

UNDEMOCRATIC AND ARBITRARY

Control, Regulation and Expropriation
of India's Forest and Common Lands

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Society for Promotion of Wastelands Development

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Undemocratic and Arbitrary: Control, Regulation and Expropriation of India's Forest and Common Lands

INTRODUCTION

Control over land and natural resources has recently become a subject of heated debate in India, and is, today, one of the central fault lines of Indian politics. No party or political leader can afford not to have a position on questions of land acquisition and displacement, as such issues are now seen as electorally important. The most dramatic illustration of this was the 2011 defeat of the Left Front government in West Bengal — a defeat that was widely attributed to the avalanche of discontent triggered by the Nandigram and Singur conflicts.¹

As a result, there have been parallel discussions underway about the question of land at multiple levels. In each arena of discussion, the debate has been framed in a different way. Thus, at one level, the question is discussed as a political issue, about how mass discontent is being channelled into different forms of resistance and how the state is responding to it. This is the discourse most common among political parties and social movements. Linked to this is the “security” discourse, about how the state should respond to threats to “law and order,” as well as to the armed resistance movements (for whom these issues have become central). For NGOs and development specialists, displacement, rehabilitation, and their welfare impacts are central concerns, as are environmental questions such as the implications of destruction of natural resources, pollution, loss of biodiversity, etc. Finally, there is the economic and “development” discourse, where the issue is framed as one of growth, generation of employment, creation of infrastructure, expansion of opportunities, etc.

Even the bare listing above makes it clear that there is a problem. Each of these approaches, and in particular those rooted in the state machinery (the “economic” and “security” ones), deems the others to be unnecessary externalities which can be addressed but are not the “main” issues. This compartmentalisation has its structural causes, but the results are very negative. For instance:

- The elite “environmental” discourse of urban NGOs often emphasises environmental impacts in a narrow sense. The debate is over what kind of regulation can work better, and the consensus is often for increased and more centralised regulation. A good example is the Forest (Conservation) Act, which gives control over use of forest land to the Ministry of Environment and Forests (and which has been more zealously used as a tool for transfer of forest land since the 1990s). But the result of this is to intensify displacement and dispossession of people living on forest land, while also doing little to stem many destructive activities. The fact that those engaging in this discourse frequently ignore development, rights and livelihood benefits has negative consequences, both for the affected people in question and for these actors’ own goals.
- Similarly, the “security” discourse and its practitioners ignore all other issues entirely. The debate on “security” centers purely on the question of how the state can more effectively repress resistance (armed or otherwise). Both the advocates of the so-called “development” route and those of the “security” route agree that the main purpose is to shut down the opposition to

resource takeover. Whether the takeover is justified, and whether its welfare, environmental and economic impacts require a democratic process of decision making, is not under consideration.

- As a final example, the “economic” perspective that dominates the financial press (and the English media generally) treats displacement, environmental destruction, conflict and all else as externalities that should either be ignored or, at most, be dealt with through their inclusion as “costs.” The fundamental principle is that growth, defined as an increase in GDP and capital investment, should not be hindered.

These discourses work at cross purposes to one another. No attempt is made to construct a holistic picture, either of what is actually happening or of what should be done. The most dangerous result of such compartmentalisation is visible in the one area of land takeover that hardly features in any discourse at all: the massive takeover of common lands.

Indeed, with the exception of the people’s movements and organisations resisting land takeover, few of those debating this issue in India acknowledge the large-scale loss of common lands to projects and other forms of land appropriation. Almost all discussion — particularly at the policy level — focuses on the takeover of individual private lands. This is despite the fact that the takeover of common lands is arguably larger in scale than the takeover of private lands, affects far more people, and is often more brutal and undemocratic.

A compendium of case studies on takeover of common lands in India was prepared for the Society for Promotion of Wasteland Development (SPWD) in order to attempt to fill the gap in the available literature on the subject of land takeover in the country. It represents one of the first attempts to look at this issue at the national level, drawing together local situations and experiences into an overall legal and policy framework. This paper seeks both to present a synthesis of the findings of these studies, reflecting the overall situation at the national level, as well as to discuss possible policy actions that can be undertaken.

COMMON LANDS IN INDIA TODAY

While definitions of the terms “common property resources,” “common pool resources,” and “common lands” vary between analysts, certain shared features are clearly visible. What are generally understood as common lands are those that provide services to a limited (if not always rigidly defined) community. Examples include grazing lands, water bodies, village lands, forests, etc. The term covers both the broad category of all lands under common use and the subset of those under collective management. It should be noted that some common lands — such as forests — provide services both to an immediate, limited community as well as to society at large.

There is no single category or classification of land use in India that corresponds to these lands. Such land is often classified as forest land, grazing land (known by different names in different States), gram sabha land, gram panchayat land,² or simply “wasteland.” The reasons for this situation, and the differing regulatory regimes that apply to these lands, are discussed later in this paper. This lack of proper legal classification complicates any attempt to discuss use and dependence on common lands, and contributes to a great deal of the confusion that exists in public discourse on this issue. For instance, many commentators — especially those in the media — take classifications such as “wasteland” and “government forest” at face value, since it is not common knowledge that these types of land are used, depended upon and often owned by local communities.³ Perhaps the only common feature of all such lands is that they are treated as “government-owned” (despite this being simply incorrect in some areas, as in Jharkhand or the Northeast, as well as contestation of this classification by local communities in other areas).

Just how critical such lands are is borne out by the findings of the 54th Round of the National Sample and Survey Organisation (NSSO), carried out in 1998, which studied the use of common property resources across the country.⁴ This is the only quantitative national study on common resources that has been done till date. The NSSO survey found that approximately 15 percent of the country's land area is used as common property resources. This area estimate excludes government forests. However, most government forests, excepting those in extremely remote areas, are also used as common property. Since such government forests constitute at least 19.3 percent of the country's land area, roughly 34 percent of the country can be considered common land.⁵

In terms of livelihoods, the NSSO found that approximately half of the households surveyed collect materials from forest and common lands, 20 percent reported grazing livestock on them, and 30 percent reported using common water resources for livestock. Seventy-three percent of the households using fuelwood (which constituted 62 percent of the population) relied on common property resources for this purpose. Similarly, 64 percent of the households that reported irrigating their lands (who were 36 percent of the total population) did so using water resources on forest and common lands. While the Survey reported wide variations in the available area of common land and the kinds of uses that were made of it, it found that a significant part of the population was dependent on forest and common property resources in all the States surveyed. As would be expected, dependence on common property resources was highest among landless households and in smaller villages.

These trends are also borne out by the data revealed in the case studies, all of which show significant reliance on common resources by rural communities. Such dependence extends across community, class and regional distinctions, though the type of activity may vary. For instance, most adivasi communities depend on minor forest produce for a significant part of their livelihood. In the Northeast, Andhra Pradesh and Odisha, many communities practice shifting cultivation, in which the village rotates between areas of land for cultivation (traditionally over a period of two or three decades), leaving each area to regenerate before returning to work on it again. On the other hand, the studies of Bellary in Karnataka (*Box 1*) and of the Kalpavalli eco-restoration project in Anantapur District, Andhra Pradesh (*Box 6*), show that settled cultivators in relatively “developed” States also depend on forest and common lands for grazing, fuelwood and water. In all these areas, the loss of forest and common lands is a major blow to the livelihoods and survival of rural communities. If anything, the data in the case studies show that the NSSO figures are likely to be an underestimate.

SCALE OF LAND TAKEOVER IN INDIA TODAY

Forest and common lands are under constant threat. The case studies demonstrate, in some detail, the various forms of state-driven takeover of forest and common lands in India today, the impacts of these processes, and the nature of the forces that drive them. This takeover is part of a general trend towards increased expropriation of land in the country — particularly, though not only, by the state.

Takeover of land has two primary forms. The first is the reclassification of land under regulatory regimes intended to restrict use, which effectively curbs or destroys the rights of those who are using the land. The most common form of such takeover is conversion of land to forest land. Though this is a relatively unnoticed method, it is most likely larger in scope and size than any other form of land takeover since Independence. The area of land recorded as forest has increased from 41 million hectares at Independence to 76 million hectares at present⁶ — an increase of 63 percent. Whether it is particular or common lands that were taken over in this manner, individuals and communities effectively lost most of their rights on such lands.

Box 1: Illegal Iron Ore Mining in Bellary, Karnataka

In the last ten years, Sandur Taluka of Bellary District in the state of Karnataka has seen a massive expansion in iron ore mining. Driven by the growing Chinese market, the liberalisation of mining regulations, and a decision by the Karnataka Government to denotify large tracts of notified forest land in the area, large companies, small contractors and even local farmers have begun ore extraction and trade. A major part of this activity has been illegal. Violations include mining without the required lease from the government; mining without obtaining environmental clearance (given after an impact assessment) or clearance for using forest land; mining even after leases have expired; mining beyond the lease area; failing to comply with transport regulations; etc. The Lokayukta (ombudsman) of Karnataka State has estimated that 30.68 million tonnes of iron ore was illegally exported between 2003 and 2010, causing a revenue loss of Rs. 16,085 crore (approximately US \$3 billion). Much of the mining has occurred on forest and common lands. In the Bellary-Hospet-Sandur region, a total of 6,507 hectares of forest land (21 percent of the total recorded forest land) have been taken over for mining, at least 1,081 hectares of which were illegally occupied. Mining has also destroyed large areas of revenue land and agricultural fields (many of which have been dug up for ore). As a result, fertile lands have become scarce and topsoil has been permanently lost. The heavy air pollution from mining, in the form of dust and toxic chemicals, has damaged the health of surrounding communities, as well as harmed crops and affected livestock (yields have dropped by around 50 percent in hybrid corn). Indeed, even the mining companies have informally recognised the damage that they are causing and instituted the practice of paying a small amount of “dust compensation” to surrounding farmers. Mining has also lowered the water table and polluted surface water sources, reducing water availability in the area. Large areas of rich forest, in some cases inhabited by endangered species, have been destroyed. The enormous profits from legal and illegal mining have driven large-scale corruption in the area, with mining barons becoming immensely rich and powerful (the infamous Reddy brothers being the best known example). Though mining has provided temporary employment and incomes to some, the benefits have been unequally distributed, as seen by the fact that the district is now third richest in the State in terms of Net District Domestic Product, but 18th on the Human Development Index. Mining has resulted in large-scale use of child labour, and most workers are hired on a casual daily-wage basis with no safety or health precautions. Following years of complaints and the Lokayukta’s report, a local group known as the Samaj Parivartana Samudaya approached the Supreme Court in 2009. On July 29, 2011 the Court banned all iron ore mining in Bellary, pending an investigation into the violations of law occurring in the area.

At present, excepting a sudden jump that followed a 1996 Supreme Court order, the trend of declaring new areas to be forest land has slowed down considerably. However, a similar process now occurs within forest lands, whereby lands are either physically taken over or brought under progressively stricter laws. Plantations, of trees or biofuels, comprise one manner of such takeover (see *Box 7* on the case study on biofuel plantations in Rajasthan and Chhattisgarh). Conversion of forest lands to protected areas (national parks, sanctuaries, tiger reserves, etc.) is another. Between 1970 and 2010, the number of national parks increased from 5 to 99, covering an area of 38,199 sq. km, while the number of sanctuaries increased from 62 to 514, covering an area of 118,419 sq. km; another 74 national parks and 217 sanctuaries were proposed as of November 2011.⁷ The vast majority of lands that are subject to such “regulatory takeover” are forest and common lands.⁸

The second form of state-driven takeover is better known and far more discussed — the forced annexation of private and common lands for large projects. There are no consolidated figures available for such takeover at the national (or even at the State) level, but some indicative statistics exist for forest land. Between 1980 and 2011, 830,000 hectares of forest land were “diverted” or cleared for non-forest use by projects (this does not include the area of land that was diverted in order to “regularise encroachments”).⁹ Diversion has been rising steadily, with the number of clearances peaking in 2010 (1938 clearances given) and the area peaking in 2009 (87,884 hectares). Of the total land reassigned for projects since 1980, 17.8 percent (148,000 hectares)

was for purposes of mining; if one looks at the process since 2007, the proportion of mining rises to 25 percent. Similarly, 20.1 percent of the total land cleared (164,000 hectares) has been for power projects.

These sectoral figures on takeover of forest land are corroborated by some available statistics on land use. As documented in the compendium of case studies, large areas of land have been set aside for mining and power projects, and more will be made available in the future. In 2009, limestone mining leases covered 1,30,096 hectares, iron ore mining leases covered 94,308 hectares and bauxite mining leases covered 31,230 hectares. Leases for 59 metallic and non-metallic minerals covered 4,914 sq. km in 2009. This does not include coal, for which it is estimated that 149,000 hectares of land have been used.

Future sectoral projections can be seen in *Table 1* and are even more sobering. A simple total of all these forecasts results in an estimated 114,475,59 sq. km of land being required over the next fifteen years.

Table 1: Sectoral Projections for Land Takeover

| Estimation of Land Requirement for Emergent Sectors (in hectares) | | | | | |
|--|--|--|-------------------|-----------------------|--------------------------|
| # | Sectors | Sub-sector | Current Area 2011 | Estimated Requirement | Additional Land Required |
| 1 | Agri-Fuel (Estimation for 2026) | Jatropha ⁱ | 500000 | 4400000 | 3900000 |
| | | Bio-Power (Agro Residue & Plantations) ⁱⁱ | 273700 | 2000000 | 1726300 |
| | | | 773700 | 6400000 | 5626300 |
| 2 | Infrastructure (Estimation for 2026) | Roads ⁱⁱⁱ | 1816355 | 3117000 | 1300645 |
| | | Dams ^{iv} | 2907000 | 3908171 | 1001171 |
| | | Special Economic Zones ^v | 86107 | 150000 | 63893 |
| | | | 4809462 | 7175171 | 2365709 |
| 3 | Extractive Activities ^{vi} (Estimation for 2026) | Coal | 147000 | 535445 | 388445 |
| | | Iron | 88065 | 320775 | 232710 |
| | | Bauxite | 30059 | 109489 | 79430 |
| | | Limestone | 144979 | 528083 | 383104 |
| | | Other Major & Minor Minerals | 244301 | 889862 | 645561 |
| | | | 654404 | 2383654 | 1729250 |
| 4 | Non-Conventional Energy ^{vii} (Estimation for 2032) | Wind | 180000 | 540000 | 360000 |
| | | Solar | 76 | 100000 | 99924 |
| | | | 180076 | 640000 | 459924 |
| | Total | | 6511266 | 17958825 | 11447559 |

ⁱ Biofuels in India: Potential, Policy and Emerging Paradigms National Centre for Agricultural Economics and Policy Research, April 2012; Estimated Figures for Jatropha include common lands from forest (10% of JFM areas, wastelands and other public land).

ⁱⁱ Report of The Working Group on Power for Twelfth Plan (2012-17); MNRE report in Bioenergy Mission <http://www.eai.in/club/users/Shweta/blogs/7498>; Biopwer includes dedicated plantations proposed for 12 & 13 Five year Plans.

ⁱⁱⁱ Basic Road Statistics of India GoI, Ministry of Road Transport & Highways (Transport Research Wing), New Delhi JULY 2010.

^{iv} Water and Related Statistics, Water Resources Information System Directorate, Central Water Commission, 2010; Report of the working group on Water Resources for the 11 five year plan; India's Water Supply and Demand from 2025-2050: Business- as- Usual Scenario and Issues: Upali A. Amarasinghe, Tushaar Shah, and B.K.Anand.

^v SEZs and Land Acquisition: Factsheet for an Unconstitutional Economic Policy, Citizens' Research Collective, New Delhi; www.sezindia.nic.in/writereaddata/pdf/listofformalapprovals.pdf.

^{vi} Report of the Working Group Mineral Exploration and Development 12 Five Year Plan; Existing mining area figures were taken from the Indian Minerals Yearbook 2010, IBM, 2011. The estimation for 2025 is made on the basis of 9% growth rate mentioned in the Report of the Working Group Mineral Exploration and Development 12 Five Year Plan document.

^{vii} Report of The Working Group on Power for Twelfth Plan (2012-17). The estimation is made on the basis of potential figures given in the Report of The Working Group on Power for Twelfth Plan (page 28 of chapter 1). The area calculation done on the basis of information from the link pib.nic.in/release/release.asp?relid=33144. It mentioned that land requirement of wind farms is @ 12 ha/MW. Similarly for solar power it is @ 2 ha/MW (5 acre per MW).

Thus, if one combines project-driven takeover and regulatory takeover, a gigantic transfer of land is imminent in the next fifteen years. This will bring equally staggering social impacts in its wake. In this context, the facts and trends revealed by these case studies take on paramount importance — they are heralds of things to come.

Though the case studies cover widely varying areas, situations and problems, there are certain patterns that repeat in each. These trends, in turn, reflect deeper problems in the political-institutional system of land control in India.

TAKEOVERS OF FOREST AND COMMON LANDS: FINDINGS FROM THE CASE STUDIES

Land takeovers

The case studies all indicate that forest and common lands are a prime target of land takeovers. For instance, in Udaipur district of Rajasthan, the public sector mining company engaged in phosphate mining did not manage to get state permission for invoking the Land Acquisition Act to take over private land, and hence it took over the forest and revenue lands in the area first (*Box 2*). In the same manner, the massive biofuel plantations planned in Chhattisgarh and Rajasthan (*Box 7*) are all intended to come up on what are effectively common lands (though they are classified as government-owned lands). In Odisha and Chhattisgarh, common lands used for grazing, minor forest produce and shifting cultivation have been expropriated by the Forest Department through administrative notifications. In the case of Bellary as well (*Box 1*), where the takeover for iron ore mining was illegal, most of the activity took place on forest and common lands.

Box 2: Phosphate Mining in Rajasthan

Jhamar Kotra and Kanpur are two gram panchayats (village council areas) in Udaipur District of Rajasthan. The villages have a large population of Scheduled Castes and Scheduled Tribes, and lie within a Scheduled Area demarcated under the Fifth Schedule of the Constitution. The surrounding area has the largest reserves of phosphate in the country. Since 1972, phosphate has been mined in this area by Rajasthan State Mines and Minerals Ltd. (RSSML), a Rajasthan Government-owned company. A beneficiation plant and fertiliser factories have been set up in nearby villages to process the phosphate into fertiliser. Phosphate mining is open cast in nature and requires large areas of land for dumping of material. In 1968, the government acquired land for mining and transferred it to RSSML; subsequently, RSSML has taken over both common and private land in these panchayats. Common lands have been handed over to the company on the signature of a local government official, the patwari (revenue inspector — the lowest rank in the Revenue Department hierarchy). Forest land has also been transferred for mining. The gram sabhas (village assemblies) have not been consulted regarding acquisition of land, transfer of common land, renewal of mining leases, or diversion of forest land, despite legal requirements under the Panchayats (Extension to Scheduled Areas) Act. The claims of forest dwellers in these villages are still pending under the Forest Rights Act. As mining and industrial activity has expanded in the last decade, smallholding cultivators have also been repeatedly pressurised by agents to sell their land. Meanwhile, mining has had major environmental and health impacts. RSSML sells water that accumulates in its mine pits, reducing groundwater recharge and leading to wells in 15 villages in the area drying up. Studies have found high fluoride levels in groundwater in the area. Cases of tuberculosis, malaria, diarrhoea and eye, ear and stomach diseases have increased. Availability of forest produce has declined with destruction of forests. Livestock and agricultural productivity have suffered severe damage from contamination, pollution and lack of water. Villagers have lost income as a result of these changes, while simultaneously facing higher expenses from having to purchase water and substitutes for forest produce. As a result, out of desperation for income, many villagers have either sold their land or are planning to do so.

The large area of land taken over in this manner is one more indicator of how the acquisition of private land is only one facet of India's land and displacement conflicts. It would be surprising if there was any large project in the country today that did not involve some takeover of community or forest and common lands. Further, the case studies demonstrate that forest and common lands are generally targeted first. Indeed, the NSSO report quoted earlier estimated that common lands are declining at a rate of approximately two percent per year.¹⁰

To confirm this hypothesis at the national level would require official data on the status of forest and common lands as distinct from other lands. However, this is impossible at present, as official records in many States do not distinguish common lands from other lands. There is hence no aggregate national data. Within the existing official data, the measurement and demarcation of lands is a questionable exercise, since it is usually carried out by revenue officials without any transparency or local consultation. The result is that totals and figures often fluctuate wildly: data from State government land-use statistics, for instance, show no land-use change in a number of significant categories in Goa, while Uttarakhand and Odisha show sharp changes that appear internally inconsistent. Data from Chhattisgarh and Rajasthan, as presented in the biofuel study, show drops in various forms of specifically-classified land (for instance, in Rajasthan, the area of land marked as pasture "wastelands" fell by 68 percent between 2000 and 2010), but simultaneous increases in generic categories (in Rajasthan again, in the category of "land with or without scrub"). This may reflect a genuine fall in pasture land or it may be the result of mis-classification; most likely, it is the result of both.

Direct loss of livelihoods

One major and obvious impact is the loss of livelihoods from the land areas that are taken over. This includes the loss of minor forest produce, the destruction or takeover of shifting cultivation lands, the loss of grazing areas, etc. Such damage does not always involve direct physical displacement; but the devastation it causes is no less severe. A particularly striking example of this is the Polavaram Dam (*Box 5*). As the case study on this dam points out, the massive destruction of forest involved in this project will deprive hundreds of thousands of people of their livelihood, even as they will not be considered "affected" by the dam.

The NSSO data indicate that approximately 50 percent of rural households rely on forest and common lands for key materials and for their livelihood activities. As such, the takeover of a large area of common lands effectively results in deprivation for half of the surrounding population. Further, forest and common lands may also overlap some forms of individual use, such as cultivation of "encroached" plots or building of huts or residences on government lands. These also get destroyed as a result.

Lack of compensation or rehabilitation

The case studies expose that it is extremely rare for any compensation, rehabilitation or other benefits to be provided for the loss of these forest and common lands and the livelihood resources they contain. In this sense, the takeover of forest and common lands hits the most marginalised and oppressed social sections in a more brutal fashion than the takeover of private land. Moreover, in effect, it is also a massive subsidy to the developer and/or the state at the expense of the local community.

Once again, if one applies the NSSO figures, it is clear that those who depend the most on common lands are landless and poor households, and indeed, also the most vulnerable. NSSO estimated that rural labour households collected Rs. 777 worth of materials from common lands — higher than that by any other social group. Thus, for such families, a key source of livelihood may be destroyed by common land

expropriation without any state compensation or welfare measures at all. These are also, of course, the families who have the least alternative resources to survive such a loss.

Existing and proposed rehabilitation policies fail to deal with this issue and are usually restricted only to those that fall within narrow definitions of project-affected families; within such limited definitions, ambiguous language and overly broad restrictions offer many opportunities for administrative officials to exclude even those that such policies ostensibly intend to protect. For instance, the current Land Acquisition, Resettlement and Rehabilitation Bill has been referred to as a law that protects not only landowners but all those who depend on the area for their livelihood. Yet what its provisions actually state is that those who lose their primary livelihood and who have been living in the area for at least three years will be considered to be project affected.¹¹ It is unclear what constitutes a “primary” livelihood. Further, with very high rates of seasonal migration among adivasi and Dalit communities (save those who are not settled agriculturists at all, such as nomadic communities and shifting cultivators), how is the three-year condition to be interpreted? In the absence of clear definitions or a transparent and accountable procedure for deciding such questions, the results will likely be exclusionary and discriminatory.

Impacts beyond the land area taken for the project

In several types of land takeover, the consequences extend well beyond forest and common lands and their direct uses. The effects include pollution, damage to the water table, additional resources taken from the surrounding area, changes in the ecosystem and so on. The loss of livelihoods from the destroyed lands is compounded by the fact that often those in the surrounding areas — whether on private or common land — are also damaged or destroyed.

For instance, the case studies on sand mining (*Box 3*) and on phosphate mining (*Box 2*) both note that the result of these activities is drastic changes in the water table in the area. This renders agriculture almost unviable and, in the case of phosphate mining, was a significant reason as well for others in the area to “voluntarily” sell their private lands to the company.

Box 3: Sand Mining in Rajasthan

The Aavara river flows through Udaipur District in Rajasthan. For more than 30 years, stretches of the river in the villages of Bori, Aavara, Gudel, Kalodia and Dhimidi have been mined for sand. An estimated 19,200 tons of sand are removed daily from an area of around 1,000 hectares. Sand mining leads to a lowering of the river bed and widening of the banks; measurements show the river bed annually dropping by around 3.5 feet (approximately one metre) at some sites. The surrounding villages have suffered a series of impacts from this activity. As a result of the fall in the water level of the river, wells in the villages have lost water too, and some wells have also collapsed after sand was removed near their walls. With some fluctuations, measurements of the water level in the wells of Aavara and Dhimidi villages show a sharp drop between 2008 and 2011. Indeed, between 2009 and 2011, in Aavara, the well water level dropped from 35 to 5 feet in the dry season (October to December). As a result, due to lack of water, crop yields in the area have been falling. Grasses and other plants on the river banks have also disappeared in many areas due to the mining. While the mining has generated some employment for local workers, the amount of employment has fallen over the years with increasing mechanisation. Some individuals lease land to the sand miners; in most cases, this is actually common land that has been taken over by the individual concerned. Such sources of income are also not likely to last for the long term, as it is expected that sand yields will begin to drop after the next few years. Licenses and regulation of the sand mining is done by the State government with no local involvement. However, recently the gram panchayat (village council) has taken steps to ameliorate the impact of the mining by building check dams and water ponds. The villagers have also started planning to switch to alternative and more sustainable crops.

Similarly, the Bellary, phosphate mining (*Boxes 1 and 2*) and other case studies all note the severe impact that pollution has had on the surrounding areas. Release of toxic chemicals into the air and into the water supply renders entire settlements unfit for human habitation, and cause massive damage to agriculture. Impacts of this kind can occur even in cases of seemingly “green” projects; for instance, the Kalpavalli case study (*Box 6*) discusses the apparently minor — but, in fact, very serious — health impact of the constant loud hum of windmills.

Furthermore, project developers often draw resources not only from the forest and common lands taken for the project, but from adjacent and nearby common areas as well. For instance, the case study on highway building (*Box 4*) notes how rocks and gravel were drawn from surrounding areas, damaging the soil and the watershed, without any kind of permission, consultation or regulation whatsoever. It is common for project developers to take construction materials, water and wood from surrounding areas. Thus, the area of common land that is affected, or even destroyed, by the project can greatly exceed the area that is formally appropriated. Finally, this issue — the impact of projects outside their formal areas — is totally ignored by current policies and laws.

Box 4: Highway Building in Rajasthan

Highways and other ‘linear’ projects (railway lines, transmission lines, pipelines, etc.) have received relatively less attention in discussions on land takeover and displacement. This case study looks at the Rajasthan State Roads Development Corporation’s attempted redevelopment of a stretch of State Highway 53, between the towns of Keer Ki Chowki and Salumber. Construction is still underway. Within the case study area, common pasture land, revenue “wasteland” and private pasture and agricultural lands have all been acquired/taken over for the road project and associated toll plazas. It appears that, exploiting an ambiguity about the extent of land that fell within the “right of way” of the old road, some private lands have been appropriated without paying compensation at all. There has been neither payment nor consultation regarding takeover of common lands. Moreover, stone and quartz quarrying has occurred on common lands on the sides of the proposed new road, without any consultation with local communities or payment of compensation. With the entry of the road, restaurants and shops have also sought land in the area, with purchases being executed through local brokers and real estate agents. If the highway is further widened in future, it is estimated that another 364 hectares of land may be required on this stretch alone. The impact of this on livelihoods in the area will be considerable.

Legal and institutional aspects

However, these realities lead to a question: why does it appear so much “easier” to take over common lands? The obvious answer—that they lack sufficient legal protection—is only half true. For, on paper, several laws exist that purport to provide such protection. Common lands in forest areas are ostensibly protected by the Forest Rights Act; common lands in Fifth Schedule Areas¹² are meant to be covered by the governance provisions of the Panchayats (Extension to Scheduled Areas) Act and by the Fifth Schedule itself; and several State laws exist with similar provisions. Yet, in practice these laws hardly seem to matter. What exactly is occurring in these situations?

The discussions in the case studies reveal some strong indicators of the processes that are at work. However, prior to looking at these trends and their significance, it is first necessary to understand and take into account the two major land governance regimes that apply in rural India: the forest laws and the revenue laws.¹³ In particular, the system of forest law offers a very clear demonstration of how common lands are taken over, which also helps illuminate the processes at work in revenue lands.

Indian forest law is centred on the Indian Forest Act of 1927, the third in a series of Forest Acts passed by the colonial administration. While there are numerous other State and Central laws on forests, this Act provides the basic framework that most of them follow.

The Indian Forest Act and its implications for forest areas

The Forest Act defines different regulatory systems for different classes of forest, of which the two most significant are reserved forest and protected forest. The term “reserved” refers to the said forest being reserved for government use. Any area of “forest land or wasteland”¹⁴ can be declared a reserved forest by the State government after following a procedure for “settlement of rights”, under which a Forest Settlement Officer is supposed to receive all “claims for rights” and decide whether to accept the right fully, permit it with conditions, or reject it. Once the final notification is issued, no one can have any rights in the reserved forest except those specifically recorded and permitted by the settlement process (Section 9). Moreover, even those rights are not concrete; for up to five years after the settlement, the State government has the power to revise, rescind or modify any arrangement made in the settlement proceeding (Section 22).

The Act focuses on individual claims, not collective ones, and even individual claims have usually been accepted only if they were backed by documentary evidence. The result has been the extinction of almost all collective and common land rights. Further, this process is entirely in the hands of the forest bureaucracy, and those affected have no method of holding officials accountable, even if they fail to comply with the law. As a result, even the highly limited settlement exercise provided for in law has never been completed. Thus, as of 2005, 60 percent of national parks and 62 percent of sanctuaries in the country had never completed their process of settlement of rights (as per affidavits filed in the Supreme Court).¹⁵ Similarly, in 2004, the Madhya Pradesh government informed the Supreme Court that the process of settlement of rights had not been concluded in 82 percent of the State’s forest blocks.¹⁶ In such areas, though the law does not actually provide for it, the Forest Department behaves as if the reserved forest has already come into existence. Some States have further amended the Indian Forest Act to permit areas considered as reserved forest under Princely States¹⁷ to be “deemed” to be reserved forest with no settlement at all; this is the case with 40 percent of Odisha’s reserved forests.¹⁸

Protected forests are regulated in a different manner. In law, all rights in such areas continue except those that are specifically barred by regulation. Therefore, unlike in the case of reserved forests, the Act does not provide any procedure for recording these rights. It only requires that some form of rights settlement should have taken place in the past, and even permits declaration in the absence of any settlement at all.¹⁹ But the mere legal provision that people’s rights can continue hardly provides any protection in practice. In protected forests, the government has sweeping rule-making powers over cultivation, collection of forest produce, etc., and such regulations can so severely circumscribe people’s rights that their livelihoods are rendered impossible.

Thus, the legal regime of the Forest Act heavily favours the government’s power to arbitrarily regulate and prohibit activities and to expropriate resources. The burden of proof is always placed on the community or the people, and even recognised rights can later be withdrawn. The Wild Life (Protection) Act of 1972 follows the same pattern, with more severe punishments.

Aside from resulting violations of people's rights, this centralised system has an additional consequence. Enormous powers, no legal rights, and a lack of accountability create a situation where records simply bear no relationship to reality. The failure to complete the rights settlement process is only one example. Boundaries are often not clearly demarcated, leading to disputes between the Revenue and Forest Departments: in Madhya Pradesh alone, an estimated 12,000 sq. km of land is disputed between the two departments.²⁰ There is no record of how many people live in, and depend on, forest areas. Thousands of villages and settlements are entirely recorded as forest land. Such communities are deprived of many of their rights as citizens of the country, including, in many States, ration cards²¹ and basic facilities like schools, water supplies and electricity. In some cases they are not even able to obtain voter ID cards, as a result of the lack of a recognised address.

Recent forest laws: Intensification of centralisation

In 1980, the Forest (Conservation) Act (FCA) was passed, making permission of the Central Government mandatory for use of forest land for “non-forest” purposes.²² (This permission is referred to as “clearance for diversion” of forest land.)

The process by which these clearances are granted is entirely autocratic. State Forest Departments make proposals for diversion of forest land, which are sent through a central body called the Forest Advisory Committee (FAC). Additional land has to be allocated for “compensatory afforestation,” or tree plantations, to ostensibly replace the forest that has been destroyed. All processes are controlled by forest officials and there is no space for input or accountability to affected people (with the sole exception of a single 2009 order based on the Forest Rights Act, which has hardly been implemented). Even the agendas of FAC meetings were not publicly accessible until recently. Unsurprisingly, from 1980 to August 2011, fully 94 percent of the projects that sought forest clearance received it.²³ It is routine for a proposal to divert forest land to be made without the people of the area being aware of it. These injustices are compounded by compensatory afforestation: one study found that shifting cultivators in a Juang village in Keonjhar District, Odisha, had lost their entire livelihood as 95 percent of their village's land had been given to the Forest Department for compensatory afforestation plantations.²⁴

The FCA process is a clear example of the logic of forest management, and, as we shall see, in the rationale of management of common lands in India in general. State control over these lands is justified by reclassifying them as “national resources.” But state control does not translate into public or democratic control: rather, extraordinary powers are vested in small centralised bodies, and these bodies are completely insulated from public access and accountability.

This interpretation has repeated itself again in the Supreme Court's orders in the *T. N. Godavarman* case (the well-known “forest case”). The history of this large and complex case is beyond the scope of this paper, but a number of significant orders are important to note. In 1996, the Court directed that the term “forest” in the Forest (Conservation) Act not only refers to notified government forest land, but to all land that is recorded as forest on any government record, and to all land that fits the “dictionary definition” of forest (irrespective of ownership). This order has not only added to the confusion about forest land boundaries, it has also given the Forest Department considerable power over large areas of government revenue land (such as various local and revenue forests across the country, as well as other areas recorded as “forest”), and even over private lands (namely, those classified as “private forests” under various State legislations). Possibly the most egregious consequence of this has occurred in the Northeast, where large areas of community-owned and managed lands in the hill areas had earlier been

recorded as “unclassed state forest” under the Assam Forest Regulation of 1891. After the 1996 order, overnight these lands were brought under the Forest (Conservation) Act, though they are not government lands in any sense whatsoever. The 1996 order has resulted in clashes across the country. Moreover, since the order is impossible to implement *in toto*, it has been used selectively, leading to even more arbitrariness and abuse. A second key order was passed in 2002, when the Court constituted a Central Empowered Committee consisting of forest officials and a few conservationists; this ad hoc Committee was empowered to monitor implementation of the Court’s orders, hear “grievances” against them, and even to pass interim orders.

As a result of the *Godavarman* case, the Supreme Court is now exercising a kind of parallel jurisdiction along with the Environment Ministry. But this does not offer much relief to communities facing attacks on their forest and common lands, for the court process is even more autocratic and opaque than the government one. Orders are usually passed without hearing from the affected communities or people. The only parties typically represented before the court are the forest officials of the Central and State governments, corporate houses and affected businesses, and possibly some environmentalists. The result is that the orders and approach of the court are largely shaped by the impressions, prejudices and vested interests that these parties bring before it. Further, as these proceedings take place in the Supreme Court, there is no possibility of appeal. The tendency to issue sweeping orders without concern for people’s rights reached its apotheosis in an order passed in 2001 that barred “regularisation” of “encroachment,” and led to one of the largest eviction drives in India’s history, targeting the common lands and homes of hundreds of thousands of families.²⁵ Even today, the Court is typically dismissive of common lands and collective resource regimes.

However, this tendency towards increased concentration of power has not gone unchallenged. As resistance to takeover of common lands has intensified, so has the struggle for alternatives to centralised control over land and resources. In forest law, this struggle eventually led to the first significant reversal of autocratic control, which we turn to next.

The Forest Rights Act

Following mass protests against evictions, in 2006 the Central Government passed the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act — better known as the Forest Rights Act. For the first time, this legislation provided for explicit recognition of the rights of forest-dwelling communities over common lands and resources, including using land for cultivation, minor forest produce, grazing areas, water bodies, etc. It also legally empowers communities to protect and manage forests, wildlife, biodiversity, water catchment areas and their cultural and natural heritage (Sections 3(1)(i) and 5). Finally, the process of determining and recognising all these rights was to be initiated by, and accountable to, the gram sabha (village assembly), thus marking a sharp shift away from the centralised control regime.

Both prior to and after the passage of this Act, however, the movement for it was met with intense resistance from the forest bureaucracy, other sections of the state machinery, as well as a small number of elite wildlife conservationists. Adivasi²⁶ and forest dwellers’ organisations, leftist political parties and other peoples’ movements in turn mobilised protests and mass demonstrations across the country, including some of the most widespread adivasi protests seen since Independence. Despite the level of political and mass uproar, the opposition from the forest bureaucracy succeeded in delaying the Act’s passage by nearly two years and then in blocking the Central Government from notifying it into force for another year.

The passionate struggle over the Act did lead to a positive result as well. It triggered policy debates and political struggles over two key issues: democratic control over forest management and collective

community rights. Centralised control over forests could no longer be taken for granted, either in law or in the public eye. One of the more striking outcomes of this change was a July 2009 order of the Ministry of Environment and Forests, which made it mandatory for any State government seeking diversion of forest land to provide a certificate from the affected gram sabhas stating that the implementation of the Forest Rights Act is complete and that the gram sabha consents to the diversion. This order essentially made the legal requirements of the Forest Rights Act explicit in the context of diversion of forest land.

Yet, having failed to scuttle it, forest authorities and other agencies have turned to consistently violating and sabotaging this law. In particular, collective and community rights have rarely been recognised. A September 2010 report of the Council for Social Development concluded that ‘all non-land rights in the Act — most of which are community rights — have largely been ignored in implementation.’ It also stated that ‘there has been large-scale interference by the Forest Department in the rights recognition process’ and that ‘both the Central and the State governments have actively pursued policies that are in direct violation of the spirit and letter of the Act.’²⁷

The same has been true of the forest diversion process, which is continuing as if both the Act and the 2009 Ministry order do not exist. A particularly striking illustration of this is provided by the case study of the Polavaram Dam. The Andhra Pradesh Government simply provided an “assurance” to the Central Government that there are no forest-rights holders. The Ministry accepted this “assurance” despite the fact that there are more than 3,000 forest interface villages in the affected area, that the majority of them are inhabited by forest-dwelling adivasis, and that the same affected districts had seen more than 87,000 individual claims and 1,800 community claims filed. Once again, Polavaram is not alone in this respect; in July 2011, the Ministry responded to a Right to Information request on compliance with the 2009 order by stating that it has no record of the same.²⁸

Box 5: Polavaram Dam in Andhra Pradesh

The Polavaram project in the state of Andhra Pradesh is one of India’s largest dam projects. Under consideration for over 70 years, the project involves a large dam on the river Godavari (India’s second largest river) and a linked canal network, with the ostensible aim of irrigating agricultural lands in the area. If built, the dam will submerge an estimated 276 villages across three districts in Andhra Pradesh, along with 27 other villages in Chhattisgarh and Odisha. As per the 2001 census, 237,000 people will be displaced by the dam; more than half of those displaced will be adivasis (indigenous communities). A similar, if not larger, number of people will be affected outside the submergence area as a result of loss of livelihoods and access to land. More than 45 percent of the land to be submerged is either village common lands (including pasture) or forest. Though the Forest Rights Act requires that any diversion of forest land be preceded by completion of the rights recognition process, the Central Government granted final forest clearance to the dam in July 2010 on the basis of a one line assurance from the Andhra Pradesh (AP) Government that “there are no forest rights that need to be settled...in the project area.” This statement was made doubly unbelievable by the fact that in other parts of these three districts, despite severely flawed implementation, community and individual forest rights had been recognised under the Act (over 350,000 hectares and 160,000 hectares of land, respectively). The Central Government also ignored the requirement under the consent of gram sabhas prior to diversion of forest land. Similarly, the AP Government subverted the provisions of the PESA Act by consulting higher bodies (the mandal panchayats) instead of village assemblies prior to acquiring private land. As mandatory rules on public hearings were not complied with, the National Environment Appellate Authority struck down the dam’s environmental clearance in 2011; the State Government won a stay order from the AP High Court on this judgement, allowing them to go ahead. However, the Environment Ministry at the Centre has requested the AP Government not to proceed with construction until questions about the environment clearance are settled. Petitions against the dam are pending before the High Court and the Supreme Court. Meanwhile, allegations of corruption in the tender process have surfaced and have led to a cancellation of tenders by the High Court in February 2012.

Thus, the situation in forest lands continues to be marked by severe contestation and struggle over questions of resource control and legal rights. A similar pattern can be found in the other major land classification — revenue land.

REGULATION AND GOVERNANCE OF REVENUE LAND

The term “revenue land” originates in the colonial land administration regime, whose primary purpose was to facilitate the extraction of land taxes (revenue) from the local population. Hence, systems for control of revenue land are both older and more diverse than those that apply to forest land. After Independence, when land was made a State subject under the federal system, this multiplicity continued, with each State passing its own laws, revenue codes and government orders.

Within this diversity, however, certain common themes are present throughout, particularly with respect to common and collective lands.

Revenue laws and control over common lands

It is often assumed that common resources in revenue lands have no legal protection, and that revenue law treats land as either private or government-owned. This impression is particularly promoted by state agencies who seek to take over land by arguing that government lands can be disposed of in any manner that the government sees fit.

In fact, this impression is incorrect. Revenue law in India does provide a number of safeguards, of varying degrees of sophistication, for common lands. This is true even of the main legislation regarding revenue lands in most States (the Land Revenue Code or its equivalent). The Madhya Pradesh (MP) Land Revenue Code can be taken as an illustration. After stating that all land is ultimately owned by the state, the law divides land into two categories: occupied and unoccupied lands. The former includes *bhumiswami* lands (private lands), *abadi* lands (land used for residences), and lands held by tenants and government lessees. The latter forms the common lands of the village.²⁹ The MP Code goes on to require that the Collector should annually prepare a record of the unoccupied lands, and must provide for various uses, including free grazing of cattle, removal free of charge of forest produce and minor minerals for domestic consumption, and removal of articles required by craftsmen.³⁰ Further, the Collector has to demarcate the areas to be used for

timber or fuel reserve; pasture, grass, bir or fodder reserve; burial ground and cremation ground; gaodhan or village site; encamping ground; threshing floor; bazaar; skinning ground; manure pit; public purposes such as schools, playgrounds, parks, lanes, drains; and any other purposes that may be prescribed.³¹

These rights are to be recorded in a document called the *nistar patrak*, after the pre-Independence practice of recognising and recording village nistar rights. Similarly, local rights of access to and use of water, pathways, etc. are recorded in a document known as the *wazib-ul-arz*.³² The Maharashtra Land Revenue Code contains similar provisions, which require the Collector to make allocations of land for community uses and record them in a *nistar patrak*.³³ Further, the practice of recording some types of rights in the *wazib-ul-arz* exists in Maharashtra, Himachal Pradesh and other States as well.

Alongside the Revenue Codes, other laws also operate in relation to these lands. Many States have separate legislations or policies for various types of common lands, such as the Maharashtra Land Revenue (Disposal

of Government Trees, Produce of Trees, Grazing and Other Natural Products) Rules, 1969, which govern allocation of grazing lands via auctions. In almost all States, including Tamil Nadu³⁴ and Odisha,³⁵ provisions were made in revenue laws regarding the rights of those who are cultivating or residing on what is officially classified as government and common lands. Even the Supreme Court has recently taken special note of common lands in its judgement in the case *Jagpal Singh and Ors. vs. State of Punjab and Ors.*³⁶

Some States go beyond mere recording and demarcation of common lands, and provide further for democratic control over them. For instance, the Uttar Pradesh Zamindari Abolition and Land Reforms Act and the Punjab Village Common Lands Regulation Act provide for common lands to be vested with the gram sabha and the gram panchayat, respectively. In the case of the Uttar Pradesh law, the gram sabha elects a Land Management Committee (which in practice is the panchayat), but retains ultimate power over these lands.

Land laws and adivasi areas

In some adivasi areas, such possibilities for democratic governance have been greatly strengthened by a series of legislative measures. These were a response to the repeated uprisings and armed resistance that the British rulers as well as the post-colonial state faced when attempting to extend control in these regions. For instance, a particularly detailed pair of special laws exists in the territory of what is now Jharkhand, namely, the Chotanagpur Tenancy Act (CNTA) and the Santhal Parganas Tenancy Act (SPTA). These laws explicitly provide for community ownership over customary lands and for recording of community rights.³⁷ In the case of the Chotanagpur Tenancy Act, the “original settlers” (known as Mundari khuntkattidars) were exempted from land revenue payments and given powers of allocation over community lands, implying that the lands in question did not belong to the colonial state at all.

Moreover, such protective laws extend well beyond collective land rights. Large areas of British India (mostly, though not all, inhabited by adivasis)³⁸ were excluded from the normal application of land, criminal and forest laws through a series of special legislations, culminating in the classification of these areas as “partially excluded areas” in the Government of India Act of 1935. The hill areas of the Northeast, which were only nominally under British sovereignty, were classified as “fully excluded areas.” The Constitution incorporated these concepts through the inclusion of the Fifth and Sixth Schedules, respectively, with these areas becoming “Scheduled Areas” in independent India. The Constitution made some significant changes in the colonial system: whereas under the British no laws applied to partially excluded areas except those that were specifically extended to them, the Constitution provided that all laws extended to these areas except those specifically withdrawn or modified by the Governor. In the case of Sixth Schedule areas (which had been “fully excluded”), the Constitution provided for a more complex institutional framework in the form of a quasi-federal arrangement, whereby elected Autonomous District Councils in these areas exercise policy-making powers over land, resources and cultural matters.

Under the Sixth Schedule and other even more extensive legal regimes in some Northeastern States (established in response to the ongoing armed conflicts there), common lands received the strongest protection that they enjoy anywhere in India (though one must reiterate that even this has not prevented the Central Government from using the provisions of forest law to expropriate them). In the Fifth Schedule areas, however, no effective changes in existing laws were made, notwithstanding the constitutional mandate. As a result, the situation in these areas developed in an identical manner to that in the non-Scheduled Areas, and in some ways more brutally, given the high number of extractive and natural resource-based industries that were set up in them.

This constitutionally anomalous situation continued despite the passage of another powerful law in 1996 — the Panchayats (Extension to Scheduled Areas) Act (the PESA Act). Passed in order to extend the Panchayati Raj system to Scheduled Areas,³⁹ the PESA Act was shaped by a nationwide adivasi mobilisation, which compelled the government to include some very powerful provisions on democratic control over land and natural resources. These include a general statement that the gram sabha is “competent to safeguard and preserve the traditions and customs of the people, their cultural identity, community resources and the customary mode of dispute resolution” (Section 4(d)), as well as requirements that the gram sabhas should be consulted prior to acquisition of land or resettlement of displaced people. The Act also gave the gram sabhas and panchayats powers over minor forest produce, minor water bodies, leases for minor minerals, development schemes and functionaries, and alienation of adivasi land.

Government control and expropriation of common lands in revenue areas

In this sense, unlike the forest laws, the laws that apply to revenue lands contain references to multiple types of common land and common use, and even provide in some States and in Scheduled Areas for control of local democratic institutions over them. Yet, the case studies show a striking pattern of expropriation and dispossession in these lands that is similar to that in forest lands. Even special laws like the PESA Act are routinely ignored and violated. How does this occur?

The case studies point towards three mechanisms. The first mechanism is the most obvious — criminal breach of law. The case study on Bellary is a particularly telling example of this, where illegal iron ore mining has devastated an entire area in violation not only of land laws but of environmental, mining and forest regulations. In other cases, technical compliance with the law is achieved by essentially criminal means. In one such case, the Supreme Court directed the closure of a private golf club near Chandigarh after it was found that the land in question was actually common land whose status had been illegally and arbitrarily changed to “agricultural land” to permit the club to purchase it.⁴⁰

However, such blatantly criminal actions are not as common as they might appear. As the other case studies expose, it is far more common to override protective laws with other laws.

This brings us to the second mechanism of takeover — the use of forest law. As already noted, huge areas of common lands have been expropriated through the use of the forest laws. The gradual expansion of Forest Department control has overridden, and in many cases demolished, the institutional structures for collective control over revenue lands. For instance, the takeover of nistari forests by the Forest Department in the “orange areas” of Madhya Pradesh and Chhattisgarh is a major cause for the loss of access to fuelwood and forest produce that the communities of these areas enjoyed.⁴¹ It has been estimated that 3 million acres of gram sabha lands in Uttar Pradesh have been taken over by the Forest Department.⁴² The 1996 order of the Supreme Court in the *Godavarman* case, which greatly expanded the scope of the Forest (Conservation) Act, has had a similar effect. Land that actually belongs to communities is now being diverted across the Northeast, as in the case of the Lower Subansiri and Tipaimukh dam projects (in Arunachal Pradesh and Manipur, respectively). The FCA’s centralised design, along with selective use of the Supreme Court’s 1996 order, become instruments to seize these lands.

The third and final mechanism is provided by the structure of revenue law itself. Under all State revenue laws, the State government has a general power to control classification of land that permits it to get around provisions on customary land either through loopholes or by ignoring them entirely. In particular, the concept of “wasteland” is frequently invoked to justify this kind of action, as “wastelands” are implicitly deemed fit to be transferred to any other use. But the definition of what constitutes wasteland is highly

elastic, and is often based on a vague notion of “low productivity” or “possibility of improvement,” which by definition, can be true of any piece of land (when current use is compared to a higher productivity use).⁴³ The case study on the Kalpavalli area being taken over by a wind energy company is indicative.

Box 6: Kalpavalli Eco-restoration Project in Andhra Pradesh

Though historically an area of dense forest, Anantapur District of Andhra Pradesh is today an arid zone, with only two percent forest cover and persistent drought conditions. Under such conditions, a group known as the Timbaktu Collective undertook eco-restoration of forest and common lands from 1990 onwards, initially on a 32-acre patch of land and later among approximately 100 villages in the surrounding area. In particular, in seven villages of Chennekothapalli and Roddam mandals, the Collective has worked since 1992 to restore an area of around 3,400 hectares known as Kalpavalli. From a barren, stony and dusty area, the Kalpavalli landscape has now been transformed into a mixture of deciduous forest and grasslands, including a network of community tanks. Wildlife has returned to the area. The land is now used extensively by the surrounding villages as pasture land, for collection of minor forest produce and fuelwood, and for water storage and distribution. However, on the revenue records, the land continued to be recorded as “unassessed waste” (a part may also have been declared to be forest land, though the records on this are not fully clear). On this basis, the State government therefore allocated 28 hectares of land in 2004 to a wind energy company — Enercon — to construct 48 wind turbines. The company went on to use almost 80 hectares of additional land for 40 km of roads. Though the area of land may seem small, it is in scattered patches, and the company has cut into the tops of almost every hillock in the area for turbine construction as well as building roads on their sides. Trees have been felled, grasslands cleared and slopes destroyed; an estimated 400,000 litres of water have also been used from the local tanks and streams (not including future water for cooling). As a result, cattle are unable to move for grazing (with the slopes cut by roads), regenerated soil has been damaged, and water supplies are diminishing from overuse, reduced catchment areas and dumping of rubble. It is expected that land near the turbines will be cordoned off in future on grounds of safety. The loss of land, water and pasture will seriously affect livelihoods in the area. The continuous noise of the turbines is also expected to have an impact on people’s health, as it has in other parts of the world. The State made no attempt to consult communities regarding use of the common lands, and Enercon has disowned an agreement signed by its lawyer with the Timbaktu Collective. The Collective is continuing its fight to stop the expansion of the wind energy project, including by exploring legal options.

Another excellent illustration of how this works can be found in the case study on biofuel policies in Chhattisgarh and Rajasthan, which details the manner in which huge areas of common land are being targeted for takeover for biofuel plantations. A reading of the concerned legal instruments shows what has been done. In these States, special Rules were passed for the purpose of allotting land to biofuel plantations in 2006 and 2007, respectively.⁴⁴ These Rules were issued under the State Governments’ general powers to make Rules for revenue lands. In both cases, without regard to existing records, rights or provisions, the biofuel Rules constitute a committee consisting of district-level revenue and forest officials, and in the case of Chhattisgarh, the district Mining Officer, whose duty is to identify “wasteland” that can be assigned for biofuel plantations. The term “wasteland” is defined very broadly in both cases: in Chhattisgarh, as “government land lying vacant for more than 10 years which is unfit for cultivation by ordinary means... [but not including] forest land;”⁴⁵ in Rajasthan, as “degraded land which can be brought under cultivation with reasonable efforts and which is currently lying unutilized and land, which is deteriorating for lack of appropriate soil and water management on account of natural causes...”⁴⁶ The Chhattisgarh Rules restrict such allocation with a very vague clause that land “required for the use of the concerned village” should not be allotted,⁴⁷ while the Rajasthan Rules restrict allocation of various categories of land, but these essentially amount to land needed for urbanisation and roads.⁴⁸

Thus, any land that is not cultivated becomes a fit target for allocation to biofuel plantations, regardless of its other uses. Since there is no Central or State law that defines the term “wasteland” such flexible

redefinitions become a convenient instrument for legitimising takeover of common lands. The irony is particularly striking in the case of Chhattisgarh. As mentioned earlier, the District Collector is actually under a duty to record *nistari* rights for each village on an annual basis. Yet this same official and his counterparts in the concerned committee are now free, and in fact encouraged, to allot this land to biofuel plantations. The resulting attempt at a massive land takeover, discussed in depth in the case study, has so far failed to reach its full extent, as a result of resistance and the inability of the concerned companies to make investments, but it has already caused considerable damage.

Box 7: Biofuel Plantations in Rajasthan and Chhattisgarh

In recent years, there has been a global drive towards the use of agricultural crops, such as sugarcane and jatropha, for fuel production (though this has waned somewhat). This has also had an impact in India: from 2005 onwards, the Central Government and several State governments have been actively promoting biofuel production. Two States in particular, Chhattisgarh and Rajasthan, have been at the forefront in this drive. In 2006 and 2007, respectively, these two governments notified new Rules under their respective Land Revenue Codes, mandating the identification and allocation of “wasteland” for biofuel plantations. In Rajasthan, plantations were to be done by the Forest Department, gram panchayats (village councils) or self-help groups (women’s saving societies formed under various government schemes); however, the State Government also invited private companies to engage in plantations, provided that they set up a biodiesel plant as well. From 2010 onwards, the Chhattisgarh Government invited the formation of joint venture companies to engage in biofuel plantations. In Chhattisgarh, 157,332 hectares of land has been classified as “wasteland” fit for biofuel allocation, while district authorities in Rajasthan have identified 41,127 hectares for the same purpose. However, most of this land is actually common lands, used for grazing, forest produce collection, etc.; some of it is under individual cultivation. The mis-identification of these lands as “wastelands” and their allocation to biofuel plantations, threatens to deprive large numbers of adivasis, forest dwellers and other marginalised communities of their livelihoods and basic resources. The process of identification and allotment has been done entirely by district authorities, without any consultation with local communities; laws such as the Forest Rights Act and the PESA Act have been grossly violated. As a result of the resistance and protests by those affected, in both States the biofuel policy has fallen far short of its production targets (achievement of plantation targets on paper notwithstanding). In Rajasthan, there have even been cases where villagers have planted jatropha during the day, in order to receive wages from the government, and uprooted the seedlings at night to reclaim the land. Despite a general slowdown in this programme in recent years, neither the Central nor the State Governments has shown any sign of responding to the resistance of affected communities. The mis-classification of “wasteland” remains on the records: even if it is not used for biofuels, the same classification can be invoked to divert it for other purposes.

Similarly, all the case studies that concern Scheduled Areas note how the concerned State governments have framed industrialisation and land allocation policies as if the PESA Act does not exist. The provisions requiring consultation with the gram sabha, the gram sabha’s powers to safeguard community resources, and its ownership and management rights are either simply ignored entirely or reduced to formalities. In the case of the Polavaram Dam, for instance, “consultation” was held with the mandal and block-level panchayat bodies;⁴⁹ the gram sabhas were bypassed entirely.⁵⁰

CLASH OF LEGAL SYSTEMS: THE INSTITUTIONAL DYNAMICS OF COMMON LANDS TAKEOVER

With this last reality, the parallel between revenue law and forest law is evident. In both cases, the issue is clearly not a *lack* of legal protection of common land rights. Notwithstanding various flaws, such protection often exists. Further, the issue is also not merely one of “non-implementation” as it is so often characterised.

Rather, it reflects a specific structural problem at work. In most conflicts on these matters, in addition to a clash between local communities and the state machinery, there is also a clash between two sets of legal and institutional frameworks. Certain features broadly distinguish these frameworks from each other:

- There is a distinction between institutions of control that vest power in the state machinery and those that vest it in local democratic institutions. This difference emerges clearly between the FRA, the PESA Act, the Chhotanagpur Tenancy Act, etc., on the one hand, and the forest laws and most revenue laws on the other.
- Communities resisting expropriation most often try to use the laws that vest control in democratic institutions. Centralising laws and private property rights are generally of little avail in such situations. Indeed, out of the case studies presented here, only in Bellary has the centralised system been sought to be used by local communities, and this is an unusual case.
- When there is a clash between the two sets of laws, those that are built around the centralisation and expropriation approach are implemented even when they are inconsistent with, or in direct violation of, laws belonging to the other approach.
- Further, the laws that seek to create democratic institutions are not integrated into the current administrative structure. Such institutions are either not set up or are not respected. Records required by them are maintained separately, outside the “normal” mainstream records, and are often poorly maintained, if at all. Regulatory procedures are established on the basis of the centralised laws, while the democratic ones are ignored. This is most clearly demonstrated when new policies are being instituted, such as in the case of the biofuel plantations or the *Godavarman* forest case.

When talking about a clash between laws, one question naturally arises: what of the courts whose duty it is to resolve such clashes? What role have they played? A detailed discussion of the jurisprudence of land and resource control in India would require a paper of its own and is beyond the scope of this study.

However, certain tendencies can be noted. The first is that the courts have not uniformly favoured the state or its institutions; at certain points, the courts tend to respond to community concerns. Bellary is one such case. The private golf club in Chandigarh that was shut down by the Supreme Court is another.

Yet, in both these cases the illegality that occurred was not limited to a violation of common lands or community rights. Indeed, the primary illegality on the basis of which the Court acted was the violation of forest law. In other cases, where common land rights have been the primary violation, the courts have generally deferred to the overarching power of the state to decide on land use. This is particularly so where the violation is not one of direct illegality, but instead the result of the state machinery using centralised institutional structures to override democratic ones. In such cases, the courts have shown a marked tendency to favour the former. Examples include the *Godavarman* case itself, in which both the orders discussed earlier and others have greatly expanded the powers of the Forest Department; the repeated failure of courts, including the Supreme Court, to block projects where the PESA Act has been violated; and the refusal of the Orissa High Court to stay the transfer of forest land to the POSCO project, despite the Court finding that prima facie the State and Central Governments had violated the forest rights of forest dwellers in the area.⁵¹

This should not be seen as merely a failure or an injustice on the part of the courts. Rather, it follows the pattern set by the remainder of the administrative system. In general, policy, judicial and media discourse in India consider centralised state control the best method for management of resources in the “national interest.” This view has formed the bedrock of Indian land administration for a very long time.

The claim that centralisation represents the “national interest” is not, at face value, a particularly logical one. The Indian Constitution provides for a democratic welfare state, and Article 39(b) — one of the Directive Principles in Part IV of the Constitution⁵² — provides that the state should ensure “that the ownership and control of the material resources of the community are so distributed as best to subserve the common good.” Therefore, one might expect that decisions over allocation of natural resources should also be democratic in nature, in order to decide the question of the “common good.” Yet, in actual practice and in public discussion, the higher bureaucracy is regarded as the “correct” location for such decision making.

This apparent contradiction is not accidental: it is the result of a historical process, an understanding of which is important for locating the place that common lands occupy within our governing system. Land and control over land were naturally crucial to the colonial regime in India, whose first priority, as already noted, was to establish a system for effective extraction of land revenue. Yet, when the East India Company initially took charge of large areas of land in the late eighteenth century, it found itself confronted by a complex and diverse system of land management with multiple levels of control and revenue extraction. In particular, various types of common land and collective regulation existed and were widespread, particularly in forest areas.

For the colonialists, this situation was both an opportunity and a problem. The opportunity was clear: those who can capture and privatise common lands, particularly with the backing of state force, can reap an enormous profit. This was a key element of the colonial enterprise. But the problems were also apparent. In such a situation, three parallel difficulties developed. First, given that there was no regulatory framework that was respected by the colonisers, a chaotic situation of competitive land grabbing and looting could easily come into being. This is indeed what happened in the early years of the East India Company’s rule in Bengal and Bihar, leading to diverse outcomes such as the immense enrichment of the Company’s officers, the Bengal famine of 1770 and, eventually, to a string of regulatory laws that attempted to make officers more accountable. Second, orderly land revenue collection was rendered difficult in the absence of clearly identified individual property owners from whom revenue could be extracted. Third, the combination of these two problems threatened the stability of the underlying natural resources that were of interest to the colonisers; in particular, timber in the case of forests and agricultural fertility in the case of other lands. Both of these suffered from looting and from the tendency to arbitrarily impose extreme taxes, leading to cultivators fleeing their lands or rising in rebellion.

The colonial authorities went through a series of attempts at responding to this situation, of which the three most significant were the Permanent Settlement in Bengal and Bihar, the subsequent *ryotwari* settlements in other areas, and the forest laws. These historical developments are widely known. However, the implications of these changes for common lands and their governance have been far less noted.

In all three cases, the effort of the colonial authorities was to strengthen revenue collection, improve “yields” (of those commodities that the empire was interested in), and to keep regulatory control in their own hands. On agricultural lands, the Permanent Settlement sought to achieve these goals by creating a class of revenue-paying zamindars who would, it was thought, invest in and improve the lands under their control in their own interest. When the glaring failure of this policy became apparent, with the zamindars becoming parasitic landlords rather than “yeoman farmers,” the *ryotwari* settlement model became more popular, with the state directly awarding title to individual cultivators.

In both cases many forest and common lands were arbitrarily assigned to private owners by the authorities. Huge areas of such lands were brought under the rule of the zamindars: for instance, in the Nilgiris mountains of what is today Tamil Nadu, one zamindar was given control over 80,000 acres of forest.⁵³ Earlier systems of collective regulation and mutual obligation were destroyed, as the zamindars were given absolute power to use the land as they deemed fit. While the *ryotwari* settlements created a much larger class of property owners, such ownership too was limited to certain castes whom the colonialists imagined to be “cultivators” by nature, in keeping with the racist understanding that the zamindars had failed because they belonged to “indolent and lazy” communities.⁵⁴ Common lands and resources were subdivided among members of these castes in the course of the settlements. One example of what resulted is the still visible wreckage of the erstwhile system of community water storage and irrigation facilities in Tamil Nadu: these were wiped out by a combination of zamindari and ryotwari settlements.⁵⁵

In forest areas, a different but parallel mechanism was employed. The forest laws vested ownership in the state rather than in individuals, and the goal of the colonial state was not so much the extraction of revenue as the extraction of timber. As a result, the forest laws were structured around the wholesale transfer of land to state ownership and Forest Department control. The British authorities themselves recorded such expropriations in great detail. In Jharkhand, a 1908 forest settlement report stated that “in the overwhelming proportion of cases the forests are the property of a Mundari or Ho group, which has always possessed full rights within the village. This being so, the government and its successor-in-interest cannot conceivably have any rights in the waste or forest land. Government certainly never has any rights in the unreserved jungles and wasteland.”⁵⁶ Despite these facts being recorded in the settlement itself, most of these lands were incorporated into government forests. In Thane District of Maharashtra, the Bombay Forest Commission recorded in 1878 that 401,566 acres of adivasi grazing lands had been converted to reserved and protected forests.⁵⁷ Similarly, in Uttarakhand and Himachal Pradesh, all areas classified as “wasteland” were converted to protected forests by one-line notifications.⁵⁸

Thus, all colonial land management regimes shared one feature: a comprehensive attempt to suppress and eradicate common lands (objections by some “enlightened” officers notwithstanding). The reasons were embedded in the political economy of the colonial project. Unsurprisingly, an entire ideological and conceptual approach was created in order to give meaning to, justify and explain this effort. This took different forms, but at its centre was the condemnation of common property as under-utilised, neglected, and unmanaged “wasteland.” The British Enlightenment philosopher John Locke provided the vocabulary for this effort, describing common lands and collective management as a “state of nature” and private property as the essence of “civilisation” and “nationhood.”⁵⁹ Following this approach, Lord Cornwallis declared that more than one-third of the Bengal Presidency’s area was “wasteland.”⁶⁰ In forest lands, an extended internal debate took place among the British authorities between those who favoured some respect for existing rights (for fear of conflict) and those who strongly held that the forest lands had to be under the “scientific management” of forest officials to halt the “wasteful and irresponsible” practices of the “natives.”⁶¹ The latter group eventually triumphed.

Despite the extensive and devastating impacts that this process had, popular resistance ensured that it failed to comprehensively eradicate systems of common property. But the overall system encouraged the fiction that all common lands are effectively vacant state property and common use is a temporary, transient phenomenon that enjoys no sanctity. The clash between this illusion and the reality, along with the ideological-legal-institutional complex that attempted to seize common lands, passed unchanged into independent India. This is visible in the manner in which the term “wasteland” is used even today. India’s systems of land administration and management continue to be based on the same

principles and engage in the same processes. Indeed, in the case of forest law, Independence was followed not by a democratisation of forest management but by a strengthening of colonial laws and a massive increase in the area of land under them.⁶²

In sum, land governance in India was designed around principles and institutions that actively aimed at destroying common land use. It was created with that purpose in mind, and the “national interest” was defined in those terms. Therefore, it is not merely a matter of accident or bureaucratic inertia that laws that conflict with this purpose are neither implemented, nor respected, nor integrated into the administrative machinery. In practically all these cases, such laws emerged from resistance to the colonial or post-colonial state machinery. But as long as that state machinery retains its original imperatives and basic institutional structures, these laws are condemned to organisational marginalisation, as the interests they represent conflict with what the state views as its own interest.

The conception of “national interest” and the projected “best use” of land, as currently embedded in our system, are both opposed to common land control. Therefore, addressing this situation requires more than piecemeal reforms or administrative changes. It calls for concerted short-term and long-term efforts to reverse a dynamic that has been operational since the colonial era.

CONCLUSIONS AND SUGGESTED WAY FORWARD

Most of the issues covered here do not feature in the current deliberations over land conflicts. A compartmentalised understanding of land takeovers has resulted in a debate focused overwhelmingly on private land, compensation measures and rehabilitation. The underlying mechanism of land takeover and environmental destruction, and the historical and political dynamics that drive them, have received little attention. Two key facts are rarely noted: first, that the “national interest” is often wrongly conceived of (as a result of colonial policies), and second, that many present projects do not serve public interest in any sense.

Meanwhile, across India, those affected by this takeover resort to diverse forms of resistance — ranging from protests and hunger strikes to armed violence and mass uprisings. The majority of such struggles, whatever their character, are met with police action and brutal repression as a first resort. To reiterate a point, the state machinery has little patience with or respect for attempts to defend common resources. The resulting spiral of violence sometimes culminates in deployment of paramilitary forces, police firings and, often, in death. The same story repeats itself in many areas, whether in campaigns against nuclear power plants, against POSCO’s steel plant, against mining in Chhattisgarh, against SEZs in Maharashtra and Andhra Pradesh, against the Polavaram Dam, against the Tatas in Kalinganagar, or against new tiger reserves.

In some places, such struggles do result in projects being withdrawn or in plans for declaration of new protected areas being dropped. As mentioned in the introduction, the wave of such conflicts in recent years has also acquired electoral significance. But at a systemic level, despite both old and new laws to defend common rights, little change has occurred in the actual practice of land takeover. The state machinery continues to use armed force to secure control of forest and common lands over the dissent of those dependent on it.

What then can be done to reduce the injustice of this process and to address the destruction it wreaks upon both people and natural resources?

Clearly, legal rights over forest and common lands should be respected. But on its own, a mere reassertion of this fact is far from sufficient. Indeed, numerous officials, Ministers and expert committees have said precisely this, to little effect so far. The state machinery is quite adept at overriding one set of laws with another.

For the problem to be addressed, the *decision-making process* for control of land requires fundamental changes. The basic principle of common and collective land use is collective control. The concomitant to this has to be a democratic process of deciding on land takeover. This will help curb the present destructive cycle, as well as reduce the tendency for speculative and vested interests to take advantage of the current legal framework.

Short-term measures to curb abuses

We have set out two key problems with the manner in which state power over land is exercised at present. The first is that it is exercised *undemocratically* — with very little control or accountability to either affected communities or to the public in general. The second is that it is exercised *arbitrarily* — without any inclusive process of planning. Even as the overall course of action is justified by rhetoric about “development,” there is no attempt to align land use towards actual development goals, and decisions are made on the basis of ad hoc pressures and the desire to please particular investors.

Certain short-term measures can be taken to address some of the more egregious problems through directives, instructions and regulations with specified compliance mechanisms. First, there is a need for **strengthening the implementation of laws that already provide for recording of collective and common rights**. For instance, on forest land, the following measures can be considered on the Forest Rights Act:

- *Provide instructions to forest officials regarding community rights*: Direct forest authorities to respect the power of gram sabhas to manage land use and collection of forest produce, as well as to protect forests, wildlife, biodiversity, water catchment areas and the cultural and natural heritage of forest dwellers (Section 5).
- *Clarify directions on evidence*: Instruct authorities to accept all forms of admissible evidence and to strictly follow the procedure in the Act, pointing out that violation of this procedure is a criminal offence.
- *Ensure transparency*: Address the very high rate of rejection of claims for rights by holding public hearings, making all documents, decisions and status of claims public, and encouraging re-filing of claims to address illegalities and anomalies in decision making. This can include appointment of special officers for every state to begin the process of public hearing and report the status of current claims and the progress in re-filing and reassessment of claims in a time-bound manner.

Regarding the PESA Act in Scheduled Areas, similar methods could be:

- Asserting PESA’s validity over conflicting state laws by amending the Act to clearly state that it overrides State laws that are inconsistent or in contradiction to its provisions (this is implied by Section 5 at present).
- Consolidating gram sabhas’ powers over common resources through uniform and clear procedures established by Central and State governments for operationalising PESA’s provisions that empower gram sabhas to manage water bodies, community lands, grazing areas, other community resources and adivasi lands.

In other revenue lands outside Scheduled Areas, State governments should update records and ensure compliance with requirements under revenue and forest laws to register common lands.

In addition to the above, some steps are required to reduce the arbitrariness in decision making on land takeovers. These could include:

- *Gram sabha consent*: It is important to recognise that any change of land use is a form of acquisition, since it results in a loss of traditional and livelihood rights, and all such acquisitions (as well as those of private land) should require the consent of the gram sabha. At present the legal provisions on this issue are not uniform. On forest land, the consent of the gram sabha is now required before diversion of forest land, as a result of the Forest Rights Act. The Land Acquisition and Resettlement and Rehabilitation Bill speaks of the consent of 80 percent of the affected people, though this provision is effectively rendered meaningless by a series of loopholes.⁶³ The PESA Act only provides for “consultation” at present, but the Ministry of Panchayati Raj has proposed amending this to require consent.⁶⁴

Requiring consent in this manner imposes a basic level of democratic accountability on the state machinery and requires it to justify the change of land use, as well as whatever compensation or rehabilitation is being offered, to affected communities. Therefore, any change of land use above a certain minimum area, such as the agricultural land ceiling in the State concerned, should be required to receive the prior informed consent of the gram sabha and be subjected to the requirements of resettlement and rehabilitation that apply to the acquisition of private land. For those cases — such as small development works — where powerful communities may use this to block access for the more marginalised, an appeals procedure can be introduced. But this should only be permitted for small works that directly lead to the provision of basic facilities.

- *Cumulative impact assessments at the district level prior to clearance*: The Environment Ministry, as the agency that grants forest and environment clearances, is a key regulatory body in most takeover processes. At present, however, approvals are granted on a project-wise basis. This results in serious problems, as it makes it impossible for the cumulative impact of multiple projects to be considered; it also inevitably biases the process in favour of the project, since the State government and the project proponent have already committed themselves and can use pressure tactics to ensure the desired decision. The Ministry has already begun trying to address this through the — once again ad hoc — mechanism of “cumulative environment impact assessments” in certain areas, as well as a more general “comprehensive pollution index.” This mechanism should be generalised to require publicly available cumulative impact assessments of existing and proposed projects in all districts, and to ensure that this data is taken into account before any clearance is granted. There should be a moratorium on clearances until this is completed. While problems will continue, this may in a very small way contribute to a more coherent approach to project clearances.⁶⁵

Most importantly, all these measures should be made enforceable, and violations punished stringently through imprisonment. Clearances obtained through false or incomplete information should be automatically revoked and the responsible proponents prosecuted. Requisite amendments to the concerned statutes for this purpose should be put in place at the earliest.

Reducing space for speculative activities related to land

Further, in order to address the trend toward using land and natural resources for speculative purposes, certain other changes can be instituted:

- *Alteration of SEBI regulations to require mandatory disclosure:* SEBI regulations should be altered to require that companies publicise the status of all clearance applications and land acquisition proceedings in their documents. Companies should also be required to clearly state that proposed projects may not go ahead if these requirements are not met.
- *Modification of RBI credit regulations:* RBI should mandate more stringent requirements for loans to such projects. RBI regulations should also require that banks treat any project without clearances as high risk. Such projects should not be provided benefits applicable to infrastructure or similar categories.
- *Rationalisation of clearances:* Companies should not be granted additional clearances until they can show completion of projects based on earlier clearances given. Where the cleared capacity has exceeded the government's target by a significant margin (as is presently the case in coal mining and thermal power), no further clearances should be granted.

Possible long-term solutions

We have seen that India's legal system at present encompasses two different institutional paradigms of land control: one rooted in colonial policies, which is arbitrary and centralised; and the other, emerging from popular struggles, that tends towards being democratic, collective and accountable in nature. Many assume that centralised bureaucratic decision making ensures planning, effective use of resources, and development. Yet, in practice, the current process has not achieved any of these objectives. There is no meaningful planning or coordination at the Central, State or district level regarding common lands and the process fails entirely when it comes to the acquisition of private and common lands for large projects. Decision making on projects, land acquisition, environment and forest clearances all run in parallel, in different Ministries, and at different levels of the federal structure.

There is no evidence of centralised control leading to effective management of resources either. The clearest trend in this regard is evident with respect to forest land, which has seen both increased concentration of power and increased land takeover since 1996. This period has been accompanied by a rapid rise in diversion of forest land and in loss of natural forests. Going by the scale of land expropriation in India today, the rate of diversion of forest land has been higher between 2007 and 2011 than at any preceding period since 1980. Meanwhile, it has been estimated that India's natural forests are being destroyed at a rate of 2.7 percent per year.⁶⁶

Finally, regarding development, neither form of land takeover — the imposition of more stringent regulations or the transfer of lands to “development” projects — appears to generate significant benefits. First, contrary to projections of acquisition for projects generating “industrial employment” in the formal sector, employment in the country has stagnated over the same years that land takeovers have greatly accelerated.⁶⁷ Indeed, in a study by Kannan and Raveendran,⁶⁸ the major industries that require land expropriation, such as mining, energy generation and real estate, are either not significant generators of employment or have seen a net loss of employment after 1991.

As a second indicator, increased production of energy for India's poor is often cited as a justification for land takeover for hydroelectricity, coal mining, biofuels, wind power projects, etc. However, between

1983 and 2005, while overall electricity consumption increased, the share of rural households dependent on biomass remained almost perfectly constant. Only the top 10 percent in rural areas showed a slight shift towards electricity.⁶⁹ Similarly, though generation capacity increased by 100,000 MW between 1996 and 2006, the percentage of Indians without electricity dropped only from 50 percent to 40 percent.⁷⁰ The government's estimated generation need for these remaining households to be electrified is 20,000 MW annually; this is one-tenth the amount of thermal power capacity cleared by the Environment Ministry between 2007 and 2011 alone.⁷¹

The centralisation of power over land use has clearly not met its stated objectives: if anything, it is acting as a hindrance to realising them. A move toward the second institutional paradigm — a democratic, collective and accountable system of regulation of land use — is therefore required to push the system toward addressing the needs of the majority of India's people. The recording of collective and common rights is the first step in overhauling the forest and revenue land administration systems in this direction. Thus, it can also be the first step toward a future where the current trend of destructive land takeover, displacement and impoverishment will no longer dominate so many parts of India and the lives of so many Indians.

ENDNOTES

- ¹ Nandigram and Singur were the sites of major protests against the acquisition of land for industrial projects (a chemical hub and a car factory, respectively). Following rallies, hunger strikes, police firings and the deaths of many people (the eventual death toll in Nandigram was estimated to be over 50), both projects were withdrawn.
- ² The word "gram" in Hindi (and many other Indian languages) means "village". A "gram sabha" is the assembly of all voters in a village. A "gram panchayat" is a village-level elected body that forms the lowest tier of local government in India.
- ³ In this context, for clarity, the term "forest and other common lands" is used throughout this paper.
- ⁴ NSSO 1999.
- ⁵ The 19.3% figure corresponds to the total area ascribed to reserved and protected forests in official records. See Forest Survey of India 2009.
- ⁶ Forest Survey of India 2011.
- ⁷ As per data provided at http://wiienviis.nic.in/Database/Protected_Area_854.aspx.
- ⁸ A similar process also occurs in urban areas (out of the scope of these case studies).
- ⁹ CSE 2011.
- ¹⁰ NSSO 1999.
- ¹¹ See section 3(c) of the Land Acquisition, Resettlement and Rehabilitation Bill, 2011.
- ¹² The Fifth Schedule to the Constitution of India is a chapter of the Constitution meant to protect the rights of adivasi indigenous communities.
- ¹³ There are two other land governance frameworks that exist in India: those in urban areas, and those that apply to the tribal areas of States in the Northeast, namely in Assam, Nagaland, Manipur, Mizoram, Meghalaya and, to an extent, Arunachal Pradesh and Tripura. These systems of land governance are not discussed in depth here as they are out of the scope of this paper. However, certain aspects of the system in the Northeast are discussed in the section on revenue laws in adivasi / tribal areas.
- ¹⁴ There are some further restrictions on the lands that can be appropriated, requiring that the government must have a "proprietary interest" in the land or the forest produce from the land, but in practice these restrictions have little relevance.
- ¹⁵ Khanna 2007. Though these areas come under the Wild Life (Protection) Act and not the Indian Forest Act, the process is almost identical.
- ¹⁶ Campaign for Survival and Dignity 2004.

- ¹⁷ These were areas of India that were ruled by local rulers, who paid tribute to the British and functioned as their vassals.
- ¹⁸ Kumar (n.d.).
- ¹⁹ In case no settlement has occurred, the Act does require that the declaration of a protected forest should not ‘abridge or affect any existing rights of individuals or communities’ (proviso to Section 29 (3)).
- ²⁰ Garg 2005.
- ²¹ These cards entitle the holder to draw “rations” – or food supplies – from fair price shops under the Public Distribution System.
- ²² The Act defined any activity other than “re-forestation” and work related to conservation, management and “development” of forests and wildlife as “non-forest purposes”.
- ²³ CSE 2011.
- ²⁴ Vasundhara 2005.
- ²⁵ For more details, see Campaign for Survival and Dignity 2004.
- ²⁶ The term “adivasi,” meaning first dweller, is used to refer to the indigenous communities of India in preference to the colonial term “tribal” (though the indigenous communities of the Northeast do not use the term).
- ²⁷ Council for Social Development 2010.
- ²⁸ Sethi 2011.
- ²⁹ Ramanathan 2002. A copy is available at <http://www.ielrc.org/content/a0204.pdf>.
- ³⁰ Section 236, MP Land Revenue Code.
- ³¹ Section 237(1), MP Land Revenue Code, 1959.
- ³² Ramanathan 2002.
- ³³ Gurpur et al (n.d.).
- ³⁴ Yanagisawa 2008.
- ³⁵ Orissa Prevention of Land Encroachment Act, 1979.
- ³⁶ 2011 AIR SCW 990. Also see PUCL 2002.
- ³⁷ For more details on these laws, see Upadhya 2005 and Rao 2005.
- ³⁸ For instance, the Kumaon area of what is now Uttarakhand was also given a special legal dispensation under which – among other changes – one of India’s few legally recognised community forest management regimes (the Van Panchayats) were permitted to exist.
- ³⁹ As per Article 243M(1) of the Constitution.
- ⁴⁰ Venkatesan 2004.
- ⁴¹ Ramanathan 2002.
- ⁴² Chowdhury and Roma 2011.
- ⁴³ Society for Promotion of Wasteland Development 2006.
- ⁴⁴ The Chhattisgarh Lease (Government Land for Ratanjot / Karanj Plantation and Biodiesel-Based Processing Unit) Rules, 2006 and the Rajasthan Land Revenue (Allotment of Wasteland for Biofuel Plantation and Biofuel-based Industrial and Processing Units) Rules, 2007, respectively.
- ⁴⁵ Rule 2(10), in the above cited Chhattisgarh Rules.

⁴⁶ Rule 2(1)(r), in the above cited Rajasthan Rules.

⁴⁷ Rule 4(2).

⁴⁸ Rule 5.

⁴⁹ Mandals and blocks are administrative divisions below the district level; a mandal may include more than a hundred villages.

⁵⁰ Mahapatra 2011.

⁵¹ One should note a recent apparent exception to this trend, which is the Supreme Court's ruling in *Jagpal Singh and Ors. vs. State of Punjab and Ors.* In this case, the Court directed removal of "illegal occupation" on common lands, and also made a number of observations on the handover of common lands to commercial and private parties, indicating that 'in our opinion, all such Government orders are illegal.' This case has been hailed by a number of organisations as a progressive ruling and a change in the Court's attitude. However, it is arguable that this judgement is more an aberration than a meaningful shift in jurisprudence. In the first place, it was delivered in the context of a specific case that was brought before the Court, in which no request or prayer for such a general order was made. Second, the judgement merely gives a sweeping direction to remove "illegal occupation" without specifying or defining this more clearly. In cases where allocation of land is illegal under one law but authorised under another – as in most cases of allocation of common lands – the implications of this ruling become unclear. An example of this ambiguity can be seen in a subsequent Rajasthan case where a District Collector overrode the decision of a panchayat regarding common lands. An aggrieved villager approached the High Court. The High Court dismissed the petition and rejected the petitioner's attempt to invoke the *Jagpal Singh* ruling, stating that 'the present one is not a case of any illegal occupant entering into the land in question as the same has specifically been allotted under the order passed by the Collector in accordance with Rules of 1963' (*Manish Purohit vs. State (Revenue) and Ors.*).

⁵² These are non-enforceable provisions of the Constitution that are meant to guide state policy.

⁵³ PUCL 2002.

⁵⁴ Whitehead 2010.

⁵⁵ Raghavan 2008.

⁵⁶ Macpherson 1908 (quoted in Upadhy 2005).

⁵⁷ Prabhu 2005.

⁵⁸ Sarin 2005.

⁵⁹ Whitehead 2010.

⁶⁰ *ibid.*

⁶¹ Whitehead 2010 and Guha 1996.

⁶² Sarin 2005.

⁶³ For more details see Campaign for Survival and Dignity 2011.

⁶⁴ Letter of the Ministry of Panchayati Raj to all State governments dated May 25, 2010. Available online at panchayat.nic.in.

⁶⁵ As a corollary of this point, the practice of granting "in principle" forest clearances should be stopped immediately.

⁶⁶ Gilbert 2010.

⁶⁷ Kannan and Raveendran 2009.

⁶⁸ *ibid.*

⁶⁹ Pachauri and Jiang 2008.

⁷⁰ Krishnaswamy 2010.

⁷¹ Sreekumar and Dixit 2011 and CSE 2011d.

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