

Territorial strategies and natural resource governance in Orissa: Is Democratization possible?

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Territorial strategies of the colonial and postcolonial states have shaped natural resource governance and the resource rights regimes governing access to natural resources. In India, the critical components of territorialisation were cartographic mapping, survey and settlements, land titling, forest reservation etc., carried out mostly in 19th Century and first part of 20th Century under colonial state, with a second round being carried out through Land reforms after independence. In forested landscapes of Orissa, these processes took place mainly after independence, providing interesting material to examine intersections between territorialization, natural resource governance, local livelihoods and post colonial representative democracy. This paper will examine the contours of territorialization in forested landscapes of Orissa, its impacts on the landscapes and local livelihoods and the manner in which local actors dependent on natural resources responded to territorial strategies of the State. The paper explores the tension between the institutions of territoriality and the expanding institutions and habits of democracy in context of tribal areas of Orissa which have undergone dramatic transformation facilitated by Orissa's territorial strategies in the last half century. For instance, over 30,000 sq km of shifting cultivation land has been appropriated as state property, either as forest or revenue land. Individual property rights have been enforced on many tribes, which exercised communal ownership over at least part of their cultivated lands. The affected communities have responded in various ways, including open resistance, covert resistance and compliance. In recent years, there has been a thrust by local communities to try regain control over what they see as their legitimate territories through strategies like community protection of forests etc. At the same time, political pressure is being applied through democratic processes – one of examples which exemplifies democratic efforts to reverse undemocratic territorialisation is the effort to have a national law passed which formalizes rights of tribals over part of forest lands, bypassing the official custodian, the Forest Department. The paper shall draw upon the findings of the authors from a study on Tribal land alienation supported by World Bank and the pre-dissertation work carried out by one of the authors who is working on territorialisation and democracy in Orissa. The findings of a number of field case studies are presented along with

review of documents and state laws and policies. The nationwide and Orissa level mobilization for the passage of the tribal forest rights bill and its use of democratic spaces is also analyzed from the perspective of territorialisation and democratization. The paper ends with how this kind of analysis can provide directions for democratization natural resource management in countries like India.

Colonial and post colonial modern states have tried to discipline landscapes (Scott 1998, Sivaramakrishan 1999, Guha 1990) through processes of mapping, survey and settlements, and land titling, named “internal territorialization” by Vandergeest and Peluso (1995). Internal territorialisation is a “resource control” strategy by the modern state wherein it divide and subdivides the area under its control into economic and political zones, rearranges people and resources within such units and delineates how and in what manner such resources can be used by whom and in what manner (ibid). Such efforts by the state are embedded in the political and economic imperatives of state making, and require all the tactics and strategies of the modern state, including coercion, violence, creation of new legitimacies, persuasion etc.

The concept of internal territorialisation provides a handle for addressing historically embedded political, social and economic processes which underlie spatial differentiation of landscapes and emergence of property and resource rights regimes. This is not to claim that the state is the only key actor in this process: market forces, traditional systems of resource tenure, existing practices, all influence the emergence of resource regimes; but the modern state often has the most critical role to play, since its laws, policies and practices lay the ground rules of legitimacy. Therefore strategies for internal territorialisation followed by States and their interactions with local dynamics become the key processes for entitlement creation over land and other natural resources, influencing the social and economic status of the inhabitants of the landscapes.

Laws, policies and procedures laid down by the State frame its territorial strategies and practices. Modern state’s territorial strategies use these instruments to create abstract templates in which landscapes and its inhabitants are sought to be shoe-horned. Since the complex realities of societies and ecological landscapes are not easily amenable to such abstract categorization, constant tension exists between the states territorial strategies and realities on the ground level. Property rights regimes which may be accepted as legitimate by the dominant majority or the State are often seen as unjust takeovers by minorities, leading to resentments and tensions. Reflections on these tensions created by state territorial strategies can provide tools for understanding some of the pathologies which afflict land use and livelihoods in landscapes. In

worst cases, such tensions can underlie major conflicts. Sometimes they can be instrumental in challenges to the legitimacy of state itself.

Since processes of territorial control often form the basis of production and social relations, they are often treated as givens. Also, in many cases resources rights regimes have stabilized due to relative success of State territorial strategies and there may be little apparent need to examine territorial strategies. However, examining internal territorial strategies becomes critical in locations where modern state is extending its control or where major shifts in territorial strategies have taken place due to political or social reasons and outcomes of territorial strategies are still unstable and uncertain. It is seldom that one comes across holistic analysis which looks at landscapes and societies and how their construction has been influenced by state's territorial strategies¹. At the same time, the vast literature that looks at land use and its linkages with livelihoods often fails to incorporate the dynamics of the State territorial strategies. The majority of literature which addresses poverty mitigation in context of natural resources also doesn't address the critical role of state territorial strategies in creating conditions of poverty.

State territorial strategies can be flexible and changing in response to pressures of state making, political pressures, markets, conflicts etc. State led territorial processes moderated by democracy may be less coercive and perceived as more legitimate than those which are imposed in a non-democratic system. For those interested in democracy and democratic institutions, the extent to which democratic processes and forces are able to mold and influence territorial strategies and thereby affect property rights regimes is an important aspect of democratization.

Thus State territorial strategies can be analyzed to provide new insights into the following aspects of natural resources and land governance:

- What are the political and economic genesis of the resource rights regimes which govern natural resources²? How does one explain the pathologies linked to resource rights regimes?
- What are the implications of territorial strategies on livelihoods and wellbeing of different sections of society as well as the land use? How have the pre-existing resource regimes been modified and what has been the implication?
- How have the inhabitants of landscapes acted upon by State territorialisation coped with, resisted and influenced these processes? How do they use the spaces provided by representative democracy to deal with territorialisation?

¹ For a detailed discussion of internal territorialisation, please see Peluso and Vandergeest, 1995)

² The Foucauldian notion of "genealogies" becomes useful in the context of the origins of the property rights regimes (Peluso and Vendergeest, 2001)

These issues become important for various reasons at the current juncture. With the Millennium Development Goal, improving livelihoods and poverty alleviation of natural resource dependent people has been a high priority. The emphasis on natural resource governance has also shifted to livelihoods and poverty alleviation. Decentralisation, democratization and community management is the buzzword in natural resources governance, with major shifts ongoing in forestry and other natural resources sectors in most countries. In many countries, claims of indigenous people for ancestral lands are being taken seriously. Increasingly the literature on CPR and property rights has brought forth the diversity of different types of local resource regimes, and the impact of formal resource rights regimes imposed by the state on these pre-existing regimes.

This paper seeks to examine the state strategies for territorialisation in the tribal areas of Orissas, a state in eastern India and the consequences for landscapes and inhabitants of these landscapes. It also briefly discusses the interaction between territorialisation processes and the democratization of politics, and the outcomes of this intersection.

I State territorialisation in tribal parts of Orissa

Orissa is the poorest state in India, with over 47% of its inhabitants below poverty line. Over 22% of its population is formed by 62 different tribal communities, a culturally diverse mélange of shifting cultivators, hunter gatherers and settled cultivators. Another 17% of its population is dalits. Tribals and dalits are the most marginalized groups, with 55% of SCs and 73% of STs Households living beneath poverty line. In south Orissa, almost 87% of the tribal households live below poverty line (Haan and Dubey, 2003).. Their economic condition is also reflected in their politically marginalized condition in the State, inspite of the fact that they are a majority in the scheduled areas of the State covering almost 44% of Orissa's total area.

The political and economic marginalization of tribals seems paradoxical as the Indian Constitution provides strong protection for tribal communities in its schedule V and VI. Orissa's tribal areas come under schedule V which provides special administrative systems for preserving and protecting tribal communities, including protection of tribal land.

Partial explanation of the marginalization of the tribals can be sought in the territorial strategies followed by the colonial and post-colonial governments in the areas inhabited by them. Almost all tribals reside in what one may call "forested landscapes", and their economies as well as cultural lives are highly dependent on subsistence cultivation and on collection, consumption and sale of forest products. Most tribal communities had localized systems of community resource control and strong customary systems of landscape management based on clan and kin

units. They tend to follow clan based land tenure systems which provides customary rights in land, trees, forests etc. Swiddening tribes like Kondhs, saoras, Parojas, Gadabas, Bondos, Juangs and bhuiyans cultivate broadly four types of land – valley bottom paddy lands, homesteads/ backyard gardens, uplands and shifting cultivation fields. Permanent cultivation carried out on valley bottom land and on terraced/bunded lower slopes requires sophisticated land and water management systems (Kumar et al., 2005).

1.1 Territorial strategies of the colonial state in tribal areas : The present state of Orissa is constituted from parts of three provinces ruled directly by the British colonial rulers and twenty-four princely states that were nominally sovereign but in practice firmly under the control of British. Thus it inherits a complex mosaic of land and forest administration from the different administrative units. Tribal parts of Orissa have inherited their land and forest administration systems from areas directly controlled by the British such as Madras Presidency (South Orissa), Central Provinces (Parts of western Orissa), Bengal Province (coastal Orissa) as well as many princely states such as Mayurbhanj, Keonjhar, Bamra, Bonai, Boudh, Kalahandi, and Rairakhol etc.

The extension of colonial state power to remote tribal areas was an uneven process, based in conflicts and conquests. During Pre-British period most tribal areas were comparatively autonomous with high degree of political and economic independence in tracts on the borders and peripheries of kingdoms (Padel, 1995). The British period led to increased incursion of state and administration in tribal areas, where it was often resisted violently. Many of these resistances were put down brutally with support of the British army.

The territorial strategy followed by the colonial state and the princely rulers were directed towards the need to increase revenue from land and forests and increased administrative control of their territories. Laws such as Orissa Tenancy Act, 1913 (applicable in coastal districts under direct British rule), Madras Estates Lands Act, 1908 (applicable in the areas under the control of Madras Presidency) etc. were used for survey and rights settlements in agricultural land with the main aim of increasing land revenue. Many of the princely states evolved legal land administration systems based on these acts. Other laws such as Forest Acts (Indian Forest Act, 1927 and Madras Forest Act, 1885) were used to categorize certain areas as forest lands.

The main principles behind these laws can be roughly stated as:

- Establishment of the legal principle of eminent domain of the State
- Recognition of private property in agricultural land
- Land not settled as private property automatically became State property including forest land

- Non-recognition of communal property tenure systems
- Enhancing land revenue and maintaining peace as the main object of land administration.

The implementation of these principles in the forested areas inhabited by the tribals had serious consequences for tribal societies. Land survey and settlements and cash land revenue monetized the economy and led to large-scale indebtedness amongst tribal societies, and tribals were often forced to part with their lands to non-tribals. The rulers also preferred to settle lands with non-tribals who carried out settled cultivation rather than shifting cultivation. Slowly, tribal intermediary tenure holders were replaced by non-tribal tenure holders in many areas, and the shift of power from tribals to non-tribals often led to revolts and rebellions. *The influx of non-tribals peasantry facilitated by the rulers led to transfer of land from tribals to non-tribals and in plain areas converted tribals into landless laborers or pushed them onto marginal lands and hilly terrains. The non-tribal was interested in plain cultivable lands, leading to large-scale alienation of such land from tribal societies.*

Simultaneously, increasing importance of forest (timber) based revenue led the British rulers as well as the Princely estates to reserve or notify more and more areas as forests under various forest laws, imposing restrictions upon the tribals using these forests. Restrictions on shifting cultivation on areas designated as forests were one of the key strategies for increasing the commercial value of these lands. These restrictions on shifting cultivation, a vital livelihood source for many tribal communities, were often instrumental in sparking tribal unrests. The takeover of forested lands was based on non-recognition of customary tribal land rights over these areas by the state. Clan and lineage territories were not recognized in the forest settlement operations. Often such forest notifications were carried out without proper survey and settlement of even legally recognized rights of permanent cultivation. Land came to be conceived as either private or state property, rather than in terms of a territory that a village held in common (Padel, 1995). Clan based land ownership systems were not recognized in legal terms.

Tribals in Orissa faced loss of land on two accounts in the pre independence era – the lowlands and paddy lands held under private ownership were lost due to influx of non-tribals, non-recognition of rights, indebtedness and inability to pay land revenue. The shifting cultivation swiddens were lost due to notification of this land as forests or Government land. Both these processes were aided by the expansion of state and markets into the tribal areas. By the time of independence in 1947, much of the customary land held by tribal communities was already either converted to State land or had passed into the hands of non-tribals, forcing many tribal communities to migrate to even more remote hilly and forested areas.

Faced with the constant rebellions and revolts arising out of tribal dominated areas and recognizing the special needs of tribal communities, the British introduced the administrative concept of “Excluded areas” and “Partially Excluded areas”, in the late 19th century. These areas were supposed to have special administrative arrangements, and protection of tribal rights in land was an important principle promoted by the British. However, this protection was limited to protecting what was seen as individual rights of tribal households in private land from being alienated by non-tribals, and didn’t extend to state takeover of customary tribal lands as “forest land”. Even the laws for protecting individual landholdings of tribals were often ineffective.

However, the diverse land administration in pre-independence era still provided some space for customary rights on land of tribals, either due to relaxations in the land tenure systems or due to poor ability of state apparatus to penetrate remote areas. Most of the land administration systems in tribal areas left the control of the village land in hands of the local intermediary tenure holder, which meant that the village lands were administered within the community or by the local intermediary tenure holders, who were often at liberty to allow tenants to convert wastelands to cultivated land. In most areas, swidden cultivation was either not taxed or nominal rents were taken by the rulers. Large extent of hilly and mountainous terrains primarily inhabited by the tribals had not yet undergone detailed land survey and settlement processes unlike the plain areas. These included most of current Koraput district, hilly parts of Ganjam districts (part of Madras Presidency area before 1936), present Kondhmal District, the hilly tracts of Keonjhar district etc. These areas faced their first major land survey and settlement after independence, and the territorial strategies adopted by the post colonial state had major consequences for these areas.

1.2 Territorial strategies of the post independence State

During the post-independence period, the postcolonial state has followed the following key principles in its land administration:

- 1 The property rights regime of private and state property was continued. Communal land tenure was not accepted.
- 2 Eminent Domain principle introduced by the British was retained
- 3 The state abolished the intermediary tenure holder system under the principle of “land to the tiller”
- 4 The concept of egalitarian landownership was introduced through land reforms which introduced the instrument of land ceiling

- 5 The colonial forest laws and policies were retained as such without change.
- 6 Special protection for land in tribals and dalits were retained
- 7 The “excluded areas” and “partially excluded areas” inhabited by tribal communities were retained as “Schedule VI” areas and “Schedule V” areas in the new Indian Constitution, with special protection in tribal land in these areas.

In Orissa, the period immediately after independence was a time of flux and change for land and forest governance, with the princely states and ex-Zemindary areas being merged into Orissa and emergence of uniform administration systems for the whole state. For land administration this implied moving from an intermediary based system to a raiyatwari³ system all over the state, following the principle of “tillers as owners”. This was sought to be done through abolishing intermediary tenure holders, accompanied by laws to regulate concentration of landholding through process of fixing land ceiling. The whole process could be completed only by 1972. For Forest administration, a uniform legal governance system was also only achieved in 1972 with the passage of Orissa Forest Act, 1972. The process included the incorporation of ex-princely state forests, Zemindary forests and forest areas under the Madras Forest Act, 1882. The whole process was done in fits and starts, and problems and shortcomings in forest administration consolidation have had major consequences for both forests and tribals.

The Orissa Estates Abolition Act, 1952, provided for abolition of all intermediary tenure holders, and vested all land rights in the State, with all cultivators becoming the direct tenants of the State. The Orissa Land reforms Act, 1960, provided for permanent, heritable and alienable rights on land for the tiller. It initially continued with the ceiling of 33 standard acres⁴, and then reduced it to 20 standard acres in 1965 and 10 standard acres in 1972. Orissa Land reforms Act, 1960, provided full ownership rights to tenants to the land in their possession and bans tenancy.

However, the period between 1960 and 1972 provided ample scope to the large landowners to transfer land in the name of relatives while maintaining de-facto control to escape land ceiling provisions (Mearns and Sinha 1999). The tenants found it very difficult to prove their possession of land as large landholders resort to rotating informal tenants among their holdings and periodically evicting them to escape the provisions of the law. This has had major

³ Ryotwari system meant that the cultivator was the direct tenant of the State, and there was no intermediaries between ryots and the state.

⁴ One Standard acre is defined as in the Orissa Land Reforms Act, 1960, as unit of measurement of land equivalent to one acres of Class I land (irrigated land with two or more crops a year), one and a half acres of class II land (irrigated land with one crop a year), three acres of Class III land (unirrigated land used for single crop of paddy) and four and a half acres of class IV land (any other land).

implications in tribal areas with non-tribal intermediary tenure holders, who often evicted longstanding tribal tenants and got the land settled in their own names.

In most tribal areas, the first land Survey and Settlement took place after independence. These first Survey and settlements were carried out under either the earlier laws of colonial provenance or under the Orissa Survey and Settlement Act, 1962 taken together with various other land laws and were the first one to formally recognize rights over land. Thus their provisions became critical for formalizing land rights of the tribals. The State government took certain critical policy decisions related to forest and land settlements which had important consequences for the tribal communities of Orissa. One of the most important policy decisions was related to not settling the shifting cultivation land with tribals. The laws created after independence also didn't recognize any communal tenure over different types of land. Another important policy decision was the decision to consider all forests notified by the princely states as deemed "Reserved forests" or deemed "protected forests". The implications of these policies have been discussed as below.

1.2.1 Rights on shifting cultivation lands not recognized: The most important factor in loss of land by scheduled tribes in Orissa has been the non-recognition of rights on shifting cultivation lands. Estimates of the area under shifting cultivation in Orissa range from 5298 sq. km. to 37,000 sq. km. (Pattanaik, 1993, Thangam, 1987). It is estimated that 44% of the forest area of the state (highest in India) is under shifting cultivation, of which 8.8% (5298 sq. km.) is under active shifting cultivation and the rest is either dormant or abandoned (Mishra, 1995). The Forest Enquiry Committee Report of 1959 mentioned that 12,000 sq. miles (almost 30,720 sq. km.) of land in Orissa were under shifting cultivation (GOO, 1959). 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. Indian Forest Act, 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 (Kumar, 2004).

The State Government used ingenious methods to avoid recognizing rights on shifting cultivation lands. In undivided Koraput district, during the first Survey and Settlements (1938-1964), the Board of Revenue ruled that since shifting cultivators are not in continuous possession of land for 12 years, they can't be treated as ryots⁵ as per Madras Estate Land Act, 1908, and therefore these lands were not to be settled in their names (Behuria, 1965). The fact that the same

⁵ Those having rights of cultivation on land

household came back to the same shifting cultivation patch, and customarily the land belonged to one household was lost sight of. Decisions not to settled shifting cultivation land with similar pleas were also taken in the tribal parts of then Ganjam district (current Gajapati), Phulbani District (now Kandhamal district), Juangpirh and Bhuyanpirh of Keonjhar district. The vast shifting cultivation areas passed to the ownership of Revenue Department or Forest Department. Only in the settlement of Kashipur, Karlapat, Mahulpatna and Madanpur-Rampur ex-zemindary areas (part of Kalahandi ex-princely estate area) the Board of Revenue allowed preparation of “Dongar Khasras” for the hillsides cultivated by tribals. The Dongar Khasra “*contains the name of the cultivator with parentage, caste, name of the Dongar(hill), cultivated crops grown, seed capacity of the slopes under cultivation, number of Kodkis (spades) possessed by the cultivator and rent settled for cultivation. ... no occupancy right accrues over the slopes*” (Sunderrajan, 1963). The Board of Revenue was forced to provide for the provision of Dongara Khasra in the Kalahandi ex-state area as the princely ruler in his earlier settlement had assessed the shifting cultivation land. This was the only instance where some legal recognition was provided for shifting cultivation by the post-colonial government of Orissa.

Compensatory Afforestation in Kadalibadi Village

In Kadalibadi, a Juang village in Keonjhar, compensatory afforestation has led to displacement of Juang tribals, a Primitive tribal group, from their customary swidden land not recorded in their names. In this village, only 25 ha out of total of 283 ha in the village is recorded in name of the village residents. 37 out of 44 families hold 25 ha. with an average holding size of only 0.66 ha.

During 1993-1999, 77.186 ha of the village (27% of the village area) was leased to Forest Department to carry out plantations. In 2005, another 43 ha. (12 % of village area) in the village have been leased out to Forest Department for compensatory afforestation. Compensatory afforestation is taken up under the Forest Conservation Act, 1980 in case of diversion of forest land to non-forest use such as mining, reservoirs etc.

The series of plantations on their customary have been a double tragedy for the hapless Juangs. Even though they didn't get legal rights on their communal swidden land, they continued cultivate these lands. Conversion of major part of their communal lands into plantations by Forest Department deprived them of the access to these swidden lands. The tragedy has been aggravated because the patch selected for the plantation in 2005 is the largest and the most important shifting cultivation patch. With the compensatory afforestation, this land has effectively become forest land, closing all possibilities of Juangs ever being able to reclaim it. No swidden paddy cultivation has been taken up this year by the Juangs, and starvation looms in their faces.

Thus the post-colonial approach toward shifting cultivation was to convert shifting cultivation lands to state land wherever possible, and only to concede some ownership when absolutely forced to do so by law as in Kalahandi. The communal tenure of tribes like the Juangs and Kutia Kondhs on their swiddens was completely ignored and these lands were also settled as government land.

This is having wide

repercussions on these Primitive tribal groups, often leading to displacement (Please refer to Kadalibadi Case study as above).

1.2.2 Creation of forest lands: According to official data, Orissa has 38% (58135 sq. km) of its area under forest land category though only 48,838 sq. km. of forest land has forest cover of 10% or more (FSI, 1999). More than 46% of the land in tribal districts is categorized as forests. Declaration of customary tribal lands as forest has been an important factor in loss of land for tribals.

The main legislation regulating forest land are the Forest Conservation Act, 1980 and the Orissa Forest Act, 1972. The framework of the forestry administration is provided by Indian Forest Act, 1927 of colonial vintage on which the Orissa Forest Act, 1972 is based. The Forest Acts provide for control of forests through a centralized bureaucracy i.e. the forest department, and the laws criminalize almost all local dependence on forests. The forest act and policies also ensure that the forest bureaucracy has no downward accountability to local people dependent on forests. The local communities have limited or no rights on the forest land, and have absolutely no say in the management of the forest. In tribal areas, this is a major problem because almost half the land is notified as forests.

Prima facie, forest laws provide protection for settlement of rights of the local people and communities before categorizing any land as forest land and the application of draconian and exclusionary regulations. In Orissa, however, this assumption fails in large areas due to declaration of *deemed* Reserved Forests and *deemed* Protected Forests (described below), non-recognition of shifting cultivation as a legitimate landuse and poor settlement of rights during forest settlements. These factors have ensured that large areas of land which have customarily belonged to tribal communities have been categorized as forest lands. The situation has become aggravated with the passage of the Forest Conservation Act, 1980. The Forest Conservation Act 1980 states that no forest land may be diverted for non-forestry purpose without explicit permission of the Ministry of Environment and Forest (MoEF), Government of India. A recent Supreme Court order has banned the dereservation of any forest land without permission from the Supreme Court. This implies that once a land is classified as forest of any sort, it can't be declassified 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.

1.2.2.1 Declaration of *deemed* Reserved Forests and Protected Forests: No proper survey and settlement of rights have taken place in most forest areas of Orissa. Most of the forest land in

Orissa comes from the princely States and from ex-Madras Presidency areas. *Reserved forests or protected forests declared by these princely states and ex-presidency areas were “deemed” to be Reserve Forests and Protected Forests as per Indian Forest Act, 1927, through an amendment brought about in 1954 in the Indian Forest Act, 1927.* This amendment was in the form of a blanket notification, effectively ruling out any need to carry out settlement of rights in these lands. In princely states, proper settlements of rights while declaring forests and Reserved or Protected were almost never carried out. Thus in almost all the deemed forests, Reserved or Protected, no proper settlement of rights of the inhabitants have been ever carried out. Since these forest areas are inhabited by mainly tribals, large number of tribal communities has been left in the lurch and is currently treated as encroachers.

The lack of settlement of rights applies even more seriously to “deemed protected forests” where no rights settlement was ever done. Since these forests were mostly under the control of Revenue Department, and are often not demarcated on ground, large areas of such forested tracts were brought under cultivation both before and after merger. In South Orissa there are vast stretches of forest category called “Reserved Lands” and “Protected Lands”, which were converted to “deemed protected forests” after 1972. These areas were never surveyed and rights were never settled. Similarly, there are forests known as undemarcated protected forests and other forests, whose boundaries are not even demarcated- it is obvious that no rights settlement has taken place in most of these forest blocks.

Large number of tribal settlements still exists inside these forest areas, which couldn't be regularized after the FCA, 1980. For instance, in the Working Scheme of Parlakhamedi Division it is mentioned that

“With the exception of the Reserved Forests, the areas of the proposed reserved forests are purely approximate and subject to correction and change after final reservation....In most of the cases the area of the village enclosures couldn't be excluded from the blocks since they have not been surveyed” (Working Scheme for Parlakhemundi Division, 1977-1997 published in the year 1977)

This has led to a large number of settlements inside forest lands which show “no physical area” at all in the Government records. As per data from 2001 Census, there were 443 such villages in the tribal districts which showed no physical area with a population of 69,000, out of which 72% were tribals.

The above data is indicative, and no comprehensive list of settlements and villages inside forests blocks in the State exists. However, there can be no doubt that large number of villages do exist within the forest areas without proper legal recognition and are currently being treated as

encroachers..

1.2.2.2 Non-recognition of cultivation rights on forest land: The formal recognition of rights over land used for cultivation is generally recorded through Revenue Survey and Settlements. In Orissa, survey and settlements in tribal areas, especially remote areas took place mostly after independence. In these Survey and Settlements, many areas already marked as forest land, either Reserved Forests or other forests were not surveyed for cultivated land and the rights were not settled as per the Revenue laws. For example in Undivided Koraput district Survey and Settlement (1938-64), almost 8000 sq. km. of forest areas and remote areas were left out of Revenue Survey and Settlement. Similarly, in other districts also, large forest blocks and the cultivated areas inside them were left out of Revenue Survey and Settlements. Also during the Survey and Settlements, in many cases, even cultivated land on Forests were not regularized in the name of the tenants. Therefore there was large area of cultivation on forest land.

Recognizing this lacunae, The State Govt. brought in a resolution in 1972, to release those areas for settlement of rights in favor of tribals and other backwards groups and landless as per the land laws (as per Orissa Government Land Settlement Act, 1962 and the Orissa Prevention of Land Encroachment Act, 1972). An order was issued for constituting sub divisional committees for conducting comprehensive surveys of all forest lands to identify areas which would be set apart for agricultural use. However, the survey of those areas as planned could not be carried out fully, resulting in this vital decision remaining confined to govt. files.

An estimate by Forest Department shows that 74380 ha of forest areas was “encroached” by people for cultivation (GOI, 1994). This excluded the massive 3,132,700 ha estimated by the same report as being affected, in varying degree, by shifting cultivation (GOI, 1994). After the passage of Forest Conservation Act, 1980, no efforts were made by the State Government to provide rights on these lands to the people cultivating them. This has effectively left people who have been cultivating land categorized as forests for generations with no rights on these lands.

1.2.2.3 Lack of Rights Settlement in Protected areas (Wildlife sanctuaries and National Parks): 8111 sq. km. (5%) of Orissa have been declared as protected areas (Sanctuaries and National Parks). The state has 17 wildlife sanctuaries. Most of these protected areas are in the Scheduled V areas or in areas where tribal population is high.

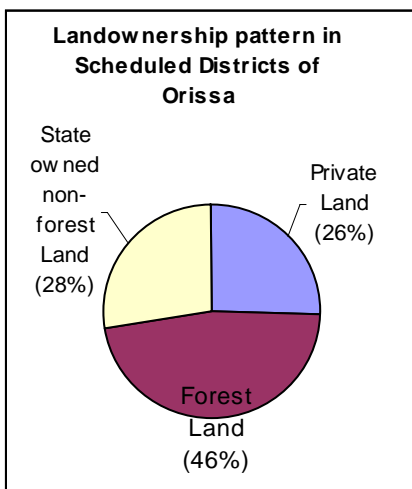
As per the Wildlife Protection Act, 1972 Act, once the Government decides to create a sanctuary in an area, it issues a notification of intention of the same (section 18), appoints a Collector to determine rights and carry out inquiry with the power to exclude rights bearing land from sanctuary boundary/ acquire the land under Land Acquisition Act, 1894/ allow continuation

of rights in consultation with Chief Wildlife Warden (section 24). A process of time bound serving of notice, submission of claim by affected persons, inquiry into the submissions and acquisition of rights have been laid out in the Act.

However, in none of the Wildlife Sanctuaries in Orissa, the settlement of claims and rights as laid down in Sections 19-26A of WL Act, 1972 has taken place. Most of these sanctuaries have large number of settlements within them. For instance, in the Sunabeda Sanctuary area, there are 34 unsurveyed settlements, mostly inhabited by the Chuktia Bhunjias, a primitive tribal group. As per the Forest Department, these 34 settlements are encroachments in the forest, even though this area is the ancestral homes of the tribals. In Belgarh area of Kondhmal district, there are a large number of unsurveyed villages inside reserve forests (now declared as a sanctuary) whose rights haven't been settled. Many of these tribals including the PTGs practiced shifting cultivation and the declaration of these areas as sanctuaries means that there is a lot of pressure on them to stop shifting cultivation.

II Consequences of the territorial strategies of the colonial and post-colonial state

The territorial strategies and decisions taken by the State of Orissa, in conjunction with national laws and policies related to forests, have had major consequences for tribal people of Orissa. Legally, large numbers of tribal households were made into landless or marginal farmers



and their pre-existing cultivation on land categorized as "government land" was criminalized as encroachers. This was in spite of abundant land and forest resources, and specific provisions in the constitution to protect tribal rights in land.

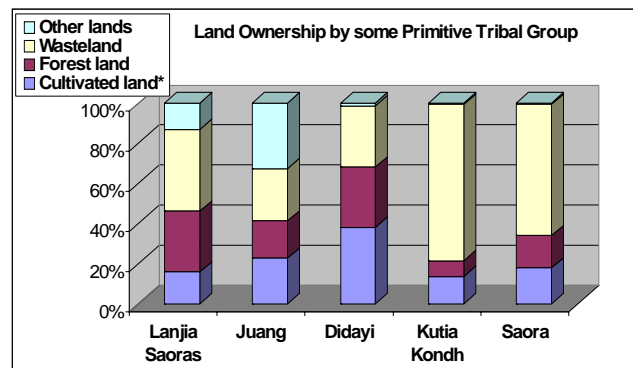
The extent of landlessness in tribals is very high. A study taken up in 1978-80 in all tribal areas showed that 22.84% of tribal households are landless whereas 40.46% owned less than 2.5 acres each (THRTI, 1980). An analysis of the *Agriculture Survey data of 1995-96* in the tribal districts shows that the percentage of tribal landholders

having less than one standard acre (defined as being legally landless) of land ranges from 41% in Malkangiri to 77% in Gajapati. This is in spite of the fact that an average 74% of the land in these districts is categorized as state land, with forest land at 46% and non-forest land at 26%. The high proportion of State land in these tribal districts is a direct consequence of the territorial strategies followed by the State.

In some tribal districts the territorial strategies have led to ridiculous situations. For instance Gajapati district has only 14.82% of its total area under private landholding, with the rest of the land belonging to the government. Around 93% of the rural households have legal title on only 9% of the district's land area, even though three-fourth of the households are either landless or marginal farmers. Kondhmal is another district where 86% of the land is owned by the State. 66% of the rural households own only 7% of the land area of the district.

The fact that most of the land in tribal districts is owned by the State reflects in the poor landholding patterns of the tribals. For instance, the Scheduled tribe average holdings in Orissa works out to 1.12 standard acres as compared to 1.43 standard acres for general castes. More than 50% of tribal landowners are categorized as marginal landowners with an average holding of only 0.44 standard acres.

Even in the remote areas inhabited by the *Primitive Tribal Groups (PTGs)* in Orissa, most of the land is owned by the State. Though many of these PTGs practice communal land ownership of swidden land, no communal ownership rights have been allowed and swidden cultivation lands have been classified as state land. This makes the tenure of the PTGs over their communal land extremely vulnerable as illustrated in the case of Kadalibadi village.



Tribal households in scheduled areas own only 16% of the land area, with 74% being with the State and 10% with the non-tribal landowners. The constitutional protection under schedule V for tribal land has been represented through a state law which only prohibits transfer of land legally held by tribals to non-tribals. This implies that in the scheduled areas, the constitutional protection to tribal land applies to only 16% of the land area, leaving the State and the non-tribals free to dispose of the rest 84% of the land as they deem fit. However, as explained earlier, most of the State owned land is actually land customarily owned by tribal communities which wasn't settled with them.

This has led to a situation while most tribals are landless and marginal landowners, much of the land actually used by the tribal communities is owned by the State, and is easily transferred by the state for various purposes. Such State owned land have been used for plantations, diverted for dams, industrial projects and mining and plans are afoot to lease much of these state owned lands for bio-diesel plantations to private corporate sector.

For large proportion of tribal families, these state owned lands are the only source of subsistence cultivation. Their use of this land has been criminalized and they are treated as encroachers by the State machinery, and are forced to pay annual fines or bribes to be able to cultivate the land customarily owned by them. This has led to a process of surplus extraction from subsistence agriculture practiced by tribal households, and thrusts them further into indebtedness. Lack of secure tenure also puts the tribals in the position of supplicants before petty officials, mostly non-tribals, who regulate access to such lands, helping to further politically marginalize them. This process of marginalization is exacerbated by the fact that few tribals have the

Case of Dekapar Village, Koraput District : In Dekapar, terracing on hillsides used for shifting cultivation has been practiced traditionally. None of the shifting cultivation areas including the terraced areas were settled with the Kandh tribals during the Revenue Survey and settlement, and they were categorized as State owned uncultivable wastelands. Out of approximate 1100 acres of land within the traditional boundary of Dekapar village, only 152 acres¹ of land have been settled with the cultivators. Approximately 126¹ acres of area located on government land are being cultivated as of now, and the villagers claim to have lost access to an additional 142 acres of land due to plantations taken up under different programs. Thus, apart from the 152 acres settled with as patta land, approximately another 287 acres, almost all of them on higher slopes, was their customary shifting cultivation land. Large plantations were carried out by the Forest Department and Soil Conservation Department repeatedly in Dekapar on customary land used for cultivation. Most of the initial plantations were destroyed by the villagers, leading to fines and harassment. More recently, plantations of coffee and cashew by soil conservation department and a watershed project have been taken over which the villagers have been promised rights. These plantations have led to a loss of 142 acres of cultivable land. As many as 23 households have migrated permanently from the village because they had little or no legally owned land, and plantations were carried out on their customarily owned lands.

competency to understand the official land administration and tenure system, forcing them to depend completely on the petty officials and local touts for any formal issues related to land. This puts lot of power in hand of the local officials who extract a price for any service that they need to provide, including charging money to even allowing a landowner to look at his land records. The authors themselves paid an amount of a thousand rupees to get the copy of land records of one village, which is supposed to be public.

As the case study of Dekapar village shows, attempts by

the State agencies to take up plantation of various species on these lands inevitably leads to conflicts or to eviction of tribal cultivators. The plantations are often destroyed by the local villagers as they are seen as a takeover of their customary lands, leading to wastage of capital

investments. Lack of tenurial rights over land customarily cultivated by them often leads to fines and evictions, pauperizing the tribal households.

In another village Podagarh in Koraput village, the authors observed that almost 150 acres of land used for shifting cultivation by the villagers was planted with cashew by the soil conservation department in the 1970s. The plantation was later handed over to Orissa Cashew Development Corporation Ltd which auctions it annually for sums of approximately one hundred thousand rupees. The contractors who gets the auction protects the crop and sells the harvest in the open market- there is no access to the villagers to the produce of these plantations, even though their forebears customarily cultivated these lands and they lay claim to these lands.

In Bangusahi village located in Gajapati districts, the total area categorized as government land and cultivated/used by the villagers (belonging to Saora tribes) is approximately 208 acres, which is almost three times the 70 acres legally settled with them as private agricultural land.

These cases are illustrative of the disjuncture between the formal land ownership imposed through the territorial practices imposed by the State and the actual situation as prevailing on the ground level in tribal areas. The politically marginalized tribal communities have generally ignored these issues since in formal territorialisation didn't affect them all at once. After legally categorizing their customary lands as state owned land, the process of actual dispossession has taken place in bits and spurts. The state extended its actual control on land already belonging to it on paper slowly, almost insidiously.

One of the key strategies which have been followed since the 1950s has been to take up plantations on such land, and evict the cultivators during this process. This has been a major cause of conflict. The application of Forest Conservation Act, 1980, especially after the Supreme Court's interim order in 1996, has been used to move out tribals from their customary land, specially the shifting cultivation land. This has been achieved through filing cases under the forest laws against one or two persons, and the threat of filing cases is then used to evict others.

Similarly in the areas where Wildlife Protection Act, 1972, is being applied, the tribals who are living inside these areas are under threats of eviction. Moreover, their subsistence living inside these areas have been made almost impossible by imposition of a blanket ban on collection on NTFPs in the Protected areas.

Displacement for development and infrastructure projects coupled with lack of secure land and forest tenure has also exacerbated the problems for tribal communities. Almost all the large dam projects in Orissa are located in areas having higher proportion of tribal population. Balimela, Upper Indravati, Upper Kolab, Machkund, Salandi, Subarnarekha etc. are some of the

major dam projects taken up in scheduled districts, displacing tens of thousands of scheduled tribes households. Most of the mines and industries in Orissa are also located in tribal areas. There is no authentic data on actual displaced persons in the state. One study estimates the total displacement by development projects in Orissa from 1950-1993 to be 79,621 households (Pandey, 1998). However, this is based on government data, which has been challenged by other researchers. Another estimate is that of 1.5 million people being displaced by development projects between 1951 and 1995, of which 42% were tribals. As per this estimate, less than 25% of the displaced tribals were ever resettled even partially. Ota estimates that till 2000, about 2 million people in Orissa have been directly affected by Development Projects in varying degrees out of which about 0.5 million have been physically displaced losing their home & hearth from their original habitat (Ota, 2001). Except for few irrigation projects, development projects have not provided land as compensation.

A study of seven development projects with a sample of 301 hhs (with 43.8% tribal households within the sample) showed that legal landlessness increased from 15.6% of the households to 58.8%.after displacement (Pandey, 1998). More important, since large areas of land cultivated by scheduled tribes are not legally settled in their names, they receive no compensation when such land is taken up for development projects. Ota, in his study of displacement in upper Indravati Project found that on an average, each displaced family had been cultivating 1.50 acres of state owned and 2.34 acres of private land before displacement. After displacement, the average legal landholding declined to 0.62 acres and the average government land cultivated came down to only 0.2 acres (Ota, 2001).

The environmental impacts of megaprojects of dams, industries and mining are drastic and affect much larger number of people than directly displaced. Given the liberalization of mining and industrial policies which allows for direct foreign investments, large number of mining and industrial projects is in the pipeline, mostly to be located in scheduled areas. Some of these propose to carry out mining in areas inhabited by Primitive Tribal Groups, such as Dongaria Kondhs in Lanjigarh, Kalahandi and Juangs and Paudi Bhuiyans in Keonjhar and Sundergarh districts.

III Rebellions, resistance and Democracy in the making: responses by the local communities to state territorial projects:

In the tribal areas of Orissa, the state territorial projects have been deeply undemocratic, both in the colonial and post-colonial period, in the sense that tribal communities have had little say in the design and implementation of territorial processes imposed on them by the State, even

though they were deeply affected by them. State territorialisation penetrates deep into the tribal landscape and societies, and has had major impact on access to land and forests, the resources on which the tribal communities depend economically and culturally.

The ingress of the colonial states and its territorial strategies was greeted by revolts and rebellions by the tribal communities. During the later stages of independence struggle, many of these tribal resistances merged with the independence struggle, and issues of land and forests were extremely important in the independence movements in the tribal areas of Orissa (Pati, 1993). After independence, the continuation of the colonial mode of administration in forestry sector and non-recognition of traditional rights of the tribals elicited little reaction. However, as the tribal communities felt the impacts of state territorialisation, struggles and conflicts in the tribal areas started again. In many areas of Orissa, resentment over lack of access and control over traditionally owned land and forest resources has led to increasing support for extra-parliamentary left forces such as the naxalites who favor armed struggle against the Indian State.

Simmering tensions over lack of local control on land and forests in the tribal areas have exploded in recent years over the issue of land acquisition for industries and mining. For instance, three tribal youths were killed in police firing in Kashipur, Rayagada district, in 2000, in a protest against a bauxite mining project by a multinational consortium. More recently, 12 tribals including women and children were killed by the police in January, 2006 when they protested the acquisition of land by the State for a steel plant of TATAs at Kalinganagar. Incidentally, the main cause of this resistance was that half the land acquired for Kalinganagar complex is state land, almost all of which was being cultivated by tribals for generations, and whose rights on these lands were not settled. They were offered no compensation for these lands and many were forcibly evicted. Similar resistance against land acquisition and displacement is taking place in varied other locations in Orissa.

At the same time, democratic processes such as elections for parliament and state assembly, as well as introduction of local self governance have also opened up new spaces for local communities. These spaces and processes are of deep interest as they manifest the penetration of democracy and its institutions into the countryside, and its role in ameliorating both the impacts of territorialisation on wellbeing as well as resolving conflicts and contradictions.

This democratic space has been used in different ways at local levels. In many cases it is used to influence local officials through political representatives to ameliorate particularly difficult situations arising out of conflicts with state apparatus. For example, when the village of Dekapar was fined Rs. 20,000/- by the Forest Department for destroying plantations carried out

on government land (customary tribal land used for cultivation), the villagers managed to use the offices of the local Member of Legislative Assembly to pressurize the FD into withdrawing the case.

3.1 Laying claim to territory through community forest protection: Another response to state territorial strategies has been to use the environmental discourses promoted by the State to lay claim on customary land legally under the control of State. This has been carried out most often through “forest protection”, wherein tribal communities have voluntarily taken up protection and regeneration of degraded forest patches. The practice of self-initiated forest protection and management has been adopted wholesale by tribal communities all over the State in the last three-four decades.

Community forest protection and management is in the classic mold of common property resource management, with the key ingredients being regulation, monitoring and sanctions by the community. Most communities protecting forests also harvest small timber and other products from these protected forest areas. Such efforts always require exclusion of those seen as outsiders, including the neighboring communities, and therefore the perceived legitimacy of a community to protect a forest area becomes crucial in avoiding conflicts. In tribal Orissa, this legitimacy often springs from the traditional territorial claims of the tribal communities, where forest land seen to lie within their traditional boundaries are locally seen to belong to the community concerned.

These initiatives to protect forests draw upon the social capital in the clan based tribal communities and represent democratic workings in a microcosm. Tendencies for exclusion and concentration of power at community level are often checked by the fact that these systems depend on voluntary consent by all community members to protect forests and the leadership of such initiatives is accountable to the community members. Moreover, unconstrained by externally imposed rules frameworks, these are adaptive, learning systems, changing and evolving as required. Due to their local presence and their adaptive strategies, they are much more efficient and effective than the state forest management which is run through an undemocratic, centralized and upward accountable bureaucracy.

The impact of these CFM efforts on forest cover has been documented. A recent study conducted in tribal Kondhmal district shows that the forest cover has increased from 53% to 67% in the sampled area in the decade of 1990s. The study attributes this increase to community forest protection in the study area. Similar increases in forest cover seem to have occurred in most other tribal areas.

In many areas, higher scale organizations federated out of communities protecting forests have emerged. These have been needed to resolve multi-community issues such as inter village

conflicts, experience sharing or the need to face up to the forest bureaucracy. Such federations often carry good amount of political clout with the political representatives in the legislature and parliament since they represent quite a large number of “voters”. Over time, these federations are slowly becoming more astute in dealing with local politics and bureaucracy, and a state level federation of forest protecting communities has been formed. This federation, called the “Orissa Jungle Manch”, has been trying to influence state policies regarding forests.

The takeover of what is “officially” forest land; under the de jure control of the Forest Department hasn’t been taken kindly by this centralized, bureaucratic organization embedded in colonial laws and policies. The FD has little say in the management of forests which have been informally taken over by communities. Any effort to directly impose their will on such communities creates major conflicts and controversies. The FD finds it very difficult to take direct action against these communities as they have adopted the moral discourse of environmental protection which the Forest Department is espousing in its official policies. The ability of the emergent federations to draw on political resources also constrains the capacities of the Forest Department to check these CFM groups. Thus even though the community protection of forests falls outside the ambit of the existing forest laws, forest department is unable to stop this takeover of forests in its jurisdiction.

The state and the bureaucracy in Orissa have tried to contend with this upsurge from below by introducing a policy framework to allow communities to protect forests. This policy initiative of 1988 was a result of widespread campaigning by such forest protection groups, who inundated the Chief Minister at that time with postcards asking for recognition of their rights to protect forests. By 1990s, the State Government introduced the Joint Forest Management framework to allow local communities to protect forests. However, many of the community forestry group is not in favor of joint forest management as it is seen as curtailing their autonomy and giving too much control to the forest department. However, Forest Department has pushed ahead with the program with an aim to regain control over the community protected forests.

These CFM initiatives can be interpreted as subversion from below of the territorial frameworks and category of forests imposed by both the colonial and postcolonial state. Interestingly, the communities have internalized the “environmental discourse” as well as the discourse of “forests” promoted by the State and used it to extend their de facto control on what was perceived as their customary territory. In this process, alliances with other actors such as NGOs and other civil society organizations have been forged to counter and subvert attempts by the centralised bureaucratic structure to regain control of such forests.

The CFM initiatives and the democratic mobilization around it are now coming in the

way of other more crucial territorial strategies of the post-colonial state. Such community protected forests exist in many of the areas where state is applying the principle of “eminent domain” to acquire land under Land Acquisition Act, 1894, for industrial and infrastructure projects. Along with acquisition of private agricultural land, acquisition of such community protected forest areas creates arenas of conflicts and resistance. Community protected forests have special significance to local communities because of the effort put in to protect these areas, the subsistence and livelihood dependence and strong emotional attachment to the forests. Thus, in the Rengali area of Sambalpur, where people have been protecting forests for last five decades or so, acquisition of land for industries is being strongly opposed by local people, not the least because such expansion would lead to destruction of some of these protected forest areas. Similar protests have surfaced in Angul and Dhenkanal district where industrial coal mining threatens to destroy the community protected areas. The perceived legitimacy of discourses which emphasise the environmental importance of forests adds to the moral strength of such resistance against the takeover of landscapes by the State.

3.2 Grassroots politics, representative democracy and the forest rights bill: Correcting “Historical injustices”

The ongoing process of introduction of a bill on "Recognition of Forest Rights (of Scheduled tribes) Bill, 2005" in the Indian parliament is another example of democratic processes influencing and challenging the territorial categories constructed by the State. The introduction of this bill has been preceded by a nationwide campaign which problematized the territorial construction of “forests” in the country.

Even after independence, forest land as a category was seen as unproblematic by the dominant development discourse, ignoring the various conflicts and injustices inherent in its construction. However, as illustrated in the case of Orissa, the creation of the forest estate was highly problematic, especially when it came to the exclusion and marginalization of tribal communities.

The post-independence legislations on forest lands i.e. the Forest Conservation Act, 1980 and the Wildlife Protection Act, 1972, strengthened the territorial category of forests, by making diversion of forest land for any other purpose extremely difficult. Even though the third National Forest Policy of 1988 prioritized meeting local needs as a major goal of the forest management, it never questioned the construction of forests as a territorial category. The problems faced by forest dwellers and tribals due to faulty construction of forests were sought to be raised by tribal organizations. In 1990, based on sustained campaigning by various tribal organisations, the MOEF, GOI, issued a set of five circulars for facilitating settlement of forest land with those who

were cultivating it. Some of the States used these circulars to settle disputed forest land with the persons cultivating it. However, these were mostly ignored, specially in Orissa, where efforts to settle forest land with those cultivating them was lackadaisical.

In 1996, Supreme Court of India's decisions in the omnibus and landmark Godavarman case⁶ further reinforced the legitimacy of forest land as a category. The unquestioned acceptance of the validity of "forest land" as a legal, inviolate category by the Supreme Court and the forest bureaucracy led to increasing tension at the local level, which finally came to a head when the Ministry of Environment and Forests, Government of India, issued an order in 2002 which asked the State Governments to evict "encroachers" on the forest land within six months. This order was passed with the implicit understanding that the forest estate of India was de jure an uncontested categories, and that all who were living on or cultivating forest land were "illegal encroachers".

This order was met with outrage and anger by tribal organizations, NGOs and activists. Various state governments went ahead with evictions, and large number of households were evicted from forestland, often with great brutality. The issue snowballed into a massive political controversy in states like Maharastra, Madhya Pradesh, Assam, Gujarat etc., and in Orissa itself various tribal organisations and activists mobilised against the evictions. Public demonstrations combined with lobbying with the Members of Legislative Assembly forced the Chief Minister of Orissa to announce that there would be no evictions from forest land in Orissa.

The nationwide furor caused by the evictions order forced the Central Government to rescind its order. Realizing the adverse political impact of the whole furor, the then Prime Minister even made a promise that all such cultivation of forest land dating from before 1993 would be regularized. An order to this intent was passed which was promptly stayed by the Supreme Court.

However the mobilised grassroots organisations and their allies in the civil society pressed on with attempts to address the whole issue of rights over forests. A coalition consisting of tribal grassroots organisations, other grassroots organisations, activists, NGOs and academics emerged who sought to cut through the whole forest land rights issue through creating new national legislation. This coalition not only highlighted the rights and livelihoods aspects of forest land, but sought to challenge the legitimacy of the territorial construction of the forests. Research

⁶ The Writ Petition 202 of 1995 (popularly known as Godavarman case) resulted in an interim order by the Supreme Court on 12-12-1996 which clarified certain provisions of FCA 1980. The Court held that the word "forest" must be understood according to dictionary meaning of forest and covers all statutorily recognized forests. Thus FCA, 1980, was held to apply on "forests" as per dictionary meaning and on any land designated as forests in any government record. The order also directed that all ongoing activity within any forests in any state throughout the country, without the prior approval of central Government, must cease forthwith (Dutta and Yadav, 2005)

and data were marshaled to question the nature of forest land construction, and to establish that even the colonial forest laws were not properly followed for categorizing land as forests. Data and information from official sources were quoted to show the weakness and illegitimacy of the forest estate construction. The term "historical injustices" was used more and more often, especially in context of the tribal communities.

This nationwide campaign was reflected at the grassroots levels through mass mobilisations, demonstrations and pressurizing political representatives. Part of the campaign strategy was to file claims with the district administrations for regularization of cultivated forest land. In Orissa alone more than 50,000 such claims were filed. This served as a tool for mobilization of the tribals and forest dwellers at the local levels and also provided a measurement of the extent of the problem.

Faced with relentless pressure at all levels, both the major political formations in the country i.e. the BJP led NDA coalition and the Congress-I led UPA alliance included this issue in their election manifesto for the 2004 parliamentary elections. Worried by the increasing influence of BJP on the tribals, the Congress-I and its allies also promised to bring a law to provide rights to tribals in their Common Minimum Program. Another possible reason for the political acceptance of this bill could have been the increasing influence of Maoists guerillas fighting against the Indian State in the tribal regions, and the assessment of the Government that land issues were a critical reasons for tribal disaffection.

The UPA came to power, and started drafting a law to recognize tribal rights on forest land. The Bill was drafted by the Ministry of Tribal Affairs, and much of the input was provided by representatives of the civil society coalition fighting for tribal rights, two of whose members were part of the drafting committee. The Bill was submitted in the Parliament in February, 2006 and has been referred to a Joint Parliamentary committee for examination and resubmission to the Parliament. The Bill is slated to be made into law by the middle of this year.

The main features of the bill as presented to the parliament were:

- For the first time, in the preamble of the Bill, an admission was made that historical injustices have been made against tribals during the settlement of forest lands
- Rights of scheduled tribes on forests have been accepted in principle.
- It proposes to settle forest land cultivated by the scheduled tribes on forest land from before 1980 to the extent of 2.5 ha. per nuclear family
- For the first time, local communities in the form of gram sabhas (general assembly) will be the initiators of the process of rights settlement.

The campaign leading to the Bill for the first time brought out the shortcomings of the territorialisation processes leading to creation of forest land and its adverse impact forest on dwelling communities into the mainstream discourse. It has also led to creation of a political consensus across different political parties that these historical injustices need to be rectified, thereby creating the possibility of a re-territorialisation more favorable to tribal and forest dweller communities. That this possibility has emerged through using democratic spaces provided by representative democracy is an important landmark in democratization of forest governance in India.

The ease with which a sustained campaign at different scales led to the Bill and its political acceptance across the board was quite surprising. The opposition to the Bill came from diehard conservationists who believe in exclusionary conservation. Some of these managed to convince a few key young Member of Parliaments to oppose the bill. However, these MPs also backed down in public once they realized that there may be a political price to pay for opposing the bill. The bill has also been opposed tooth and nail by the forest bureaucracy, but this has been ignored.

Conclusions

Internal territorialisation is an integral part of extension of modern state into landscapes and societies. Territorialisation unmediated by democratic institutions can lead to situations where citizens are deprived of rights over resources and livelihoods as is evident from the situation in tribal Orissa. The territorial strategies followed by the colonial state were bound to be undemocratic – what has been surprising is that many of the colonial territorialisation strategies were continued by the democratic post-colonial State.

Territorial strategies of states and their relationship with property rights regimes are often complex and difficult to probe, as illustrated by the example of Orissa. The state itself is disinclined to question its territorial strategies, since these strategies are the product of consensus within the dominant interest within the State structure. When such territorial strategies impact the interests of politically strong sections of society, pressures are generated to modify the territorial strategies. When these strategies impact on those who are weak, marginalized or voiceless, it can have drastic effects, as seen in the case of tribals in Orissa. It is precisely for this reason that those who work on progressive and emancipatory projects for the politically marginalized need to examine the territorial strategies of the state and their implications on livelihoods, wellbeing and landscapes.

In Orissa, imposition of state led internal territorialisation was resisted since the colonial period. After the introduction of representative democracy, the communities and actors affected

by internal territorialisation have started using the democratic spaces and institutions to subvert, influence and modify territorial policies of the state. In Orissa, community forest protection provides an illustration of how moral claims are being made on forest areas customarily perceived to be the territory of communities. Similarly, the attempt to get the Forest Rights Bill passed in the parliament can be seen as an outcome of democratic attempts to correct past wrongs. Community forest protection as in Orissa and the processes leading to tribal forest rights bill can also be seen as an attempt to democratize the institutions of forestry and to make them accountable to a democratic polity. This is an extremely significant development as the forestry institutions in India have undemocratic and colonial roots, and continue to be undemocratic and centralized in their functioning. These also point to the possibilities of greater democratization in forestry and land administration.

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