

# Perpetuating Injustices: Tribal rights and Forestland cultivation in Orissa

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*This note deals with the issue of forestland and the manner in which the State Government has dealt with it. The note is part of a series of notes prepared for discussions by the Research Team of Vasundhara on the above issues. For further information or clarifications contact the authors at [kumarkun@msu.edu](mailto:kumarkun@msu.edu) (Kundan Kumar) or [ygiri.rao@gmail.com](mailto:ygiri.rao@gmail.com) (Y. Giri Rao) or [vasundharanr@satyam.net.in](mailto:vasundharanr@satyam.net.in)*

## Background to the Note

The tribal communities of Orissa face a massive new threat from legislation for conservation and forestry and their judicial interpretations, as well as from the increasing onslaughts of globalisation. The Forest Conservation Act, 1980, (FCA) was initially applicable to land legally notified as forest under the Indian Forest Act, 1927 (hereafter mentioned as IFA) and all lands recorded as forest in any government records. Over time, judicial interpretations have extended its purview even to lands for which only the preliminary notification under Section 4 or 29 of the IFA have been issued and the rights of local people are yet to be settled. The latest expansion of the FCA's purview was done to all lands conforming to the dictionary definition of forests, irrespective of ownership, by an interim order of the Supreme Court in 1996 (under the Godavarman case). All such 'forest' land can't be converted to any non-forest use without the permission of the Ministry of Environment and Forest, GOI.

This implies that once a land is classified as forest of any sort, it can't be used for cultivation or any other purpose without MoEF's permission. This all encompassing law doesn't take into account the unique situations in different parts of the country, and assumes that categorization of land as forest has been done as per law and more important, **with justice**. It totally ignores the confusion that exists in land and forest records in various parts of India, including Orissa, and the fact that assembling the national forest estate has been done largely through annexing tribal lands as state property.

The situation has become particularly serious with the Supreme Court pushing for strict enforcement of the FCA under the Godavarman case. In 2002, although the Court had only enquired about what was being done about encroachments, the MOEF issued a letter to all states and U.T.s suggesting that the Supreme Court had asked for the eviction of all forestland encroachers within a period of only 5 months. Though this blanket order was later withdrawn due to widespread protests, the process of removing supposed 'encroachers' has continued in many states. This has serious implications for the Scheduled areas of Orissa, where hundreds of thousands of adivasis continue practicing both settled and rotational cultivation (podu) on several lakh hectares of land which has been officially categorized as 'forests'.

The Wildlife Protection Act, 1972, is another conservation legislation with serious implications for the tribal people of Orissa. This draconian law enables a State Government to simply declare its intentions to convert a particular area into a Protected Area (Wildlife Sanctuary or National Park) and restrict the mobility, access to services and livelihoods of the people living in or dependent on these areas.

Although the Act does not explicitly mentions it, a *Supreme Court order of February 2000 has prohibited the collection of any forest products including firewood, non-timber forest products etc. from Wild Life Sanctuaries*. The practical impact of such restrictions is that those living inside such

areas are deprived of access to their livelihood resources and basic welfare services, and are almost cut off from the outside world. Although most protected areas are declared mainly on “Forest lands”, the Government can also declare non-forest land, including private areas as part of protected areas (private land needs to be acquired which is avoided due to the costs involved – the strategy generally followed is to leave unviable islands of private land within Protected Areas). Orissa already has more than 8000 sq. km. ( 5% of its area) under such protected areas, and there are plans to increase this up to 10% of the state’s area. Most of the existing and proposed PAs are in Scheduled areas affecting the lives and livelihoods of lakhs of tribals.

### 1. Forest Land ‘encroachment’ versus disputed claims

Orissa is one of the most forest rich states in the mainland India, with a high proportion of tribal population. Almost 40% of its land area is categorized as forests of different types. Many of these “forest lands” of various types have been under cultivation, both permanent as well shifting. As discussed below, this situation has arisen due to convergence of various laws and policies related to land and forests, and their interactions with actual situation on ground. Most of these problems have arisen not due to deliberate encroachments of tribal people on lands categorized as forests, but because of categorization of existing land under cultivation as forest land or because of faulty implementation of policies. The status of most of these areas as forest is therefore disputed.

In 1990, MOEF, GOI, acknowledged that many forest areas are riddled with disputed claims. A set of orders for resolution of such conflicts were passed in September 1990. These circulars provide a possibility for regularizing some of the land under tribal occupation. It is urgent that these circulars be operationalised to remedy the current situation. In cases where the 1990 circulars are inadequate for ensuring justice, the situation must be opened for discussion, and if required, legislative changes.

All state Governments have submitted data about the area of forests under ‘encroachments’ in their respective states to the MOEF, GOI and the Supreme Court (Annexure I) and States like AP and MP have managed to regularize large areas of cultivated areas in forest land in name of the cultivators. The State of Orissa in the data submitted to GOI shows that **only 42,605 ha. of forest land in whole of Orissa is under encroachments**. The Government of Orissa has submitted applications to MOEF to regularize only 4,729 ha. of forests land which are under the eligible category of pre-1980’s encroachments. This, as we show in this write-up, is a complete underestimate. It has created a very dangerous situation in which lakhs of tribal households are threatened by eviction from land cultivated by them, as the State government doesn’t even acknowledge their existence. Instead of addressing the complexity of the issue of non-settlement of tribal rights in forest lands, the Government of Orissa has attempted to hide the massive extent of forestland cultivation in the State and the implications of FCA enforcement for the tribal population of the State.

The note draws upon different sources of secondary information, including official data to substantiate this claim. We discuss the discrepancies at Orissa level and then illustrate the situation through the case of Mallaguda, a village in Malkangiri district (Malkanagiri Forest Division, erstwhile it was under Jeypore Forest Division).

**2. Forests in Orissa:** According to official data, Orissa has 58135 sq. km of its area under forests belonging to the following legal categories:

Type of Forest	Area in sq. km.	Comments
Reserve Forests	26329	Under direct control of Forest Department. Declared as RF under Section 21 of Orissa Forest Act, 1972 or deemed as Reserve Forests under Section 20(A) of Indian Forest Act, 1927

Demarcated Protected Forest	11685	Land under control of Revenue Department. Declared as Forest under section 33 of OFA, 1972 or deemed as protected forests under Section 33(4) of OFA, 1972
Undemarcated Protected Forest	3838	Land under control of Revenue Department
Unclassed Forests	20.55	
Other Forests	16261	Land under control of Revenue Department. Legal status is not clear.
Total Forest Area	58135	

Only 48,838 sq. km. of forest land has forest cover of 10% or more. (FSI, 1999) Thus almost 10000 sq. km. has a crown cover of less than 10% i.e. either they are scrub forests or have no forests at all.

**3. Scheduled area in Orissa:** Over 23% of Orissa's population is comprised of 62 tribes. Schedule V areas cover approximately 44.70% of Orissa's land area. More than 50% of the scheduled areas are categorized as forestlands of various types.

**4. Official version of forest encroachments in Orissa:** In response to the Supreme Court orders and MOEF instructions, the GOO submitted an affidavit to the Supreme Court on the status of forest encroachments in Orissa. As per this affidavit, **47,304** ha of forest area in Orissa are under encroachment. This information is apparently based on a joint survey by the Revenue and Forest Departments. Out of these 47,304 hectares only **4729** hectares have been treated as pre-1980 encroachments and have been submitted for regularization to the MOEF, GOI. Only **29** hectares of eligible encroachments have been regularized so far as the Court has stayed new regularisation till further orders.

These official figures can be questioned on various grounds, the most important being the vast area under shifting cultivation in Orissa.

**4.1 Land under shifting cultivation in Orissa:** Shifting cultivation has been a traditional cultivation practice in hilly terrains, especially amongst the tribal communities in India. Orissa is estimated to have the highest amount of land under shifting cultivation in India (Table 2 below and annexure 2).

Table 2: **Estimated Area under Shifting Cultivation (1971-1975 Data) (Thangam, 1987)**

State	Estimated Area Under Shifting Cultivation each year (km <sup>2</sup> )	Estimated Population (in Thousands)
Andhra Pradesh	173	116
Arunachal Pradesh	920	270
Assam	700	403
Bihar	162	61
Madhya Pradesh	81	14
Manipur	600	300
Meghalaya	760	350
Mizoram	616	260
Nagaland	735	400
<b>Orissa</b>	<b>5,298</b>	<b>706</b>
Tripura	223	100

Estimates of the area under shifting cultivation in Orissa range from 5298 sq. km. to 37,000 sq. km. (Table 3). That these areas were traditionally under shifting cultivation is clear from a number of reports from the colonial period<sup>1</sup>. Even the Forest Enquiry Committee Report of 1959 mentioned that 12,000 sq. miles (almost 30,720 sq. km.) of land in Orissa was under shifting cultivation. Almost all tribal communities in Orissa practice shifting cultivation.

Table 3: Estimates of area under shifting cultivation in Orissa

Source of Information	Estimates of area under shifting cultivation in Orissa
FSI, 1999	5,29,800 hectares under <b>active</b> shifting cultivation in the year of Survey
N.Pattnaik, 1993	37,00,000 hectares of shifting cultivation area
A Decade of Forestry, GOO, 1995	2649000 hectares of shifting cultivation
Forest Enquiry Report, GOO, 1959	3072000 hectares of shifting cultivation approximately

Despite the extent of shifting cultivation and the critical dependence of tribal people on it for their livelihoods, the colonial and post-colonial state has refused to recognize it as a valid land use. Therefore, during the Survey and Settlements, the shifting cultivation lands on hill slopes were categorized as government land, with no recognition of tribal rights over it, either individual or collective. Section 10 of IFA, 1927, also dismisses the rights of shifting cultivators during declaration of Reserve Forests, only providing that the forest settlement processes should keep aside some area for shifting cultivation.

Most of the shifting cultivation areas have been converted to forest category either during Survey and Settlements or through various processes of notifying forests. Since no law recognizes the shifting cultivation land-use and the rights of tribal people over these lands, the tribal communities have been effectively alienated from these vast areas. As B K Roy Burman Committee Report mentions, "A Policy decision of the Government, as a result of which the preparation of Record of Rights turned into denials of rights which were enjoyed by the concerned population for generations" (quoted in Viegas, 1991).

The fact on the ground is that vast areas of land, despite being notified as forest land or Government land are under shifting cultivation by the tribal communities. These are not even being shown as 'encroachments' by the State Government in its official reporting. The FD also claims that shifting cultivation areas recorded as Revenue Lands and having natural vegetation on them are also to be considered as forest land as per the FCA, 1980 and interim orders (1996) of the Supreme Court. The State Government has not even mentioned this issue and the extent of so called forest land under shifting cultivation in its affidavit to the Supreme Court and in its reporting to MOEF.

The application of FCA, 1980, on lands under shifting cultivation will have disastrous consequences for the livelihoods of vast numbers of tribal people.

**4.2 Settled cultivation on forest land:** The GOO calculates the total area of encroachments (both pre-1980 and post 1980) in forest land as only 42605 hectares. They have applied to the MOEF for the regularization of 4729 hectares involving 5113 families. The data prima facie itself is suspect, given that both the neighboring states i.e. Chattisgarh and AP show encroachments figures that are 150495 hectares and 295283 hectares respectively (Annexure I). In fact on comparison with other sources of information, it is clear that the figure of 42605 hectares is a massive understatement.

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<sup>1</sup> District Gazetteers, Partially Excluded Area Enquiry Committee Report, Ramdhyan's Report on Land Tenure and the Revenue Systems, Survey and Settlement Reports and many other sources document the extensive practice of shifting cultivation in the tribal areas.

**Table 4: Inconsistencies in official data about encroachments**

<b>Data submitted by GOO to MOEF/Supreme Court on forest encroachments</b>	<b>Data from other official sources</b>
42605 hectares in whole of Orissa (Both pre 1980 and post 1980 encroachments).	As per Nowrangpur Working Plan, 1999-2009, in Nowrangpur Forest division alone, <b>35,000 hectares</b> of forestland are under settled cultivation in contrast to the figure of 18129 hectares reported by the GOO in the data submitted to MOEF. Another official document <sup>2</sup> of the Forest Department estimates that in 1998, <b>46,126 hectares</b> of forestlands were under encroachment in Nowrangpur Division alone.
1633 hectares total encroached area in Jeypore division	A survey of only 99 villages in part of Jeypore Division (the division has over 1000 villages) by the Campaign for Survival with Dignity (CSD) revealed that more than <b>1400 hectares</b> of land were under pre-1980 cultivation. Another 879 families stay on forestland in Kotpad and Boipariguda blocks within Jeypore Division (Census of India, 1991).
Pre-1980 encroachments for the whole state submitted for regularization by the GOO: 4729 hectares for 5113 families	In Nowrangpur Division, the Working Plan enumerates 23039.45 hectares as pre-1980 encroachments. Pre-1980's claims collected by CSD from a small part of forested areas of Orissa for only settled cultivation add up to approximately 20,000.

The above comparison indicates that the data submitted by the GOO to the MOEF and the Supreme Court is highly suspect and is a gross underestimation of the extent of land under occupation/cultivation, even though it doesn't include the vast areas under shifting cultivation in the State. From the above data, it would appear that at least a few lakhs hectares of land categorized as forests are under settled cultivation. If one adds the area of shifting cultivation to this estimate, the area of cultivation on forest land will easily cross ten lakhs hectares as against the paltry 42,605 hectares officially admitted by the State Government. No one in GOO has even tried to ascertain the extent of the problem and the implications of application of FCA, 1980 in these areas. Application of FCA, 1980 on these lands will result in a massive crisis of livelihoods, governance and law and order situation in Orissa.

## 5. Understanding the roots of the crisis

The following is a very preliminary analysis of the roots of this crisis. This multifaceted crisis can be seen as having these major elements:

- i) **Unsuitable Survey and Settlement Methods:** Application of Survey and Settlement processes developed for land use of plains to mountainous areas and non-recognition of shifting cultivation as a valid land use. Land over 10 degrees slope was not surveyed and was simply classified as Government land. This covered most of the shifting cultivation on hill slopes. Recording of many of these areas as forests of various categories.
- ii) **Inclusion of Shifting Cultivation Lands:** Inclusion of shifting cultivation areas in various types of forests by the colonial rulers and the princely states in an attempt to control shifting cultivation.

<sup>2</sup> GOO, 1998 "A Status Report on Forest and Forestry in Koraput Circle- 97-98", Table no.- 25.

- iii) **Deemed Forests:** Much of the forest land in Orissa came from the princely states and zamindaries. Most of these areas had never been surveyed and no proper settlements of rights had been taken up when they were notified as forests by the erstwhile rulers. Some had not even been notified as forests under any law and had simply been recorded as 'reserve land'. All lands recorded as forests in the Princely states were deemed to be Reserve Forests under IFA, 1927 through amendment 20(A) and under OFA, 1972 (Section 81(1)). In undivided Koraput district, Reserved and Protected land created under Chapter III of the Madras Forest Act, 1882, were deemed to be Protected Forests under Orissa Forest Act, 1972 (Section 33(4)). Similarly as per Section 81(4), of the OFA, 1972, all forests of any type as recognized in the merged territories (princely states), except reserved forests, shall be deemed to be protected forests. This meant that extensive areas where no settlements of rights had been done were automatically deemed to be state forest lands. A lot of permanent cultivation existed and continues to exist within these areas.
- iv) **Poor Settlements of Rights:** Even when RFs and protected forests have been declared after independence, the forest settlement processes were not properly implemented. This has happened specially in areas where forest areas were left out of Revenue Settlement processes (as in the case of protected land and Unreserved Land in Koraput district). In many of the cases, the procedure of rights settlement during reservation has been followed on paper, but due to lack of literacy of the tribal people and their inability to negotiate the procedures, rights have not been recorded. This has again meant that settled cultivation areas have been included inside RFs and PFs.
- v) **Non-Regularization of Forestland under Cultivation:** The non Reserve Forests in Orissa are under the control of Revenue Department. Before the FCA, 1980, clearing of forestland for cultivation was being actively promoted for programmes like the "grow more food" campaign or distribution of land to the landless. In 1972, the GOO came up with laws and procedures to regularize such cultivation on forestland and issued circulars for the same. However, the GOO wasn't able to regularize such lands till 1980 (when FCA was enacted) because of operational problems. Circulars on this issue have been repeatedly issued even after 1980, but nothing has been done. This has meant that almost all cultivation on forestland which should have been regularized is still pending and the cultivators are being treated as encroachers on their own lands.
- vi) **Displacement by Development Projects:** A large number of development projects have been taken up in Scheduled areas leading to massive displacement. This happened both pre-1980 and post 1980. Large numbers of people who were displaced were actually staying on land categorized as Revenue or Forest Land (as their shifting cultivation areas were categorized as Government land), and received no compensation. They were simply forced to shift – and most of them shifted to other forested areas and are now being treated as encroachers in these areas. Examples are the Kondh tribals who were displaced by HAL, NALCO, Machkund, Kolab and Indrawati projects in Koraput district and were forced to move to Malkangiri and Nowrangpur and clear forests. Now they are being treated as encroachers in these forest areas.

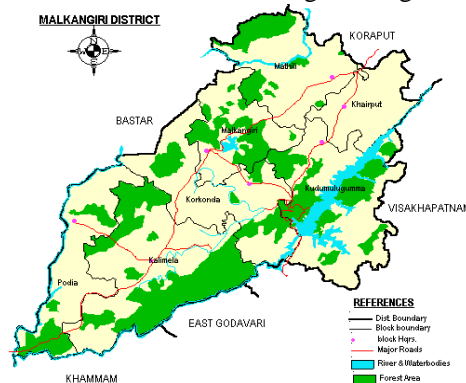
Most of the factors listed above are linked to each other, and need greater investigation and analysis. Unfortunately, the people affected by all this are generally the poorest and most marginalized section, mainly tribals, who are not politically organized. They also tend to be non-literate, and ill-equipped to deal with the highly complex sets of rules and formalities related to the revenue land and forest laws. These processes have caused massive alienation of land and forests from these tribal people, and are the most important reason behind the continuing poverty and unrest in these areas.

Many of the factors mentioned above are illustrated by the case of Mallaguda village as discussed below:

## 6 Mallaguda village, Malkangiri District

Mallaguda is a small tribal village located inside Dharamgarh Dongar Proposed Reserve Forest (PRF) under Dharamgarh beat with a total area of 295.75 acres. It comes under Malkangiri Range of Malkangiri Forest Division. The beat falls under Govindpalli G.P. of Khariaput block in Malkangiri. It is located around 6 kms from the G.P. headquarter. It consists of 32 families of which 22 belong to Scheduled tribes (Dharua, Kandha and Paraja) and others are from the *Mali* community (OBC category).

Initially the village Mallaguda was located on the bank of Sapta Dhara River flowing along the foot of Dharam Dongar. Apparently, in 1963 during the Revenue Survey and Settlement, three households were settled with patta land along the river. The shifting cultivation land was not settled. As the river valley is very steep, during the monsoon the habitation often became flooded. For this reason, in the early sixties, the tribals decided to shift to the top of the hill. During early 80's, 9 families immigrated to the village (3 Kandha tribals and 6 Mali families). These people were displaced from Damanjodi of Koraput district, after being displaced by National Aluminum Company Ltd. (NALCO) mines and alumina plant<sup>3</sup>.



All tribal households depend on Podu Cultivation (shifting cultivation) and on jhola cultivation (streambed paddy cultivation). Over the years, they have converted the area along the riverbed and streams into permanent agriculture land (jhola). In these fields they cultivate paddy whereas in podu areas they cultivate Mandia (minor milles), Suan dhan (minor millet), Alasi (castor) and other crops, which sustain them for 4-6 months in a year. Apart from this, they work as wage-labour for road repairing, agriculture, etc. and also collect and sell forest produce.

In the mid-eighties, as per the villagers, the forest department staff started harassing people by saying that they were illegally cultivating forestland. A number of forest cases were booked against the local habitants over time. In 2004, villagers allege that the forest department has carried out plantations in their agriculture land by destroying their crops. When the villagers protested, the department staff said that the Supreme Court has ordered to evict people from forestland. *"It is not your patta land. We will do whatever we wish as the land belongs to the forest department"*. During interaction with the local NGO worker, when he took the issue of plantation before him, the local forester told him, *"It is a reserve forest. We will not allow any body to cultivate in it. It is against law"*<sup>4</sup>.

Analysis of the history of this area brings out the history of alienation of land from the Mallaguda villagers. The Dharamgarh Dongar was declared as Un-Reserve Land (URL) under Section 26 of Chapter III of Madras Forest Act 1882 prior to 1940s when the area was under the Jeypore Zemindary. No settlement of rights was done in the area at that time. In un-reserved lands, apart from clearing land for shifting cultivation, which was only allowed, on permission from Collector, other activities including felling un-reserved forest species, grazing, clearing land for permanent cultivation etc. seems to have been allowed. No settlement of rights was carried out in these lands as in the case of Reserve Forests or Protected Forests under IFA, 1927.

<sup>3</sup> NALCO acquired 2,741 hectares of land at Damanjodi for setting up its alumina plant in early eighties, which resulted in the displacement of 17678 persons from 26 villages, of which 52.44 percent of total outsees were from tribal communities. (N.C.Kar, 1991).

<sup>4</sup> The Dharamgarh Dongar is notified under section 4 of Orissa Forest Act, 1972, and is proposed as a Reserve Forest. Thus it has not been finally declared as a Reserve Forest.

However, the Dharamgarh URL seems to have been converted to Protected Forest u/s 33, sub-section (4) of Orissa Forest Act, 1972<sup>5</sup>. This happened even though no settlement of rights was taken up by the Forest Department. This implies that by using this sub-section, rights were extinguished without any compensation or settlement.<sup>6</sup> In case of Dharamgarh Dongar, and Malkanagiri in general, Section 33 (4) of OFA, 1972 was used to declare all the Reserve Land, Protected Land and Unreserved land as deemed P.F

Even though the State Government issued orders for regularization of cultivation on Forest Land as per the provisions of Orissa Prevention of Land Encroachment Act, 1972 in 1972<sup>7</sup>, there was no effort by the district administration to regularize the cultivated lands in Dharamgarh Dongar. This Status quo continued till 1984, when the State Government issued a notification (24.4.1984, Notification No. 27915) u/s 4(i) of Orissa Forest Act to declare Dharamgarh Dongar as Reserve Forest. After the notification u/s 4 (i) of OFA, 1972, Forest Settlement Officer (FSO) seems to have issued notice to the inhabitants to reclaim their rights over the land. However, apparently, these notices and their implications were not conveyed to the non-literate tribals, who considered these notices as similar to notices they have received regarding various cases booked against them by Forest Department. Nobody from the village approached the FSO to claim his or her right. As a result, the villagers lost the opportunity to claim the land and are now being treated as 'illegal Encroachers of Forestland'.

At present, besides Mallapadar village, there are 8 more villages consisting of 82 households who have been living inside the Dharamgarh Dongar since long. They have gone through the same experience and are being treated as encroachers. Dharamgarh Dongar provides food & shelter to approximately 114 families from 9 villages. Almost all of these people are tribals and scheduled castes and cultivate over 231 acres of land proposed to be declared as Reserve Forests.

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<sup>5</sup> The chapter IV of Orissa Forest Act, 1972 u/s 33 of sub-section (4) Says, "Lands at the disposal of government to which the provisions contained in Chapter III of Madras Forest Act, 1882 (Madras Act 5 of 1882) were applicable immediately prior to the coming into force of this Act shall *be deemed to be 'Protected Forest'* under this Act.

<sup>6</sup> It is important to mention that prior to declaring any land as 'Protected Forest' the section 35 of Orissa Forest Act, 1972 says, "*the Divisional Forest Officer shall cause a translation into Oriya of every notification issued under Section 34 to be affixed in a conspicuous place in every town and village in the neighborhood of the forest comprised in the notification.*" Before declaring an area as PF, the rights of the inhabitants must be settled.

<sup>7</sup> The State Government in a Policy Resolution pronounced that encroached forest areas by tribals, harijans and other landless persons would be released for settlement. In this context the Government issued executive orders to all the district Collectors for constituting Sub- Divisional Committees for undertaking comprehensive survey of all forestlands to identify areas which would be set apart for agricultural use and areas which would be managed as forests. However, this task has never been completed, in spite of repeated issuance of circulars and orders. Thus all the areas which the State Government would have regularized under various laws, post 1980, are being treated as encroachments

### Villages inside the Dharamgarh Dongar P.R.F

	Name of the Village	Total HHs	Caste	Range	Land under Possession (in acres)	
					Homestead	Agricul
1	Mallaguda	32	ST & OBC	Malkanagiri	1.30	52
2	Samkund	12	ST	Malkanagiri	0.76	32
3	Venusjodi	07	ST	Malkanagiri	0.30	12
4	Dabuguda	26	ST	Malkanagiri	1.12	44
5	Pakanguda	06	ST	Malkanagiri	0.26	34
6	Nuaguda	11	ST & SC	Malkanagiri	0.45	14
7	Khapraput	07	ST & SC	Malkanagiri	0.32	08
8	Dabagodi	06	ST	Malkanagiri	0.26	12
9	Dakrijodi	07	ST	Malkanagiri	0.23	23
		<b>114</b>			<b>5.00</b>	<b>231</b>

(Source: Personal communication, PUPAC, Govindpalli)

Mallaguda is just an illustration of what has happened in a large number of settlements throughout Malkangiri and in Undivided Koraput district. Now attempts are being made by the FD to remove these people by taking up plantations of forest species on their lands<sup>8</sup>.

Malkanagiri is a scheduled district, which came into existence with effect from 2nd of October'1992 after being bifurcated from the erstwhile Koraput district. It is the home of primitive tribes like Bondas, Koyas, Paraja, Durua, Matia, Bhumia, Kandha, Halwa and Didayees. According to the 2001 census the population of tribal people is 2,89,538, which is 57.43% of the total population. 86% of the total rural families are below poverty line and in case of tribals families this is around 91%.

Most of the tribes are hill cultivators i.e. shifting cultivators. They cultivate Tobacco leaf, Mandia, Maize, Chuan, Kangu, Alasi etc. Apart from this, they also grow various types of vegetables and cereals in the hills. The district has a history of revolts against the colonial government because of its attempts to declare their land as forests. Due to the strong tribal movements at different periods, the colonial government failed to declare most of the forested areas as Reserve Forests under the Madras Forest Act, 1882 but categorized large areas as Reserve Lands, Protected lands and Unreserved Lands under provisions of Chapter III of Madras Forest Act, 1882. These categorizations didn't require the sort of rigorous Settlement of rights which is done before declaring reserve forests (Koraput Survey and Settlement report, GOO, 1965, page 8). Reserve Land and Protected land were notified as such. Unreserved land required no notification (Koraput Gazette, GOO, 1966, page 25).

Most of the Reserve Lands and Protected Lands in Jeypore ex-state (earlier Malkangiri was a part of Jeypore ex-state) were declared "between" 1900 to 1935. These declarations were not made known at local levels due to the remoteness of these areas and were simply blanket declaration of areas as Reserved or Protected Lands. A provision was made that in unreserved land tribal cultivators could clear lands for podu cultivation after taking permission from the Collector. However, in practice, shifting cultivation was extensively practiced on both reserved and unreserved land, and the law was only implemented on paper.

The first Revenue Settlement and Survey was taken up in Malkangiri area starting from 1959-60. No further Survey and Settlement has been taken up in the district. The Survey and Settlement report states "*the experience gained in this survey belied the earlier impression that Malkangiri was full of forests ... In fact the area also contained extensive cultivated fields in a large number of villages*".

<sup>8</sup> Ironically, such plantations are often funded by the Long Term Action Plan for KBK districts, the explicit aim of which is to develop and help tribal people.

(page 85, Koraput Survey and Settlement Report, GOO, 1960). This Statement shows how little was known about the habitations in these areas, and the fact that large chunks of these areas had been declared as forests (Reserve Lands and Protected Lands) without having any idea about tribal settlements in these forest tracts. The Survey and Settlement processes excluded the Reserve Lands in Malkangiri. Two more large blocks of forests which were proposed to be reserved were also excluded from Settlement and Survey. Thus any habitations inside all these forest areas were never enumerated or surveyed, and their rights never settled. This illustrates the casualness with which the categorization of forest land has taken place in the region.

Worse was to come. Orissa government declared all the Reserve Lands, protected lands and Unreserved Lands as deemed to be "Protected Forest" under the Section 33 (4) of Orissa Forest Act, 1972. No settlement operations were carried out before doing this conversion, even though Protected Forests are supposed to be normally declared only after a detailed rights settlement is done. Further, after 1972, the State Government has issued notifications u/s 4(i) of Orissa Forest Act, 1972 to bring all the R.L, Protected Land and Un-reserved Land under the category of Reserve Forest in Malkangiri district. **At present there are 120 forest blocks consisting of 85494 hectares of R.L and URL waiting for final notification u/s 21 of OFA 1972.**

In almost all Reserve Lands and Un-reserve Land (URL) proposed for reservation, there are a number of villages. Recently, under the claims campaign by the Campaign For Survival with Dignity, some local NGOs carried out a preliminary field survey in their operational area. *The survey revealed that from 26 gram Panchayats in 99 villages around 1428 Households have been dwelling on 68.33 acre of homestead land and practicing settled cultivation on 3696 Acres of agricultural land since four to five decades. This survey only covers 1/10<sup>th</sup> of the total occupied villages in the whole District of Malkangiri. The survey also doesn't cover any land under podu cultivation.*

According to the list submitted to the MOEF by the State Government for regularization of pre-1980 forest cultivation, 5113 families in 22 districts are cultivating a total of 4729 hectares of forestland from before 1980s. Surprisingly, Malkangiri district doesn't even show up on this list. When the local people met with district collector on 14th July 2004 as part of a claim submission campaign started by CSD, and submitted memorandum related to regularization of their land, the District Collector told them, *"Why are you all shouting here? Did you not claim your rights during the forest settlement operation? How are you all making noise today?"*

The Mallaguda and similar situations in Malkangiri can be summed up as follows:

- **Vast stretches of land were declared as different kind of forests without any settlement of rights by the princely states.**
- **In Survey and Settlement Operations (1959-1964), many of these forest areas were left unsurveyed and rights of people cultivating lands within these areas were not recorded.**
- **In areas where rights were recorded, podu (shifting cultivation lands) were not recorded in any form and were retained as Government land.**
- **Under IFA and OFA, these various categories of forests have been "deemed" to be either Reserve Forests or Protected Forests. This implies that the normal safeguard of settlements of rights hasn't been followed in these areas at all.**
- **The Policy of GOO to settle forestlands (including Reserve Forests) being cultivated was formulated but never implemented properly and extensively. These policies in general didn't recognize podu as a valid land use for which rights could be given to tribal communities.**

- After 1980, the FCA put paid to any efforts for large-scale settlement of these lands with the cultivators, even if the State Government was serious about it.
- All the deemed Protected forest areas are now being planned to be converted to Reserve Forests and (the preliminary notifications?) notices have already been issued. One can infer from the situation in Mallaguda that the process of settlement of rights under the OFA might have been fulfilled only on paper. In any case, since the areas are already deemed to be protected forests, anyone cultivating land inside is automatically treated as an encroacher. The same applies to the shifting cultivator, whose land use itself is deemed to be illegal, even though she has been doing podu on these forestlands for ages.
- The net effect of all these processes has been that lands which have been traditionally cultivated and used by tribal communities are being alienated as forest land.

The GOO, by not addressing these issues, is not only perpetuating grave injustice on its weakest inhabitants i.e. tribal communities, but is also ensuring disturbances and conflicts in these areas for ages to come. Conflicts have already started in Nabarangpur District, where major ethnic tension exists between the indigenous gond tribal communities, the Kandhs who have moved to Nabarangpur mainly after being displaced by the various development projects namely Kolab, Indrawati etc. and the Bengali settlers settled under Dandakaranya Project. People have been killed in clashes. Ironically, while the Bengali Settlers have been given land titles, the area's indigenous tribal inhabitants have been labeled 'encroachers' on their own lands.

Another implication is that communities inside these forest areas can't avail any services provided by the state, including health and education. Dongriguda village in Nowrangpur district was recently in the news when 11 children died of malnutrition and disease. This is a village inside a reserve forest which the Forest Department claims to be a post-1980 encroachment because of which it had not permitted even an anganwadi under the ICDS programme to be opened there.

The situation for the tribal people of Malkangiri and Nabarangpur has been doubly tragic as they have seen more than 200,000 acres of forest land being cleared for settling the refugees from erstwhile East Pakistan under the Dandakaranya project. It is also important to note that the persons who immigrated to Mallaguda after 1980s were displaced by NALCO from Damanjodi. Large-scale displacement of tribal people by projects and dams seem to be the most important cause of post 1980s encroachments on forest lands in Undivided Koraput district.

Similar situations as in Malkangiri are repeated in other scheduled areas in the State. This process of alienation can be seen as a larger process of disempowerment and disenfranchisement of the tribal communities in Orissa, which includes parallel processes of patta land alienation and massive displacement through development projects. Another major threat is posed by the declaration of tribal areas as Wildlife sanctuaries and national parks under the Wildlife Protection Act, 1972.

## **7 What needs to be done?**

The very first requirement is to make the Government of Orissa accept the situation and stop trying to sweep the reality under the carpet. Simultaneously, a detailed analysis of the situation in various scheduled areas needs to be initiated to understand the extent of the problem. In the long term this will most probably require a revised Survey of all the Scheduled areas and thereafter settlement of rights of tribals must be taken up. Laws and policies at the State level need to be reviewed and modified. Most important, the FCA 1980 has to be amended in order to accommodate shifting cultivation as a legitimate landuse. Alternatively, provisions of Schedule V of the Constitution should be activated to withdraw applicability of the FCA from the scheduled areas. It is obvious that all this needs political mobilization. However, the political mobilization has to be supported through high quality research and surveys, which bring out these issues and their linkages into the open.

**Special Note:**

We are sincerely expressing our gratitude to the NGOs of Malkanagiri district especially UNMESH, PUSPAC, POPULAR, JIED, KOYA, HARMONY, TSRD, GSS and people of Mallaguda those helped us in preparing the Mallguda Case study.

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**Annexure I****ANNEXURE REFERRED TO IN THE REPLY TO PART (a) OF THE LOK SABHA STARRED QUESTION NO. 284 BY SHRI TATHAGATA SATPATHY AND SHRI MAHAVIR BHAGORA REGARDING "REGULARISATION OF ENCROACHMENTS ON FOREST LAND" DUE FOR REPLY ON 16-08-2004.****(Data as on 31-3-2004)**

<b>Sl. No.</b>	<b>Name of State/UT</b>	<b>Existing encroachments (pre-1980 &amp; post 1980 both) on forest lands (area in hectare)</b>
1	Andhra Pradesh	295383.000
2	Assam	299710.000
3	Arunachal Pradesh	3887.810
4	A & N Island	2057.490
5	Bihar	251.869
6	Chandigarh	0.000
7	Chhattisgarh	150495.000
8	Delhi	0.000
9	Daman & Diu	87.960
10	Dadar & Nagar Haveli	614.350
11	Gujarat	22139.540
12	Goa	1012.000
13	Haryana	1274.060
14	Himachal Pradesh	2841.875
15	J & K	9284.000
16	Jharkhand	48438.410
17	Karnataka	67710.000
18	Kerala	7290.000
19	Lakshdweep	0.000
20	Maharashtra	79641.730
21	Manipur	533.240
22	Meghalaya	6584.490
23	Madhya Pradesh	138110.585
24	Mizoram	18759.616
25	Nagaland	0.000

<b>Sl. No.</b>	<b>Name of State/UT</b>	<b>Existing encroachments (pre-1980 &amp; post 1980 both) on forest lands (area in hectare)</b>
26	Orissa	42605.530
27	Punjab	6812.806
28	Pondicherry	0.000
29	Rajasthan	6712.742
30	Sikkim	3499.640
31	Tamilnadu	17555.564
32	Tripura	59336.150
33	Uttaranchal	9668.000
34	Uttar Pradesh	27214.630
35	West Bengal	13834.536
	<b>Total</b>	<b>1343346.622</b>

**Annexure II: Estimated Area under Shifting Cultivation, and Communities and Population Dependent on It (Primary or Partially) (1971-1975 Data) (Thangam, 1987)**

State	Districts Affected	Name of Tribes Practising Shifting Cultivation	Estimated Area Under Shifting Cultivation each year (km <sup>2</sup> )	Estimated Population (in Thousands)
Andhra Pradesh	East Godavari, Srikakuiam and Vizag	Bagata, Jatapus, Konda Dhoras, Konda Kapus, Konda Reddi, Mukha Dhora, Samantha, Savaras and Valmiki	173	116
Arunachal Pradesh	Kameng, Lohit, Siang, Subansiri and Tirap	Adi (including the subgroups of Gallong, Miniyeng, Padam, Pasi, Ashing, Ramo, Simong and Tangam), Aka, Dafla or Nissi, Hill Miri, Khowa, Mishmi, Miji, Nocte, Tangsa and Wancho	920	270
Assam	Karbi Anglong and North Cachar Hills	Dimasa (Kachari), Garo, Kachari, Karbi, or Mikir, Khasi, Kuki, Lalung and Naga	700	403
Bihar	Santalparganas (now in Jharkhand)	Mal Paharia and Sauria Paharia	162	61
Madhya Pradesh	Bastar	Hill Maria	81	14
Manipur	East District, North District, Tengnoupal and West District	Anal, Chothe, Hmar, Kabui, Kacha, Naga, Lamgang, Mao Maring, Paito Simte, Tangkhul, Thadou, Valphui and Zou	600	300
Maghalaya	West Garo Hills, East Garo Hills, East Khasi Hills, Jaintia Hills and West Khasi Hills	Hmar, Jaintia, Khasi, and Mikir	760	350
Mizoram	Aizawl, Chbimtuipul and Lunglai	Chakma, Hmar, Lakher, Mizo, Pawi and Riang	616	260
Nagaland	Khome, Phok, Mokochung, Hon. Tuensang, Wokha and Zunheboto	Naga, Kuki and Mikir	735	400
Orissa	Baudh-Khondmals, Ganjam Dhenkanal, Kalahandi. Keonjhar. Koraput, Sambalpur and Sundergarh	Bhuiya, Bondo Poraja, Didayi, Gadaba, Juang, Khond (Kuttia Khond), (Dongaria Khond), Koya, (Lanjia) Saora and Paroja	5,298	706
Tripura	North District, South District and West District	Chakma, Halam, Jamatia, Lushai, Mag, Naotia, Rieng and Tripuri	223	100

### Annexure III A: Forest land in Malkanagiri Division

At present 54.35% of the total geographical area of Malkanagiri is categorized as state forest land. Out of the total forest area 10.47% is Reserve Forest, 28% is DPF, 19.67% is UDPF and the remaining 42% is 'other forests'.

Total Geographical Area	6190 sq. km.?	
Total Forestland	3364.29	54.35%
<b>Classification &amp; Categories of Forests:</b>		
• Reserve Forest	352.43	10.47%
• Demarcated Protected Forest	940.61	28%
• Un- Demarcated Protected Forest	661.92	19.67%
• Un-classed Forest	0.38	0.01%
• Other Forests		
o Forest Area under Revenue Dept.	1400.61	41.63%
o Non-forestland but Having Forest Growth	8.34	0.24%
<b>TOTAL</b>	<b>3364.29</b>	

**Annexure III: Forest blocks under process of reservation in Malkangiri District**

<b>Name of the Range</b>	<b>No. of forest blocks notified u/s 4 (i) of OFA, 1972</b>	<b>Period of Notification</b>	<b>Area (in acres)</b>	<b>Earlier Status under Madras Forest Act 1882</b>
Malkanagiri	2	1979-1980	3162.2	Reserve Land
	4	1980-1981	7809.3	Reserve Land
	5	1979-1980	673.37	Un-Reserve Land
	18	1980-1981	9817.1	Un-Reserve Land
	2	1981-1982	498.75	Un-Reserve Land
	12	1984-1985	3639.5	Un-Reserve Land
	1	1985-1986	59.5	Un-Reserve Land
	1	1988-1989	111.00	Un-Reserve Land
	03	1993-1994	35.5	Un-Reserve Land
	Chittrakonda	01	1972-1973	4180.00
02		1980-1981	9003.5	Reserve Land
03		1984-1985	50266.5	Reserve Land
02		1968-1969	121.00	Un-Reserve Land
01		1970-1971	1340.00	Un-Reserve Land
01		1971-1972	705.00	Un-Reserve Land
07		1979-1980	18242.00	Un-Reserve Land
13		1980-1981	13663.00	Un-Reserve Land
02		1981-1982	4324.5	Un-Reserve Land
19		1984-1985	37006.00	Un-Reserve Land
	01	1992-1993	27.46	Un-Reserve Land
<b>TOTAL</b>	<b>100</b>		<b>164685.2</b>	

**Annexure IV**

**Area Deemed to be Protected Forest as per sub-section 4 of Section-81 of Orissa Forest Act, 1972 in Malkanagiri District**

<b>Name of the Range</b>	<b>No. of Reserve land Blocks</b>	<b>Area (In Acre)</b>
Malkanagiri	11	94401.16
Chitrakonda	02	87799
Kalimela	03	11467
<b>TOTAL</b>	<b>16</b>	<b>193667.2</b>