Conference on Forests & Common Lands: Rights, Conflicts, FRA & PESA
18th December 2012
Background Note

Highlights

- The problem and intense resource conflicts afflicting the uncultivated half of India
- Acquisition of the forest and other common lands for various purposes
- Overlapping mandates of the FRA and PESA
This conference on “Forests and Common Lands: Rights, Conflicts, FRA, and PESA” aims to focus attention on how the tribal and rural communities, with tenuous rights on forests and other common lands, face increasing deprivation of their livelihood resources despite the inherent constitutional and legal guarantees under the Forest Rights Act and PESA. The conference presentations from the tribal states and an overarching study highlight the dimensions of the problem and intense resource conflicts afflicting the uncultivated half of India. Acquisition of the forest and other common lands for various purposes has not yet received the attention of the policy makers despite the raging debate on Land Acquisition Bill. A set of forward looking policy options and changes in the implementation structures will be presented that could help in transforming the livelihoods of the poor, securing investments on fairer terms, and resolution of conflicts.

This conference will convene government leaders, tribal and community representatives, civil society, and the scholars who have been analyzing these issues for a long time. Participants will identify the options for reform that help in ushering in a fairer and inclusive path of development in some of the poorest areas of the country.

**Background**

Widespread protests against large scale land acquisition for development projects have become a major political issue in the country and new Land Acquisition, Resettlement & Rehabilitation Bill is under consideration of the Parliament. It is meant to replace the 1894 Land Acquisition Act. Simultaneously, efforts appear under way to revitalize implementation of the Forest Rights Act and to finally ensure implementation of the progressive Panchayats (Extension to Scheduled Areas) Act, (PESA) 1996 providing for self governance and management of community resources by village assemblies in tribal areas. The government is also in the process of radically revising the Mining and Mineral Development and Regulation Act which for the first time would treat local people to be displaced as major stakeholders entitled to a share of benefits from the mining operations. All these developments present an opportunity where tenuous gains made in recognition of tribal and other forest dwellers land and forest rights could be consolidated and tribal and other communities get the chance to determine the nature of development in their areas.

The Ministry of Tribal Affairs and the Ministry of Panchayati Raj are responsible for the overlapping mandates of the FRA and PESA and under the current leadership have indicated
their commitment to ensure the implementation of these Acts. The positive signal from the political leadership combined with the strengthened and energized tribal and other social movements present an opportunity for the realization of real rights of the tribal and other poor communities.

**Purpose and Scope:**

Four set of studies - strategic analysis of forest and common land acquisitions in nine states, estimates of potential land acquisitions, a numerical and graphical data base of conflicts in forest (and other common land) areas and an over-arching analysis of forest and revenue laws provide a firm foundation to understand and analyze the phenomenon of forest and common land acquisitions that undermine peoples’ rights and livelihoods. Sharing these studies with a broader set of participants, including the policy-makers, will help in determining the right set of reforms that are required for full realization of the intent of FRA and PESA.

**Expected Outcomes:**

1. Increased knowledge base and information on the unprecedented scale of forest (and common land) acquisition;
2. New understanding of violation of tribal and community rights due to land acquisitions and the extent of conflicts it is engender in the rural areas;
3. Policy options for strengthening of FRA and PESA to enable the protection of tribal and other communities’ rights on forests and common lands; and
4. Establishment of a mechanism to monitor progress and respond to violations of tribal and community rights.
AGENDA
## Conference on Forests and Common Lands: Rights, Conflicts, FRA and PESA

### 18th December 2012

**Agenda**

<table>
<thead>
<tr>
<th>Time</th>
<th>Session</th>
<th>Chair</th>
</tr>
</thead>
<tbody>
<tr>
<td>9.00</td>
<td><strong>REGISTRATION</strong></td>
<td></td>
</tr>
<tr>
<td>9.30</td>
<td><strong>WELCOME AND OVERVIEW SESSION</strong></td>
<td>Dr. Sudershna Iyengar, Vice Chancellor, Gujarat Vidyapeeth</td>
</tr>
<tr>
<td></td>
<td>Welcome Address: Mr. V. B. Eswaran, Chairman, SPWD</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Objectives of the Conference: Ms. Madhu Sarin, Fellow, RRI</td>
<td></td>
</tr>
<tr>
<td></td>
<td>National Overview: Dr. B. D. Sharma, Bharat Jan Andolan</td>
<td></td>
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<tr>
<td></td>
<td>International Overview: Arvind Khare, Executive Director, RRG</td>
<td></td>
</tr>
<tr>
<td>10.30</td>
<td><strong>TEA</strong></td>
<td></td>
</tr>
<tr>
<td>11.00</td>
<td><strong>TECHNICAL SESSION I</strong></td>
<td>Samar Singh, Former Secretary, Government of India</td>
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<tr>
<td></td>
<td>Forest and Common Land Acquisition: Lessons of Case Studies from 8 States, Viren Lobo, Executive Director, SPWD</td>
<td></td>
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<tr>
<td></td>
<td>Estimated Forecast of Forest and Common Land Acquisition, Dr. Jagdish Purohit, Program Director, SPWD</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Discussant, Richard Mahapatra, CSE and Dr R Sreedhar, MM&amp;P</td>
<td></td>
</tr>
<tr>
<td>12.30</td>
<td><strong>LUNCH</strong></td>
<td></td>
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<tr>
<td>1.30</td>
<td><strong>TECHNICAL SESSION II</strong></td>
<td>Pradip Prabhu, Campaign for Survival and Dignity</td>
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<tr>
<td></td>
<td>Geographical Dimensions of Land Conflicts, Madhu Sarin</td>
<td></td>
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<tr>
<td></td>
<td>Undemocratic and Arbitrary: Control, Regulation and Expropriation of India’s Forest and Common Lands, Shankar Gopalakrishnan</td>
<td></td>
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<td></td>
<td>Discussants, K. B Saxena, CSD and Ritwick Dutta, LIFE</td>
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</tr>
<tr>
<td>3.30</td>
<td><strong>TEA</strong></td>
<td></td>
</tr>
<tr>
<td>4.00</td>
<td><strong>LESSONS FROM INTERNATIONAL EXPERIENCES AND WAY FORWARD</strong></td>
<td>Arvind Hare</td>
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<td>Impact of Forest Tenure Reforms in China, Xu Jintao, Professor, Peking University (China)</td>
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<tr>
<td></td>
<td>Protection of Indigenous and Other Community Rights in Brazil, Luis Joels, Former Director, Brazilian Forest Service (Brazil)</td>
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<td>Common Property Regimen with special reference to Mexico, Leticia Moreno, President, International Society for the Study of the Commons (Mexico)</td>
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<td>Minister of Tribal Affairs, India</td>
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SPEAKERS

1. Welcome Address: Viren Lobo, Executive Director, SPWD
2. Objectives of the Conference: Ms. Madhu Sarin, Fellow, RRI
3. International Overview: Arvind Khare, Executive Director, RRG
Viren - Good morning everybody, welcome to the Conference. This particular conference relates to a study done by SPWD with support from Rights Resources Initiative. The various sessions would be covering different aspects of what the findings are; basically the whole issue related to the increasing amount of land which is being demanded place as a result of the development processes. We have tried to understand what it means in different sectors and also in different states across the country. The implications of which we will be discussing across the day. Mr Eswaran will be chairing the first session; I hand over the mike to him.

V.B. Eswaran - Good morning ladies and gentlemen let me welcome you all on behalf of SPWD and RRI to this “Conference on Forests and Common Lands: Rights, Conflicts, Forest Rights Act and Panchayats Extension to Scheduled Areas Act.” This basically is about issues related to natural resources and livelihoods which are in practice. In reality, common lands, in different countries are governed by different kinds of laws and practices. In India, the traditional practices about forests are governed by forest laws dating from the late 1800s and into the twentieth century. The laws are a part of a major policy initiative by the government of India in 1990 which mandated Joint Forest Management i.e. whether they were one kind of forest or another kind of forest the idea was that management would be worked out jointly with communities. In practice however, because of the kind of forest management setup we have in this country, the real transfer of the management rights and responsibilities to village communities through joint committees does not quite work out accept in a few places. One of the Ministers in the Central Government in the Ministry of Environment and Forest way back in 1993 in an address to the Indian Institute of Forest Management annual meeting observed that forest management in India has not departed from its colonial legacy. The officers are doing management irrespective of the Joint Forest Management Policy or whatever else, irrespective of the constitutional provisions in the case of Scheduled Areas (for example the 6th Schedule in the case of North East) and irrespective of local traditional practices of Forest Management. As far as common land go in India, the position is that they are looked after as a legal responsibility by the District Revenue Administration headed by officers who
are called collectors in India or deputy commissioners in some places. Each state has its own Land revenue laws. For instance in the old Bombay which later split into Maharashtra and Gujarat in the 1870s there was a Bomaby Land revenue code which has been the basis for settling what are common lands for what purposes, what are private lands and so on and so forth. But in practice though common lands in normal understanding of the language should mean lands used for common purposes by the local communities. In practice this does not quite operate that way, government has a tendency to allocate common lands for purposes unconnected with the local community's interests and needs. In other words the old traditional rights which people had, get brushed aside particularly in the tribal areas, this has meant injustice from the colonial days to the local tribal communities and their way of managing local forests and local common lands and so on and deriving innumerable benefits from the products and productive potential of those resources. This was an injustice from the days of the colonial regime. The FRA in India which came in a few years ago has been an attempt to redress that injustice. In India there has been a rather late development as compared to some of the other area which used to be under British rule like Canada. Many years ago I met a Canadian lawyer who had come to India who was telling me that the Canadian government has taken a number of steps to redress the injustices done in the early years of settlement in Canada from Europe. Injustice done to local tribal communities. Anyway as far as India is concerned it is better late than never. But the way it has been implemented leaves a lot to be desired. That is why we have the title “Rights, Conflicts, FRA and PESA”, PESA is a piece of legislation of the late 90s which mandated that any use of common lands other than what the communities were using them for, would need the consent of the Gram Sabha; the Gram Sabha is the village general body so to speak but in practice in many states this been swept aside or you know on paper it looks that community has agreed but in reality when one goes down to the field, it is just question of fudging a whole lot of papers. It is that kind of situation which has led to the expropriation of the community rights on their local natural resources from which they derive a whole lot of benefits for their livelihoods. There have been some studies, not all over the country but in some places certainly; I recall one by Dr. K.C. Malhotra, who has studied some of the forests in Southwest Bengal and as I remember the forest products there were over 200 of which around 80% was used by local people throughout the year or in particular seasons for their homes or earning some income through sale of forest products and so on. Macho you can correct me if I go wrong I don’t think they have studied this at all. We have a Forest Research Institute at Dehradun which is a part of the forest department’s empire. Years ago I suggested to the head of it Dr. Rai, that this would be a good idea to study, he agreed but as far as I know and Madhu confirms that it has not been done, so where do we go? I think these are the kinds of issues which will turn up today in the course of our conference. I don’t want to take any more of your time and I am looking forward to learning a lot from the conference today not only in India but also in other countries from where we have representatives whom I welcome very heartily. May I now handover the mike to Madhu who will tell us about the objectives of the conference.

Madhu - Welcome to everybody and particularly to our guests from China and Brazil. We are very grateful and very honoured that you made the long journey to be with us and we are looking forward greatly to your inputs and sharing experiences from your countries. As Mr. Eswaran has already said the primary objective of this conference is to focus attention on issues related to forests and common lands
and in view of the very vague, legally not that strongly articulated rights of forest dwelling and other tribal communities on forests and common lands. The nature of livelihood and other crisis which are beginning to extend across the country, the nature of conflicts, we have had this massive debate and discussion on new Land Acquisition Bill in terms of the revisions to the 1894 Land Acquisition Act but that is essentially a concept focused on private lands. Though it does have a provision to provide for compensating for the rights recognized under the FRA, the community forest rights recognized under the FRA but in a very dangerous way, because it’s not at all clear on what basis and why these rights should be easily acquired and compensated by the government in this manner. So, as the title of the conference says, the focus is on common lands both forests and other common lands, the conflicts which are surrounding them all over the country and how the two very important laws related to the rights of tribal communities, the Forest Rights Act and PESA, Extension of Panchayati Raj to Schedule Areas Act, how that though these two laws their interface with these conflicts and how by ensuring or working towards better implementation of these two laws may be some of these conflicts can be addressed. I’ll not try and preempt what the other sessions would be dealing with but essentially the conference is going to present four different studies which both RRI and SPWD have supported and undertaken and the findings of those studies. There are going to be four sessions, this is the first one. In the next session after tea the case studies which SPWD has undertaken and the estimation of the extent of land which is expected to be taken over in the next 10-15 years will be presented to give an idea of the nature of the conflicts that are likely to generate. Then in the afternoon we have another two sessions. You have the programme so I will not go into that.

Thank You.

Arvind - Good Morning. The title of my presentation is the ‘Large Scale Land Acquisition’ which is the term which is widely used across the world which is also known as the Land Grab which I’ll come to in a few minutes and I am presenting an international overview but it also
covers the situation in India to some extent. The way I have crafted my presentation is, I’ll make a brief introduction as to what this Large Scale Land Acquisition is all about, then I’ll be talking about what is driving this large land acquisition what is its scale, in terms of how much land is involved, what is the impact on the communities and the populations which are involved in it, what is the relationship between the phenomenon of land grab and the recognition of the rights of communities, then we will look at India’s position in the world and this entire unfolding drama about Large Scale Land Acquisitions and then we will talk about what the Development logic which is a rights based development logic is. So, let’s look at when we talk about Large Scale Land Acquisition what we mean by it. Now, primarily this is long term leases 25-99 years. Occasionally even the ownership rights are transferred wholesale to a party which is not from that particular country. Now the second one which we are to take with a pinch of salt is all the land which is being transferred to people outside the country of more than 1000 hectares. Now, this is mainly a researcher’s notion of what is a large scale because in some of the places even 50 hectares, 100 hectares which have been acquired can create havoc with the local communities but that’s how they are tracking this whole phenomenon. Now, we know that it’s not a new challenge for the rural poor because their land resources have always been under attack right from the time of the colonizers, the colonial rulers till present day but what has happened that since the year 2000 the transfer and sale of rights to forests, marshes, range lands, all kinds of common resources including agricultural lands to the companies and elites has accelerated very significantly in fact and we will very soon will try to grasp what those numbers are, means how much and has really been transferred to different sets of entities taken away from the communities and given away to companies and investors and other sovereign wealth funds. Now, this new sense of urgency for the investors comes from a number of different kinds of crisis and motivation (climate change, global economic crisis, food price shops, demographic growth and political instability, land being a world class investor class asset) so we will look that particular phenomenon also in a few minutes but this actually peaked in 2009 in that particular year itself the world bank estimated approximately 60 million hectares of land deals were announced. Now 60 million hectares just to get a comprehension of what that land is, is the size of Rajasthan, Punjab and Haryana combined. That’s the size of the land which was really transferred went through number of deals in the year 2009. In itself land grab accentuates rather than mitigate poverty. If we look at the phenomenon, historically whenever the concentration of this kind of land resources has taken place it has led to a number of conflicts across the world. Let me first clarify the term what is Land Grab itself? Now we call any transaction of land which
does not recognize local people’s rights to the land, violates the human rights, fails to take the consent of the community is not based on thorough social, environment and economic assessment win, win situations which take into account the risks involved. When the process of this transaction of land between one party and another is opaque, is not clear, people don’t understand what the contractual obligations are and the binding commitments are not made and there is absence of an independent effective and timely oversight of this process and of the conflict resolution mechanism as to where the aggrieved parties can go to. If these conditions are not met we talk about it as a land grab. Now in the next three slides I would try to make an assessment what is the environment and economic assessment? What is it that is driving this phenomenon of Land Grab. Now the chart which is in front of you is developed by Jeremy Grantham and essentially shows the GMO Commodity Index. This is based on the 33 commodities prices and it is from almost 1900 to year 2010-2012. Now what this graph shows, we need to just get into it little more deep in it. What it shows is that from the 1900s till about year 2000 on an average the commodity prices had been falling at the rate of 1.2% per year, except for 3 different occasions which were big cataclysmic events in the world. So like there was a hike in the price of the commodities during the World War I, there was a hike in the price of commodities during the World War II, there was a hike the price of commodities during the oil shock of the 70s. But what we are witnessing since year 2000 without any global major event the commodity prices have begun to rise and they are staying there. Now this is a new norm, so this is reversing the trend which the world had witnessed for the last 90 years, in fact almost last 100 years; and now the commodity prices are on the rise. The secular trend shows that there might be fluctuations seasonally or one year to another, but if you look at the overall trend the commodity prices are increasing and they are going to continue to increase in the coming years this is the part under the circle in which I am trying to say that the demand for commodities far exceeds the supply of commodities and therefore the prices will remain high there is no choice. Now let’s look at the second set of slides. This is, you might call it a speculation on my part but let me try to wade through this. Firstly, now it is very clear that the money is not with the governments. Governments are bankrupt everywhere, whether they are developed country governments or developing country governments they don’t have the money. Money is with the investors, money is with the private sector, money is with completely different entities than the governments. Now the developing world is tired of being poor and left behind and they have now given up hope on this Washington consensus, if you behave properly, if you do things as under certain conditions then you get money from the world bank and from the developed countries and you would be able to move on the growth path very quickly. Now that the world has given this up, the developing country governments now looking to modernize their economies through an old inequitable and
unsustainable model which I will tell you in a few seconds, but just to know where the money is going to be invested and what is the size of that money is important and these figures which I am presenting to you is not from us but it’s from several other entities who have made those calculations; so there is going to be an investment of approximately 4.9 trillion dollars in agriculture in the next 20 years, approximately 38 trillion dollars in infrastructure and in the extractive industries will be something like 140 billion tons per year of mining through the year through mining by 2030. Now as you can see the estimates are by FAO, OECD and by UNEP. Now, this is huge investment and this is what is being eyed by the developing countries. They have given up that if we follow good governance path if we do xyz then we will be on the growth path, now they are eying that particular investment and therefore what is it that they are doing. They are basically bulldozing their forest and common resources and displacing people in the hope that these investments will create jobs, infrastructures, service sector and tax havens. Now they have a clear choice to make, they can invest in their own people, the rural people and see that they are going to become more developed. But the developing country governments now really are not going to follow the path which was prescribed by the developed world; they want to now attract this particular investment thinking that this is the path which will help them create jobs and lead their country to prosperity. The fact of the matter is that this is not going to create jobs for them and they have a clear choice of either investing on their people or using the bulldozer, clearing out the forests and the common lands. Unfortunately, at the moment the bulldozer is winning. The host governments, the ones who are encouraging these land deeds are actively inviting investors, they are really now creating a buyer’s market in their countries. So the deal in fact heavily now favours these investors. They are given preferential lease breaks rates and therefore in market terms therefore land and water are cheap. They are given tax breaks, they are told that the land is unencumbered and if it is not unencumbered they provide them the security promises, paramilitary forces are deployed to keep the local people away and a complete deregulation of environmental and social regulations so that the investors can do what they wish to. They are as desperate as to get these investor to their country. So there is a perception of abundant, empty, underused marginal lands this view is also implicitly endorsed by the world bank and propagated by the host countries infact the term where they say that these are the marginal lands and underused lands is straight derived from the
Government actually reduces the value of land owned by them, undermining the value of the land to the communities. These negotiations between the countries which are trying to ease the playing ground for the investors from outside, is largely supported by the embassies and their foreign ministries of these purchasing country investor governments which are now being dealt with in Bilateral trade negotiations as it were. So there are these various set of drivers, we know that the commodity boom, commodity high price will continue to be a phenomenon in the coming years and therefore the investors want to invest in those commodity exploitation, agribusiness and other sets of things. They are looking for the land therefore and therefore the host governments who have now given up the development agenda which they have pursued for the last 20 years in a fruitless pursuit of development now are really eying these investments and easing the way so that investors can purchase this particular land in their country. Now what is the size of this whole Land Acquisition that we are talking about? Different estimates are being made, ILC is the International Land Coalition which is actually tracking these investments across the world; they made an estimate in 2012 that records approximately 203 million hectares worth of land deals either approved or under negotiation between 2000-2010. Then Oxfam came out with a report just last year. They have recorded approximately 230 million hectares of land sold or leased since 2001 and most of them, in fact the highest number of deals have taken place from 2008 onwards. And as I earlier mentioned World Bank estimates that in 2009 alone there were deals worth about 60 million hectares of land. Now transfer of rights means this kind of a transfer of rights the 60 million hectares in one year is the scale of Saudi Arabian one decade. There is some attention being paid to it, I would say it is still wishy washy International attention to voluntary guidelines which have been approved by various countries under the leadership of the FAO, the voluntary guidelines on the rights of the community that is rights of communities on forest land and water but those are voluntary and therefore it’s not enforceable anywhere and the scale which we are talking about is so staggering that they are bound to leave a footprint in the countries though it is still not attracting the kind of attention it needs to attract in the world. Let’s look at the human scale and I don’t have let’s say the figures from everywhere or the research which has been done so far in the world doesn’t provide us the information on this but we do have some specific examples. The most glaring example which one can think of, in the year 2009 the first shipload of rice produced in Ethiopia was loaded on a ship which left for Saudi Arabia. Now that
particular rice was produced on land which was acquired by Saudi Arabia Sovereign Wealth Fund. The rice was produced and straight away went to the port to be sent to Saudi Arabia. That was also the year 2009 when 25 million Ethiopians were being given food aid by the World Food Program. Now this is most unbelievable kind of an episode; the rice produced in that country is going to Saudi Arabia; that country itself is receiving food aid by the rest of the world and that is being distributed by the World food program. Now throughout the 2000s approximately 4.525 million Ethiopians annually are dependent on the food aid which is provided by the International Community itself. And Ethiopian government continues to enter into these deals with the foreign companies including Indian companies which I will talk about in a minute and while there are about 4.525 million people in Ethiopia who continue to depend on this particular food aid and as the research done by International Food Policy Research Institution shows there is a direct correlation between access to land rights and levels of hunger. In the Gambella region, now that’s the epicenter of Land Grabs in Ethiopia, the government is implementing a process which they have named as Villagisation to resettle 180 thousand people who are essentially the farmers, fisher folk and pastoralists, who have been removed from their land which has been given over to the foreign companies. In South Sudan the surface areas of the entire provinces has been promised to the foreign companies and the investors, almost all of it. These being kinds of deals which are being entered on today’s date is not going to affect only the population which is existing there but it is also going to affect the next to next generation because these deals are good for 25-99 years. Now coming back to the topic of the Conference, so what is the relationship of all that is happening in different countries and what is the relationship with the question of rights. Now I want you to first look at the right side of your screen which essentially tells the forests tenure distribution; the blue line in that is the amount of forest which is claimed to be owned by the government themselves where they have not recognized the rights of their communities or the right of anyone for that matter, so if you will see in Africa the government’s claim to own 98% of the land. In Asia, again look at the blue line, they claim to own about 70% of the forest area. In Latin America, this is about between 40-45%, so we can clearly see the governments, where they have recognized the rights of the communities and where they have not recognized the rights of the communities which are progressing faster, which are not. Now look at the left hand side of your screen, the highest amount of land acquisitions which are taking place are in Africa where the government claims to own virtually all land, the next highest amount of land acquisitions are taking place in Asia where the government claims to own 70% of the land and the least amount of land transactions which are taking place are in Latin America where the government claims just about 40-45% of land to be owned by them and they have transferred the rights to the communities on a massive scale and later on sometime today our Brazilian friend will tell us what is the amount of land transfers which they have made to the communities. This is extremely important to recognize that the absence of recognition of rights on the land, forest and common resources is at the heart of this Land Grab phenomenon. Now what is the outcome of this entire transfer of resources from the communities to the investors, means obviously there is a destruction of local livelihoods, displacement of communities we have already looked at the situation in relation to food crisis in Ethiopia and probably further impoverishment of some of the poorest people. It will also have very
negative impact on the forest itself, the whole world is talking about the forest biodiversity stock that will erode, soil fertility will erode, biodiversity will not exist and the fresh water resources will get depleted. And obviously, there are going to be huge conflicts which are already starting to take place. Not only conflicts for the remaining piece of land but there will be conflict for, for even the lands which has already been dispossessed from the communities. There will eventually be the loss of the legitimacy of the state itself, now I do know that lot of you know about what happened in Madagascar. The government of Madagascar entered into a deal with Daewoo company of South Korea and they promised virtually almost half of the land of Madagascar to that company. The reaction was so quick and so fast and so furious that the government was overthrown; and since then no election has taken place in Madagascar. So there is no legitimacy of state if you enter into that kind of a deal, it will create conflict not only with your own communities but other interest groups as well. The investors who are at the moment having really a good deal they are also in serious danger of what we call as fag tail risk. Fag Tail Risk, just to explain to you is: In the whole cycle of investment there will come a time that a major event will take place which will wipe out your entire investment. Now remember the case of Vedanta, remember the case of POSCO in India itself, now if you do not really start by respecting the rights of the people that’s where you are going to end and therefore the investors who are at the moment really having a good time, probably will also suffer. Now how does India match up in this whole business of how much rights they have recognized and how much is owned by the communities and how much is claimed by the government. The 52% of the land is claimed to be owned by the government is not the entire picture for India, because if you look at the third column which is designated for communities and IPs (Indigenous people’s) this 31.5% is essentially the land which is joint forest management in which, in fact there is no transfer of rights to the communities. There is transfer of benefits to the communities, some of the benefits but there is no transfer of rights. So in effect we are talking about 83% of the land which is owned by the government and only 2.4% which is owned by the communities and the individuals and that is under the Forest Rights Act. The firms and other individuals own approximately 14% of the land and this we can talk about a little later because I think lots of people are very confused on which individuals and companies own this. Basically I am saying that in terms of actual transfer of rights, it is just 2.4% to the tribal communities and individuals under the Forest Rights Act. As compared to, let’s say whole of Asia minus China which I’ll talk about in a second that is a poor record because other people have done better than this. We are almost comparable to countries like Indonesia, Cambodia maybe Vietnam and Nepal we will talk in a second slightly differently. China which has
transferred much greater amount of tenure rights to the households. If you take China, then now the government is claiming to own just about 39.2% of the forests lands and the communities have the rights over 60.8% of the forests lands. Now that’s a very different situation than what we are talking about in India. Nepal the 26-29% which is mentioned as designated for communities and IPs enjoy a much greater degree of rights on that than say what is mentioned in the row for India in that particular case. In fact the communities have completely transformed the landscapes of mid hills of Nepal by managing those forests for last 20 years, the remaining portion of the forest is either in Terai which is very disputed region or its in the Himalayan region where the communities are mostly the ethnic groups who practice forestry in a very different manner than what the Community Forestry Provision allow. So this is the situation where in India about 80% of the land, forest land being claimed by the government. Now where is the priority in the land allocation? This is again very important because you will find India in a very different kind of a company here. Liberia, what is allocated or owned by the communities is about 1 million hectares of land and what is confirmed as negotiations for concessions to the companies and to the investors is about 5.8 million hectares of land, this includes the latest case of the transfer of land to Simitar B the palm oil company from Malaysia just in last one year they have been given 60 thousand hectares of land. Cambodia, about 0.77 million hectares, 770 thousand hectares for the communities result for them and approximately 1.14 million hectares at least 6.3% of national territory which has been sold or given in concessions to the corporations and to the investors. Indonesia, 1 million hectares reserved for the communities not yet transferred I might say and 7.5 million hectares at least3% of the National territory which has been given mostly to palm oil companies. India, in fact leave that Joint Forest Management Land aside 1.65 million hectares is owned by the communities and the individuals, this is slightly different than the earlier figures that are mentioned and 4.6 million hectares, at least 1.5% of the national territories has been given to the companies or is under negotiation with the companies to be given to them. Now most land grabs are in the countries which are having a hunger index which is now serious. These include Cambodia, Sudan, Ethiopia, Indonesia, Laos and Liberia. And the hunger index of India is nothing to be proud of; it’s very serious here as well. Of the identified large scale land acquisitions in India, 95, means out of 100, 95 are from Indian owned investors. The scale of Indian investment, domestic and abroad has reached at least 6.3 million hectares, which is almost the twice the size of state of Kerala. At least 1.7 million hectares has been acquired abroad by Indian companies in the countries which are spread in all three continents but mostly in Asia and Africa. They have acquired some land in Uruguay, Paraguay and Brazil as well, but those are very small acquisitions. Their major acquisitions are in Africa and Asia and the countries are all listed here. Which are the Indians companies
who are doing this, I have listed a few here. Karuturi agro is very prominent. It is acquiring land in all three continents. Its major acquisition is in Ethiopia which is approximately 300 thousand hectares. Then there is Shivagu, Ruchi Soya Oil you will also find the mention of the Aditya Birla Group. That case I am personally aware of how they have acquired land in Laos and putting pressure on the government that they want one chunk of 50 thousand hectare territory and when the government refused they went over the State Government in the provincial level and made these to acquire chunks of 5 thousand, 10 thousand hectare, actually, virtually displacing people from there. Now the last three are the ones which have been acquired in India itself and if you will go to the database maintained by the ILC, you will find that the Indian government being listed as one of the large let’s say investor in land both inside India and outside but mostly in India which is approximately 3.8 million hectares that makes India the tenth largest investor in the Large Scale Land Acquisition in the world. The purpose of mentioning all these cases, these statistics, all this phenomenon which is taking place is, is basically to come back and then start looking at whole situation. As we discussed earlier, this is taking place in the countries where the recognition of the community rights does not exist and that’s why we perhaps need to look at how this whole issue of rights which is at the heart of the development is being treated in this. I have few assertions to make here; first, what is Tenure Reform, Tenure Reform is a legal process which changes the right in the bundle of rights to natural resources, land trees and others. Bundle of rights essentially consists of whether you have access, whether you have ownership, whether you can transfer it, whether you can alienate it, whether you can dispose of it in the market in whichever fashion you want to do; so there is a whole set of rights and what kind of rights you have and what kind of rights are being granted to you for the natural resources. Now more secured and more comprehensive these rights are, the greater is the opportunity for development. Now I don’t have to cite any statistic, this is proven across the world; we also know that this process of transfer of rights from the governments to the communities is often long and contentious. But without a basis in rights, it is impossible to achieve significant access to resources and services. Establishing rights to livelihood opportunities and provisions is the only way to ensure that governments address it as policy priority and that their expenditure patterns reflect this particular priority; without enshrining that right the government is not obligated to do that. Once a benefit stream is established as a right, it’s very difficult to reverse it; it’s very difficult to then take away those particular rights which have been granted first by the sovereign governments. It’s also much easier to defend once the rights have been given to you. Benefits maybe slower to appear in the beginning, more modest, but they are always more reliable and more sustained. Land grabs are exactly the antithesis of this particular approach; they erode the possibility of the rights based possibility of the development.

Thank you very much.

V.B. Eswaran  - Thank you Arvind, I think you have set the scene for our conference very ably and comprehensively. Are there any points to be raised for clarification on Arvind’s presentation?

Rita Brara: Is the manner in which land grab on this large scale, taking place in a very different manner in democratic countries as compared to non democratic countries. Strong democracies and strong traditions cannot be overridden very easily.
Arvind: Thank you very much ma’am. What our research shows is that if we mean by democracy, a change of government by elections, let’s say every 4 years or 5 years then there actually is not difference between democracies and non democracies as far as is the phenomenon of Large Scale Land Acquisition. Secondly, there are a lot of people in the audience who will agree with me that there is a lot of violations which are taking place in this country itself.

Rajesh: There are two questions which I have pertaining to the figures. One is this 14% of land which is with Individuals and firms. What is the status of that? Is it still with the forest department or has it been denotified and given to companies. The second relates to your mention of 3.8m has acquired by the government. This refers to what? Railways, factories or what?

Arvind: Let me answer both one by one. In fact this 14% is a very controversial figure and we do have the data base we maintain and update every year. This will show where the distributions are. This has been mutated a number of times. We can make it available to you.

Let us come to the second part, the 3.8m has of land. This is in the last 10 years. Mainly Government acquires all the land before it hands over to the companies.
TECHNICAL SESSION - I

Chair: Rita Brara, Assistant Professor, Delhi University

SPEAKERS

1. Presentation of Case studies: Viren Lobo, Executive Director, SPWD
2. Land grab estimates: Dr Jagdish Purohit, Programme Director, SPWD
3. Discussant: Indu Netam, Adivasi Samta Manch
4. Discussant: Dharam Raj Meena, former Pradhan Panchayat Samiti, Girva
Rita Brara: We will follow it with just the order which is given in the program before you. We’ll have Dr. Jagdish Purohit next and the two discussants on my side Indu Netam and Dharamraj Meena will follow. I will also offer some brief comments on the eight papers which were given to me to discuss briefly, so I will double up as the discussant at the end of this session.

Viren- I’ll be giving a brief presentation. I mean you all have the presentation these are the summary of the case studies, which we did. Seven case studies and the estimate of the land requirement in the country, which details how we have estimated the land requirement over the next 15 years. Dr. Jagdish Purohit will be presenting those findings and also the issues involved in that, the methodology followed etc so that you can understand how we have arrived with these figures. SPWD keenly engaged in the issue related to livelihoods and its relation to the natural resources which is part of its mission statement. Now for a long time basically our work was more in terms of what we have called as wasteland development, going for plantation or for the regeneration of pasturelands etc. Subsequently, SPWD got involved in Joint Forest Management in the early 90s after the forest policy changes. SPWD experience spans 16 agro eco systems of the country and 22 States, and on various dimensions of these natural resource problems. When we commemorated our silver jubilee the kind of things that we found becoming important was the whole question of governance which Arvind has also highlighted in terms of how decisions are taken and the role of local communities in those decisions. The second thing was that even in the terms of solutions, coming up as options in front of the country, there was a massive push for green technology under CDM like biofuel policy. In the study which we did on this issue, we found that neither are wastelands being developed (if you have to go for oil production then you need better quality land) nor is there Employment generation as the land for biofuel competes with agriculture, or animal husbandry. In terms of energy security also the biofuel companies were looking at the European union price regarding biofuel. D1 Mohan and others were therefore interested in export markets. So on
all three counts Wastelands, Employment and Energy Security there was a mismatch. There is also a problem related to the type of land which are classified as wastelands. The issue came up for instance in Rajasthan which over 10m has as wastelands and hence thought that it would be quite easy to develop 4.5m has of wastelands for biofuel. However when they went on the ground they could find only 38,000 has. Watershed development in the State uniformly worked on 100 has of land for plantation to jatropha after 2004. Yet most of these have not survived, as in many places people uprooted the plantations after getting paid for their wage labour. We therefore started highlighting the issue related to integrated land use, in order to give it a balanced approach. The debates at that time were talking about food versus fuel or jatropha versus pongamia. SPWD therefore highlighted six securities food security, fodder security, energy security, biodiversity, livelihood and water security. These have to be looked in an integrated manner in terms of the land use so that you get a balanced perspective.

Hence when Arvind came with this proposition that we should look at this whole phenomena of Land Grab in the country and also we focus on common lands, we were very excited because it would give us a perspective on the larger picture, instead of just looking at individual aspects. The way in which this study was designed was to cover a cross section of states and in the initial round, we explored nine states and we also a cross section of sectoral issues; for instance power generation, road building, infrastructure and also biofuels etc. for instance the State of Gujarat has targeted its coast line which is 25% of the countries coast line. Finally, at the end of the day we could came out with case studies covering 6 states and 7 thematic areas. The larger study would give the overall magnitude of the problem across the country and the case studies are aimed at highlighting the various dimensions that would be there on the ground which would be impacted with the kind of development process taking place when land is acquired. In the press conference yesterday, Arvind had highlighted that this latest Land Acquisition Bill which is before the parliament (and is likely to get passed), is more looking at the private lands and very little at the common land; also the type of things which it recognizes as problems related to acquisition are very limited.
The six case studies which we took up in Jaisamand catchment area near Udaipur in Rajasthan cover different parts of the catchment area of 1,80,000 has. Jaisamand has about 60% commons and 16% of forest land, so 78% is the total area which is commons over there; Agriculture is only 22% which is 8% irrigated. The issues studies were stone quarrying, sand mining, phosphate mining and the tailing dam, the impacts of pollution from the industry and also infrastructure development namely roads have been covered in the case study. The summary of the findings are presented in the booklet. One of the key issues highlighted is that the impacts go much beyond the land being acquired. Phosphate mining for instance apart from damaging the health of the people, is resulting in communities having to leave those areas.

On the question of green and clean energy, I have covered on the bio fuel question. We also took up the case study of Kalpavalli which is in Andhra Pradesh. This is an area which is developed by Timbuktu collective based on their own personal experience of regenerating wastelands of 32 acres. They extended it to 7000 acres of land covering 8 villages. In this process the plantation etc which was done may have covered about 50 species at the maximum, either by direct plantation or by seeding or by the programs which the community implemented. However, because of the fact that the community took the effort to protect and regenerate the area, the entire area came back to almost the virgin forest condition. The paper shows that over 500 species have come back in that area. This is close to Guttur.
Forest area and hence acts as a corridor. A number of species have come up because of that, now there are more than 800 species over there. Here all of a sudden because of the CDM kind of initiative (the fact that Anantpur has high wind speeds), Mushitkovilla, which is part of Kalpavalli is designated as the third highest wind speed area in Anantpur district. So, in this area windmills were commissioned and the permission was given. The type of impact measured for approvals is basically to study the wind speed. Wind towers were erected to study the wind speed and that’s the kind of report which they have put up on the UNCCD website for getting carbon credits etc. When granting permission, the government did not take in the account that this entire area was a forest. Those are familiar with the vegetation scenario in the dry land areas (Anantpur has 400mm rainfall), the primary vegetation which comes up is grasses and shrubs; and in fact our study also shows species Poacea dominates the landscape which is now home to 40,000 sheep. This is not considered as important. What are a few shrubs and bushes? The other part is being what Arvind has been highlighting that the revenue lands do not have an adequate tenure right so therefore with what basis the people could resist this particular thing. Documentation exists that the forest department of Andhra Pradesh thought that this area was fit to be designated for the compensatory afforestation program for the Tungabhadra, for the land submerged under the Tungabhadra Scheme, so they went to designate this area as reserved forest. The people resisted because then they will lose the rights to the lands which they have developed. Shortly after this, the government allotted it to windmills. Since the people had taken up kind of a fight with the forest department, they couldn’t really take the help of forest department to resist the windmill. On paper it is designated as revenue land. Later we had found many strange things regarding the titling. Somehow the land which has been allotted to the windmill is called revenue land so that can be allotted without permission, if it is Advi land (forest) and then you require the permission of forest department. Of course the issue is that with windmills CDM project doesn’t require any EIA officially. This is the kind of things we’ll be taking up vis-à-vis this issue and highlighting all later.

Two studies relate primarily to mining issue, those done in Chhattisgarh and Bellary. In Chhattisgarh for instance the government is using mining as a stepping stone to development. Chhattisgarh has 44% forest and 8% of India’s forests. CSE in their book Rich lands poor people had highlighted that these are the very lands which also have mineral wealth and therefore an attempt is being made to divert these lands for the mining purposes. And as seen in other places also, this also area comes under PESA and FRA, the provisions of these laws are bypassed so that the area can be allotted for mining etc. In Bellary, the whole issue is about illegal mining in the forest areas of Bellary. Bellary has a similar kind of landscape as Anantpur district but the particular area where the mining is taking place is one of the richest forests of Bellary area and has very rich biodiversity. This has been ignored. With illegal mining,
severe damage is being done to the forest which has also been documented by ICFRE. However instead of spelling out how the area can be restored, the main concern is how to go ahead with business as usual rather than seeing how this damage can be restored, how the type of health hazards which have been created can be dealt with etc.

Two studies have been done by Environics trust. You all must be familiar with the Western Ghats report of Dr Madhav Gadgil which came out after the study. In the Western Ghats, the diversity changes very rapidly because there is a rapid change in latitude. The coastal area is very narrow and hence there is large expanse of sea. It is one of the 18 biodiversity hotspots in the world. The study was taken up in this area between Karnataka and Maharashtra, mining was given a large fillip due to illegal mining in this region, the Goa case is before you. In Polavaram, we have the ridiculous case of using technology to bypass key socio economic and natural resource issues. One proposition is to prevent the spillover of displacement into Odisha by erecting a huge wall to contain the river. In both regions, the major issue is the large amount of forest area. The non-implementation of the FRA Act. Even where FRA is being implemented if you look at what is being monitored, basically it is giving of individual rights. Even if you are talking about community forest rights, it does not deal with the ecosystem, the issues which are there and the way in which communities depend on this ecosystem for their livelihoods. So these are things which need to be taken in account. I think basically I have covered mostly what is here, I think Shankar and Madhu will also later elaborate about the general implications beyond what the case studies are talking about for the country.

Thank You.

Dr. Jagdish Purohit- Good Morning. I just want to share the exercise we have done to get some estimates of the land requirement in coming 15 years. We have started with looking at sources from where we can get the relevant information about current status of land acquired by different categories. Then we defined certain sectors in which we tried to look at the growth rate and so broadly we defined the sectors, one is agri-fuel, second one is infrastructure, third is the mining sector or extraction and fourth is the renewable energy sector. The overall figures show that in coming 15 years by 2025 these sectors will require about 11 million hectares of land. These sub-sectors were divided in further sub-sectors. So I will start with the first category, agri-fuel, in agri-fuel we included 2 categories- one is the bio-fuel and second is the electricity generation through biomass. In bio-fuel sector the overall target is about 13.4 million hectares but when we looked at the performance of bio-fuel implementation in different states we found that this is not the realistic figure so we tried to arrive at a realistic figure so we have taken some basic figures. There is a plan to cover 10% of the JFM area under JFM plantation, so the current JFM area is about 14 million hectares so jatropha plantation would be covering around 1.4 million hectares. Similarly the Integrated Watershed development program and other poverty elevation program targeting about 2 million hectares of land for jatropha plantation and another 1 hectare on other types of common land like roads, railway lines. So the total land requirement for jatropha plantation will be around 4.4 million hectares. The current land used is 0.5 million hectares so the additional land requirement will be 3.9 million hectares by 2025. In Bio-power sector ie. electricity generation through biomass, it includes plants as well as agricultural residue so we try to figure out estimates about the plant species and in plant species, Prosopis is the main type. It is indicated in the
MNRE, Ministry of New and Renewable Energy report that 2 million hectares land will be required for
dedicated plantation for electricity generation through biomass and the current area is about 0.2 million
hectares so the additional land requirement is about 1.7 million hectares. For this particular sector
therefore the total land requirement will be about 5.6 million hectares.

If we look at the total figure of land requirement by major sectors or emergent sectors the energy sector
is demanding maximum area. In infrastructure we tried to cover all sectors but due to non availability of
data sets we were unable to get information about ports. We covered 3 sectors, one is the roads,
second is dam and third is special economic zones. For roads, the current area is about 1.8 million
hectares. It is calculated based on the report of road transport, and they have come out with a report,
basic road statics of India in 2011. So we have taken major roads like national highways, state highways
and district roads and then calculated based on the standards of different types of width of different
types of roads like single lane, double lane, and four lane. So the total figure comes to 1.8 million
hectare. Right now looking at the trend of road expansion, it will require additional 1.3 million hectare of
land in coming 15 years. The total area under road will be 3.1 million hectare by 2025. In dams, we
excluded the medium and minor dams. We only covered the major reservoirs. The current area is 2.9
million hectares under major reservoirs. And looking at the water demand, by 2025 in various
government documents and the growth rate of reservoir area we come to figure of 3.9 million hectare
by 2025, so the additional land requirement for reservoirs will be around 1 million hectare in the next 15
years. Similarly in special economic zones current area is about 86000 hectares and t is planned that
SEZs have to be expanded and they are targeting 1.5 lakh has of land. So SEZs will require about 60000
hectares of land. Infrastructure sector will require 2.36 million hectare of land in next 15 years.

In mining sector, we tried to categorize mining in 5 categories, coal is dealt by a separate ministry, so the
information about coal is available through a different source. Rest of the mineral related information is
taken from the Ministry of Mines records. The area under coal mining leases, currently it is 1 lakh 47
thousand hectares. We looked at the twelfth five year plan report and plans for thirteenth five year plan
report, targets for thirteenth five year plan and past performance. They are targeting that in coming 15
years we have to maintain at least 9% growth rate in coal mining sector. So at that rate coal mining will
require 5 lakh 35 thousand hectares of land that means it will require additional 3.88 lakh hectares of
land particularly for coal mining. Iron ore mining is currently undertaken in about 88000 hectares of land
major leasing is for iron ore and similarly the basis for projecting the future demand is taken from the
twelfth five year plan where they indicated that in twelfth plan and the thirteenth plan we have to
maintain a growth rate of 8.5% per annum so based on that figure it will require 3.2 lakh hectares
mining lease area for iron ore. The additional and requirement will be 2.32 lakh hectares. Bauxite mining
alumina ore is covering an area of 35000 hectares currently and the future plans target growth rate of
9% for bauxite. The future land requirement will be 1.09 lakh hectares, the additional land requirement
is about 80000 hectares. The major area covered under mining is by limestone mining. Limestone as a
major mineral and not as a minor mineral because in some cases limestone is mined out as minor
mineral so minor mineral figures are not included in this estimation. The current area under limestone
mining is about 1.5 lakh hectares and the targets for cement industry and other limestone needs, it is
projected that the growth rate will be maintained at 9-9.5% per annum. So the area requirement for
limestone will be 5.2 lakh hectares by 2025. The additional land requirement will be 3.8 lakh hectares. The other 56 major minerals having area of 2.44 lakh hectares and in report of IBM (Indian bureau of Mines), they again are targeting 8% growth rate for all other major minerals. The area requirement for the other 56 minerals will be 8.89 lakh hectares and the additional land requirement will be 6.5 lakh hectares. The mining sector will require about 1.7 million hectares of land by 2025.

In non-conventional energy resources, we made estimation for two types, one is the wind energy and other is the solar energy. Looking at the current status of configuration of non-conventional energy resources, it is quite low in overall energy supplies but the target for increasing the contribution of non-conventional energy, they are having huge targets and right now the windmill projects cover an area of about 1.80 lakh hectares and this figure we calculated based on the figure given in the latest note of Renewable Energy Ministry that the wind farm require 12 hectares of land per megawatt. The current wind energy production multiplied by 12 hectares comes to around 1.8 lakh hectares, and the plans to achieve wind energy production to 45000 megawatt by wind energy will require 5.40 lakh hectares land. The additional land requirement will be 3.6 lakh hectares land for windmills. Solar energy production is quite low and currently it is about 38 megawatt Area figure is 2 hectares or 5 acres per megawatt. Again it is taken from the Non-Renewable Ministry’s figures, but they are targeting that the solar energy contribution is to be raised to 50000 megawatt by 2032, so the area requirement for solar energy will be about 1 lakh hectares. The total area requirement for non-conventional energy resources will be 1.1 million hectares.

Thank You.

Indu has in her presentation mentioned the limitation on what was presented. The hunger of the companies for land, on that there is no doubt. There are laws to protect the local communities, they are being flouted and therefore this problem is taking place. That is resulting in a number of conflicts in various places. What the study has not covered is the status of the people in those areas. She is particularly talking about Chhattisgarh where in every Kilometer there are power plant and people have no rights in terms of what they can do about the power plants. PTGs are made to run helter skelter. When the people asked for their rights, they are being given empty promises that something will be done about it. The needs of the people have not been taken into account while dealing with the issues. Indu concluded that a lot of lies are being propagated that they are naxals so any protesting for democratic rights results in being branded as naxals so that the state can resort to repression against them.
In terms of the presentation made by Dharmraj Meena, he’s talking about the area near Jamar Kotra mines and which has spread over 10km in the upper catchment of Jaisamand lake next to Udaipur. The water level has gone down considerably, and the tribals are facing difficulty with respect to availability of water. Then nearby also 10 factories have come up to process the rock phosphate and these factories are spreading pollution in the area which is affecting the sanctuary nearby and also destroying the life support systems on which they depend. In the village Umarda where these factories are, next to that is a lake, called Udaisagar Lake. This lake he says has become as a septic tank and the water cannot be drunk from this lake. So most of the people are going to Udaipur and this polluted water is also going to Udaipur. Then he also talked about the fact that 30-40km away (this is the upper catchment of the Jaisamand Lake) the polluted water is also now affecting Jaisamand Lake. Now, as far as administration goes and the politicians go, there is no kind of appreciation of the problem. Their minds have been corrupted and they are not fulfilling their responsibilities. There is a possibility that the cow will vanish. Basically in this area actually the milk production has been affected considerably and the polluted water so the milk cannot be drunk there. Thank You.

Rita Brara: We have had 4 rich presentations, and I know I’m standing between you and lunch, so very briefly in about 5 minutes I’ll flag off some issues that were raised not just in the presentations but actually in the set of papers which were given to me. Now, the first issue I think that we need to consider is how does one ascertain the public interest? I don’t think this is something which we can take for granted, because for ascertainment of the public interest it seems to me the existing policy instrument for it is the environmental impact assessment report and the social impact assessment report for large scale projects and mostly they are conducted through what are called public hearings or ‘Jan Sunvayis’. Now we know that often the ‘Jan Sunvayis’ and some of these papers allude to it have been reduced to formalities or rituals; so what are the alternatives? We have public hearing where you can present environmental perspective as part of the local public’s interest on whether they want to allow an environmental clearance to a large scale project or not. Now when I look at the existing advances on
public hearing, there seems to me that there are two lines, one is there are groups which do not settle at just the public hearings, if they question how the proceedings have been incorporated in the final impact assessment, they appeal before a court of law and often environmental clearances have not been given because the proceedings were inadequate, decorum was not there, the other impacts were not considered that is one line. But civil society groups also do other things which is they lobby with political representatives, they organize protest movements, trigger off social movements and also in many cases they garner the support of the press and the media to support action against what is being contemplated in the light of detrimental, environmental and livelihood impacts. I don’t think we can ignore these considerations. They may not make for an ideal situation, but certainly there is a questioning and that has to be appreciated. Like I said before in our democratic context.

The other issue I would like to raise is, ok if you are not happy with the public hearings and we agree a lot have become just rituals or formalities, in fact one of the report shows that there was an Environmental Impact Assessment which was literally copied from the Environmental Impact Assessment for a Russian Bauxite Mine in Ratnagiri; but at the same time mind you that was questioned in a court of law and it was negated. So there is corrective action on the judicial front, but environmental hearings have also been reviewed more recently in the context the Land Acquisition Act.

And just, I think a fortnight ago, late November, a group of 60 NGOs came together in a forum called ‘Jan Samvad’, and what they argued was that the way to go for environmental clearance and land acquisitions clearances, was not public hearings but a referendum by locally affected people; because the argument is that a referendum by the locally affected people will give you a better idea of what constitutes the public interest, then a public hearing or ‘Jan Sunvayi’ is the corrective practice. So I think it’s important that we keep looking at movements in this sphere. It’s not as though it’s static, there is movement, that allows for some hope. It is not a zero sum game.

The second point really that I want to flag is in the conception of a public interest we have also got to recognize that there are some issues on which citizens can unite very easily together but on other issues subaltern publics have different interests from dominant interests. And here there’s a conflict and certainly that conflict needs to be addressed in every way conceivable. But I would also like to point it out that even within subaltern groups there are multiple and contested public interests. There is no monolithic public subaltern public interest. And here we are all familiar with the fact that, you know men have different environmental interests from women there is Madhu Sarin who will corroborate here. Her earlier work showed that. There is also the idea that Nomads have different interests from settled agriculturists. So I want to reiterate the point of view, that even if land is privately
owned, corporately owned, singly owned, there are situations where on the ground the situation is layered, what you have is multiple interests coexisting on the same piece of land. Dr. Rathore will substantiate that in Rajasthan often enough a field maybe privately owned but it will be used by other villagers for pasture. The multiple uses continue to coexist; this is also Elanor Ostrom’s argument that you have layered interests in the land, there isn’t a singular interest. So even if the ownership maybe individual, private, government, there are interests and there are uses which coexist with the main use, and just to give you a very brief example, I work at the Delhi School of Economics which was originally a pastureland. Till 5 years ago, the cattle from the neighbouring Kamla Nagar came into the Delhi School of Economics and had customary rights to graze there and asserted those rights. We used to take our tutorials with cattle roaming in the Delhi School of Economics’ lawns. So I’m not talking about just rural areas, I’m talking about a very urban situation where multiple uses coexist. So we cannot think of unitary, monolithic cultures of land use actually.

Now my third and maybe last point is my hope from judiciary. I argued before, that public interest litigation has made great strides in India. It is a concept we have also sent out to other developing countries which have used it to very good effect actually, and in more recent years I know that it hasn’t worked ideally, what we’ve had is innovations on that count as well. So the idea of the locus standii was expanded, the idea of aggrieved individual so anyone can file a PIL was expanded. We also have the idea of amicus curia or friends of the court who could assist the court, unlike most of the countries what you found in India was we also have the writ of Mandamus which is that you can supervise an environmental judgment and monitor it on the ground through others. Now most of the time, enforcement of judgment in India is very difficult, this is a radical and an exceptional step which the judiciary takes to argue that, ok we will help you support this particular judgment and I think it also points to the fact that the judiciary is not closed.

I’ll conclude with this. In a sense you know the juridical is different from the law or particular acts, and what the juridical then allows is an arrangement or an architecture that allows you to question the law and the acts themselves. In the sense, they will also suggest modifications which make it possible. Sometimes in our country this is been called Judicial Overreach, but Judicial Overreach has been fairly advantageous in the environmental field. I’m not saying that everything is a hunky dory story, a lot needs to be done but nor would I say the situation dismal and we have to see it as black only. Thank you very much.

The papers and the comments of the discussants are now open for questions from the floor.

Dr Rathore: The studies show that the State itself does not follow its laws, they flaunt it. In Rajasthan there was a case to maintain the river bed as it was in 1950s. Fifty percent of Industrial settlements is on common lands violating existing laws. EgIn Hirakud, coal multinationals have exerted a lot of pressure for the resources. Large amount
of land is acquired in peri urban areas, media support for such activities. In Navalgarh in Rajasthan, Four big cement companies want to evict people from 28 villages. For the last one year, people have been protesting. Our study in Jaisamand shows the harmful effects of the industries on the environment, but the government does not listen as the company is paying a lot of tax. There is complete exploitation of Natural resources at people’s cost. There is a need to reclassify land classes. There is no land classified as Industrial/Urban land. Haryana has done an excellent job of digitizing their land data.

**Juned Khan:** The policies show the failure of beaureaucracies. In the wastelands Atlas, snow covered peaks, marshy lands etc are shown as wastelands. On the question of mining rights in Rajasthan, all mining rights are with RSMM. Companies that want mining leases have to apply to RSMM and not to the Government.

**Sharat Singh:** Referring to the issue of Judiciary, In Jharkhand close to Ranchi, two institutions are coming up, the court is against communities. A lot of land is traded. Local land laws regarding land transfer is being violated. GIS tools like remote can be used the judiciary should be pro active.

**Falguni Joshi:** In Gujrat what is the status of Government policies regarding Environment public hearing. EIAs are not done. GIDC has acquired land, you cannot do anything. There is a State circular to facilitate corporate farming. Special Investment region (SIR) is more than 100 sq Kms. MoEF does not do anything, they are helpless.
Sreedhar: I would like to add to what Juned has pointed out. In order to bypass the implications of the Samta Judgement that the State cannot give to private players, a circuitous route has been worked out. The State governments are part of the process to make it politically feasible. In the case mentioned by Sharat it is ironic that a management school and a law college do not have a management or legal solution to the issue and want the use of police force to take land forceably from the people.

Rajesh: What we have been hearing since morning is discussed separately by Civil society, Corporate, Government. They never meet on the same platform. The overarching need by Corporates and Government is getting in investments. Arvind talked of Fag tail risk, the danger of Investments being wiped out. Is there an example anywhere in where Governments, Corporates and NGOS can meet together?

Speaker: Stakeholders should develop challenging mechanisms instead of only depending on policies. They should not depend on the government.

Ganesh Purohit: How are policies and laws implemented. If PESA/FRA, no matter what the law is the government implements the way they please. In Udaipur, Shri B D Sharma had come for a meeting in village for PESA. There was a 250 strong police force where we were doing the Gram Sabha. The BDO wrote the gram sabha proceedings and informed the collector that they could now go. What was written was false information against the collector for which the BDO indicated that people would be arrested.
Chair: S. R. Hiremath, Petitioner, Supreme Court Case on illegal mining in Bellary

SPEAKERS

1. Geographical Dimension of Land Conflicts
   A presentation
   Ms. Madhu Sarin, fellow RRI

2. Undemocratic & Arbitrary: Policies & Laws that Govern Forests & Common Lands in India
   Mr. Shankar Gopalkrishnan

3. Discussant:
   Dr R Sreedhar
Ms. Madhu Sarin- Good afternoon everybody, post lunch session I have to keep you awake, somehow I’ll try to be very precise and brief, and my job is kind of quite limited and focused. In front of you, you see this map; in your folder also there is a folder which has a map, with a brief commentary about it. The origin of this map, you know while we were deciding on the case studies and then the synthesis paper trying to place you know the findings from the case studies into a more kind of holistic analysis of what’s really happening with forest and common lands, the rights related to that and the community dependent on that. We felt that we should also have some idea of the geographical spread of these conflicts, not the case study ones but generally all conflicts related to land and with a particular focus on common land. So this map is an outcome of that exercise. Right from the beginning I would like to point out that this is a rather limited exercise; it’s based on a study of 49 high court and Supreme Court judgments, you know an internet search and 96 press reports in the English media, and again I would like to point out that the English media tends to be rather selective, it does very poor coverage of the local, regional issues, and particularly issues related to rights of local communities. Now, the 49 court cases, the majority of them are from 2000 onwards, 9 are from 1990s, they were particularly selected because of their importance, for example that includes the Samata Judgment. And out of the press report, all are from 2011-2012 except one from 2009 and two from 2003, again some of the older ones were selected because of their particular relevance, for example, one related to Narmada Andolan which has been one of the longest movements against displacement in the country. As I said, our effort was to focus on struggles related to common lands. One big problem is that very few of these struggles actually reach the courts. Partly, which I think Shankar will cover very well in his presentation and his paper is because of various ambiguities about customary rights over common lands. And in any case, even where there are these
struggles as I said earlier, there is very poor reporting of these in the English press. Even when these cases are reported, they tend to present them as conflicts related to private lands. I think the POSCO case is a very good example, you know they are talking about people are fighting for more compensation or they can be won over with more compensation, whereas the largest chunk of land over which the resistance is there, is so called forest land over which people have claimed their rights under the FRA Act which ironically the high court accepted that prima facie they do have rights which should have been recognized and yet the court ruled that because of the importance of the project, it should go ahead. I’m sorry because of the large number of cases, I can’t really give you the details of each one of them. Anyone interested can get the database from SPWD. If one looks at patterns, what you find is, in the case of court cases and this is related to some of the comments which came in the earlier session about the role of the judiciary. A number of cases have gone to the courts for example over Schedule 5. In a Scheduled area, the government has no right to acquire land and hand it to a non-tribal. The court has not necessarily upheld that. I think the BALCO case, this was again taken up based on the basis of the Samata judgment, the Supreme Court almost annulled the Samata judgment, mainly to say no, it doesn’t apply to Chhattisgarh, the Chhattisgarh land revenue code is not the same as in AP, based on which the Samata judgement has been passed and they gave other arguments that such interpretation of the constitution should have had a constitutional bench of 5 whereas this was only a bench of 3 Supreme Court judges etc. so in a sense even the people who were pushing for implementation of the Samata judgment withdrew because it seemed like the judgment in itself may be problematic. Then you have had cases, like there was a case again from Jharkhand, where there are probably the best protections for customary rights under the existing law which the adivasi communities fought for during the British regime. So you have the Chhota Nagpur Tenancy Act and then the Santhal Parganas Tenancy Act under which none of the lands can be alienated without the consent of the traditional leaders. Now in one case you know the government acquired some land, didn’t consult the local leaders and people were protesting. It was acquired for building a dam, people went to court and the court agreed that you know there was violation of the law, they shouldn’t have done this way, but then they said, oh since work has started there will be so much loss of investment therefore it should go ahead. So, when it comes to even judicial pronouncements there is a lot of ambiguity. There have been a few cases where the judiciary has been quite supportive, but I think one major problem, this is my personal view, is that the background of our judges you know, I think the earlier judges because they probably were much closer to their rural origins of their family or whatever had a much better grasp of rural realities. Today we have judges who have become environmental activists through the judiciary without any deep understanding of the realities on the ground and a lot of them don’t seem to be aware of a lot of the laws which actually protect customary rights, for example just take under the Godavarman case, sweeping judgements. Like the Santhal Parganas Act, in one sweep they have all been overruled and no one took it to the juridical notice because the main parties were Forest departments and they loved it. It open their access to a number of lands so in the North East for instance, under the 6th Schedule, under customary law, under customary management protected by the constitution, the Forest department can now say that all forests whether notified or not but recorded in any government record or conforming to the dictionary definition of the forest come under the Forest Conservation Act, and the forest department will be involved in their management. But going back to the map the basic idea was to, firstly look at the spread of the conflicts and as you can see, you know there are these red
marks all over the country. If we prepare a more detailed map, you know even the other areas which are not covered would be covered. What is very clear is that there are absolutely extensive convergence all over the country over issues of land and a lot of them in the court cases there was a problem because most of the court cases reported related to private land but we’ve tried to select ones where inevitably they are linked to common land which was something brought out in one of the earlier presentations as well. You cannot separate private and common as these two are very interdependent. So that is basically the context and I think that Shankar’s synthesis paper based on the case studies as well as a more holistic analytical framework for understanding why we are facing these problems particularly related to community rights over common lands in the country.

Thank You.

Thank you, Madhu. Now I request Shankar to make his presentation of ‘Salient Features’ of this important research paper with all of you.

Mr. Shankar Gopalkrishnan-I think I just want to mention one fact first that makes our current gathering both, slightly poignant and slightly ironic. As we have gathered here today, the Land Acquisition Bill has been tabled in the Lok Sabha. Government is pushing for the vote right now. And since the two title words of my paper, ‘Undemocratic and Arbitrary’, I think you can see that in action, the government has moved 154 amendments of the draft. Under Parliamentary Business rules, the procedure is that no amendment can be moved without giving two days notice except by the government, which prerogative the government is always happy to exercise. It did the same with the forest rights bill and today they have done the same thing with the land acquisition bill. They have moved 154 amendments, it was circulated to members of parliament precisely half an hour before the session could start. The session has started and the Rural Development Minister is in the house at the moment declaring that it does not really matter that people do not have time to read, all that he is presenting, he has taken care of all their objections. So that is the essence of undemocratic and arbitrary. Though there is an effort to get it stopped, most likely it will be passes which is rather sad. So on that note, as has been discussed earlier today by several speakers, there is a great deal of debate on land takeovers in India today. It’s not that anyone, any longer regards this is an issue that can be ignored we’ve seen State Governments fall because of this issue. As in the case of west Bengal, it has become a political fault line across the country. But what is very interesting is there is a certain distortion that takes place in the way this issue gets debated which is that on the ground and politically, where people are fighting. It’s very clear that the issue is very complex and
involves many facets. But when one reaches policy and the English media, these kinds of debates at the central and to some extent at the state level, land takeover is equated with land acquisitions and the whole debate is reduced to the question of land acquisition. The problem with this way of thinking about the issue as has been already highlighted by a number of speakers is that and acquisition is concerned with transfer of property rights and therefore payment of compensation. Now by definition this means you cannot to account how land is actually used, because you have already decided that the land is a fungible commodity which can be replaced by money, which is simply not true, as we have heard time and again since morning for the vast majority of Indians today. So in that sense it is often said in politics, ‘that the more important than winning the argument is framing the debate’, more important than winning your point of view is setting which point of view will be considered, and the very fact that this is the way the debate is formed, already means that the vast majority’s issue simply never gets considered at all. The focus of my presentation today will be on breaking this boundary and looking at how common land rights exist on the ground, they also exist in law, they also exist in the procedure and yet they are being grossly and mostly violated all in the name of development. So the common lands in India, there is a certain problem in terms of measuring how much common land exists in India because there is no single official category that corresponds to common land, there is not even a correction of categories, different State Governments have different categories, some of them explicitly describe them as common lands such as Punjab, most of them do not, others have Nistari jungles such as Chhattisgarh and Madhya Pradesh which are known to be common lands. So we have no quantitative figure of how much land is used collectively or commonly across the country today. The only data we have is a 1998 NSSO, National Sample Survey Organization for those who are not familiar with it. The NSSO Survey across the country only looked at non-forest land and tried to classify those lands which were used collectively, if you look at our report even that conservative estimate leads them to conclude that 15% as commons. Now if we then take the point the government owned forests which they excluded from their survey is 19.4% of the country’s land area as per the forest Survey of India, and almost all the government owned forests except in that remote reaches of the Himalayas is used somewhere or the other as common land. We can take a rough estimate that 34-35% of this country’s land area at the very least is common land. And the NSSO survey also found some other interesting things, they found that in the survey villages, half the rural households, collect livelihood and use materials from common land, 74% of those using firewood collected from common land, 63% of those using irrigation take their water from common land and one other point is that you know all of these cases the percentage rises to 90% in the case of poor and landless household in the village. As I said, these figures are likely to be an underestimate. Now the next question when we talk of takeover, what is actually happening. Now there are not one but two types of takeover and the debate is reduced to the question of large projects, highways, power plants and coal mines and so on. But a much larger form of takeover is actually the one which is listed first which is regulatory takeover, where the land is brought under some legal system or the other which effectively results in people being denied their rights, so the land itself may not be destroyed but it is brought under the system of law or regulation which does not allow people to exercise their livelihood rights. The single biggest instrument is Forest law, but also other laws, just to give you few instances which I will give here, the land area under the control of forest department not actual forests which everyone agrees have diminished in size but the land area under the forest department has increased by 63% since independence. Sanctuaries and national parks
together cover about more than 5 lakh hectares of land and so on. Then of course we have second type of takeover which we have been discussing largely since morning which is the takeover of large projects which is happening across the country. NSSO itself estimates that independently of these two types of takeover because they did not look at these two types of takeover, they only looked at us and changes in land use. They say even independently of that they have found that common land area has been declining by 2% per year. So it’s not an exaggeration to say that today there’s a crisis developing around the issue of common land but as far as political and English media is concerned there is almost a silent crisis, as one is talking about this. The whole focus is on individual land rights as it is in parliament today. Now what does it mean when you takeover common land. I think most of us are familiar with what this would mean for those who depend on this land for their livelihood, those who collect timber, firewood those who use these lands for livelihood. When they lose their livelihood this is a very severe blow specially to those who are otherwise landless or marginalized. For instance in Orissa it was estimated that the adivasis, the scheduled tribes draw 60% of their cash income from minor forest produce. Similar is true in other parts of the country. So if you deny these people access to MFP or you destroy the forest, you cut their income by half. These are already people living on the edge of civilization. Then the second form is those quite often what is common land is also under individual use, possibly temporarily, possibly permanently, people are cultivating it, people are using it people are occupying it. People may have made residences on it and these are all described as encroachers though that term is inaccurate. So they are also evicted and removed if either of these takeovers happen. Then this is particularly striking in terms of the legal cases that I will come to. Those who lose access to common lands or lose their livelihood as result receive no rehabilitation or compensation at all which means they are reduced effectively to nothing and the most striking example of this. What happens to people who have rights and residences on forest land. Then finally there are impacts beyond the land area that is required for the project. Not only common but also individual land, such as pollution, environmental destruction, changes in the water table. These cause particular damage to other common lands. In individual lands you at least have legal recourse if you choose to use it. But in the case of common lands by enlarge you have no recourse at all. We have seen this in the wake of the Supreme Court order which Madhu has already talked about. During the 2002 eviction drive, what you have are Primitive Tribal Group hunter gatherers being driven out of forests, stories of them coming on to the road and dying of starvation have come to light. No consideration for people like these at all. So when people are removed from this land, except when the State Government may decide to rehabilitate the people under pressure, they are simply hounded out like animals off their own land and left to survive. In the example of the Polavaram project which has already been mentioned earlier today. It is a dam project at the Andhra, Orissa and Chhattisgarh border which is going to displace roughly 250 thousand people and in that project literally millions more people will lose
access to that area which will be submerged under water and therefore lose their livelihood, most of them being tribal. And these millions of people don’t figure anywhere in the policy discussion at all on Polavaram. There is no talk of their rights, there’s no talk of rehabilitation, there’s no talk of compensation, what is going to happen to them.

So, as I said there is a common misconception, that Common Land Rights are not recognized in Indian Law, this is actually not true, they are recognized on both revenue and forests lands and we will come to how that recognition exists and they are not respected and how that violation happens is the key question. The question is not the people don’t have rights. The question is why are those rights so brazenly violated, continuously and systematically? And in particular in this paper and present in this forum, I want to look at two major legal regimes, Forest Law and Revenue law. These are the two of the four land law regimes in this country. The other two are the urban areas and the ones that apply in the North East. I am not looking at those in depth, especially the North-Eastern one is very complex and they will take us away from our focus. So the focus in this rest of the presentation is on mainland India and on rural areas. Now, Forest Law, I think many of us are familiar with this but for the sake of those who are not, I will take us through a brief tour of Forest Law in India. Now the Central Indian Legislation for management of forest is the Indian Forest Act which provides for the takeover of land after settlement of rights under the IFA or the Revenue laws. In the case of reserved forests, there is a procedure in the IFA. In the case of protected forests they are supposed to be settled under the Revenue laws but in fact the protected forests provision goes on to provide escape laws which says that even if nothing has been done to settle the rights under the Revenue Laws land can still be declared as a protected forest provided people’s rights are not violated which is an utterly meaningless clause because if you have not recognized the rights how do you know what they are and how therefore you would know they are violated or not, but nevertheless the law says that you can do this and that is what has been done in roughly 60% of India’s government forest area. Now the problem in this and procedure for the settlement of rights is something I will come back to later. Where does it come from in history? But what we need to know about this act which is that the process is completely under the State. There is someone who is known as the Forest Settlement Officer who is appointed by the Revenue Department generally and his/her job is to receive claims for rights from all those who have rights in the area and then to decide those claims, the act only provides a procedure for dealing with land claims, the claims are left open the rights can be claimed and the State government can decide. But for dealing with land claims FSO, Forest settlement Officer is to do an enquiry, if he/she is convinced that it is a legitimate right then they can recognize it and then can pay compensation for it or leave it out of the reserved forest area, if they don’t they can reject it. And as I said this again only applies in reserved forests, in protected forests there is no procedure at all which is left open which may exist under the Non-Forest Laws, the Revenue Laws as they are called. And the result of this, you have three primary results. The first you have a total focus on individual rights. There is hardly anywhere in the country with the exception of Himachal and Uttarakhand to some extent that you have community or collective rights recognized in reserved forests. At most what you have is the State Government would have recorded something with settlement report that we concede to provide these people the privilege of grazing their cattle or removing their minor forest produce which may be withdrawn at any time as and when the State Government might decide. And even individual rights are only given to those who can produce
documentary evidence again outside states like Himachal and to an extent Kerala but otherwise those that we are talking of a legal review that came into place almost a hundred years ago. The documentary evidence even today is hard to come by. So the net result is that all rights are effectively denied to adivasis, dalits and other marginalized communities, those whose rights were recognized tended to be upper class and powerful communities. Whenever you leave enormous power to the hands full of selected bureaucrats the net result is that. If you have no way to hold them accountable, then they do not do their job. That’s the most common experience and the result in this case is the settlement process is not actually been done. Even the limited, distorted, absurd procedure that is in the Indian Forests Act has not even been completed in most of India’s forest area. Madhya Pradesh in 2005 informed that most of its forests have not been surveyed. In Odisha, 40%, 60% of National parks, 60% of sanctuaries have not completed their process. Sometimes after more than 30 years. So what this creates on the ground is that you have in the name of the government forest you actually have a sort of fantasy is that huge areas are declared National Parks or Sanctuaries or Reserved Forests in which people are not supposed to have right but in fact they do have rights and they do continue to live in that area. They do continue to use that area but on paper they don’t exist. So you put literally crores of people that is tens of millions of people into a situational legal limbo. Dr B. D Sharma who should have come this morning, when he was the Tribal Commissioner of Scheduled tribes in 1989 said, in his report that you have criminalized the livelihood of entire community, because you have reduced them to the status where they do not exist on paper and their very life is a criminal life. Now having already created this problem, after 1980 we see this problem greatly intensifies because the already highly controlled system of forest management under the Forest Department now gets highly hyper centralized after 1980. The first in 1980, the Forest Conservation Act is passed under which it is illegal to use any forest land for non-forest purposes without permission from the Central Governments and Environment Ministry. So the State Governments lose all power of it and everything comes to Delhi. I am not going to go into details on the process of forests clearance because we won’t have time for that but the process effectively unlike every other process of research takeover in India including that under the 1894 Land Acquisition Act or the Environment Impact Assessment Notification, all pay at least lip service to inviting objections. Under the Forest Conservation Act there is nothing at all, the whole proceeding is between the State Government Forest Department, the Central Environment Ministry and the concerned project proponent which might be a private company or might be a government agency. In fact the committee that decides these matters in the Central Government is the Forest Advisory Committee does not even allow a local committee or anyone else to appear before it. The only people who are allowed to appear before it are the State Government and the company or the agency that wants the land. So unsurprisingly this leads to the 97% of all projects who seek forest clearance receive it and certainly there is never any consideration paid for people’s rights which I will come back to. So this is also a hyper
centralized procedure and the final step in this process of extreme centralization came with the Supreme Court’s order which Madhu has already referred to in the Godavarman case in Dec 1996. They issue a very significant order where they are asked to interpret the Forest Conservation Act. What does it mean when you say Forest Conservation Act? No forest should be used for a non-forest use, what does the word forest mean in that clause? Does it mean only notified government forest under the IFA or does it mean any land that could be considered as a forest and specifically laid down two conditions, any land that is recorded in any government records as a forest will be considered forest under Forest Conservation Act and any land which fix the dictionary definition of a forest will be considered forest under Forest Conservation Act and as we always like to say which dictionary so nobody knows, incidentally if you look up the dictionary definition of forest, in the Oxford English Dictionary it says, a forest is a land covered with trees, shrubs, grasses etc. which means pretty much any land of all. So this order introduced the huge amount of chaos in the country because it is impossible to implement since nobody knows where the boundary lies. What it did do is to empower the forest department basically go and start threatening people with all kinds of situations with violation of the Forest Conservation Act. And though this was brought to the Supreme Court, the court never bothered to pay attention to the fact. The reason for that I will come back to. First through the 1980 FCA, you take all the power to Delhi, second you initiate a process where even in Delhi there is no space for any Democratic or public input whatsoever I mean never mind democracy there is not even space for participation and thirdly after 1996 you expand the land area over which this hyper-centralized system will operate, at least 23%,but potentially more. So this is the situation on forest lands which are the critical common lands for a huge part of population of India. Naturally they do not go unchallenged as Dr Brara said, says nothing goes unchallenged and there was a great deal of protest and movement and all particularly in the preceding 30 years after the 1980 FCA. There was a gradual build up towards the national struggle to overturn the forest laws in this system and finally that achieves a sort of partial victory in terms of the FRA which was passed in 2006 notified on 1st January 2008. It is a highly complex law and I am not going to go into it in much depth here because there is material available and if you like any more details, we can always provide for it in the questions, but very broadly the FRA has provided for three things, it recognizes rights over forests to forest dwellers and tribals and those rights are not only individual rights, they include individual rights to cultivate land under their occupation, they also include non-timber forest produce, they include rights over grazing, fishing etc. Secondly and even more importantly, the process for deciding who has what right is supposed to be democratic in nature. It is supposed to start from the Gram Sabha, the village assembly. Gram Sabha which makes the first decision on whether someone has right or not and then proceed up to 2 higher committees in which officials are also representatives and the highest committee of the district level is to make the final decision, this is the process on paper. And the third point is that, possibly in our view the most important point in this act at all, is that it also says that not only do people have rights on forests, people have an authority under law to protect, manage and conserve forests and this is crucial because it overturns 160 years of colonial history which said only the forest department has the power to manage the forest and again I will come back to why that was the case, why the colonial power did it that way. But now this law says it was a criminal offence under the IFA for you to stop the forest department from cutting down trees or it is a criminal offence even to plant a tree in a reserved forest. I have done it, and
there is a case registered against me. That is because it is illegal for anyone to do anything in a reserved or protected forest that is not done by the forest department and therefore there are thousands and thousands of villages that have sought to save their forests from destruction have been treated as criminals. Most famously in the case of Chipko Movement which many of us are familiar. So this law says that this is no longer the case that people do have a legal right to protect the forest, naturally some people were not happy about this and those people who happen to be in the forest Ministry and environment ministry have carried on violating that law till the present day. We’ve already heard about how it is not being implemented properly. Recognition of rights is very poor, particularly of common rights and there’s been a massive sabotage, where illegal conditions have been imposed. Illegal conditions have been put on those rights and so on. But particularly important for us is the question of how this act relates to the Forest Conservation Act and takeover of forest land for large projects. Now, obviously once this act was passed it became illegal for the Environment Ministry to take that land when people have rights over it. This did not bother the Environment Ministry and it carried on taking the land as before. After some protest in August 2009, they issued an order saying that until you receive a certificate from the Gram Sabha, the village assembly (1) that recognition of rights under FRA is complete, (2) until the Gram Sabha consents to the diversion of forest land, the forest land cannot be taken. This order was issued in August 2009, since then it has also been ignored and violated almost continuously and you do not have to take our word for it. The Tribal Minster himself wrote a letter to the Environment Minister in which he said I do not understand how your Ministry and your advisory bodies are still ignoring the existence of the FRA. As if you can carry on diverting forest land without bothering about, anybody’s consent. He subsequently sent a letter about a week ago that without the consent of the people of that area you cannot take this land. It is illegal for you to do this and apparently he has received some heated replies and there will be a process that goes on. What we are seeing now is a brazen, brutal illegality, daylight robbery that is going on under the Environment Ministry over forest land and that is the huge threat to their rights on common land. Now the question, Revenue Laws, specifically for those guests who are not from India, they might be confused about the term revenue. This is a colonial term, naturally Revenue Laws meant land laws that were meant to administer land and since the only interest the colonial administration had in them was to receive revenue, hence they are called Revenue Laws, even though they are actually Land Laws. So Revenue Laws in many states do actually protect some kind of community or collective rights and again this is not a thing most people are familiar with but it exists. For instance in MP, every village is supposed to have a document which is called the Nistaripatta, which records their community rights. The Punjab village Common Lands Act places the larger part of the land of the state under the Gram Panchayat. The UP Land Reform and Zameendari Abolition Act also says that common land in the village is owned by the Gram Sabha, by the village assembly and administered by the Panchayat village council on behalf of the Gram Sabha. Similarly there are many states which have separate lands for grazing land and other types of land which are used in common. And as I said many of these laws not only provide for recording of rights but also for democratic control over these lands in the forms Panchayat or Gram Sabha. And then finally before I come to the next question which is how does takeover happen for tribal and adivasi areas? These are what are called as scheduled areas done under 5th Schedule of the constitution. There are certain special legal systems that exist on both Forest land and Revenue Land and they are both very strong. In the state of Jharkhand you have two very famous examples Chottanagpur Tenancy Act and Santhal Parganas
Act both of which are British Law, which actually say that the land in those villages is owned by the community and not the state, the law is very explicit on that. Similarly in the North-East, you have the sixth schedule of the constitution which provides for autonomous district councils who have a legal power to legislate on land resources and certain states. Nagaland is protected by article 371 A, Mizoram is protected by article 371 G; these enjoy the power, that any law related to land passed by the Government of India will not apply to these states unless it is explicitly extended to them by the State Assembly so they have their own land administration system, which are very different and which do recognize community and collective land. And finally in fifth schedule areas, you have the 1996 PESA Act, which explicitly provides for a whole range of powers to the Gram Sabha, the village assembly to stop alienation of private lands to non-tribals, to control land dues, to own minor forests produce and so on. So we now see what exists on paper is revenue land. However we also know the massive appropriation and takeover of revenue land is happening without any respect for people’s rights. There are three mechanisms, first is simply you do it illegally, I mean there is a very famous case because it was struck down by Supreme Court in Punjab, somebody wanted to setup a golf course and duly got the Revenue Officer to change the land records to say it is not a common land. It went up to the Supreme Court and got struck down. But this kind of illegal transfer is actually not as common as you might think. The other two mechanisms are much more common. The second is using Forest Law, especially the December 20, 1996 order of Supreme Court invoked the Forest Conservation Act in order to take over land that is neither forest nor government owned, and this is most common in North-East. I give you another example as it is particularly striking. This is the lower Subansiri Dam which is on the Arunachal-Assam Border and which is currently the subject of a huge wave of mass protest and struggles which have stopped it from being built for the last year. Now this dam is going to flood land in Arunachal that actually belongs to tribal clans the indigenous people in Arunachal and is owned by them collectively and is not owned by the government, but because in 1897 or so on, under the Assam Forest Regulation, British forest officers recorded all of the hill areas in the NE as un-classed State Forests on a paper record, now nobody knew that this classification really existed and it had no consequences for anyone, it was merely a sort of wishful thinking on the part of the forest department that one day they will be able to own and control these lands which actually didn’t belong to them. That classification had no importance whatsoever until 1996 when the Supreme Court’s order came in and then suddenly it became it that land is recorded as forest on somebody’s record, therefore the Forest Conservation Act applies and therefore using a slightly upside down logic, the Forest Conservation Act applies. If the Environment Ministrygives you clearance to divert the forest land you can take the land when though the land doesn’t belong to you, it doesn’t belong to the state at all, but because the Environment Ministry has given you permission you can take the land. This is exactly what they did in the lower Subansiri Dam. Eventually because of protests and so on they agreed to give some compensation for the affected communities in those areas. They didn’t consult them first. They instead directly went to Environment Ministry and got the clearance and once they got the clearance they said, its forest land now we can take it. So this method and otherwise using the protected forest and the reserved forest provision in the IFA is a very common way by which revenue common lands over which rights may actually be recognized or taken away from people. First by regulatory takeover and then handed over to some project. Now the third one is the use of State Government powers to re-classify lands under all state laws in main land India. This does not apply to the NE. The State Government has an inherent
power to classify land as it likes and to assign it to various uses as it likes. So they employ this power even where the land in question is actually technically owned by Gram Sabha or by the panchayat or controlled by them and they use it to re-classify land and in particular they use this term Waste Land. All of us in India are familiar with the way anything that the Government wants is classified as Wasteland. This is absurd for one thing this is a diversion. Waste land is not legal category in most of India. It’s a descriptive category that is used for recording land and I have a particular striking sequence of that in the Biofuel example which already referred to earlier. Both Chhattisgarh and Rajasthan form special rules under the Revenue Law for assigning land for Biofuel, and those rules defined the term Waste Land. In the case of Rajasthan, it defined to be any land that is not under cultivation and is not required for roads or for urbanization. And in the case of Chhattisgarh it is defined as any land that is not required in the opinion of the government, which means basically that all the land in the state becomes waste land and can be assigned to Biofuels. So this abuse of power to classify land under other uses particularly wasteland is a key part in taking over of revenue lands. So, the thing is that, if we step back for a minute and look at both of these legal systems and consider what is at work here, what lies behind this process. Then at the legal level you can see it is not that people don’t have right, it is that the two different systems of law are clashing at the same time in these areas. One set protects democratic rights by vesting it in people’s institutions and the other one vests all power with the State machinery. Communities resisting takeovers usually try to use the democratic laws, the FRA Act, the PESA Act, the 5th Schedule in order to defend themselves under these laws. But the state machinery always ignores these laws and only implement the autocratic laws that empower itself. A particular reflection of this is that administrative procedures do not take into account these democratic laws at all. The most striking example of what I already narrated is about the Forest Conservation Act and you have law of parliament itself is a particular reflection of this is that administrative procedures do not take into account these democratic laws at all. The PESA Act is routinely ignored across the country. No state has bothered to bring its laws or procedure in line with the PESA Act. And this is also true as brought before the courts. It is extremely rare for a court to intervene in favour of Common Land Rights. In most cases, what you have seen, they will uphold the administrative power and the administrative procedure rather than the common or democratic procedure and that is not surprising, because at the end of the day, the courts are the institutions of the state and the ability of communities to express themselves to actually reach the courts, to put this argument in term that makes sense to the court and to convince the court, The courts tendency to favour the state and hence people’s power in court is extremely weak. We have seen that particularly in the Godavarman case, where policies and issues that affect millions of people without having anyone to represent them, being present in the court. In all cases except with the exception of Bellary in all cases where right to land is being fought for, people have fought it by using their local institutions and trying to use their power.

It is not particularly true of the courts. It is true of all administrative machinery, they always tend to automatic state control in the name of the public good or the national interest over democratic community collective rights, and the question is why, I mean where does this come from, and why is this so central to the way the State functions.? In a democratic state it is a peculiar state of affairs. In every case following a democratic procedure is against National Interest and following an undemocratic procedure is National interest. Why does this happen? We have to look very quickly at the structure of
land and the way we think about land. The British Colonials when they came to India, their main interest was extracting revenue and increasing the yields of things they were interested in. They were not interested in Tendupatta or in fuel wood. They were interested in certain types of forest produce. So now for both, if you are trying to extract commodities and you do not have control of that forest. Instead it is being controlled by a collective management system, you want to manage for manage for timber and the community does not want it. Community control therefore poses a problem.

The takeover even if it is by powerful State or Corporates, is always presented as national Interest and the resistance by people is always presented as a sectional vocal interest which at most may be valid here and there, it is never presented as National interest. Now for both systems community control posed a problem. If you wanted to increase revenue, you want to tax, extract cash and land is being used as a medium, then how do you tax ?So what we have is there’s a conception of national interest and best use and that is embedded in our way of governing land that is inherently opposed to community land rights. If you recognize community land rights, the colonial interest cannot be entertained. Colonial interest becomes the national interest and this is the same thinking that is played out in the court, is played out in the English media and is played out in the administration.

Now the question is, does it work? This I am asking because it does not work. It does not generate employment, this is the first one. The claim that there is employment generation is simply not true. We have already seen that in India, between 1996-2008, formal sector employment growth in India was zero. The sectors that are seeking land namely mining and energy ,have actually seen a net fall in employment despite being granted a huge area of land in this period. The energy sector, which is the single largest source for land takeover of India today, for generation, for mining and so on. Though the generation capacity increased by 1 lakh megawatts almost double, between 1996-2006, the percentage without electricity fell by only 1%. From government estimates only, only 20000 megawatts is required to reach electricity to all, but in the last 5 years alone the Environment Ministry has created 10 times more capacity than that.

Finally conservation in the name of which huge areas of land are taken under forest has been taken over is actually not happening. A large part of land is being taken over and then handed over for other uses or simply being illegally destroyed. So this system is not working on anyone’s interest leave alone in the national interest. So therefore the key issue is to change the way land is controlled recording of rights is the first gap in that but the question is are we going to continue with the highly centralized land administration that was intended primarily for colonial purpose or are we going to integrate people’s rights and collective rights. Even the colonialists recognized rights and incorporated into our land administration system, though they did not respect it.

There is this hilarious story from the Bhil uprising of the 20th century. The British went into the Bhil areas with newly passed 20th century Forest Act and negotiated with the Bhil Rajas. They simply signed an agreement with the Rajas, who mostly did not know what they were agreeing to do saying we will take this forest and you will not oppose it and they signed a written agreement,
gave him some cash and some alcohol and so on. Then they sent in a surveyor to reserve the land and the surveyors were killed by the local Bhil adivasis. When they went to the community and asked them what they were doing, your raja has signed an agreement. They replied by saying we don’t care about the agreement. This is our land. He is just a Raja. In a collective management system the Raja is just another person. He is just a king. He does not control the land, he does not own the land and he cannot sign it away and eventually, the British had to retreat from that area at that time. So for the colonialists, any kind of collective management system posed a very serious problem. If you look at all the colonial settlements which addressed land; the permanent settlement which addressed Zamindari, the Ryotwari which was pioneered in Madras which claimed to give title to the individual peasant. In practice they were actually given to the higher class. In Tamil Nadu, they were actually Brahmins, who were given individual title over small plots of area. They were not meant to have tenants. The forest laws as we already saw focus on timber. They always tend to favour individual instead of community right and the laws, that I mentioned earlier like CNTA, SPA, 5th, 6th schedule areas, all 4 these result from rebellions. They all reflect one or other uprising. It goes beyond tribals. In what is now known as Kumaon in Uttrakhand, there were massive uprising so the British withdrew. In order to do this they also came up with a justification as to why it was necessary to eradicate common land. John Locke the famous proponent of Civil rights also declared that private property is the harbinger of civilization. Anything which is not private property is barbarism and therefore, land that is not used as private property will become used and abused. Somewhat like the tragedy of the commons that people are so fond of even today. Therefore, even though Lord Cornwallis did a second survey of what is known as Bihar, Bengal and Odisha, in 1796. Even though they were the most populated parts of the country, he decided that 1/3rd of the land was considered as wastelands though it is under some collective form of use. So what we have is some sort of National Interest and best use that is embedded in our way of looking at land that is inherently opposed to community land. If you recognize community land rights, the colonial interests cannot be satisfied. The colonial interest become national interest and so that becomes a problem. This is the same thing played out in the courts, in the English media it is played out everywhere.

The current process is totally undemocratic. It is controlled by the bureaucracy and it is totally arbitrary. Even the bureaucracy does not know what it is seeking to achieve. Example- the Integrated Energy Policy of 2003 set out certain targets for additional generation capacity in the next 20 years. They themselves do not have a plan of what they are doing. They themselves have cleared more than that which is required for the next 20 years.

And finally, just as a brief note what I had mentioned, the pattern which we have seen in the last 20 years is that this system of law, and the best example of this is the coal scam which we all of us in India are familiar with. The report of the Comptroller and Auditor General says that out of 123 coal blocks given to companies to mines, only 28 blocks are actually used. What happened to the remainder? They get the lease for the mining block and then because you can’t sell the lease, you sell the company,
because the company stock price goes up after you got the lease, or you raise credits from bank because banks are likely to give low interest rate for infrastructure projects. You increase your stock price in the market and therefore increase your own income (Those who are directors in the board). As Arvind drew attention to it in the morning, this has increased the space for players who are primarily interested in financial speculation. Who are not even interested in using the land.

The third single largest sector with the most non-performing assets, unpaid loans in India today is the power sector, 2,91,000 crores. A crore is 10 million. Loans are pending from this sector to public sector banks primarily. Then the pressure comes on the bank that if you write off the loan, if you declare bankruptcy, the bank will fail. Banks have therefore been restructuring these loans and spending more and more public money to these companies and all at the cost of those who have lost their land and natural resources.

So the question is what is the way forward. The first step obviously is those right and powers which are already in law need to be recorded and integrated with the administrative system. Then forests rights act, individual and community rights should be recognized. This is what we have recommended in the study. That they need to be recorded and integrated with the administrative system. The FRA Act, community and individual rights should be recorded and recognized in all areas. There has been a small step forward in this by the tribal ministry. Recent orders and rules on recognition of rights in the forest is the most important one. It says that in every village area, the forest dwellers should now have demarcated rights to manage protect and conserve the forest. Whether it would be done or not that’s a different question. The second is that the forest department official should be directed to respect and comply with the powers of the Gram Sabha, the village assembly and their plans for forest management. Incidentally if we went to look at what development means, there is an excellent example in Gadchiroli District in Maharashtra. The only part of the country where these community forest rights have been recognized on a large scale. They received rights over bamboo and claimed the right to control its transit beyond the forest department. And last year in 5 villages alone they earned 70 million rupees from harvesting bamboo in one year, so you can imagine what tremendous difference that is making to the lives of the people in that area.

So to say that we should destroy the entire forest and then hand it over to a power plant. What has also been tried is to provide employment to the dispossessed people at the rate of Rs.2000 per month. Calling this development is absurd when the collective rights can lead to much more. The PESA Act, Gram Sabha’s powers should be incorporated into the relevant laws and procedures and rights of communities should also be recorded. That is the first step that we feel is necessary. Secondly, the first step towards a more democratic arrangement which has been mentioned in the morning is when you are taking over land, you should take the consent of those who are affected. Mere consultation and holding public hearing is irrelevant. In a public hearing you hear the objections and do whatever you want. So taking consent imposes a minimum requirement that without their consent, without the negotiated agreement you cannot move forward and that has to include the provision of rehabilitation and including land. And finally one key point that we wanted to make in the study is that the moment the way it is looked at is in a very piecemeal fashion. The Land Acquisition Bill with private land, the
Forest conservation Act, nothing deals with the question of government revenue lands which are not under private ownership. There is no system of compensating or rehabilitating anyone at all on those lands. It should be that any land use change over a certain region should be deemed as acquisition and it should involve compensation and rehabilitation. Finally a key point is that violation of all these procedures should be made, criminal offences and strictly punished. This exists on paper only. There is no punishment at all for violating PESA Act or many of the Revenue Laws, so this should be changed. There is a ridiculous provision which say, anyone violating the law etc etc..shall be punished etc... except government servants.

Secondly we felt that there is a need to take steps to tackle the enormous speculation that is happening in land and natural resources, because that is the single biggest driving factor for takeover today. And for that we have some suggestions which are only a first step but a step all the same. First is SEBI, should make it mandatory for the companies that are going in IPOs or otherwise raising money at the stock market to disclose the status of recognition and implementation of rights in the project areas. Of course they will lie but at least that is the first step that the information gets into the public domain. Secondly the RBI’s regulations which currently mandate providing credit at low interest rate infrastructure projects should be changed to say, projects that don’t receive clearances or don’t have completion of recognition of rights, the banks that lend in to such projects should keep a higher cash reserve and such projects should not receive infrastructure and priority structure status.

Finally in the long term, following recording of rights and through a democratic process to move towards a system of collective regulation and control over land use and welfare which in fact leads to money income as I said bamboo is a good example. E.g. Collective means and collective forms only through community forest resources. That has been made legally mandatory for every village and forest dweller in the country. Whether it will be done or not is a different question but that is what we have recommended. Development through land takeover and land expropriation, in fact leads to exploitation.

Thank You.

Thank you very much for a very comprehensive and thorough presentation. Now I call upon our colleague Shreedhar, who is a discussant to give his comments on both the presentations.

Mr. R. Shreedhar- Thank you Shankar and Madhu for an exhaustive presentation. Over the last 2 decades I keep saying, if I hadn’t read the pre amble of the Indian Constitution or if I had read it wrong, probably my blood pressure wouldn’t go up. Lot of our premises are based on the fact that we may be a socialist, secular, democratic Republic but when you look at how they are creating separate State within a State. From Sez’s now they are planning to establish
NIMS. Very recently in the parliament Mr. Anand Sharma said 10 of these NIMS which are super SEZs have been already cleared. It exactly kind of reflects what the 1931 Zameendari Abolition Act mentioned and it’s exactly bringing it back. Today I think the most realistic definition of this country is, it’s a capitalist, communal, semi-feudal oligarchy. both the political and economic system which we see reflects this. So if we keep on looking for democratic rights. We look at the preamble in this manner and find some rights in it. In all probability a little has been achieved by the exercises which courts and judgements have given us. This will give us relief, but not when the expectations are that we a Democratic Welfare State and these are a very glowing and glaring examples of all this. The unfortunate thing is most of these cases you know, the state earlier also in the morning Dr. Purohit brought out what how the state is the violator. In most of these cases, the ministry which is supposed to protect actually comes and speaks up in the court only when the judge or the court starts asking as what is your view about it and sometimes I feel you know that it has become so despotict. Like our rules today have become so despotic both for whether it’s a promoter or for the local community that you don’t know what is the law under which you will be evicted or what is the law under which you will protect yourself. For instance we just take the case of Vedanta, in 2003 the issue was that they had violated the Forest Conservation Act and they had encroached upon additional land in the refinery which was illegal and they should have not gone ahead with their work. The government of India was willing to overlook the violation of the forest rights, as some presentations have pointed out in order to get this process going ahead. Then you have got the FRA Act coming. Now the government does not say that it has violated the Forest Conservation Act but that, they have violated all Environment Acts. As if to offer a window to the company company says that this because violation of FRA came up in 2006. So whether the Government is very serious about not having some violation, It is constantly telling the investor, listen I have to deal with the public also so if the problems become a bit larger, I will show you some window but I will stop you from this window. Therefore at the end of the day we find that the land is taken over and the kind of problems or destruction that has to happen continues to happen. The other worry that does not get reflected very clearly. That a huge amount of land like in the morning, the scale of land that was going to be lost was brought out. The scale of people who are going to look for employment in the next decade. In the next decade we are also going to have a flood of people who are going to come into the working age group and as more and more people are going to come into that demographic situation, we find that always. Including the Delhi Mumbai Industrial corridor, the planning commission itself says that it can’t produce more than 2.6 m jobs in the next 15 years. So if it can’t produce the jobs, what is the direction in which it wants to take the economy? There is a huge question mark in trying to resolve this problem.

They want more investment. The investor has already invested both within the plant and outside. We can take examples of area where there were immense opportunity that could have been created for employment, take the case of alternate energy, solar energy has become another kind of a land grab, wind energy has become another kind of a land grab, things that could have been decentralized that could have been easily broken down you know. We are having in technology even things like cable TV. We are having a centralization that is much more than required. Will it produce the same or better quality output in the end ?So I think how the economy is getting designed is one fundamental question and if both the major political parties are going to continue to have this mindset. The next two decades are going to be even more conflict prove. Today I am finding, the more data we generate about each of the land acquisition, there is a conflict and
also now for instance the coal land for instance. They acquired land from 1089 people. Before they could continue their first round of issuing orders, there were already 1300 cases that were filed on compensation. To other things, like on the Sardar Sarovar canals, even today we have more than 18,000 cases that are there. That is why they want Lok Adalat and they want to find new forms of setting with people so you are going to have this conflict magnified further and the more worrisome end where most recently the Odisha Government has come up with a new kind of a legislation for police protection for industrial areas where they would be even more free to do many things. Then they have put up restrictions saying researchers from outside cannot come into these areas without giving information to the local Collector or taking permissions from the Collector. So what you find is that at one end, you know even simple kind of things where other people could go and interact, you are finding a kind of constraint. Whereas you are finding that it is more single window and open door policy is being brought for the investor and at a much much more larger level and as what is new e.g. Same as in Ethiopia. It has become infradig for the Steel and thermal power plant owner in India not to have coal mines in Indonesia, so we are getting requests from Indonesia saying that our lands are being taken over by Tatas or GMRs so what can we do about it. So this kind of economic hegemony, I think this country will try and perpetuate in other places which will be very sad contribution from this country and I think unless there is a real shift in this kind of economic thinking, I think we will be as I say we will let the elephant in and pull it out with its tail, which will be a difficult task.

Thank You.

Thank you, Shreedhar. So friends we have three colleagues who have covered the entire scenario fairly well and in details. We now look forward to your questions and any clarifications you may need and brief comments if any.

Rita Brara: My first question is for Shankar, you talked of common and individual lands, I think what you want to say is common and private lands because individual does not make sense. You could have private lands which are common.

My second thing is a clarification. I don’t think John Locke said what you did. He might have said it in another context. He said, as long as there are enough commons for everybody. There is no problem. But once the presence of population increases then it has to be that common are in a sense parceled out. I have also had a look at John Locke’s two treatises on Government and that is precisely what he says.

Shankar Gopalkrishnan: I agree that I missed a caveat. In the Indian context, the British were convinced they has a population that was already too large.

Rita: It is not true, that the British did not recognize commons. Every village in North India has a pasture tract that is in common. Not only in Rajasthan, it is the characteristic situation in Punjab and Haryana as well. That land is recognized as common to the gram panchayat always has been even in the British land records. I had reason to check some of them.

Shankar Goplakrishnan: Yes it is true, but as I said I also quoted the Chotta Uappur Tenancy Act and other British Acts.
Rita: I know, I am just talking of a village meant that there has to be some common tracts, that there has to be some common land, otherwise the villagers can’t subsist. So you do need pasture stretch what the commons are may vary. Sometimes it is a common well, sometimes it a common passage not just Easman. It is a common threshing ground. What is common may vary, but in that sense it is in conformity with the customary rights of North Indian settlements even prior to the coming of the British, e.g. coming of the Mughal.

Shankar Gopalkrishnan: As I said, the issue is not that the British did not do this. The issue is that they did this under duress. The vast majority of which. Take TN for instance, the vast majority of Tanks and common pastures were parceled out under the Permanent and Ryotwari settlement in different parts of the state. Which is why India’s traditional system of irrigation collapsed completely under the British. The same thing is true with the majority of grazing lands which were either converted into forests or parceled out. It is true that some patches were left which people were willing to subsist. They did not do so.

Rita: Second suggestion, it is a good thing to look at judgements and newspaper reports, like I find myself confined to looking at the English Press. It also helps to look at the Indian law reporter which gives you a more complete account of court cases.

Shankar Gopalkrishnan: Source was recorded judgments from the Indian law reporter

Gopi: Not a question but some remarks on PESA The AP PESA rules, the conformity Act which has come in 1998 took almost 15 years to put the rules in place which just happened in March and one of the provisions which is very central to the issue today is acquisition of land in scheduled areas and particular to this particular provision. There is no place at all for the Gram Sabha. Gram Sabha is central to PESA implementation but unfortunately PESA rules which as far as acquisition of land in the Scheduled areas, is completely left to the Mandal Zilla Parishad. The Mandal Govt. will write to the Mandal Prajapati Officer, telling that there is a project and give the details of project and they prefer to write to Land Acquisition Officer. Nowhere Gram Sabha is mentioned. I think this is what others are saying. We have strong laws that is what others are saying but in actual practice we can see how much of dilution is taking place. There are a number of things like water bodies and all that, there the Gram Sabha is taken into cognition. When it comes to Land acquisition which is very central to their livelihoods, we find that absolutely there is no gram sabha mentioned. There is one clarification, I wanted from the Shankar. You were talking about the salient features of FRA for deciding rights. That is the central feature you said. Madhu was involved in our study. Where it comes to the rejection of the claims which at least in AP is to the extent of 43% of the rejection rate which is phenomenal and very high, we still do not see on ground, the kind of adjudication process that the people can fall back on to take it forward. If someone has any information we would like to have it.

Shankar: Slightly erroneous to call it a democratic process, it is a partially democratic process. And even what is in the law which gives the final power to the district committee, as you said, even that is quite often not being done and quite often we have to without any respect for legal procedures you quite right.

Madhu: I think one saving grace is the recent amendment rules which have now clarified those procedures and the ministry has taken this up with State government officials and there should be (one can’t say to what extent) there should be considerable reexamination of these.
Sreedhar: The SC has been hearing the Vedanta Case. On the 6th, in the order that has been passed, the judge Aftab Alam raised a very crucial issue. In the whole FRA debate, that is section 6(1) of the FRA which says that the Gram Sabha will be the vesting authority. This is being misinterpreted by the States and even the Central Government, to say that the District Administration will be the one that will finalize and settle these rights which according to him, the government of India should clarify before the next hearing on January 11th, what it understands by FRA, because if you read the bare Act which was read in the court by the judges, that the voting right is only which the Gram Sabha. Not only the initiation of the process, it says that we will make the maps and give it in the cases where there is an appeal or there is someone aggrieved by it. The job of the district administration is mechanical only to ensure that the map is made properly and put in place and not that they would be the persons who would be granting rights. The important point here is, what is the process for reversal of historical injustice? The historical injustice is as you know, the British and others centralized this decision making on your land and here is a way that is making it completely reversed to make it a truly a republic. That is the Gram Sabha is making a claim about what is right. So I think, it is going to be a very crucial moment where at one end the Central government has to be very clear about what it means. Who has the right to vest these forest rights and the other is whether those Gram Sabhas which have already lodged their claims. Is the process settled at that level? Therefore they already have the rights.

Mr. Eswaran: Let me go away from the points that were discussed in the recent times, the point of view of looking at two issues:

1. The mining in India, there is a lot of mining of iron ore, much of it is exported. It involves a lot of cost not only of the local livelihoods and ecological destruction, which can’t be restored in a matter of weeks or months or years. Do we need to do that scale of mining in the ecologically sensitive areas? Some studies have been done. Gopal Kadekody has done a study of what happened in Goa for instance. I think we need to look at this.

2. It is an ancillary point. If you look at Coal mines we have been talking about other land taken up for coal mining. We have not been looking at the kind of damage which is caused by the movement of mined coal to the railway station or the port or whatever. I think that is also a major issue which has happened in the coal mining areas. Local mining is a large activity.

3. Another unrelated thing to draw attention to this. The extent of land which the Government acquires for activities projects and so on. We are nowhere in a position to say that for capita availability of land is so much now. It is nothing of the kind. Even if you look at the country wide average. By the time the 1951 census moved to the 2011 census, the per capita availability of land is less than a 1/3rd of a ha. Should we not keep this in mind when we acquire land for say defense cantonments, firing ranges, railways or steel mills or whatever. What do people do say in Europe. The area is small but the population is not small. They also have mining. How do they cope with this,
without raising protests within England or Poland or Germany or whatever. Do we have any lessons? In terms of how much land do they allow to be acquired for mining purposes. I have a feeling that our government and our own scientists, and social worker and academics would learn a lot from this comparison.

Sreedhar: I just wanted to point out that the new mining bill is even more scary. The individual lease in the new mining bill is 100 sq. kms. You can run a highway from here to Dehradun or something like that. So 100sq. kms. in a single lease would mean that there would be significant number, expansion could be so huge.

Chetan Agarwal: A query and few comments. Along with the process of identification of common lands, there is also a process of alienation by communities or elements within those communities. Either amongst themselves or aided and abetted by outsiders e.g. in North India, in Haryana, and Punjab. Panchayat lands have become community lands and they have been declared joint private lands. Then they are being parcelled out and sold over the last 30-40 years and specially in peri-urban areas where land values are likely to go up. This process get accelerated because of the real-estate potential. Apart for what is being done through large scale projects for land acquisition, this is a kind of an autonomous, insidious process. Look at its scale. If the land remains within the community, there is an equity impact of whether the sharing was fair and equitable. Often those who did not have land, had very small amounts of land. They get no share or a very small share, because the sharing is based on the existing private land holdings. Of course, there is the ecological land question. Does some land need to remain in common for its ecosystem services for ground water recharge and fuel wood and fodder and so an. So that is one question. The second kind of comment was the there was a judgment in the Supreme Court. Last year that Jagpal Singh judgement, which said that if anything was a Shyamlator a common land, it needs to be restored back. They cannot be privatized unless they are given out for the very poor or the SC STs, and so on. Is there any comment on that process. And finally Shankar, there were two questions on your presentation which we can perhaps debate or follow up on. One was on the financial thing. lot of these projects are financed by large scale credit. So if the credit is being processed, it would basically require disclosure both on whether they have got their regulatory clearances or not and secondly, the land which they are being built on are they erstwhile common lands, apart from being forest lands. And the last one was that like the CFR process where the communities have the opportunity to reserve some land around them for common purpose and prevent their parceling out if they so desire and prevent their use for non forest common land which are often treated as residual lands by the State.


Madhu: Chetan we have discussed this before but I think the parceling of so called common lands. Firstly it is not new. The undivided Punjab had this common land’s Act which actually now applies to large parts of Haryana, Himachal and large parts of Punjab. There are various categories of common lands. The one you are talking about were always a percentage share of the common lands, based on how much land you own. The non land owners never had rights on those lands. There was always provision to divide and they are doing it now because of the market forces etc. But I think a more important question to look at is what is happening to the non divisible common lands. What is the Government doing to those. I mean any number of cases in Punjab. In fact Punjab and Haryana High Court has set up an enquiry judicial
Committee to look into fraudulent grabbing of the lands again by political bigwigs, which also happens to land records. This is more difficult to do where people have shares because then legally it is the shareholders. And also what Shankar pointed out. There are laws which protect common lands, but we need to be very watchful of how those laws are being subverted, amended, abused to actually releases those common lands and transfer them either in Haryana and other places it is a daily event.

Shankar: Just to respond to the other points you raised. The Jagpal Singh judgement has become to one more which the State has become wary of. What we are talking about is the clashes of two sets of laws. There is supposed to be another case in Ahmedabad which is a somewhat frightening case. Most probably from what we have heard, it will never be heard again. It is deemed to be too inconvenient a case to be looked at. The second thing is that if we look at the way high courts and others have interpreted that judgment. A judgment from Rajasthan quoted in the study. The question was brought up of handing over common land to windmills. In that case the Jagpal Singh judgment was cited as a precedent about how it cannot be done. The Rajasthan High court overruled the Jagpal Singh judgment literally or indirectly and said, that were the collector has made the decision, these can be no question of illegal transfer of land. No question of rights once the collector has made a decision. This is becoming another case of where when you assert democratic procedures, it get brushed aside.

Madhu: Another dimension of that judgment. You see it gives powers to the government to evict. Just as in the Godavaram case, the forest rights act was actually a product of that order of MoEF. I mean it gave a fillip to the movement because of the atrocious rejections and look what they have done under the garb of using that judgment. In Jharkhand, thousands of properties have been demolished. People have not even given the right to appeal or even a stay. They cannot be heard and in many cases we do not hear very much about it but I think that judgment has been abused to throw out we do not know who to what extent, because it again gives incredible power to the authorities without any accountability. If they had said, the Gram Sabha should decide who to remove and who is legitimately occupying the land that would be different but for the State Government to rule because they are occupying the common land it leads to horrendous situations.

Sreedhar: This is the third point that Chetan raised. This is the suggestion of Shankar on the SEBI regulations. Actually it is there already. You know if you like, we have been sometimes looking at the red herring prospectus. Jindal’s for instance, when they brought out the red herring prospectus on the JSPL. Page 206-271 is all their violations you know. It is like a periodic table of violations. Similarly like now Vedanta after the ADR. Now the AC in the US, it constantly keeps on talking about whatever changes have happened. Anything which will make a material difference to the company. The problem most often is that when they raise money, they raise in the name of the company which has not being violating. They have another company which you know what they call us special purpose vehicle, which only takes the good things about promoters and promotes this new vehicle.

S R Hiremath: Thank you all. I think I would like to just have brief concluding remarks. So first of all friends we had a very wonderful session in terms of being very comprehensive, in depth covering not only the legal provisions and so on but also the ground realities. So now I would like to just highlight a
few things. In the 1980s when we began dealing with the common land issues, we wanted to understand the intricate relationship of the livelihood of the marginal farmers and the other landless people in the rural areas with both agriculture and forest and what the British way of looking at a forest had done. One of the most perceptive books that we came across was by Jyotiba Phule in a regional language Marathi. It is in 1882, hardly about four years after the scrub law. He says in the past, the peasants who had small pieces of land, basically marginal farmers who could not eke out enough from it for their survival used to eat fruits from the nearby forest and used to collect leaves, flowers and dried tree branches which is basically fuel wood, by selling them to others, supplemented their meager income, they also used to maintain a couple of cows or goats and were living happily in the villages depending on the village common grazing land. How did the British interrupt this process? But Her Majesty’s conspiratorial bureaucracy have used their foreign intelligence and have newly established the great forest department. They have incorporated all mountains, hills, valleys along with barren lands and village common grazing lands in this department thus making it impossible for the goats of the poor peasants to find even breathing space in the forest. So that’s the kind of intricate relationship we had and with this land. In the present government, the trio of Manmohan Singh, Chidambaram and Montek Singh Ahluwalia, the kinds of policies that they are pushing are absolutely focused on destroying this intricate relationship that the rural poor have had whereas FRA and others basically tried to re-establish them. Here I would like to say that the kind of situation that we are facing is very crucial, critical and most challenging. We need to use all possible different avenues innovatively and creatively to find space for the establishment of the rights of the rural poor on both the land and forest resources because that alone can basically help in a country like ours. I don’t want to go in more details on that because how the colonialists had their colonies to basically expropriate the produce and everything to fuel their industrial revolution and take away the resources of the marginalized section of the communities is known to all. Charles Dickens whose 200 birth anniversary we are celebrating has depicted this society very well in his great novel. One of the ways that we have found to deal with this in India, which as somebody said very clearly is through the public interest litigation. It’s not an easy job and it’s not happening particularly at local and high court level but at least in the Supreme Court level in exceptional cases we have had unusual degrees of success and one such success is the Bellary case which Viren Lobo mentioned in his opening remarks and presentation this morning. It is the same judge whom Shreedhar mentioned. A very sensitive, a very caring judge, Justices Aftab Alam who heads the forest bench, and their own committee, the Centrally Empowered Committee brought illegal mining (brought what they called as reckless and irresponsible mining and this in connivance with people’s representatives and officials. This is something they have never seen in any part of the country) to a grinding halt. They ordered a scientific study of it. They ordered CBI enquiry so that the criminal who basically have looted our natural resources (creating what the Lokayukta and major newspapers called the Republic of Bellary), were sent to jail they and all their criminal associates and all that. These cases are I do understand exceptional, but we have to find creatively such spaces. To me PESA, 96 and FRA are the two major harbingers for asserting the legitimate century old rights of the people on both lands and forests so that they can make a dignified living which is basically enshrined in our Article 21 of the constitution which is what Justices Aftab Alam and Kapadia invoked as the intergenerational equity as well as the precautionary principles in our case. Now, one of the things that I would like to see this debate extended to is not just the forest and common lands which are most crucial but also to agricultural lands. These
together in Jotibha Phule’s words are most intricately linked, so how do we go about is a major question. After a three day workshop in Palampur, with one of the very innovative IAS officers and a former planning commission member, we came to four conclusions. Firstly this so called growth engine which is basically bulldozing the rights of the people has to be somehow stopped. As Gandhi said in 1921 when we launched Non Corporation Movement that real Swaraj will not come by acquisition of power by a few but by the capacity of many to resist when that power is abused. What we see all around is abuse of power in the most blatant inhuman irresponsible way. Secondly we have to have a National Land Use Policy Commission at state levels and that is not just for common lands and forest lands but also for agricultural lands and we need to call a Moratorium on the transfer of agricultural lands and these common lands and that would basically take on directly as Gandhi did the unjust British rule in India and establishment of the National Land Use Policy Commission or state, because land is basically in our constitution is a state subject. This will go a long way in terms of what land to be used for what purpose, keeping not just the land, livelihoods of the people who are dependent on it as the central focus. And thirdly we have to cut off once and for all fully and clearly our linkage with the colonial heritage. During freedom struggle we had this land to the tiller which was a major reform movement to enable these poor peasants and others to lead a dignified life and that was basically Land Reforms and that Land reform has been basically not only been relegated to the back seat (except Kerala, Kashmir and West Bengal maybe one other State, Himachal) it is has not been implemented. Instead they are going overboard not just to give hundreds of acres but thousands of acres of land on a platter to industry. Where is that land coming from? We have got to bring back the Land Reforms and the conservation and protection of the common lands as the central thing in our National Agenda. Fourthly instead of having special economic zones and others, these marginal farmers whom this agriculture has become unviable we have to bring them into co-operatives so that the size of the land in a cooperative mode becomes viable for their agriculture. One of the reasons for the farms being unviable is that the costs of production have gone up. So these were the four solutions we came up to and I think they need to be read in conjunction with what has been stated here. One of the things we find in the National Sample Survey is that many of the Statistics are not reliable. For example, National Sample Survey showed that between 1992-93 to 2002-03, 17.4 million hectares of agricultural land was transferred to non-agricultural purposes and that has to be examined clearly, I am not saying that we should go to the extreme and nothing should be transferred but what should be transferred, on what principles and how that has to be debated and this does not cover, I repeat does not cover what one of our most enlightened Secretaries, Bandhopadhyay reported about. Many zamindars who are still holding benami lands, also livelihoods and earning and meeting basic needs from passage to the forests who have lost their livelihoods due to degradation of the forest lands, these are not covered by National Sample Survey scheme. So friends this is a very, very challenging situation and there lastly but not least important, we have to learn lessons from other countries. I was very happy to hear what our friends in China are doing in terms of small and marginal farmers giving tenure on the forest lands and how there is an enormous increase in income and I am sure from Brazil and other countries we will learn. So it is time that all of us who are concerned about this need to come together because the present situation is nothing short of Mahabharata. This is a fight between the satvik forces where 2500 years of history starting from Buddha, Socrates Confucius to these days there have been some voices like Schumacher
and many others and that kind of wisdom has not been viewed into an alternate holistic development strategy which is the challenge before us.

So I thank you, it was a post lunch first session and I think we have learnt a great deal from our friends and I thank them again and I thank the organizers for giving me an opportunity to chair this.
Way Forward

Chair: Arvind Khare, Executive Director, Rights and Resources Group

SPEAKERS

1. Xu Jintao, Professor Natural Resource Economics, Peking University, China
2. Luiz Joels, former Director, Brazilian Forest Service, Brazil
Xu Jintao-We have reformed for 30 years but we have finished probably a third way. A third of the way to finish the task of giving back some of the livelihood opportunity to the ordinary farmer household, try to increase their income and improve the income structure basically reduce rural inequality and to enhance labor allocation and to give farmer bigger capacity for private investment. The third area of impact would be very important for the government, social and political stability because we have long term social inequality a lot of corruption where due to ineffective public services, farmers at the bottom of the society have been suppressed for so long. They don’t have sufficient rights. Farmers are very unhappy for many reasons. There are equity reasons. There is the governance issue and corruption all over the country. Social tension has been a problem and maintaining social stability has been top priority of the central government that has consumed a lot of the national budget. Land reform now is considered one way of mitigating social tension and improves farmer happiness and reduces the pressure of local government.

Our work has been trying to address all these questions, basically give response to the three potential impacts. We want to evaluate the performance of the reform. Firstly we want to establish baseline information. What was the situation ten years before the reform and what happens afterwards? Are farmers stronger ten years later? The progress of the reform is to give the collectively owned, also collectively managed land to farmer households. We want to establish the household base to forest management system but the question is after the reforms are implemented for several years, are farmers stronger are farmers getting more land to manage are they enjoying stronger rights? Are reforms conductive for the new process? The government has a serious policy to regulate the process of reform. Are these processes followed? Are farmers happy? Impact wise we would like to see whether farmer are enjoying stronger rights of forest management, including harvesting rights but also we would like to see farmers investing in forest management including planting trees, are farmers getting more revenue and what’s the impact on farmer households. On labor decisions what happens with land, people worry about farmer loosing land quickly. Like this conference people worry about if farmer gets land they do not have experience with property rights they would be tricked, they would lose land to people who want to drag, loose land to multinational companies all this is happening. We want to look at is whether after land decentralization, farmers forming new organizations, new kind of
administrative structures. What would be the impact of state forest reforms? What are the needs for future policies and regulatory adjustment in order to support the reforms.

Going back to basics, firstly in any part of China the records are quite streamlined as you don’t have a problem in understanding ownership patterns. You only have two types of ownership since it is a socialist country. In other Socialist countries like Soviet Union you did not have private ownership. In China we have state ownership and we have collective ownership for all lands including agriculture land, forest land and urban land. In urban areas, most of the lands are state owned but in rural areas most of the land is collectively owned. In the forest sector, we have around 48% of the forest land owned by state and managed by either state forest enterprise or the local state forest department. In the collective forests after 30 years of reforms consecutive reform has resulted in many self diversified management schemes. China progressed as one of the few developed countries to see their forest land increasing and the main increase, main expansion has happened in the collective forests.

Like I said, we experienced two runs of forest tenure reforms in collective forests, first round started in 1981 – 1986 basically the period China had farmer agricultural land reform but it was not successful. Our agriculture reform was pretty successful as I said it improved agriculture productivity from year 78 to 84. China is already out of hunger and we are food self sufficient for the first time in Chinese history. So it was pretty successfully and the success of agriculture reform basically led the foundation for China economic growth nowadays. The first reform was more complicated, all the forest authority from central government to local government all level of forest authority are against forest decentralization probably the reason is because of forest industry. Although 60% of land are collectively owned by villages all forest industry in the 80 and before are state owned. This industry employs lot of people and have strong link with the government. If we fully decentralize collective forest then timber supply to this industry would disappear because the people would sell to the highest price giver and forest industry usually enjoy monopoly in the market, they give farmer a very low price, that won’t work in a decentralized scenario. That was exactly what happened during those years and with strong government opposition, center opposition I would say in 1987 the first round of reform started and the government was pushing for experiment of shareholding system basically keeping the collector management intact and trying to give farmer more revenue. That didn’t work well and since 2003 we started second round of forest tenure reform and from 2003 to 2007, 14 provinces announced the new reform policy calling for bigger share for household management. In July 2008 central government reform policy was declared. This is not the conclusion of policy change process. By the year 2010, 20 provinces have their own reform policies.

What’s new with the second round. First we had Fujian province which is the largest collective forest province and Fujian has the strongest forest agency in the whole of China and has the strongest forest industry in the 80s based on collective forest. Fujian was publically against the first round of reforms for exactly those reasons. Fujian under Central government support established a few experimental zones to try out shareholding system. The first forest management was collective but the farmers were given shares based on household population so the theory is at the end of the year when timber was sold, the revenue would be distributed among the farmers based on household population. Theoretically, it sounded like a very ideal system. All the elite people, intellectuals and forest officers liked the model and the central
government established Fujian as a experimental province. However after 15 years, Fujian could not hold out any longer. In 2003 Fujian province announced that they would join the household based management system. In 2003 with change of the national leader, with change in forest minister Fujian was considered the flagship reform province and enjoyed a lot of public exposure. It was phenomenal because the Fujian finally give up collective management and started doing household based reform.

The central government policies was declared after 14 province announced their policies so it’s a consolidation of local initiative and this time around, China already had nearly 20 years of election experiment in villages. We had village autonomy, village organization law basic guiding decision of village administration and the major decision such as land redistribution has to be decided by village representative committee basically village level congress. Central government policy, provisional government policy set the tone the target is to establish household based management but many different kinds of diversified business models are allowed. The reform structure, reform plan has to be approved by two thirds of the villagers essentially a village representative committee so this is very different form the decision making process than in the 80s.

In the 80s basically government has a figure saying 90% of the collective land has to be given to household. Then people were working on this 90%. This time around we can expect that the outcome of the reform would be very diversified across villages and regions and provinces based on our new property rights, rural agriculture land contract law. Land distributing to household can have a very long contract. In 80s land contract used to be 5 years, 10 years, 15 years but this time around forest land contract used to be 30 years, 50 years, 70 years. Before central government policy there are land contract for 100 years, farmers are enjoying many traditional rights. In the 80s it was basically management rights. All the behavior was regulated by government. This time after those two laws with the spirits of those two laws farmers enjoy the rights of inheritance, right of transfer, right of using the land, as collateral so the farmers investment capacity has been enhanced and the farmers are given forest certificate for agriculture land. We already have successful reform but there is no agriculture land certificate but forest land this time our government made lot of investment trying to give each farmer household a very good looking forest certificate, there is huge potential for land conflicts the government effort is to reduce the possibility of land conflicts so with the forest certificate you have each piece of land marked clearly at the boundaries of the land in order to reduce potential conflict.

With the support of many agencies including RRI, the communities are being provided both financial and intellectual support. We conducted two rounds of survey. The first one started in 2006 finished in 2007 and the second started and finished in year 2011. We basically have information from 2000, 2005-6 and 2010. Basically we are talking of ten years of that reform process.

This is China’s forest map, you can see China’s forest resources are distributed very much in the East from northeast to southwest. Northeast China is basically a desert. And this is the area we are surveying. We cover all the regions where there are collective forests. This is what happened.
We see a significant 10 year change for provinces in the last 10 years. Fujian is the most important province. Due to the economic crisis a lot of people returned to local jobs, there was pressure on the forest. People did not cooperate in turning out fires etc. After forest reform, the incomes increased. We can see there’s a co-relation between 10 year reform, forest harvest, forestation and the forest income share. In Chiangshi there is no change in the first five years but a lot in the next five years. The fundamental reason is that decisions are made at the village level. Here you have a very good correlation between tenure reform and forest income. This is all I have to say.

Thank You.

Luiz Joels - First of all let me say thank you to the organizers of this event for bringing me here. It’s a privilege to cooperate with your efforts here in India. I am going to give you an overview about what has happened in Brazil. This is Brazil here and here is the Amazon, the neighbouring countries here also have a part of Amazon. Brazil is a very large country with just a fraction of India’s population. Most of the forest area of Brazil is in the Amazon and the most of the indigenous population, over 90%, is in the Brazilian Amazon. So, I am here going to talk about the Amazon. All my case studies, all my examples are from Amazon. Well, Brazil is a young country just 500 years old; in 1500 the Portuguese arrived and colonization was based on distribution of land to the Portuguese and very violent land grabbing with the genocide of the indigenous people. There were no rights for indigenous people at all. There was serious opposition to their enslavement, contrary to the situation of the Africans who were brought to Brazil as slaves. The Jesuits opposed enslavement of the indigenous people. Only in 1961, after 461 years of Portuguese occupation, there was the first land allocated to indigenous people by law in Brazil. This is the Xingu indigenous territory. There is a recent film from last year about this. It is about the origin of the Park. I am certain you can download this from the internet. After the first land was allocated to the indigenous people by law, things started to change a little bit. We had a military dictatorship in Brazil from 1964 to 1984. The military had a military constitution. In 1967 they moved the ownership of indigenous people from the Brazilian States to Central Government because the States are prone to political influence by farmers, settler etc. This helped control the land grabbing. In 1985 after 20 years, we had a democratic process. In 1988 we had a democratic Constitution in Brazil. This is the turning point after those two decades of military dictatorship. That constitution, is very strong on human rights, of every kind of human right and it has changed Brazil.
completely. It has a very good chapter on the environment too... For the first time we had a whole chapter on the environment instead of just one paragraph, it. We had a special event in Brazil, in Rio de Janero. It was the United Nations Conference on Sustainable Development, Rio 92 or Eco 92, and it has created a lot of media publicity. It made people discuss the protection of traditional peoples, of indigenous people in Brazil.

Just few points from the constitution, just going to focus on indigenous people, I am not going to talk about the whole human rights chapter or the environment rights chapter but it is very important. It protects the indigenous people’s cultural identity. It means they can be what they are and they remain as part of the country. This was not accepted before this constitution. They were considered as not full citizens, they are now full citizens, different citizens. They have originary rights because they were there before what we know as Brazil started to exist, so they have originary rights. And the Union ought to demarcate their property, the lands traditionally occupied by indigenous people are those permanently inhabited. Those essential to the environment resource necessary to their well being into their physical and cultural reproduction according to their uses, customs and traditions. It’s not only the area where they live that is considered their territory but also the area they need to survive, the watershed, the area where the hunting grounds this is going to be termed according to their customs. This changed everything.. From the time the Constitution was enacted to now, 20 years later, this area has increased over a million square km, from 144 thousand square km to over a million. That’s almost 1/8th of Brazilian territory. This is a huge increase. The situation has changed in the last couple of years. What happened since 2009, no more areas was allotted to indigenous peoples. We were financed by an International programme to protect the Brazilian rain forest. I was the Executive secretary of that programme. New programs in the Ministry of education, Ministry of Welfare were implemented, special programs for indigenous health and education. As I was preparing to come here I started to look in for social-economic indicators and I couldn’t find health or education or income indicators of their well being but I did find in our demographic data from the Brazilian Geography and Demography Institute, that the indigenous people’s population increased by 35% over the same period. Were they having so many children? The birth rate in indigenous people is slightly higher than the average Brazilian population. But what happens now is that many people who said they were not indigenous people, admitted to being Brazilian indigenous people as a result of self-esteem. So I think this is a good indicator of better life and good health. What is the difference between indigenous people and the traditional population? Indigenous people are those who descend from the people who were already in Brazil. Traditional people are the people from assorted origins who went to live in forest or went to live as fishermen and adopted traditional ways. Same habits and practices over generations. So for those people a different approach was tried. A Sustainable Development Reserve was created. Land rights, protection and identity as I mentioned. Identity is extremely important not only for indigenous people but also for fishermen, peasants. So they also have access to many things, exclusive access to natural resources. We also have now a national program to support and to promote community forest. It’s a very new program started just 3 years ago and is coordinated by the Brazilian Forest Service. Tenural solutions one might work they might not work. This depends on how strong are the ties within the community. More radical forms of tenure can be used. In the case of the Quilombola, descendants of African people, this is the only place where private rights have been granted. In indigenous people’s
areas, the protected areas, only 2% were deforested. While 23.6% of the area surrounding it, were deforested. So the protected areas, the indigenous people’s areas and territories are extremely important. There is an ongoing attempt to limit indigenous people’s rights on their allocated areas. For instance, indigenous people don’t have rights to explore the mineral resources in their areas, nobody has, not even them. Now they want to change it so that private companies can access those areas, a private company could do it without indigenous people’s permission in a process which is controlled by the government, But now they want to change it so that the Congress would authorize it and not the indigenous people. You know, you can imagine what would happen if a Senator can change sides. So just to finish here there are some conflicts in Brazil. Conflicts are permanent, for each one there is a characteristic situation which can be very tense, mostly in the frontier areas. Bellamonte linked to a hydro electricity dam. So this is it.

Thank You.

Arvind Khare: Thank you. We have heard two presentations, two very different types of histories, two very different types of geographies, two very different types of political systems but the fact is that they have actually done the Tenure Reform, granted rights to their people and they have seen the benefits accruing to their societies. Now, it has certain implications for India, it also has certain differences with India.

Question-answer session:

1. What is the impact of the entire bio-fuel plantation programme on deforestation in Amazon?

   **Luiz:** We have two main types of plants for bio-fuels in Brazil, palm oil and sugarcane. Sugarcane plantations for bio-fuels are not allowed in the Amazon for the moment. There is restraint for that. There is an indirect impact because it is planted in other areas so it results in cattle grazing spilling into the Amazon, anyway there is no direct impact. Now, palm oil, it’s a problem because palm oil is planted in the Amazon, now they want to use palm oil for reforestation of the area which are legally required to have a forest cover, so it has an impact. But the oil palm is just a fraction of what is devoted to sugarcane and it’s concentrated in certain parts of Eastern Amazon. The big problem here is that the legislation on sugarcane is reversed if they allow it to plant in the Amazon then we will have a very, very big problem.

2. What is the management power of the communities and what is the management decisions which are retained by the government and in your particular case what is the management of the power of the communities in protected areas and what is the power which is retained by the government? (for both, China and Brazil)
**Ans. Xu Jintao**-In the 80s, they have very little power. They have a right to plant trees but don’t have the decision right to cut the trees; they have to apply to government for harvesting the trees. And this time the quota is not there but management quota is there. In terms of enriched property rights this time around the household gets the rights to manage. If you look at the bundle of rights, the farmer is enjoying the rights of a private owner. Just within the contract period, within the 70 years period, he functions exact in the same way as a private owner. Title is not just privatized. From what I can see, the purpose of the land reform is to establish a private land system as near to complete but not quite. People who craft this law really have private land ownership in mind. Earlier the decisions were made at a collective level, as the tenure structure across almost villages was that some portion of the land is under direct collective management. Before the reform, some of the land was contracted to outsiders by the villages. These lands cannot be divided by farmers, so we have to wait until those contracts finish, then the land can be privatized.

**Luiz Joels**-In Amazonian forests, there are many forests that are managed by the people. There are no restrictions. They can sell, they manage. In the case of timber however, it is very difficult to get authorization. Federal timber reserves are not allowed to be cut. A strict approval process is followed with plan approved. No one can tell you what to do people just tell what they cannot do. This is a good start.

3. **What was the motivation for reforms? (for both)**

**Luiz Joels**- The main motivation was the emphasis on human rights in Brazilian law. We started with our representative democracy in the 80s and very soon we started discussing participative democracy. I think participative democracy brings local people to what they can do and what they won’t.

**Xu Jintao**-I think Forest Law Authority is the central authority. The most important motivation is to improve forest management before the reforms in the 80s all believed in collective management. Basically forest protection is very important and they believe that collective management does this, but the reality is that it is not good for income opportunities.

4. **The question of two hundred Percent self identification. (for Brazil)**

**Luiz Joels**- The first example that I am going to show you is from the last part of my presentation. It has that to do with self identification. It’s a group of indigenous people, a tribe of almost 50,000 people and some 7000 people were left out of the allocation of lands to the tribes. These people saw members getting land. The land of the indigenous people have been occupied by farmers for decades, so there is fight for rights, suicides and a number of conflicts.

**Arvind Khare** -Thank you. I think this story should also have a happy ending. First I would like to lead a round of applause for our two international guests for making this presentation and then
I’ll take just about couple of minutes before I handover to Viren. It’s impossible to sum up the entire discussion or to really determine what is, a way forward. But to me, each of the sessions actually provided learning, an indication to where we can move forward or what is the factor which we take into consideration in terms of moving forward.

Let me go one by one, we started with this whole International Overview of Land Acquisitions and we realized in this time and day of consistently higher commodity prices, the land will be under pressure, because the commodities are produced from land. And as Mark Twain said, “buy land they are not making it any more”, so that’s precisely what is happening in the world and therefore this pressure on land resources from the investors, from the countries, from the food deficit nations, the countries which require more commodities and other things will continue. So that’s the fact to recognize that it is going to be a continuous and persistent threat and then we are to find out a way of how we are going to deal with it.

The second learning from that international presentation is that, the threat is much higher in the countries with the poor governance, poor recognition of rights and therefore much more vulnerable to this international land grab by the investors and that’s why we saw that it is highest in Africa followed by Asia and least in Latin America. That’s a very important lesson which we learn that if you do want your land to be protected in this particular world then you have to have recognition of right and a governance to match that particular thing.

We moved on to looking at the case studies, the synthesis report and the map. Three things really stand out. One is not only the clash of two systems which was so brilliantly brought out by Shankar. It also started looking like a clash of two societies. When I heard the comments made by people like Indu, Meena and the lady from Gujarat, it’s a very bleak depiction of what is really going on in our hinterland. And when I hear the comments from more urbane colleague of mine in India, or just read the English Press, it’s a complete different impression which one gets. So this clash of two systems is almost the clash of two societies that are emerging here, one is this rural, tribal, marginalized, poor people whose land rights, property rights, civil rights virtually are not recognized or they are struggling to get those rights recognized. On the other hand we have this whole urban middle class Bureaucracy, English Media and several of those kinds of forces which are moving towards maximizing the GDP in this particular country because it benefits most to them.

Now, in this whole clash of the systems and the clash of the societies, there are certain things which are emerging from different places, one is the violence and the conflicts which were depicted on the map should not be seen purely as a matter of something which needs to be suppressed. In fact that’s an indication of resistance by the communities to the current situation that essentially says that people are beginning to organize and I think that’s a good positive sign and something which we can build on.

The second lesson from that whole set of very interesting findings which were presented was whether the government or the ministries or the bureaucracy or the judiciary like it or not, FRA Act and PESA are on the statute book. They are for us to be used, they are for us to move forward, they are not going to be removed from the statute book as easily as people think and that’s why one of the assertions which we wish to make all the time is you have to recognize the
rights, give it a legal empowerment to that particular right, then it becomes extremely difficult for the government to reverse that particular right.

I do think that the existence of FRA and PESA will continue to be a rallying opportunity for the people who are wishing to fight for the rights of the poor in this particular country. From the two very able colleagues who have come from outside of our country, it is very interesting that though the motivations were so different, one was the motivation was basically how to protect forests in China, the motivation was human rights in Brazil but they both reached to the same conclusion of granting rights to the people and that’s why if you look at the literature the countries which have actually done a very successful job of recognition of right, providing it the security in the law and enforcing that right. The countries that come to mind are- Finland, Mexico and Sweden. If you really look at them, they are deriving multiple benefits from it. Not only their forests are protected, not only are their communities’ livelihood and incomes higher, the surprising thing is the governments’ taxation revenue is higher from those areas because the people are rich and that’s precisely what should happen and therefore, just to imagine that the pathway to prosperity has to be by displacing these people does not seem to be correct because they are the living examples in the world that you don’t have to displace people by telling them that we are displacing you because we want to develop you. That’s not the philosophy which is going to work because there are examples in which they themselves find the pathways and you also find the urban people who require much greater let’s say utilization for the commodities will also find a pathway only by working with those sets of people. Unfortunately, very frankly speaking I do not have a clear pathway forward but I do think we have the rallying points. We do think that the resistance and the mobilization and the organisation of the communities as reflected in the conflict map is something to be proud of, is something which we could utilize in the future.

I’ll close here.

Thank you very much.

**Viren**-I thank you all for your patience and participation in this conference. There were very interesting questions and we’ll be documenting the proceedings which we’ll circulate to all of you.

Thank You.
1. **International Overview:** Arvind Khare, *Executive Director, RRG*
2. **Estimated Forecast of Forest and Common Land Acquisition,** Dr. Jagdish Purohit, *Program Director, SPWD*
3. **Undemocratic and Arbitrary: Control, Regulation and Expropriation of India’s Forest and Common Lands,** Shankar Gopalakrishnan
4. **Impact of Forest Tenure Reforms in China,** Xu Jintao, *Professor, Peking University (China)*
5. **Protection of Indigenous and Other Community Rights in Brazil,** Luis Joels, *Former Director, Brazilian Forest Service (Brazil)*
Arvind Khare, Executive Director, Rights & Resource Group

Presentation Outline

- Introduction
- Drivers of LSLAs
- Spatial and Human Scale
- Land Grabs and Tenure Risks
- India’s Position in the World
- Rights-Based Development Logic
Large Scale Land Acquisitions in the 21st Century

Large-Scale Land Acquisitions (LSLAs)
- Primarily long-term leases (25-99 years), occasionally ownership rights
- Generally over 1,000 ha

Not “new” challenge for rural poor and indigenous communities
- However, since 2000, the transfer and sale of rights to forests, marshes, rangelands, and agricultural lands to companies and elites has accelerated

New sense of urgency for investors amidst crisis to mitigate risk
- Climate Change, Global Economic Crisis, Food Price Shock, Demographic Growth, Political Instability, etc.

Peak in 2009 following food shocks in 2008 – est. 60 Mha of deals announced
- Size of Haryana, Uttar Pradesh, and Rajasthan combined

Land grabs exacerbate risks rather than mitigating them

What’s a land grab?
1) Fails to recognize local rights to land
2) Violates human rights
3) Fails to properly apply Free, Prior and Informed Consent (FPIC)
4) Not based on a thorough social, environmental and economic impact assessment.
5) Absence of transparent contracting process with clear and binding commitments
6) Absence of independent, effective, and timely oversight and conflict resolution mechanisms

Drivers: Paradigm Shift in Commodity Markets

GMO Commodity Index: The Great Paradigm Shift

- Governments are bankrupt – both in developed and developing countries.
- The developing world is tired of being poor and behind and has given up on the “Washington Consensus”.
- Looking to “modernize” economies through an old, inequitable, and unsustainable development model.
- Investment is projected to be $4.9 trillion (FAO 2009) in agriculture, $38 trillion (OECD 2007) in infrastructure, and will extract 141 billion tons per year through mining by 2030 (UNEP 2011).
- Governments in developing countries are bulldozing their forests and displacing their people with hope to get jobs, infrastructure, service delivery, and tax revenue.
- There is a clear choice to make: either invest in rural people and let them choose, or hire the bulldozers.

Drivers: “Full” Factors

“Host” governments are actively courting investors (buyer’s market), so deals heavily favor investors
- Preferential lease rates – land and water are “cheap”
- Tax breaks
- Promises that land is “unencumbered”
- Environmental and social impact deregulation
- Security promises

The perception of abundant “empty,” “under-used,” or “marginal” lands
- View implicitly endorsed by the World Bank and propagated by host governments
- Government “ownership” distorts market and actual (to communities) value of land

Negotiations often supported by embassies and provided guarantees through bilateral trade agreements

Drivers: Looking for “Short-Cuts” to Development

Human Scale

- 2009 - First shipment of rice from Ethiopia to Saudi Arabia
- Throughout the 2000s (and currently), 4-5.5 million Ethiopians annually are dependent on food aid to make it through the year
- There is a direct correlation between access to land rights and levels of hunger (IPPR 2012)
- In Gambella Region, the epicentre of land grabs in the country, the government is implementing a process of “Villagization” to resettle up to 180,000 people (farmers, fisher folk, and pastoralists) off their lands
- In South Sudan, the surface areas of entire provinces have been promised to investors.
- These investments will have generational impacts (leases range from 25-99 years)
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Perverse Outcomes of Rights Depivation and Land Grabs

Failing to recognize customary rights & undermining existing rights leads to:

- Destruction of local livelihoods and displacement of communities -> Increased hunger, dispossession, and poverty in some of the world’s most poor and marginalized communities
- Accelerated destruction of the world’s remaining forest carbon stocks, erosion of soil fertility, declination of biodiversity, and depletions of fresh water reserves
- Increased conflict and competition for remaining land
- Loss of state legitimacy and political conflict (Madagascar – Darewoo)
- Increased “Fat-Tail” Risks for Investors

Security of Rights: How Does India Match Up?

<table>
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<th>Country</th>
<th>Government Owned</th>
<th>Designated for Communities &amp; IPRs</th>
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<td>0%</td>
<td>27.6%</td>
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</table>

Percent of forest area under each form of tenure

India’s Investments

Of 100 identified LSLAs in India...

95 are from Indian owned Investors

The scale of Indian investments (domestic and abroad) has reached at least 6.3 million ha or 63,000 sq km - an area almost twice the size of Kerala State (ILC, 2012)

At least 1.7 Mha abroad (Grain, 2011)

- Including Indonesia, Cambodia, Lao PDR, Ethiopia, Sudan, Cameroon, Mozambique, Madagascar, Uganda, Rwanda, Malaysia, Kenya, Tanzania, Gabon, Uruguay, Paraguay, Brazil
Major Indian Investments

- Karubiti Agro Products Plc: 300,000 ha in Ethiopia
- Sanex Group: 418,000 ha in Liberia
- Ruchi Soya Industries: 152,649 ha in Ethiopia
- KG Oils: 341,004 in Indonesia
- Olam International: 30,000 ha in Gabon; 16,000 ha in Uruguay and 17,000 ha in Argentina
- Varun International: 232,000 ha in Madagascar
- BHRO Bio Products Plc: 27,000 ha in Ethiopia
- Aditya Birla Group: 51,207 in Lao PDR
- Mundra Port and Special Economic Zone LTD: 2,648 ha in India
- Adani Group: 1,081 ha in India
- Bharat Forge: 2,000 ha in India

Government of India: 3,877,419 ha – mostly in India

Sources: ILRI (2012) and Grain (2013)

Tenure Reform at the Heart of Development

- Tenure reform: a legal process changing the rights in the bundle of rights to natural resources (land, trees, other)
- More secured and more comprehensive these rights → greater the opportunity to development
- Often long and contentious processes

A Rights-Based Development Logic

- Without a basis in rights, it is impossible to achieve significant access to resources and services.
- Establishing rights to livelihood opportunities and provisions – the only way to ensure that governments address it as policy priority and alter expenditure patterns to reflect this priority.
- Once a benefit stream established as a right – difficult to reverse; easier to defend.
- Benefits may be slower to appear and more modest – but more reliable and sustained.
- Land grabs are the antithesis of this approach. They erode the possibility for rights-based development.

THANK YOU

www.rightsandresources.org
@RightsResources
Dr. Jagdish Purohit, Program Director, SP WD

Estimation of Land Requirement for emergent sectors

Dr. Jagdish Kumar Purohit
Programme Director

Society for Promotion of Wastelands Development

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Telefax: 011-23236440, 23236387, 23235994, 23215428
email: ho@spwd.org, website: www.spwd.org
Extractive Activities (Mining)

India has accorded great importance to mining in its industrial development and overall growth of the country. Contribution of fuel minerals in GDP in mining sector during 2008-09 was 54%, metallic minerals 28%, non metallic minerals 2% and minor minerals 18%. The total area under mining is about 6.5 million hectares and it is estimated that in coming 15 years it will increase almost 4-fold to reach 2.38 million hectares. So the additional land requirement for mining purposes will be about 1.73 million hectares by 2025.

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<th>Sectors</th>
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<th>Additional Required</th>
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Infrastructure

Looking at the past trends of expansion of different types of roads and the projected growth rate the area under road projects will reach to 3.1 million hectares by 2025. The additional land requirement will be about 3.5 million hectares.

<table>
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<th>Sectors</th>
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<th>Estimated Requirement</th>
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Agri-Fuel

Based on the plans made by the respective State Food authorities, we can approximately take 10% of the IFP areas (5.4 million hectares) the forest land targeted for Jatropha plantation comes to around 1.1 million hectares. Similarly under Integrated Watershed Development and other poverty alleviation programmes of Ministry of Rural Development the potential of 2 million hectares of plantation is assessed. On vast stretches of public lands along railway tracks, roads and canals, one million hectares of national coverage with Jatropha can easily be achieved. So the total area targeted for Jatropha plantation is around 6.5 million hectares.

The MNRE report on Bioenergy shows that the potential of biofuel could be increased substantially if linked with dedicated plantation on forest and non-forest degraded lands. It is possible to generate about 5,000 MW power from raising dedicated plantations on about 2 million hectare forest and non-forest degraded lands.

<table>
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<tr>
<th>Sectors</th>
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<th>Current Area 2011</th>
<th>Estimated Requirement</th>
<th>Additional Required</th>
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<td>725700</td>
<td>640000</td>
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Non-Conventional Energy

As per the available data about wind and solar energy projects, the current installed capacity is 14,157 and 38 MW respectively. To get the area covered by these projects calculation has been done on the basis of land requirement for wind farms @ 12 ha/MW, similarly for solar power it is @ 1 ha/MW. So the current area is 1,800, 74 hectares. The estimation of area requirement is calculated for the proposed capacities of 45,000 and 50,000 MW by wind and solar projects. The area required by these projects by the year 2021 will be 6,40,000 hectares (5,40,000 and 1,00,000 hectares respectively).

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<th>Sectors</th>
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<th>Estimated Requirement</th>
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<td>Non-Conventional Energy (Estimation for 2021)</td>
<td>Wind</td>
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Sources: Report of the Working Group on Power for Fourth Plan (2012-17). The estimation is made on the basis of potential figures given in the Report of The Working Group on Power for Fourth Plan (page 28 of chapter 5). The area calculation done on the basis of information from the link phu.nic.in/release/release.asp?tid=33544. It mentioned that land requirement of windfarms @ 12 ha/MW similarly for solar power its @ 1 ha/MW (5 acre/MW).

Thanks
Shankar Gopalakrishnan

Undemocratic and Arbitrary

by

Shankar Gopalakrishnan

The Land Takeover Debate

- At the policy and political debate, focused on land acquisition debate
- Land acquisition essentially concerned with transfer of property rights and compensation
  Not with the manner in which land is used, managed and made part of livelihoods and production

Common Lands in India

- NSSO 54th Round (1998) found 15% of country’s land area is non-forest common lands; Govt owned forest is 19.4%, so roughly 34% of country’s land area in total
- Half of rural households collect livelihood and use materials from common lands
- 74% of those using fuelwood, 63% of those using irrigation collect from common lands likely to be an underestimate

Land Takeover of Common Lands

Two types of land takeover:
- Regulatory takeover: Through use of forest laws or other instruments that deny rights
  - Forest land area has expanded by 63% since independence
- Takeover for projects

NSSO data estimates common lands declining by 2% per year
Impacts of Takeover of Common Lands

- Loss of livelihoods dependent on forest and common lands
- Eviction and removal of those who reside in / cultivate ‘common’ lands
- No rehabilitation or compensation
- Impacts beyond land area taken for project:
  - Pollution / environmental destruction
  - Changes in water table etc.

Legal and Institutional Mechanisms

- Common misconception that common land rights are not recognised in Indian law
- In fact they are recognised but not respected
- Two major legal regimes:
  - Forest law
  - Revenue law
  (That is, aside from those in the Northeast and in urban areas)

Forest Law

- Indian Forest Act provides for takeover of land after ‘settlement of rights’ under IFA or revenue laws
- Process entirely undemocratic, resulting in:
  - Complete focus on individual rights in most areas, and only those with documentary evidence
  - Denial of rights to adivasis, Dalits and other marginalised communities
  - Process not completed at all in most areas (82% of MP’s forest blocks; 40% of Orissa’s; 60% of national parks and 62% of sanctuaries)

Revenue Laws

- Revenue laws in many States do protect some forms of common lands / rights
  - E.g. Nistar Patrak in MP, Punjab Village Common Lands Act, UP LR and ZA Act etc.
  - Also separate laws for grazing etc.
- Also provide for democratic control in the form of gram sabha (village assembly) and panchayat (village council) powers

Forest Rights Act

- After intense struggle, Forest Rights Act passed in 2006 and notified on Jan 1st 2008
- FRA provides for:
  - Recognition of rights including community and common lands
  - Democratic process for deciding rights
  - Democratic process for managing and protecting forests
- In 2009 MoEF recognises that gram sabha consent required for diversion of forest land – but ignores own order

Forest Law – Increased Centralisation

After 1980:

- Forest (Conservation) Act centralises all power in Central Environment Ministry
- Process has no space for public input at all – leave alone informed consultation or consent
- Supreme Court’s orders in T.N. Godavarman case, esp. 12.12.1996, vest even more power over larger area in forest bureaucracy
Laws for Adivasi / Tribal and Scheduled Areas

- Special laws:
  - Chottanagpur Tenancy Act / SP Tenancy Act etc.
  - Fifth and Sixth Schedules; Art 371A, 371G, etc.
  - Panchayats (Extension to Scheduled Areas) Act, 1996
- Again provide for democratic institutions such as village councils / gram sabhas / etc. to control and regulate land use

Takeover of Revenue Lands

Three main mechanisms:
- Simple illegality – change of records or illegal transfer
- Use of forest law, esp 12.12.1996 order of Supreme Court, to invoke FCA and take over the land (esp in Northeast)
- Use of State govt powers to reclassify land – often in the name of being “wasteland”
  - E.g. Chhattisgarh and Rajasthan biofuel policies

Institutional Dynamics

Clash of two sets of laws:
- One set protects common rights and democratic institutions; others vest power in state machinery
- Communities resisting takeover usually use democratic laws
- However state machinery only implements the autocratic laws
- Administrative procedures do not take into account democratic laws at all (this is also true of the courts)

Historical Reasons

- British colonialists’ main interest was increasing revenue and yields of commodities they were interested in
- Common lands and community management posed a problem on both counts
- Hence all colonial land regimes – Permanent Settlement, ryotwari settlements, forest laws – shared common feature of eradicating community rights
- Ideological justification in the form of describing them as “wasteland”
  - Conception of “national interest” and “best use” embedded in system is opposed to community rights

Does it Work?

Consequences of “Development”:
- No employment generation: No formal sector employment expansion over the same years of rapid land takeover; sectors seeking land (mining, energy, real estate) have seen net loss of employment
- Energy sector not serving majority: Between 1996 and 2006 generation capacity increased by 100,000 MW (almost double) but percentage w/o electricity fell only from 52% to 42%
  - Govt estimates only 20,000 MW required to reach electricity to all, but MoEF has cleared ten times more capacity in just the last five years
- Conservation being harmed: Rapid rise in diversion of forest land and destruction of forests in violation of law

Suggested Ways Forward

- Key issue therefore is to change the decision making process over land
- Current process is undemocratic (entirely controlled by bureaucracy) and arbitrary (no planning; whatever user wants, they will get)
- Needs also to reduce space for speculation
Recording of Rights and Powers

- FRA community and individual rights should be recorded and recognised in all areas.
- Forest officials should be mandated to respect and comply with gram sabha decisions and plans on forest management.
  - Can lead to massive benefits e.g. bamboo in Gadchiroli.
- PESA gram sabha powers should be incorporated in relevant state laws and procedures to ensure that community management is respected.

Consent and Compensation for Change of Land Use

- Basic step towards a more democratic arrangement: taking consent of the affected communities.
- Provision of land and other forms of rehabilitation.
- This should be done prior to any land use change over more than a limited area (e.g. agricultural land ceiling) whether land is private, revenue or forest.
  
  *Making violations a criminal offence*

Reducing Space for Speculative Activities

- SEBI regulations should mandate disclosure of the status of all clearances for projects as well as implementation of rights-related legislations in project areas.
- RBI regulations should impose higher reserve requirements when granting credit to projects without clearances / without completion of recognition of rights.
- Such projects should not receive “infrastructure” or “priority sector” status.

In the Long Term

Following recording of rights, and through a democratic process, to move towards a system of collective regulation and control over land use.

*Welfare can occur through many routes, such as collective means and collective production, rather than through land takeover and expropriation.*
Xu Jintao, **Professor, Peking University (China)**

**Conference on Forests and Common Lands**  
Rights, Conflicts, FRA and PESA

**Collective Forest Tenure Reform**  
**under Village Democracy**  
**Overview and Preliminary Analysis**

Jintao Xu, Peking University  
Dec 18, 2012, New Delhi, India  
SPWD, RRI

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**Significance of the Reform**

- A step toward completion of rural land reform
  - 120 million ha of registered agricultural land
  - But, 167 million ha of registered forestland owned collectively (62% nat’l total)
  - Reform affected 147 million ha forestland
  - Livelihood of ~70 million rural households
- Closure to China’s New Countryside Initiatives
  - Ag land reform
  - Free election of adm village government
  - Financial transfer
  - Collective forest reform

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**Potential Impacts**

- **Forest Management**
  - Incentives for farmer and private sector investment
  - Better protection
  - Higher productivity
  - Forest policy reform
  - International supply chain
- **Farmer Livelihood**
  - Income and income structure
  - Labor allocation
  - Capacity for investment
- **Social and Political Stability**
  - Equity
  - Relationship between farmers and government
  - Village governance
Policy and Research Questions

How the reforms were conducted at County/Township/Village Level
-- Are farmer forest tenure stronger?
-- Reform conducted with due process?
-- Stakeholder attitude?

What are the impacts?
-- Do farmers harvest them all?
-- Do farmers plant?
-- Are farmers better off directly?
-- Impacts on farmer labor allocation?
-- Impact on forest and market?
-- Impact on Farmer social organization?
-- Impact on State Forest Reform?

Needs for future policy and regulatory adjustment/reform?
-- Forest regulation reform? Logging quota?
-- Regulation on forestland transfer/market.
-- Regulation on farmers association.
-- Policy on farmer financing.

Two Rounds of Tenure Reform in Collective Forests

• First Round: 1981-1986
  -- A fluctuating process
  -- Different level of progresses among provinces
  -- Tenure remains controversial Issue
• Second Round: 2000-2007, 14 provinces announced new reform policy
  -- In July 2008, Central Government Reform Policy was declared, conclusion of the policy change process
  -- By 2010, 20 provinces with reform policies

What’s New

• Fujian
• Local Initiatives to National Consolidation
• “Village Autonomy”
• Longer contract
• Rich rights
• Forest Certificates

Two Rounds of Repeated Surveys

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<td>5</td>
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<td>2003.6</td>
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<td>12</td>
<td>30</td>
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<td>Total</td>
<td>49</td>
<td>141</td>
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Results from Preliminary Analyses

- Tenure Choice
  - Dominated by rural governance structure
- Afforestation
  - Reform increased forestation area by 8%
- Labor Allocation
  - Safety net effect for better educated farmers
  - Labor tying effect for ordinary farmers
  - Enhance self-employment

Thanks!
Luis Joels, *Former Director, Brazilian Forest Service (Brazil)*

**Traditional populations and forests**

An overview of Brazilian policies

*Forests and Common Lands: Rights, Conflicts, FRA, and PESA*

*New Delhi, December 18, 2012*

---

**Brazil**

- **Population**: 197 million
- **Area (sq km)**: 8,514,875
- **Forest area (sq km)**: 5,170,885

**Brazilian Amazon**

- **Population**: 23 million
- **Area (sq km)**: 4,200,000
- **Forest area (sq km)**: 5,564,293
**Brazil**

- 1500 – the Portuguese arrive: colonization based on distribution of land to Portuguese, land grabbing and forest conversion.
- No rights for the indigenous peoples (but serious opposition to IP slavery)
- 1961 – First IP land: Xingu

**Recent History**

- 1987 - Constitution: land occupied by IP belongs to the Union (and not to the States)
- 1985 - Democracy
- 1988 - Constitution
  Human rights + Environment
- Rio 1992 and international context
- Perception by public, media and government of the need to stop deforestation and protect native Brazilian and traditional population rights

**1988 Constitution**

- Acknowledges IP cultural identity and originary rights
- The Union ought to demarcate their lands and protect the people
- “Lands traditionally occupied by IPs are those permanently inhabited, those essential to the preservation of environmental resources necessary to their well-being and to their physical and cultural reproduction, according to their uses, customs and traditions”.

**Land allocated to Indigenous Peoples**

![Bar chart showing land allocated to Indigenous Peoples.](chart.png)

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<thead>
<tr>
<th>Year</th>
<th>Area (1,000 sq km)</th>
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<tr>
<td>1999</td>
<td>144</td>
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<tr>
<td>2002</td>
<td>873</td>
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<tr>
<td>2009</td>
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**Implementation**

- International programme (PPG7) financed most land demarcation
- Programmes for health and education
- Socioeconomic indicators difficult to come by
- Indigenous peoples population increased 200% (1990/2010)
  - Large proportion of increase due to the self-identification as IP
  - Now: 896,000 people
  - Brazilian population increased 35% over the same period

**Other Traditional Groups**

- Forest extractivists, fishermen and peasants
- New approaches to conservation areas and settlements to allow for sustainable use
  - Extractive Reserves
  - Sustainable Development Reserves
  - Extractive Settlements
  - Sustainable Settlements
  - Quilombola Lands
Gurupá case study

- Two decades of community and union organization
- 1997 - necessary to tackle the issue of tenure if natural resource management was to be successful
- Starting in 2004 tenure rights were formalized using 5 different legal tools
  - Extractivist Settlement Project
  - Sustainable Development Reserve
  - Extractivist Reserve
  - Usage Concession Agreement
  - Quilombo Territory (forex. slaves descendants)
- Emphasis on socioeconomic development (health, education and water quality, among others)
- Development of new technologies: one on shrimp traps that received 2 major awards for social technology

Gurupá: lessons learned

- Strong link between tenure and community based forest management in Amazonia.
- Tenure solutions must consider community characteristics, their forms of using the resources and their wishes.
- Community-based guidelines for resource use very important. It has set the basis for the type of tenure most appropriate for each community
- The struggle for tenure and resource use has a positive impact on citizenship and on the creation of social capital.
Conflicts

Guarani Kaiowa
- IP outside allocated areas murdered
- Suicide trend
- Decadence

• Awa
• Encroached by farmers and illegal loggers

Present situation

- Slow progress and a couple of setbacks
- Political forces grouped around traditional view on the use of natural resources
  - geographical area where agriculture is main economic activity
  - agribusiness production chain
  - conservatives
- Changes to the Forest Code
- Changes to Conservation Areas
- Attempts to limit IP rights on their allocated areas

Deforestation inside and outside protected areas

As percentage of deforested area - 2003

Source: Ferreira et al., 2005

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<th>Name/Address</th>
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<td>1</td>
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<td><a href="mailto:xujt@pku.edu.cn">xujt@pku.edu.cn</a></td>
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<td></td>
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