

## Briefing note on compensatory afforestation<sup>1</sup>

**Introduction:** Forest land has been diverted for non-forest purposes in India throughout the ages. This diversion took place at a more rapid pace after the advent of industrialisation and with a view to ‘modernisation’ of the economy to provide a better standard of living to the people. The result of this ‘modernisation’ has been disastrous for forest dwelling and forest dependant communities. The negative impacts of such displacement has been documented quite extensively, there is no need to go into it here. However such impacts were largely ignored until they began to tell heavily on ecological and environmental conditions. Widespread concern began to be expressed in the seventies at the alarming rate of deforestation in the country. In response to the situation the Government of India (GoI) enacted the Forest Conservation Act, 1980 (FCA) to restrict and regulate diversion of forest lands.

While the Act slowed down the rate of diversion, forest lands continued to be parcelled off for industrial and developmental purposes at an alarming rate. A Centre for Science and Environment report notes that during the 11<sup>th</sup> plan period (2007-11), 8,734 projects were granted forest clearance and 2 lakh ha of forestland was diverted, about 24.3 per cent of all forestland, for development projects since 1981. Since 1981, about 40 per cent of the forestland has been cleared for mining and power projects (20 per cent each) and in the last three decades about 1.6 lakh ha of forestland has been diverted for mining. Lastly, hydel, thermal and wind power projects accounted for 2.9 per cent, 1.1 per cent, 1.3 per cent diversions of forest land in the 11<sup>th</sup> Plan period.<sup>1</sup>

Though initially FCA was conceived as a deterrent to rampant and rising events of organized and largely government-sponsored deforestation in various Indian states, and did not provide for CA, its subsequent Rules and executive ‘Guidelines’ framed and issued by MoEF from time to time kept on coming out with elaborate and constantly changing prescriptions about compensatory afforestation. Interestingly, the act itself (including the rules) does not define it at all—or provide for it in so many words: the FCA Rules as amended in 1988 and 2003 started to include applications forms in which user agencies would apply for using forest land. One item in the form was compensatory afforestation; which meant that the applicant agency had to furnish details of proposed compensatory afforestation.

From the mid-1990s, the Supreme Court of India started taking an interest in the matter, and one could say that its interventions are responsible for the present form of CA, which has gone way beyond raising plantations, and has incorporated the forest/biodiversity valuation mathematics central to all offset systems: it is no longer enough to raise plantations—the user agency has to pay full ‘value’ of the biodiversity content and environmental services of a forest it seeks to divert to compensate for forest loss, in addition to raising plantations. The 1984 guidelines required state governments to,

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<sup>1</sup> Based on i. Report - Scenario of Multiple Displacements: A critical look into cases of forest diversion and allocation of land for Compensatory Afforestation (CA) in India – Soumitra Ghosh ii. Legal note on Compensatory afforestation – Sahana Basvapatna iii. Study on Diversion of forest land for non forest uses : Spatial, Sectoral and temporal analysis of eight states of central India – SPWD

“...indicate as to what steps are proposed to be taken to undertake compensatory plantations so that *vegetal cover lost is made good at an alternative site* and accordingly the proposal should give details of compensatory allocations of *land, plantations and creation of habitat for the wildlife.*”<sup>ii</sup> (italics added)

The principle of equating habitat lost to habitat created, which acts as the basis for all biodiversity and wild life offset programmes, was at work. It was assumed that raising of CA plantations will offset (*make good*) not only loss of forest and vegetal cover, but also wild life habitats. This naivety was corrected over the next twenty years through a full-blown valuation exercise for quantifying and commoditizing various ‘environmental services’ that forests provide.

### **Valuing forests: emergence of twin concepts of NPV and CA**

The notion of compensation for loss of forests and destruction of biodiversity, which is at the heart of compensatory afforestation, came to be expanded with the adoption of Net Present Value (NPV) for forests being diverted; from 2006 onwards, the MoEF adopted this mechanism on an all India basis. It is unclear however, which concept came first—in a way compensatory afforestation too entailed a primitive kind of value exchange—land for land, and trees for trees. Dr. Kanchan Chopra, pioneer of ecological economics in India (and the leader of the team of scholars appointed by Supreme Court of India to develop a methodology for arriving at NPV), when asked about whether compensatory afforestation conceptually preceded the net present value, argued that the latter was only a “logical step further”.<sup>iii</sup> The Supreme Court's rationale in accepting the NPV mathematics of forests was that compensatory afforestation was an inadequate means and a poor substitute for natural forests.<sup>iv</sup>

Adoption of NPV meant that for each approved instance of forest diversion, the concerned state government and MoEF started getting paid. The more forest diversions, the more money deposited with the governments. In practice therefore management of funds collected by state for CA became central to the future mechanism that has emerged. An apex body that would centrally manage and control funds collected towards compensatory afforestation and Net Present Value was created.

### **CAMPA: structure, mandate and functions**

The Central Empowered Committee was asked by the Supreme Court to submit a report and recommendations in the compensatory afforestation IA No. 566 pointed out<sup>v</sup> that apart from states of Chattisgarh, Madhya Pradesh, Uttaranchal and Uttar Pradesh, where user agencies deposited money collected towards compensatory afforestation with forest department as “forest deposit”, in most other states, these funds were deposited as routine revenue receipts and thus allocated to ‘forest deposit’ through the state budgets. The states, it argued, were of the view that the pace and quality of compensatory afforestation was linked to method of release of funds existing at the time. “It is therefore desirable”, it concluded, “to create a separate *Fund for compensatory afforestation, where the monies received from the user agencies are deposited and subsequently released directly to the implementing agencies as and when required*”. It noted that states unanimously held that this new system “would help undertake compensatory afforestation in a planned manner and on a continuous basis”. (italics added)

NPV was thought to be an improvement over CA; it was based on the reasoning that because compensatory afforestation had not compensated for the loss of natural forests, something more was needed. The Supreme Court, in its order of 26 September 2005 noted,

“...the plantations raised under the *compensatory afforestation scheme could never adequately compensate for the loss of natural forests as the plantations require more time to mature and even then they are a poor substitute to natural forests*. States/Union Territories as well as MoEF are of the view that in addition to the funds realised for compensatory afforestation, the NPV of the forest land being directed for non-forestry purposes should also be recovered from the user agencies.”<sup>vi</sup> (italics added)

Kanchan Chopra notes that when the issue is of loss of ecosystems, how can a range of services [provisioning, regulating and cultural] be compensated by putting a patch of some 10 ha under some other single species plantation somewhere?

“There is the single species against multi species, there is provisioning services against regulating services against cultural services...[to take into account]. So you can move from the position that forest cannot be replaced at all to the position that CA is enough. There is a whole range of in between positions in this.”

### **The illusion created by forest offsets: forest communities under attack**

Instead of halting deforestation and strengthening conversion of forest habitats and forest biodiversity, CA is in practise legitimizing destruction of forests and hurting communities dependant on them. There is enough evidence to prove that both the concept of ‘no net loss’/‘compensatory forests’ and the money it produces are being used against forest communities. The attack against communities is happening in broadly four ways: 1. community-held forest lands, agricultural areas and pasture are being enclosed by state and user agencies in the process of obtaining land for CA plantations. 2. The money in CAMPA fund is being used in extending the territorial limits of existing wild life conservation areas like wild life sanctuaries, national parks and critical tiger habitats, often directly encroaching upon community lands and facilitating displacement of forest communities. 3. Both these processes are leading to completely illegal denial of a range of old and new community rights, tenural as well as others, and severely curtailing community access to forests. 4. Most important of all, by creating and sustaining the illusion that destruction of natural forest habitats can be compensated in monetary terms and by raising plantations, all ecologically and socially impermissible deforestation events are being green-washed and legitimized. In reality, much of the money is probably being misappropriated, and plantations as claimed are seldom if at all are coming up: there is not even the required amount of land to raise such plantations.

### **Getting Land for CA ? Land grab at best ?**

That the regulatory mechanism in the CA does not function and that the system of compensatory afforestation, despite its grand structure, does not offset forest loss in any way has been stated many times.

That compensatory afforestation has not fared well was known even during the late 1990s when the Supreme Court became cognizant of the matter. Until August 2002, when the numbers were compiled by the MoEF and filed before the Court, as against the stipulated target area of 6,73,527 ha over which compensatory afforestation was to be done, it had supposedly been done over 4,26,965 ha, about 60.64 per cent of the target. Further, as against Rs. 859.29 crore which was to be recovered from user agencies, Rs. 793.86 crore had been recovered and Rs. 496.22 crore had been spent on compensatory afforestation.<sup>vii</sup>

These figures are useful as broad indicators of the general nature of things, but they fail to inform the finer and often disguised layers in the CA narrative. An evaluation of compensatory afforestation would need to consider not only how the scheme is implemented but also the complex sequence of events in the licensing chain that culminates in issuance of a forest clearance. To begin with, it is important to understand how a forest is lost, before we look at the other end of the offset, i.e., CA and other protection and conservation measures carried out with CAMPA funds.

One could see that forests (or lands on which forests grow) in India are up for grab, despite FCA and its checks, and that legal deterrents alone do not halt deforestation: laws and legal prescriptions can be overridden and ignored at will, and with impunity, if there is a market demand, and if state so wills.

Diversion of forest lands in the CA offset regime means that equivalent (non-forest land) or double ('degraded' forest land) amount of lands have to be made available for plantations. According to e-green watch, in last three years (2011-2013), the ministry had issued 1,039 forest clearances to as many number of projects, licensing denudation of 29,445.486 ha of forests. This means that for about 30,000 ha of forests diverted since 2011, compensatory forests should have come up on at least another 30,000 ha of land. This begs two questions. Where did these considerably large amounts of land come from and what kind of land is being used? A third question concerns the physical process of carrying out compensatory afforestation. None of these can be looked at in isolation; more often than not, one invariably touches upon the others.

### *Land banks*

Paucity of lands for compensatory afforestation has led to the idea of "land banks", which means that state government will identify non-forest lands as available, and keep those in the bank for future use. The concept of creating land banks for CA borrows directly from other such banks in existence mainly in USA (for instance, species bank, wetland bank)<sup>viii</sup>. The very notion of these CA land banks pre-assumes that because licence for forest diversion would be issued anyway, projects should not face delay on environmental compliance issues, hence there should be a ready land pool with government which can be used for CA as and when required.

Several questions follow. If non forest revenue lands are not available, what lands are being acquired for the purposes of afforestation and what lands (judging by land-use, land-possession and land-ownership patterns) are being brought under land banks? Even if one goes by the logic of forest lost equals forest created, how can the loss of natural forests and its biodiversity be compensated with CA on patches of land taken from land banks, which are likely to be ecologically and spatially far removed from the lost forest? Lastly, what is the purpose of the

elaborate certification/licensing mechanism if one starts with a given that a forest clearance is a *fait accompli*?

Beginning 1997, in case of central sector projects<sup>ix</sup> degraded forest lands double in size of forest lands diverted for a project were permitted for compensatory afforestation,

“...without insisting upon a certificate from the state Chief Secretaries as hitherto...In case it was difficult to locate suitable degraded forest land for such central projects within the time frame...the Ministry will allot *areas for compensatory afforestation in degraded forest land bank already identified in either of the states of Madhya Pradesh and Rajasthan* as per the cost norms indicated by the concerned Government from time to time”.<sup>x</sup> (italics added)

These guidelines followed a meeting of the Committee of Secretaries<sup>xi</sup> (headed by the Cabinet Secretary) on 15 November 1996, which discussed the issue of unavailability of non forest land for compensatory afforestation. It is at this time that the states of Rajasthan and Madhya Pradesh offered to create “degraded forest land bank” to accommodate demand of compensatory afforestation, by central sector projects.<sup>xii</sup>

In fact, the question of availability of non-agricultural land was raised much earlier, in 1989. A conference of state power Ministers in January 1989 recommended the creation of “compensatory forest banks” in the states, for upcoming power projects.<sup>xiii</sup> P P Bhojvaid, Director of the Forest Research Institute<sup>xiv</sup> argues<sup>xv</sup> that because finding suitable lands for CA is not easy in a number of states, changes (such as the above) have to be made for creation of land banks. When asked if land banks have helped, his view was that,

“that they have helped in case of non forestry and predominantly agricultural states such as UP, Gujarat, Bihar, Haryana. But take for instance in Uttarakhand, if trees are removed from hills, there cannot be land banks in Haridwar; this does not help”.

Mahesh Rangarajan, noted ecological historian and a former member of the Forest Advisory Committee(hereafter FAC) under the MoEF, on the other hand, puts it more bluntly: with more than 50 per cent lands under cultivation, there are no lands to be taken up for compensatory afforestation.<sup>xvi</sup>

Successive guidelines and circulars that propose identification and carving of “banks” out of common lands such as *zudpi* jungle (degraded forests used as pasture and for various other purposes— mostly village *nistar* lands)<sup>xvii</sup> illustrate that lands may not be readily available for compensatory afforestation, without encroaching upon the commons. These lands serve livelihood functions; people are known to depend on *zudpi* jungle for minor forest produce, grazing, cultivation, among others.<sup>xviii</sup> The MoEF guidelines on forest land diversion of 2003 allowed the use of,

“...revenue lands/*zudpi* jungle/*chote*/*bade jhar ka jungle*/*jungle-jhari* land/civil-soyam lands and all other category of lands, on which provisions of Forest (Conservation) Act, 1980 are applicable for compensatory afforestation...provided that such lands on which compensatory afforestation is proposed, shall be notified as RF under the Indian Forest Act, 1927.”<sup>xix</sup>

In Maharashtra, by way of a “special relaxation” of the rule of identifying non forest lands, compensatory afforestation is allowed on “Zudpi jungle, twice in extent to the forest area disforested” in the six districts of Nagpur, Gadchiroli, Chandrapur, Wardha, Bhandara and Gondia in Vidarbha, without the obligatory requirement of producing a certificate from the state chief secretary that non forest lands are not available. A news report published in 2013 describes zudpi jungles as “virtually uncared-for, no-man’s lands just because they are described as forest in some government record or other” and indicates that a part of these forests which initially were to be used for compensatory afforestation purposes will now be diverted for projects. Thus, out of the 1.80 lakh ha in these six districts, 54,000 ha will be made available for development projects and around 94,000 ha “can be notified as reserved forest and made available for afforestation against any projects to be undertaken on the 32,000 hectares currently lying unused”.<sup>xx</sup> Compensatory afforestation has also been allowed in Maharashtra on Mangrove lands or Khar lands.<sup>xxi</sup>

Arunachal Pradesh, with more than 80 per cent of its geographical area under forests has no land for compensatory afforestation, a fact admitted by a former Chief Minister of the state.<sup>xxii</sup> As our investigations in Arunachal show, in order to ensure that clearances under the FCA are not held up or refused, the state government is setting up land banks, and forest officials have been directed to ensure that community lands are notified as Reserved Forests, Protected Forests, Anchal Reserve Forests or Village Reserve Forests.<sup>xxiii</sup>

In a recent example from Gujarat, “lands” allocated for compensatory afforestation, among other irregularities, turned out to be areas under water. The Adani Chemicals Limited which was granted permission to divert 2008.41 hectares of reserve forest land for their Solar Salt Project & Salt Washery Plant in Mundra and Dhruh villages in the Kutch east forest division reportedly failed to acquire the land for compensatory afforestation at its cost; the “lands” for compensatory afforestation were instead acquired by the state government, handed over to Adani, which in turn transferred the same to the state forest department. These lands falling near the coast of villages Kaner and Sinapar of Lakhpata Taluka, Kutch turned out to be part of the sea.<sup>xxiv</sup> **These examples show that even if community-owned and private lands are included in “land banks”, the supply of lands will still fall far short of the demand.**

#### *The New FC Rules: more imminent attacks on Community lands*

The government of India is mulling a change in the FCA rules. Other than a string of new clauses providing for speedy forest clearances, the substituted rule 7 (section 4.clause 3.a in the new draft rules put up at the MoEF site on December 2013) provides for the regional offices of MoEF to have powers to clear proposals for clear felling any amount of forests with crown density of 40 percent or less, if such forests are re-used for ‘reforestation’ purposes. According to State of Forests Report 2011 by FSI(Forest Survey of India), Arunachal has 2859 and 46542 sq.km of forests respectively under moderately dense (canopy density between 40 to 70 percent) and open forests (canopy density between 10 to 40 percent) class. The proposed new rules mean that, irrespective of legal category, tenural status and ecological importance, a fairly large portion of these forests stands to be cleared at the stroke of the pen so that land for CA plantations becomes available.

This leads to a weird offset equation: meaning that standing forests (A) supporting any range of biodiversity and providing important services to many communities will be destroyed so that

programmes for raising new forests (B) can be taken up to compensate for forests (C) that will be destroyed and flooded by upcoming hydro power projects (or any other development project on forest land). The whole logic of compensatory forests or forest offsets is that A equals C: any amount of forests lost somewhere equals forests created someplace else. Here we have another additional factor of B forests that have to be cut at first, to make C forest possible. In short, applying the same equation, we have  $A=C(-B)$ . One can perhaps expect that the mathematics of NPV and valuation of environmental services will be applied in the case of B forests too, and thus the state CAMPAs will always have unlimited money at their disposal, which can be used for raising more CAs (following the logic of offset, and not exactly FC Rules) to offset the forest loss in B. So there will be another set of forests/lands (D) needed for doing that. The offset cycle will thus self-replicate *ad infinitum*.

In the real world of mountainous North-East India where many communities still swidden the hill slopes and use forests as shared ecological, social and cultural spaces, this bizarre logic of offset plantations can spell plain slaughter. Because most jhum fallows as well as current jhum lands have crown density of 40 percent and below, all such land in the area will be technically open to acquisition as potential CA land. Because clearing of forests in such lands will not need the consent of the FAC and MoEF central, proposals for reforesting forested terrains can be locally cleared. Forests officially under government control will be yet easier to obtain, because in most such cases, government can include the clear felling operations in the regular working plans.

### **More Enclosures: wild life conservation and denial of rights**

The ad hoc CAMPA currently manages Rs. 32,000 crore<sup>xxv</sup>, a sum collected since 2009 under the broad categories of compensatory afforestation and Net Present Value. This money is to be utilized for, among other things, ‘the development, maintenance and protection of forests and wildlife management’ and ‘for undertaking activities related to protection of biodiversity and wildlife’.<sup>xxvi</sup> The state CAMPA, after receiving money from the ad-hoc CAMPA has to raise the obligatory afforestation for which the user agency has deposited money, within a period of one year, or two growing seasons after project completion. There is also a distinct emphasis on habitat conservation, with NPV money<sup>xxvii</sup>.

(The money) “...received on account of Net Present Value (NPV) is to be used for natural assisted regeneration, forest management, protection, infrastructure development, wildlife protection and management, supply of wood and other forest produce saving devices and other allied activities.... *monies realized from the user agencies in pursuance of the Hon'ble Supreme Court's orders or decision taken by the National Board for Wildlife involving cases of diversion of forest land in protected areas shall form a distinct corpus and shall be used exclusively for undertaking protection and conservation activities in protected areas of the State*”. (italics added)

One can see that there is a consistent attempt in principle to make good the loss of forests, including wild life habitats. It is assumed that CA done within one year or two growing seasons

after project completion will offset loss of forests, and better conserved wild life areas will offset the loss of forests in designated wild life habitats. The money received for a particular kind of forest has to be spent on a similar forest elsewhere; specific budget heads will ensure specific compliance, hence, credible offsets.

### *'Relocation' of villages with CAMPA funds*

In reality, CAMPA money is being used for randomly displacing entire villages from designated wild life conservation areas, something which both forest officers and big conservation NGOs in India have traditionally favoured. According to Ullas Karanth, a prominent conservationist, money spent on relocation of villages by providing compensation and hand holding of villagers (so that they are resettled with all necessary basic requirements) would help them in the long run<sup>xxviii</sup>. Groups like that Wildlife Trust of India also suggest that in the context of “consolidation of protected areas” which are being fragmented because of development projects, land can also be bought with CAMPA money to extend the present limits of existing protected areas. Praveen Bhargav from the group, explained that the problem lies in the indiscriminate and routine manner many user agencies are exempted from carrying out compensatory afforestation. Bhargav suggested that encouraging user agencies to buy private lands that lie in between or around reserve forest areas or get owners of these private non forest lands to develop such lands as private community reserves by amending the FCA would help reverse fragmentation and aid in consolidation.<sup>xxix</sup> In his view, CAMPA funds can be validly used for consolidation of forests as this is one of the ‘aims and objectives’ of CAMPA.<sup>xxx</sup> In so far as relocation is concerned, he notes that in addition to protecting wildlife habitats such relocations also help in reducing the burden of development works inside the national parks such as construction of roads, erecting transmission lines, laying of cables etc and aid in consolidation of protected areas.<sup>xxxi</sup>

It is interesting to note that the use of CAMPA funds for purposes of relocation of villages (as a measure of forest conservation) contradict with another goal of CAMPA, which is to:

“promote....environmental services”, especially, “(i) provision of goods such as wood, non-timber forest products, fuel, fodder and water, and provision of services such as grazing, tourism, wildlife protection and life support.”<sup>xxxii</sup>

If the communities are recognized to have access to these services, would not relocating them amount to its denial?

Whether Bhargav's views will be accepted in the future is unclear, but the practice of buying lands to extend existing wild life conservation areas and setting up of private wild life reserves is common outside India. For instance, such privately owned reserves can be found in much of USA and various countries in Africa. Many of these have now started trading in conservation by selling certified species or habitat credits, which, as in all offset regimes, is said to be generating much-needed financial resources for conservation.<sup>xxxiii</sup>

CAMPA money is largely being spent in keeping alive and strengthening Indian forest bureaucracy's hold over forests, and at the same time, to deprive forest communities of their customary and legal rights. Funds from CAMPA are being released for relocating villages as in the case of Taroba-Andhari Tiger Reserve(TATR) in Vidarbha, Maharashtra (See Case Study 1). It is important to note that independent of CAMPA guidelines, relocation of villages from forest



areas violate FRA. Rights of forest dwellers, which the act recognizes and vests in them can in no way be curtailed, restricted or denied unless the rights holders and their institutions agree in writing. FRA stipulates that any relocation of forest dwellers' settlements must be preceded by an independent scientific study, which conclusively says that co-habitation of humans and wild animals including tiger is not ecologically permissible in the forest area from where the village is to be shifted. Most importantly, the gram sabhas (village assemblies formed under FRA, various state panchayat acts and PESA—a gram sabha is the main authority to implement the Forest Rights Act) have to give informed consent in writing about their forest rights being recognized, and also their agreement to the proposed curtailment to those rights. All ongoing and completed relocation operations have been in areas that have been deliberately and illegally kept out of the ambit of FRA, for instance, in Taroba-Andheri Tiger Reserve and Navegaon National Park in Vidarbha, Maharashtra. In all these areas, the so-called voluntary relocation process leaves behind a long hurtful trail of coercion, persecution and denial of rights by forest officials.

In and around TATR, the land people have traditionally used as *nistar* or forest commons and pasture are being simultaneously used as CA areas and extended buffer zone of the tiger reserve: both have resulted in more land-grab and fresh denial of rights.

### **Virtual Plantations:**

#### **Legitimizing and Greenwashing Corporate Plunder of Forests**

The history of FCA clearly shows how the FCA, instead of regulating/reducing deforestation, has been used for greenwashing it. Environmental compliance has become coterminous with monetary payments for environmental services, and the real forest situated in a specific space-time has been replaced with a only a notional numerical value, which, as a manifestation of capital, transcends both ecological and space-time barriers.

The mediation of capital ensures that one forest ecology and one forest ecosystem situated at a particular space-time becomes the same as another ecology and ecosystem in another space-time grid. Thus CA plantations in the future and the mere notion of future conservation of wild life habitats are taken to have 'offset' the very real loss of forests in the present. However, beyond facilitating deforestation and socio-ecological displacement, these virtual and cleverly crafted constructs of future environmental values and services can pose a direct and additional threat to real forest communities who need certain natural resources like land, water and forest biodiversity, to survive.

#### *Deforestation continues unimpeded*

Ironically, in comparison with the pre-FCA period, the licensing regime under FCA has been made stronger on paper, and on the face of it, series of checks have been put in place, including even a system of payment for environmental services. But did FCA do what it was mandated to in the first place? Did it halt deforestation?

Because credible data on pre-1980 forest conversion is hard to come by, it is not possible to compare forest diversion figures for pre-FCA and post-FCA periods. Centralization of the licensing regime and judicial pro-activism might have saved a few forests from destruction, but in absence of data, this is largely guesswork. On the other hand, one could see that conversion/destruction of forests continues unimpeded. A 2013 news report states that since mid

2004, an estimated 600000 ha (6000 sq. km.) of forests (of which more than 250000 went to mining) have been diverted.<sup>xxxiv</sup> Between May 2009 and July 2011, the environment Ministry had cleared 1,446 projects that required 31,501 hectares of forestland. Another 993 projects got 'in-principle' clearance to divert 35,391 hectares of land during the same period.<sup>xxxv</sup> Instances of outright rejection were few and far between. The Prayas Energy Group, for instance, points out that between 2006 and July 2010, no application for Coal and gas based thermal power plant the EAC of the MoEF was rejected.<sup>xxxvi</sup> The EAC's (Expert Appraisal Committee) rejection of river valley and hydro electric projects for the period between April 2007 and December 2012, when a new EAC was constituted, was also zero; in this period, all 262 river valley and hydro electric projects placed before it were either cleared or sent back for "reformulated proposals".<sup>xxxvii</sup> This raises the question, how do these bodies function? What time is spent on each proposal and how does FAC ensure that stage I conditions are complied with? What follows in case of violation of terms or provision of the law?

In a letter written to the former Environment Minister, Jayanthi Natarajan in September 2011, three former FAC members (Mahesh Rangarajan, Ullas Karanth and Amita Baviskar) accused forest officers involved at various stages of the forest clearance process, of,

"fudging data, hiding facts, sidestepping laws, overlooking violations and finding ways of clearing even projects that are dangerous for forests."

The letter also said:

"From the bottom up, state forest departments/governments are routinely approving even obviously damaging projects. They have abdicated their role of due diligence, mandatory under the Forest Conservation Act, and honest expression, possibly under political or other pressure."<sup>xxxviii</sup>

### *Plantations not done*

There is also the possibility of large-scale and all-pervasive corruption. Plantations reportedly raised under both CA and CAT (catchment Area treatment) were found to dissolve into thin air on a closer look. False information and notoriously erroneous data on plantations has been posted on e-green watch, the centralized data portal maintained by MoEF). In Arunachal Pradesh/Sikkim, records prove that many of the plantations shown on government records have no existence. The Sikkim Government claims on record to have done plantations but these are most likely only virtual. Similar claims have been made by both the government of Arunachal and NHPC (National Hydro-electric Power Corporation), the project developer in Lower Subansiri HEP, while all known facts point to the contrary.

### **Conclusion**

Like all other offsets elsewhere, CA in India, in practice has turned out to be a money-making process. It has given the government enough money in the last fifteen odd years, so much that nobody now knows what to do with it. Like all offsets, CA (by CA we mean here the entire-CA-NPV-CAMPA chain) provides a pseudo-environmental licence for land grab and enclosures. CA encroaches upon forest commons and other common lands, and deprives communities of their legal and constitutional rights.

The recent decision of the Supreme Court<sup>xxxix</sup> to allot huge amounts of CAMPA money to the states will act like a two-edged knife, and hit forest and other ecosystem communities in two ways. One, the money in CAMPA going to state governments means that it will go to state forest departments, who will then be free to use the money for strengthening departmental hold over forests, at the cost of people's rights. Two, such huge amounts of money in the hands of state governments will in fact provide a kind of perverse incentive to speed up forest clearance processes. This, in turn, will escalate corporate invasion of forests and forest communities on the one hand, and, as demand for CA land increases, is bound to affect agricultural land and the remaining village commons outside recorded forests.

Is there any way out of this morass? Is there any way the present mess of CA can be reasonably and equitably untangled? Can one expect that the already huge and growing fund in CAMPA will be spent meaningfully, and not for violating laws and obstructing and denying people's access to forests? Given the present scenario, particularly the new FC Rules in the offing, this does not seem likely. Nonetheless, here are certain things which could be done:

- A review by an impartial and transparently constituted team of environmental experts and representatives of civil society groups to look into the CA process so far, including a thorough ground-level fact-finding exercise to determine how CA is being executed in the areas where deforestation (forest diversion) events are taking place: in particular, the review should look into the question of land for CA, and present as well as potential impacts on communities, and violation of laws and denial of justice and issues of non-compliance and alleged corrupt practices which have been brought to light.
- A complete overhaul of the FC mechanism: instead of facilitating fast-track clearance of development projects that cause deforestation and displace forest communities, it should start behaving as an environmental instrument: each proposed case of forest diversion, beyond those specifically recommended by Gram Sabhas under relevant provisions of FRA should be looked into separately, and judged only by its potential environmental impacts at micro-level as well as the larger ecological landscape level. Gram Sabha consent for all kinds of forest diversion projects are already legally mandatory and the new FC mechanism should incorporate this by making necessary changes in the FC(Rules) itself. Though the new Draft FC Rules include this, the way this has been done subverts and undermines the very logic of community consent. This should be changed in consonance with the relevant provisions of FRA and PESA, the GO issued by MoEF in August 2009, and the verdict of the Supreme Court in the Niyamagiri-Vedanta case in April 2013, all of which reiterate the primacy of Gram Sabhas in decision making.
- The manifestly failed and false process of CA (or any other kind of forest offsets) must be generally done away with. Because these offsets, instead of ensuring environmental compliance, only facilitate and escalate deforestation, allow a wide margin for corrupt practices, and finally encroachment upon people's lands and forests, the FC mechanism should not have this provision at all. In exceptional cases, and only if the concerned communities give prior informed consent, the plantation part of CA should be entirely

handed over to the affected communities: the communities and their legal/customary institutions should identify suitable land, species and cost for such plantations independent of interference by forest department or user agency. For this purpose, degraded forest land as well as plantation areas with commercial monoculture(eucalyptus, teak, pine varieties) can be used. Under no circumstances, community-held swidden areas with 40 percent canopy density( and below), can be used for CA.

- In case a community gives its consent to a particular case of forest diversion, its control, access and use of forests must figure prominently in determining the mitigation exercise, if any, irrespective of whether such control, access and usage have been officially recorded by forest department. Section 5 of FRA provides for community control and access of all kinds of forests, and Section 3 and 4 of the same act stipulate that rights of governance control, access and usage have already vested in forest communities.
- The money in CAMPA fund must be spent in an equitable, democratic and transparent manner. The communities who had been displaced or in any affected by cases of approved deforestation must be given first charge of this money for community development works including development of various sustainable forest-based livelihood programmes inc: the fund can be routed through local panchayats or autonomous councils(where such councils exist) to the concerned gram sabhas/community-level institutions. It must be ensured that CAMPA funds are no longer used for grabbing community land under the pretext of CA, and/or shifting villagers from wild life conservation areas in violation of FRA and Wild Life Protection Act.

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- i 2012. CSE Public Watch, unnumbered pp.1- 3, available at <http://www.cseindia.org/userfiles/GRP%20factsheet%20Full.pdf>
- ii Statement No. LT-7895/84 tabled by MP Rao Birendra Singh before Lok Sabha during the fourteenth session held on 7 March 1984, p. 5. See Lok Sabha Debates, Fourteenth Session, Vol. XLV, No. 11, 7.3.1984, Unstarred question No. 2370, pp. 125-128. The statement tabled in the Parliament can be found in Papers on the Table, Nos. 7867-7899, 1984, Parliament Library, New Delhi. On file.
- iii Interview with Dr. Kanchan Chopra, TERI University, New Delhi, 31 December 2013 by Sahana Basavapatna. (hereafter Interview, Dr. Kanchan Chopra)
- iv T G Godavarman Thirumalpad v Union of India, (2006) 1 SCC 1, paragraph 13 at p.15.
- v Recommendations of the Central Empowered Committee dated 9.8.2002 in IA 566 of 2000 in Godavarman, pending.
- vi T N Godavarman Thirumalpad v Union of India, (2006) 1 SCC 1, paragraph 13 at p.15.
- vii See the CEC report dated 9.8.2002 in I.A No. 566 in W.P(C) No. 202/1995, Godavarman, para 5, p.6, pending.
- viii Robertson, Morgan M: *The nature that capital can see: science, state, and market in the commodification of ecosystem services*, in *Environment and Planning D: Society and Space* 24(3), 2006, also *Discovering Price in All the Wrong Places: The Work of Commodity Definition and Price under Neoliberal Environmental Policy*, in the journal *Antipode* 39(3), 2007, available at <http://onlinelibrary.wiley.com/doi/10.1111/j.1467-8330.2007.00537.x/full>.
- ix Letter No.11-30/96-FC to all Forest Secretaries of All States/Uts by IG (F), C.P. Oberoi dated 10 April 1997.
- x Supra note 98, p.188.
- xi The Committee of Secretaries meets in the Cabinet Secretariat to discuss issues assigned to them by Department/Ministries in the Government of India. See <http://cabsec.nic.in/showpdf.php?type=cospreparation> (accessed on 8 March 2014)
- xii Thus, the new guideline 3.2(viii) was inserted in the FCA guidelines. Now, compensatory afforestation could be raised on degraded forest land double in extent of forest area being diverted. It was stipulated that “while identifying the pool of degraded forest land, blank forest lands in reserved forests in compact/sizeable blocks should be identified as first priority as “plantation bank”. An appropriate treatment plan with choice of species should be prepared by the beneficiary States. Only when such areas are not available, the choice of compensatory afforestation will fall on protected, unprotected forests and unclassified forests in declining order of priority”, Handbook on Environmental Law, 190-191.
- xiii Rajya Sabha Debates, Vol. CXLIX, No. 19, dated 27.3.1989, Unstarred question No. 2950, Columns 165-166. This was a question by Subas

- Mohanty of the Indian National Congress to the Minister of Energy about proposals to set up forest banks in each state on which compensatory afforestation could be carried out for a power project. Were there any guidelines, he enquired? Mr. Kalpanath Rai's response was that no guidelines were issued but MoEF had suggested to the government of Uttar Pradesh to identify a big area of non forest land for compensatory afforestation. Some states appear to have initiated action on their own. He also noted that the conference of state Power Ministers held in Delhi on 23<sup>rd</sup> and 24<sup>th</sup> January 1989 also recommended "compensatory forest banks" to be created by states which can be drawn from when compensatory afforestation is required to be done for a power project.
- xiv Interview with P P Bhojvaid, Director, Forest Research Institute and Vice-Chancellor, FRI University, Dehradun, 31 January 2014 by Sahana Basavapatna. (hereafter "Interview, P P Bhojvaid")
- xv This was in relation to a broad question I asked on how compensatory afforestation has fared so far. Mr. Bhojvaid's observations were limited to Punjab where he worked and "other places I have visited" (he did not identify other states). So if a broad view is taken, he concluded, forests are being compensated, but seen from the point of view of the local level, they are not compensated.
- xvi Interview, Prof. Mahesh Rangarajan.
- xvii Garg, Anil. 2000. Lakho Vanwasio Ke Haq Me, Betul, Madhya Pradesh.
- xviii See for instance, Incidents of Land Grabbing in the Guise of Afforestation an undated statement issued by the Campaign for Survival and Dignity argues that compensatory afforestation is only a pretext to grab lands that are often community lands. The statement is available at <http://www.forestrightsact.com/climate-change/item/download/29>. A press release by the Lok Sabha refers to the report of the High Power Committee on Zudpi jungle which notes that out of a total area of 1,78,525 ha, 27,507.34 ha of zudpi jungle were under encroachment. The central government in its letter No. 4-8/87 of 15.9.2000 allowed "...32,230 hectares of fragmented/patchy Zudpi jungle to be recorded as revenue land subject to the condition that it will be used for pasture and grazing purposes only and in no case it should be used for construction and mining...". See the PIB release at <http://pib.nic.in/archieve/lreng/lyr2001/rapr2001/23042001/r2304200141.html> (all documents accessed on 18 February 2014).
- xix Guidelines for diversion of forest land for non forest purposes under the Forest (Conservation) Act, 1980, F. No. 2-1/2003-FC, FC Division, Ministry of Environment and Forests, Government of India, dated 20.10.2003. On file.
- xx Deshpande, Vivek. 2013. 86,000 hectares of shrub forest may be freed for development, The Indian Express, 9 November available at <http://indianexpress.com/article/cities/mumbai/86-000-hectares-of-shrub-forest-may-be-freed-up-for-development/> (accessed on 18 February 2014)
- xxi 2013. Maharashtra Forest Manual, Volume II, Draft for Approval, pp.92-93. Zudpi jungle, by way of a circular issued in 1992 (No. 4-8/87-FC dated 12.2.1992), is treated as forest land under the Forest (Conservation) Act, 1980. The State government was to transfer all such lands to a "Zudpi jungle land bank" for the purposes of compensatory afforestation. A 1991 letter issued by the Government of Maharashtra allows use of Khar lands. See GOM No. FLD/1390/C.N.743/F-10 dated 10.10.1991 quoted in the Manual.
- xxii See Planning Commission. 2001. Address by Shri Mukut Mithi, Chief Minister, Arunachal Pradesh, 49th N.D.C. Meeting, 1<sup>st</sup> September 2001, Vigyan Bhavan, New Delhi. <http://planningcommission.nic.in/plans/planrel/pl49ndc/index.php?state=arunachal.htm> (last accessed on 25 February 2014)
- xxiii Letter dated 11.4.2011 No.FOR-1-40/Cons/Vol 1-118, Itanagar, *Identification of land for compensatory afforestation – regarding*. On file.
- xxiv See <http://www.anhadin.net/article206.html> (last accessed 28 February 2014)
- xxv Interview, Mr. B K Singh.
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- xxix Interview with Praveen Bhargav, Wildlife Trust of India, on 6.2.2014, Bangalore. (hereafter "Interview, Praveen Bhargav"). Bhargav added that this proposal was not accepted. See also, Bhargav, Praveen. 2013. Making space for the tiger a reality, The Hindu, April 19, available on <http://www.thehindu.com/opinion/op-ed/making-space-for-the-tiger-a-reality/article4630903.ece> (last accessed 27.2.2014).
- xxx One of the aims and objectives of CAMPA states,
- "State CAMPA shall seek to promote:
- (a) ...
- (b) conservation, protection and management of wildlife and its habitat within and outside protected areas including the consolidation of the protected areas;" CAMPA Guidelines dated 2.7.2009.
- xxxi Bhargav gave an example of Govind Sanctuary and National Park in Uttarakhand to elaborate this point. He noted that the villagers that he spoke to, on a site inspection carried out when he was the member of the Standing Committee of the National Board for Wildlife, accepted resettlement. See the Site Inspection Report of Govind Sanctuary and National Park, Uttarakhand State, dated 26.8.2009. On file.
- xxxii Supra note 57, Clause 8(d)(i). (CAMPA guidelines 2.7.2009)
- xxxiii Robbibs, P and Luginbahl, A, *The Last enclosure: Resisting privatization of wild life in the Western United States*, in Heynen, N et al(Eds), *Neoliberal Environments, FalsePromises and Unnatural Consequences*, London, 2007. See also, Sullivan, S. *Banking Nature? The Financialisation of Environmental Conservation*, Open Anthropology Cooperative Press, Working Papers Series #8. <http://openanthcoop.net/press/2011/03/11/banking-nature/> 2011.

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- xxxiv See Sethi, Nitin. 2013. Since 2004, 6 lakh hectares of forest cleared for mining, *The Times of India*, 20 April, <http://timesofindia.indiatimes.com/home/environment/developmental-issues/Since-2004-6-lakh-hectares-of-forest-cleared-for-mining/articleshow/19642811.cms> (last accessed on 19 February 2014). The CSE data is in variance with the figures put out by *The Times of India*. Table 1 figures above indicate that around 4,27,119.12 ha of forest lands were diverted between 2002 and 2013 (this year covering only January to April).
- xxxv Ibid.
- xxxvi Shripad Dharmadhikari and Shantanu Dixit, *Thermal Power Plants on the Anvil: Implications and Need for Rationalization*, Prayas Energy Group, Discussion Paper, 2011, p. 2. [http://www.ercindia.org/files/Prayas\\_Paper\\_TPP\\_Aug\\_2011.pdf](http://www.ercindia.org/files/Prayas_Paper_TPP_Aug_2011.pdf)
- xxxvii Analysis of MoEF's EAC on River Valley Projects, The Expert *Approval* Committee has zero rejection in 6 years, April 2007 to December 2012, South Asian Network on Dams, River & People, February 2013, p.2 <http://www.sandrp.in/> (last accessed 24 August 2013). See also, Nitin Sethi, Only 19 projects were denied green clearance from 2008 to Aug 2011, *Times of India*, 16 August 2011, [http://articles.timesofindia.indiatimes.com/2011-08-16/environment/29891715\\_1\\_clearance-thermal-power-projects-mining-projects](http://articles.timesofindia.indiatimes.com/2011-08-16/environment/29891715_1_clearance-thermal-power-projects-mining-projects) (last accessed 1 September 2013). Sethi notes that "Out of the 1,689 projects that the environment ministry decided upon from 2008 up to August 2011, only 19 were rejected. The ministry cleared 186 thermal power plants in the same period. Another 641 building and construction projects got the nod from the government and not a single project was rejected. Forty-five hydroelectric projects were given green sanction without any rejection."
- xxxviii See Sethi, Nitin. 2011. Forest officials pose danger to forests: Experts, *Times of India*, September 10.