forests on rotation basis - Member;
Inspector General of Forests (Forest Conservation), Ministry of Environment and Forests, Government of India - Member;

3 eminent non-government organization experts, one each in the field of forestry, wildlife and ecology, for a period of two years subject to not more than two consecutive terms - Member.

The Bill also suggests that the Central Government may appoint an officer of the rank of an Inspector General of Forests as the Chief Executive Officer who shall be the Member-Secretary of the Governing Body and the Executive Body.

This article appeared in India Together (www.indiatogether.org). It can be viewed at <http://indiatogether.org/2008/aug/env-campa.htm>. The views expressed in the article are of the author and not of the editorial team of Forest Case Update.

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