

Western Ghats

Environmental and Forest Right Concerns



A report Prepared for Society for Promotion of Wasteland Development (SPWD)

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Contents

1. Western Ghats – An Overview	1
2. Western Ghats in Different States.....	5
3. Implementation of Forest Rights Act	9
4. Environment Clearances to Projects	17
5. Case Studies.....	21
6. Towards Better Governance	27

1. Western Ghats – An Overview

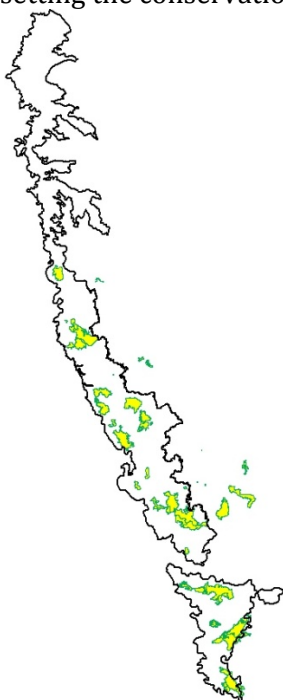
1. The Western Ghats range extends from river Tapti in Gujarat in the north to Kanyakumari in the south, approximately 1,600 km in length and passes through six states of the Indian Union covering an area of about 1,62,000 sq. kms¹.

State	Area (km ²)	Area of the State (km ²)	Percentage
1. Maharashtra	58,400	3,07,713	18.98
2. Karnataka	44,300	1,91,791	23.10
3. Tamil Nadu	28,200	1,30,058	21.68
4. Kerala	28,100	38,863	72.31
5. Goa	1,073	3,702	28.98
6. Gujarat	1764	1,96,024	0.90
	1,61,837	8,68,151	18.64

2. Western Ghats has been under a constant pressure from the “developmental” activities. These physical disturbances destroy the natural interactions within and between ecosystems. The impetus of urbanization in the ecologically sensitive areas like the Ghat regions remains unchecked and unplanned. In the rural hinterland where resources exist, the numerous “development” projects are devouring livelihoods integral to the ecology and culture of the communities. It is only recently that the Government has constituted a Western Ghats Ecology Expert Panel to address these issues despite a long history of community and civil society efforts. Among the earliest moves to bring attention to the ecological sensitivity of the Western Ghats was the ‘Save Western Ghats March’ organized through a consortium of NGOs in the concerned states in November 1987 culminating in a conference in Goa in January 1988.
3. The Western Ghats is unique with inter-woven network of protected, reserved and community conserved forest area supportive of wildlife corridors over longer distances, overcoming administrative boundaries. Also there is culture of protection with numerous sacred groves.
4. Important processes in the decision to allow a project, the Environment & Forest Clearance and the Wildlife Conservation are analogous but their administration and quality varies. Further the inputs for these most often does not emanate from the grassroots. Although there are dedicated wildlife and conservation efforts in the region, there is invariably stronger pressure from the non-compatibles i.e. those that compromise the ecological sanctity of the Western Ghats like Mining, Thermal Power Plants, Nuclear Power Plants, Industries, Commercial Tourism and Construction projects.
5. In 2006, the Government of India passed a legislation to recognize the rights of forest and other forest dwellers, focusing on Scheduled Tribes and Other Forest Dwellers who have suffered immense loss and their rights never settled. Among them are communities who have been

practicing traditional agro-forestry activities in the region, their rights and thus their attachment to the forests is vital.

6. During the same time, the National Tiger Conservation Authority drew a plan to move around 750 villages located in the 28 Tiger Reserves in the Country to make inviolate space for the Tiger. These settlements / villages have to be relocated outside the Tiger Reserves. Similarly, there is an increasing effort to integrate the core and buffer areas, thus enabling greater integration in the buffer zone by altering or offering a changed situation in terms of livelihoods, interaction with forests in the buffer zones and defining certain activities as non-compatible to suit the inviolate principle but how far it is engaging in a participative manner would be a trust winning and goal worthy formula for success – for both conservation and people.
7. The contrasting situation can be judged with the given challenges that are at one hand occurring from the conservation point of view and on the other hand some decisions are offsetting the conservation value and promoting non-compatibles.



NETWORK OF PROTECTED AREAS IN WESTERN GHATS, INDIA



LOCATION OF WESTERN GHATS IN INDIA

Population Composition of Tribals in Western Ghats			
State	District	Total Population	Tribal Population
Kerala	Kasargod [#]	1203342	30338
	Kozhikode [#]	2878498	5940
	Kannur [#]	2412365	19969
	Malappuram [#]	3629640	12267
	Thrissur [#]	2975440	4826
	Palakkad [#]	2617072	39665
	Wayand	786627	136062
	Thiruvananthapuram [#]	3234707	20893
	Alappuzha	2105349	3131
	Kollam [#]	2584118	5190
	Pathanamthitta [#]	1231577	6549
	Kottayam	1952901	18340
	Ernakulam [#]	3098378	10046
	Idukki	1128605	50973
	Total Kerala	31838619	364189
Karnataka	Uttar Kannada	1353299	23781
	Dakshina Kannada	1896403	62936
	Udupi	1109494	41613
	Shimoga	1639595	55997
	Dharwad	1603794	70442
	Belgaum	4207264	243451
	Chikmagalur	1139104	41019
	Hassan	1721319	26451
	Kodagu	545322	46115
	Mysore	2624911	271351
	Chamarajanagar	964275	106111
	Total Karnataka	18804780	989267
Tamil Nadu	Madurai	2562279	5972
	Coimbatore	4224107	29103
	Tirunelveli [#]	2801194	8358
	Kanniyakumari	1669763	5443
	Dindigul	1918960	6484
	Virudhnagar [#]	1751548	2357
	Nilgiris	764826	28373
	Erode	2574067	17693
	Total Tamil Nadu	18266744	103783
Maharashtra	Thane [#]	8128833	1199290
	Ratnagiri	1696482	20102

Population Composition of Tribals in Western Ghats			
State	District	Total Population	Tribal Population
	Sindhudurg	861672	4952
	Nashik	4987923	1194270
	Dhule	1708993	443564
	Ahmadnagar	4088077	303255
	Pune [#]	7224224	261722
	Satara [#]	2796906	21896
	Sangli	2581835	17855
	Kolhapur [#]	3515413	21387
	Nandurbar	1309135	859574
	Raigarh	2205972	269124
	Total Maharashtra	41105465	4616991
Gujarat	Valsad	1410680	772405
	Surat	4996391	1408270
	Dangs	186712	175079
	Total Gujarat	6593783	2355754
Goa	North Goa	757407	281
	South Goa	586591	285
	Total Goa	1343998	566
	Grand Total	117953389	8430550
<p>Source: From Western Ghats Portal (Google Earth)</p> <p>Note: Some of the districts in respective states are not fully under Western Ghats region Scheduled Areas in Maharashtra: Parts of Thane, Nasik, Dhule, Ahmednagar, Pune Districts Scheduled Areas in Gujarat: Parts of Valsad, Surat and Dangs Districts</p>			

2.

Western Ghats in Different States

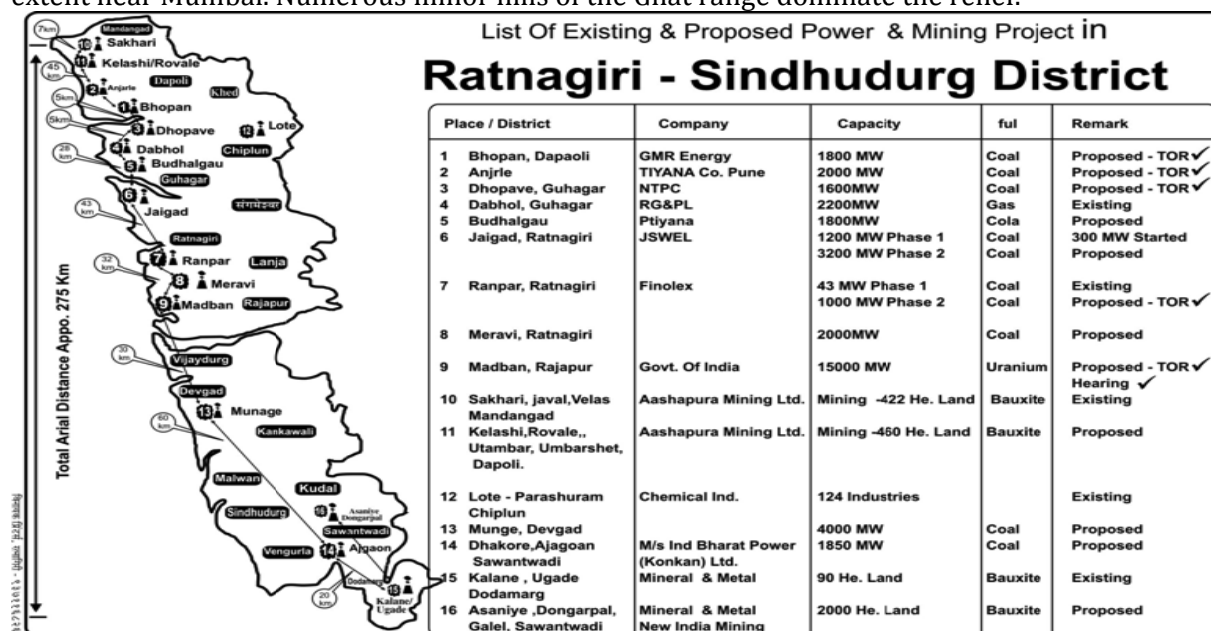
2.1. Gujarat

The northern limits of the Western Ghats are in Gujarat and the Ghats are well forested. The Dang, Valsad and the new district of Tapi have some element of the Ghats. The river Tapti, flowing in a deep trench from the east cuts through Surat and the eastern country is mountainous. The west flowing rivers which originate in the Western Ghats are: Purna, Auranga and Par.

There are very few industries in the Western Ghats of Gujarat.

2.2. Maharashtra

Western Ghats moves into Maharashtra at the Kundaibari Pass in Dhule district. It runs almost continuously 720 km north-south and almost reaching the Arabian Sea. Elevations increase northward to the peaks of Kalsubai (1,646 m) and Salher (1,567 m). There are a few passes through which roads and railroads link the coast with the interior. The eastern slopes of the ghat descend gently into the Deccan Plateau and are sculptured by the wide, mature valleys of the Krishna, Bhima and Godavari rivers. To the west is the narrow Konkan coastal lowland, which reaches its widest extent near Mumbai. Numerous minor hills of the Ghat range dominate the relief.



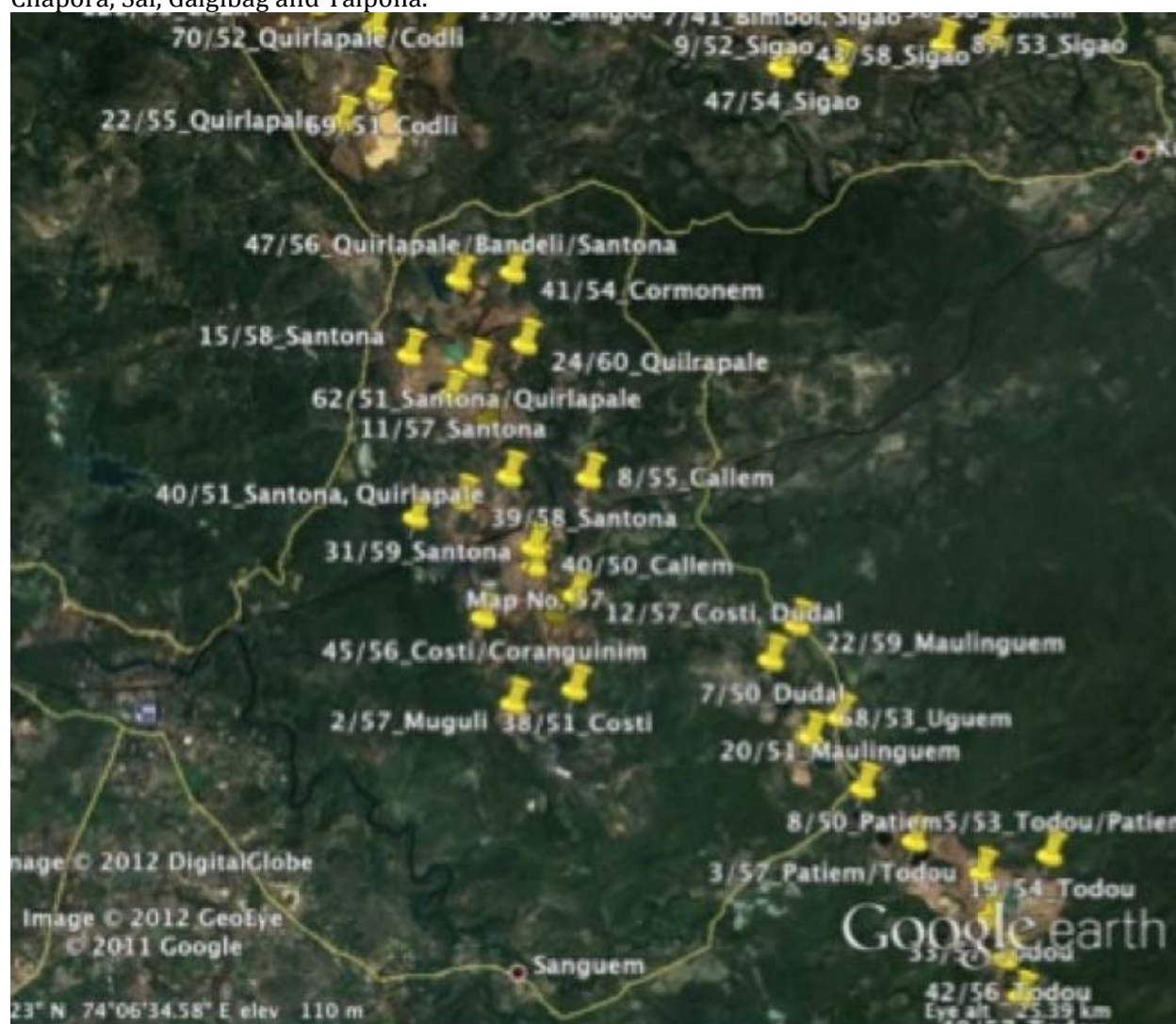
Two major east-flowing rivers originate in the Western Ghats section of Maharashtra - the Godavari arising in Nasik district and the Krishna originating near Mahabaleshwar at an altitude of 1,360 m. Many small, swift west-flowing rivers, Ulhas, Surya, Vaitarana, Damanagang, Tansa, Vashist, Savitri and Shastri exist. Twelve districts of Maharashtra are in the Western Ghats ecoregion: Nasik, Thane, Dhule, Nandurbar, Pune, Sindhudurg, Raigad, Satara, Ratnagiri, Sangli, Kolhapur and Ahmednagar.

Maximum forest land diversion in the state took place in Dhule and Kolhapur, the land diversion in total has been around 900 sq. km. Around 82,000 hectares of land is under encroachment and this figure has only increased over a five year period.

The coastal belt of Maharashtra is witnessing spurt of projects like power plants (thermal, nuclear) and mining which is a good mangrove area in districts of Raigarh, Ratnagiri, Thane and Sindhudurg. Ratnagiri, especially is home to export quality alphonso mangos where Jaigarh Thermal Power plant has been cleared by Ministry despite concerns of locals that it will spoil the production and quality. Jaitapur nuclear power plant is also in this district to have a capacity of around 10,000 MW as of now, more are in pipeline.

2.3. Goa

The whole of Goa is included in the Western Ghats ecoregion. Goa is the smallest state in the Western Ghats region with a coast-line of just about 100 km which extends 64 km inland and is dominated by the Ghats on its eastern part which rise to 1,034 m (3,392 ft) at Sonsagar. The hills give way in the west to an undulating area dissected by rivers and the coastal plain. Goa's two largest west flowing rivers are Mandovi and Zuari. There are several minor streams: The Tiracol, Chapora, Sal, Galgibag and Talpona.



A small segment of South Goa with mine plotted on the Google image indicates such a high density

of mining. There are nearly 100 operational mines in Goa and several of them clearly violating the environmental norms and destroying the environment. The number of agencies seeking lease is over 400, which would completely destroy the small state.

2.4. Karnataka

Karnataka is situated on a tableland where the Western Ghats and the Eastern Ghats converge into B R Hills and the Nilgiri Hills complex. Although the Ghats run parallel to the coast for a length of about 267 km, the width of the coastal lowland varies. It is about 80 km wide near Mangalore but practically non-existent in the north near Karwar where the range dips into the sea with peaks emerging as picturesque islands. A series of cross-sections drawn from west to east across the Ghats, generally exhibit, a narrow coastal plain followed to the east by small and short plateaus at different altitudes, then suddenly rising up to great heights. Then follows the east and east-north sloping plateau. Among the tallest peaks are Mulainagiri (1,923 m), Bababudan or Chandradrona Parvata (1,894 m) and the Kudremukh (1,892 m) all in Chickamagalur district and Tadianamol Betta (1,745 m) and the Pushpagiri (1,713 m) in Kodagu district. There are a dozen peaks which rise above the heights of 1,500 m. T

The coastal region consists of two broad physical units - the plains and the Ghats. The coastal plains represent a narrow stretch of estuarine and marine landscape. The abrupt rise at the eastern flanks forms the Ghats. The northern part of the Ghats is of lower elevation (450-600 m) as compared to the southern parts (900-1500 m). The major east-flowing river is Kaveri with the east-flowing tributaries which include Hemavati, Laxmantirtha, Kabini and Suvarnavati. The swift west-flowing streams are : Kali, Gangavali (Bedthi), Aganashini, Sharavathy, Kollur-Chakra-Gangoli, Sita, Mulki, Gurupur and Netravathi. Eleven districts of Karnataka are in the Western Ghats ecoregion: Belgaum, Uttara Kannada, Shimoga, Udupi, Dakshina Kannada, Chickmagalur, Hassan, Kodagu, Chamrajnagar, Mysore and Dharwad.

The recorded forest area of the state forms 22% of the state's geographical area stands at 43,356.45 sq. kms. Forest land diverted for various activities is around 430.81 km² which means the state has lost almost 1% of the state's geographical area under forests to non forest activities. There are a series of protected areas in the Ghats region of Karnataka around 12-13 out of 27 protected areas (Wildlife Sanctuaries, National Parks, Tiger Reserves). The threats are at two levels, one at the periphery of the protected areas where mining has been reported and another that where resource availability like fuel and non-fuel minerals to fulfill demand of proposed and already existing industry i.e. thermal power plants, mineral industries.

2.5. Kerala

Kerala is a narrow strip of land on the south west coast of the Indian subcontinent bounded by the Western Ghats on the east. There are three geographical regions:

1. The Highlands consisting of a number of peaks with heights varying from an average height of 900 m to well over 1,800 m. Anaimudi peak - 2,695 m (8,842 ft), the highest point of peninsular India, crowns the Western Ghats.
2. The Midlands made up of hills and valleys.
3. The lowlands or the coastal areas which are made up of the river deltas, backwaters and the Arabian Sea.

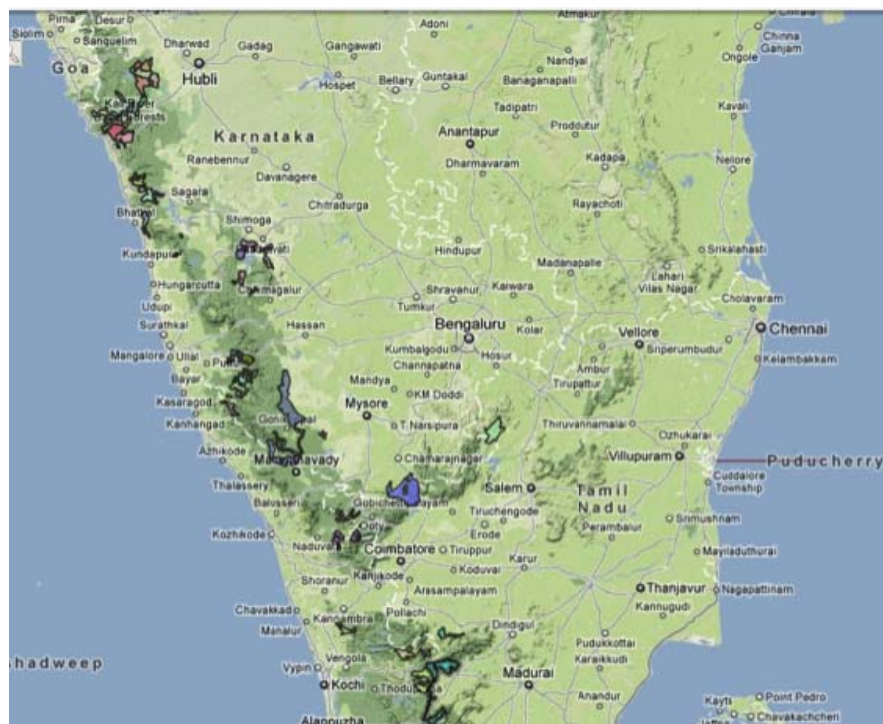
Over forty four rivers cut across Kerala; among the rivers that flow into the Arabian Sea, are the Bharatpuzha, Chalakudi, Periyar and Pamba. All the fourteen districts of Kerala fall in the Western Ghats ecoregion: Kasargod, Kannur, Kozhikode, Malappuram, Wayanad, Palghat, Thrissur, Ernakulam, Pathanamthitta, Idukki, Kottayam, Allapuzha, Kollam and Thiruvananthapuram.

Kerala has a rich riverine ecology which sustains its agriculture and coastal plantations (cash crops). With almost 27.84% of the total geographical area of the state under forests, there are 8894 tribal settlements in the 35 forest divisions of Kerala.

The most number of settlements are identified in Thiruvananthapuram, Munnar, South Wayanad, Wildlife Division (Wayanad), and WL division (Thiruvananthapuram), the total tribal families estimated to be around 35,000 in numbers and spread over an extent of 253 square kilometers.

As these forest villages are to be converted into revenue villages while extinguishing their rights in the forests, at present the process is underway and around 17350 titles over 89 square km. have been issued. More than 410.34 square kilometer of forest land has been diverted for non-forest activities in the State of Kerala since the enactment of FC Act.

2.6. Tamil Nadu



The Western Ghats, after a run of 1,600 km through six states of the Indian union, end in Tamil Nadu just 20 km short of Kanyakumari. The Eastern and the Western Ghats meet in Tamil Nadu and run along the whole length of the western boundary of the state at a distance of 80 to 160 km from the Arabian Sea. The Ghats are a steep rugged mass with an average height of 1,220 m rising to 2,637 m at the highest point - Dodabetta near Ooty. The Nilgiris and Anaimalai are the group of hills with the maximum height followed by the

Palnis. The Palghat gap and Shencottah gap are the only two breaks into the long chain of ghats that border Tamil Nadu.

The main rivers which arise in the Western Ghats and flow east in Tamil Nadu are the Kaveri, Tambraparni and Vaigai. Nine districts of Tamil Nadu are covered in the Western Ghats ecoregion: Nilgiris, Coimbatore, Theni, Dindigul, Virudunagar, Tirunelveli, Erode, Madurai and Kanyakumari⁵.

3. Implementation of Forest Rights Act

3.1 Implementation Status

The Central Government had sought the implementation by November 2009 and the Status at that stage was so dismal as this table indicates.

State	Total claims received	Deeds distributed/ ready	Number of claims rejected
Gujarat	1,84,329 (1,76,242 individual and 8,087 community)	5,668 distributed	528
Maharashtra	2,66,572	2,453 distributed	170
Goa	0	0	0
Karnataka	45,801	0	0
Kerala	35,620 (34,886 individual and 734 community).	23 distributed	9
Tamil Nadu	8,352	0	0

In a recent meeting, parliamentary panel (Parliamentary Standing Committee on Social Justice and Empowerment) expressed at the sorry state of implementation of Act, where out of a total number of claims i.e. 28,49,000 from 17 states, as many as 12,67,928 claims have been rejected. It also did not provided enough clue on the levels at which these claims were rejected as the information supplied varies from state to state.

The Minister in his reply to a question in Rajya Sabha (December 2011) maintained that there are four critical reasons for rejection of claims;

- i. OTFDs not able to prove occupation for 75 years as on 13.12.2005
- ii. non-occupation of forest land as on 13.12.2005
- iii. claims being made on land other than forest land and
- iv. multiple claims etc

3.2 Issues Raised by States

The issues raised by the states and the Ministry’s response clearly indicate that the effort has been to confuse the communities rather than to proactively enable recognition of rights and thereby ameliorate for the “historical injustice’ which the law purported to correct.

The most recent information, which is online, indicates even worrisome picture⁶:

State	Total	Accepted	Rejected	Pending	PA
GOA	0	0	0	0	0
GUJARAT	212	209	0	0	0
KARNATAKA	33370	1857	339	13	0
KERALA	25055	20413	155	1	0
MAHARASHTRA	8406	139	83	1	0
TAMIL NADU	0	0	0	0	0

The states have been giving various reasons for the slow performance of the settlement of rights. The major reasons stated by the various states in Western Ghats are as follows:

Reasons Given By States for delay in Settlement Rights to the People under FRA 2006	
Kerala	Due to high density in forest, only manual survey is feasible. This, the state claims is taking much time. Community claims are not being given priority as there is confusion on community rights with regard to facilities envisages for right holders u/s 3(2) of the Act. But on the face of it the provision looks clear and there have been directions sent to states regarding this.
Maharashtra	Large number of false cases encountered, so the delay in resolving that.
Tamil Nadu	Pendency of High Court stay under which committee formed to verify correctness of beneficiaries by conducting field visits.
Karnataka	OTFDs claims rejection high (Over 88% of total claims and over 90% of claims rejected) No proof as forest dwellers i.e. 75 yrs. Evidence; ST claimants also being devoid due to want of evidence as to whether they are forest dwellers

Issue Raised	Ministry of Tribal Affairs’ Response
Implications of the phrase “ primarily ” reside in and who depend on the forests or forest lands for bona fide livelihood needs” appearing in Section 2(c) and 2(o) of the Act.	The implication of using the word ‘primarily’ is to include the Scheduled Tribes and other Traditional Forest Dwellers who have either habitation, or patches of land for self- cultivation for livelihood, and would, therefore, be primarily spending most of their time either in temporary make shift structures or working on patches of land in such areas irrespective of whether their dwelling houses are outside the forest or forest land. Therefore, such Scheduled Tribes and other Traditional Forest Dwellers who are not necessarily residing inside the forest but are depending on the forest for their bona fide livelihood needs would be covered under the definition of “forest dwelling

	<p>Scheduled Tribes’ and ‘other traditional forest dweller’ as given in Sections 2(c) and 2(o) of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006.</p> <p>[MoTA’s letter No.17014/02/2007-PC&V (Vol.II) dated 9th June, 2008, addressed to all States/ UTs, except J&K]</p>
<p>Consideration of the revenue land under the occupation of forest dwelling Scheduled Tribes and other traditional forest dwellers for determining the limit of an area of 4 hectares of forest land for habitation or for self-cultivation, referred to in Section 4(c) of the Act.</p>	<p>The term “forest land” is defined in section 2(d) of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 and the said definition does not include revenue land. Therefore, the revenue land under the occupation of forest dwelling Scheduled Tribes and other traditional forest dwellers is not to be taken into account for determining the limit of an area of 4 hectares of forest land for habitation or for self-cultivation, referred to in Section 4(6) of the Act. The area of encroachment of forest land shall, however, be included in the limit of 4 hectares, prescribed in section 4(6) of the Act</p> <p>However, section 3(1)(a) of the Act refers to “the right to hold and live in the forest land under the individual or common occupation for habitation or for self-cultivation for livelihood”, while rule 2(1) (b) of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Rules, 2008 notified on 1.1.2008 defines “bona fide livelihood needs” as “fulfillment of sustenance need of self and family”. As the basic objective of the Act is to provide livelihood means to forest dwelling Scheduled Tribes and other traditional forest dwellers, the livelihood aspect also needs to be kept in view, while considering the maximum limit of an area of 4 hectares of forest land for recognition and vesting of forest rights. If the forest dwellers do not primarily reside on the forest land in their occupation and depend on the revenue land or the area of regularized encroachment of forest land for their bona fide livelihood needs, then they should not get title to the forest land in occupation.</p> <p>[MoTA’s letter No. 23011/28/2008-SG-II dated 3.12.2008, addressed to Government of Gujarat]</p>
<p>Since 3 months time has been provided under Rule 11(a) of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Rules, 2008 for filing the claims, whether the Gram Sabha can consider the clear cases immediately or the Gram Sabha has to consider the cases only after the expiry of 3</p>	<p>The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Rules, 2008 provide that the Gram Sabha shall call for the claims and authorize the Forest Rights Committee to accept the claims. Such claims are to be made within a period of three months from the date of such calling of the claims. The period of three months for filing the claims is thus to be reckoned from the date of calling of claims after the constitution of the Forest Rights Committee. Gram Sabhas can consider undisputed cases provided the procedure as laid down in the Rule has been followed.</p> <p>[MoTA’s letter No. 23011/28/2008-SG-II dated 3.12.2008, addressed to all State/ UT Governments except J&K, Harayana, Nagaland and Lakshadweep]</p>

months period.	
Whether a claimant under the Act who already owns some land other than forest land or when he is engaged in some occupation and is using the forest land under occupation for agriculture in addition to his occupation is to be considered eligible for recognition and vesting of forest rights under the Act?	<p>As per Sections 2(c) and 2(o) of the Act, the eligibility of the forest dwelling Scheduled Tribes and other traditional forest dwellers for claiming forest rights depends upon the following factors: -</p> <p>(1) Primarily residing in the forests or forest lands;</p> <p>(2) Dependence on the forests or forest lands for bona fide livelihood needs (fulfillment of sustenance needs of self and family)</p> <p>This Ministry has clarified vide letter No.17014/02/2007-PC&V(Vol.VII) dated 9.6.2008 that implication of using the word ‘primarily’ in Sections 2(c) and 2(o) of the Act is to include the Scheduled Tribes and other traditional forest dwellers who have either habitation, or patches of land for self- cultivation for livelihood, and would, therefore, be primarily spending most of their time either in temporary make shift structures or working on patches of land in such areas irrespective of whether their dwelling houses are outside the forest or forest land.</p> <p>Therefore, it is for the Gram Sabha to examine, based on the findings of the Forest Rights Committee, as to whether a claimant under the Act who already owns some land other than forest land or when he is engaged in some occupation and is using the forest land under occupation for agriculture in addition to his occupation needs forest land under his occupation for the sustenance of bona fide livelihood needs of self and family, before passing a resolution and forwarding the same to SDLC for enabling the SDLC/DLC to adjudicate on the claim.</p> <p>The Ministry of Law Justice (Department of Legal Affairs) is agreeable to the view that the Gram Sabha has to examine each case individually after taking into consideration all relevant factors including the findings of the Forest Rights Committee.</p> <p>[MoTA’s letter No.17014/02/2007-PC&V(Vol- VII)(pt.) dated 17.11.2009, addressed to Tribal Research & Training Institute, Pune]</p>
Whether the term “self cultivation” appearing in Section 3(1)(a) of the Act shall include the forest land under plough only, but also forest lands which are used in activities ancillary to cultivation, such as, for keeping cattle, for winnowing and for other practices that are related to post-harvest activities?	<p>The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 is a welfare legislation. Keeping in view the spirit of this welfare legislation, if the agricultural operations take place adjacent to the place of actual cultivation, such operations and “self-cultivation” appearing in Section 3(1)(a) of the Act cannot be divorced. Each case has to be examined and decided individually by the Gram Sabha.</p> <p>[MoTA’s letter No. 17014/02/2007-PC&V (Vol- VII) (pt.) dated 17.11.2009, addressed to Tribal Research & Training Institute, Pune]</p>
Whether the quorum should not be at least	As per the procedure notified on 18.5.2009, the proposals for diversion of forest land for developmental projects specified in

<p>2/3rd (as against 1/3rd) as indicated in para 2.2 (ix) of the procedure for seeking prior approval for diversion of forest land for non-forest purposes for certain facilities under Section 3(2) of the Act as circulated by the Ministry of Tribal Affairs on 18.5.2009 since the total number of members of the District Level Committee as prescribed in Rule 7 of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 framed under the Act are just ?</p>	<p>Section 3(2) of the Act are to be forwarded to the District Level Committee for a final decision only when the Divisional Forest Officer (DFO) concerned does not approve the proposal submitted by the User Agency through the Range Forest Officer (RFO). As per the said procedure, at least 1/3rd quorum of members of DLC is needed for taking a final decision in such cases.</p> <p>It may be stated that DLC comprises the following members:</p> <ul style="list-style-type: none"> (a) District Collector or Deputy Commissioner – Chairperson (b) Concerned Divisional Forest Officer or concerned Deputy Conservator of Forest – Member (c) 3 members of District Panchayat (d) An officer of the Tribal Welfare <p>Department in charge of the district This Ministry has already clarified that the officer of the Tribal Welfare Department will be the Member Secretary of DLC. So, whenever the meeting of DLC is convened, the Chairperson and the Member Secretary would be present and at least one more member – either the concerned DFO / Dy. Conservator of Forests or Member of the District Panchayat – would also be attending the meeting. The possibility of only 2 out of 6 members of DLC deciding such cases is, thus, very remote.</p> <p>Since the process for providing the facilities under Section 3(2) of the Act is going on, it would not be desirable to change the provision relating to quorum at this juncture.</p> <p>[MoTA's letter No. 17014/02/2007-PC&V (Vol- VII) (pt.) dated 17.11.2009, addressed to Tribal Research & Training Institute, Pune]</p>
<p>Whether a time limit should not be fixed for processing of cases under Section 3(2) of the Act as a one-time exercise considering the fact that by assigning the task of final decision making in respect of section 3(2) cases to the DLC, the DLC will continue to exist even after completion of the process of recognition of forest rights and the need for reconstitution of the Committee after every election of Panchayat body?</p>	<p>The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 and the Rules framed thereunder do not lay down any fixed tenure for the District Level Committees (DLC) constituted under the Act. The DLCs can continue to exist for considering the cases relating to the diversion of forest land under Section 3(2) of the Act that are referred to it by the DFO for final decision, even after the process of recognition of forest rights is completed under the Act. Such DLCs can be re-constituted if such re-constitution is so warranted on account of election of Panchayat bodies and nomination of new members from Panchayat Institutions. .</p> <p>As regards the issue whether a time limit be fixed for processing of cases under 3(2) as a one time exercise, it may be stated that Section 3(2) of the Act does not prescribe a time limit for processing cases of diversion of forest land for the developmental activities specified in that Section. There is no bar in Section 3(2) of the Act for allowing diversion of forest land on more than one occasion for any of the development projects specified therein, as long as the forest land so diverted is less than one hectare in each case and such projects are recommended by the Gram Sabha. Hence, it is not advisable to fix a time limit for processing cases of diversion of forest land under the Act.</p> <p>The Ministry of Law Justice (Department of Legal Affairs) is also agreeable to the above views.</p>

	[MoTA’s letter No. 17014/02/2007-PC&V (Vol- VII) (pt.) dated 17.11.2009, addressed to Tribal Research & Training Institute, Pune]
Whether the allotment of area indicated as upto one hectare in Section 3(2) of the Act is applicable to each developmental facility each time in the village or is it once only for all times to come?	As stated above, there is no bar in Section 3(2) of the Act for allowing diversion of forest land on more than one occasion for any of the development projects specified therein, as long as the forest land so diverted is less than one hectare in each case and such projects are recommended by the Gram Sabha. [MoTA’s letter No. 17014/02/2007-PC&V (Vol- VII) (pt.) dated 17.11.2009, addressed to Tribal Research & Training Institute, Pune]
Applicability of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, Municipal Corporation Areas	The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 prescribes the Gram Sabha as the authority to initiate the process of determining the nature and extent of the forest rights which are to be given to the forest dwelling Scheduled Tribes and other traditional forest dwellers. As per the Act and the Rules framed thereunder, the Sub-Divisional Level Committee has to examine the resolution passed by the Gram Sabha and prepare the records of forest rights and forward it through the Sub-Divisional Officer to the District Level Committee for a final decision on the record of forest rights. It has been stated in the letter of TR&TI, Pune, that the Sub-Divisional Level Committee and the District Level Committee cannot be formed in the Municipal Corporation areas of the State as per the provisions of the Act. In view of this, the Act cannot be implemented in the concerned Municipal Corporation areas of the State. [MoTA’s letter No. 17014/02/2007-PC&V (Vol-13VII) (pt.) dated 4.3.2010, addressed to Government of Maharashtra, Mumbai]
Whether the condition regarding three generations prescribed in Section 2(o) of the Act can be relaxed in the case of other traditional forest dwellers.	The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 does not permit relaxation of the condition relating to three generations’ residence prior to 13th day of December, 2005 in the case of “other traditional forest dwellers” for recognition and vesting of their forest rights under the Act. Hence, it is not possible to relax this condition. 17[MoTA’s letter No. 17014/02/2007-PC&V (Vol- VII) (pt.) dated 6.5.2010, addressed to Government of Maharashtra, Mumbai]
Tribals in some settlements are demanding that land under cultivation should be assigned in their common name. Whether this is permissible as per the Act? If yes, then is the ceiling of 4 hectares applicable on the communal allotment of	Section 3(1)(a) of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 recognises the right to hold and live in the forest land under the individual or common occupation for habitation or for self-cultivation for livelihood by a member or members of a forest dwelling Scheduled Tribe or other traditional forest dwellers. The said Section, thus, permits the recognition and vesting of the right over the forest land under common occupation for cultivation in the name of a community of tribals. However, in view of the provisions of Section 4(6) of the Act, such forest land under the occupation of the community of tribals shall be restricted to the area under actual occupation and shall in no case

land, or is the applicable ceiling 4 hectares x no. of families? i.e. can 100 acres under common cultivation be so assigned to a community with 40 families in the Form at Annexure II of the Rules?	<p>exceed an area of four hectares.</p> <p>[MoTA’s letter No. 23011/28/2008-SG-II dated 15.1.2009, addressed to Government of Kerala]</p>
How is the Annexure II Title to be assigned to a couple who are married intercaste?	<p>Section 4(4) of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 inter alia provides that a forest right conferred under the Act shall be heritable but not alienable or transferable and shall be registered jointly in the name of both the spouses in case of married persons and in the name of the single head in the case of a household headed by a single person and in the absence of a direct heir, the heritable right shall pass on to the next-of-kin. There is no bar in the Act to the registration of the forest right conferred under the Act jointly in the name of both the spouses who are married inter-caste, provided the applicant is an ST or if not an ST, fulfils the criteria for a traditional forest dweller.</p> <p>[MoTA’s letter No. 23011/28/2008-SG-II dated 15.1.2009, addressed to Government of Kerala]</p>
There are cases of tribals from Kerala requiring regularization of their rights under the Act in the forests of Karnataka, and vice versa. There could be similar cases with Tamil Nadu also. How is this to be tackled?	<p>Section 4(1) of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 recognises and vests forest rights in (a) forest dwelling Scheduled Tribes in States or areas in States where they are declared as Scheduled Tribes, and (b) the other traditional forest dwellers. The terms “forest dwelling Scheduled Tribes” and “other traditional forest dweller” are defined in Sections 2(c) and 2(o) of the Act.</p> <p>Further, Section 4(3) read with section 4(6) of the Act requires that the following two conditions should be satisfied for recognition and vesting of forest rights in the forest dwelling Scheduled Tribes and other traditional forest dwellers in respect of forest land and their habitat:</p> <p>(i) they had occupied forest land before the 13th day of December, 2005; and (ii) they were in occupation of such land on the date of commencement of the Act, i.e., 31.12.2007.</p> <p>The Scheduled Tribe status is State- specific and the forest dwelling Scheduled Tribes in Kerala would not carry their Scheduled Tribe status in Karnataka and vice versa. As all the conditions prescribed in Sections 2(c), 4(1)(a), 4(3) read with Section 4(6) of the Act would not be satisfied in the case of forest dwelling Scheduled Tribes in Kerala claiming recognition of forest rights in the forests of Karnataka, they would not be eligible for recognition and vesting of forest rights under the Act in the forests of Karnataka, and vice versa. Most important, the recognition of rights and the processing thereof has to be initiated by the concerned Gram Sabhas. The Gram Sabhas of one State cannot</p>

	recommend the claims for recognition of forest rights over forest land in another State. [MoTA’s letter No. 23011/28/2008-SG-II dated 15.1.2009, addressed to Government of Kerala]
Relaxation of the quorum of two-thirds of all members of the Gram Sabha for the meeting of the Gram Sabha in Rule 4(2) of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Rules, 2008.	The provision for the quorum of two-thirds of all members of the Gram Sabha for the meeting of the Gram Sabha in Rule 4(2) of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Rules, 2008 has been made with a view to ensure true representation of all the members of the Gram Sabha in such meetings so that the decisions taken therein are impartial and cater to the real objective of the meeting. These Rules do not permit relaxation of this requirement of quorum. [MoTA’s letter No. 23011/28/2008-SG-II dated 21.1.2009, addressed to Government of Kerala] & [MoTA’s letter No. 17014/02/2007-PC&V (Vol- VII) (pt.) dated 4.3.2010, addressed to UT Administration of Daman & Diu]
Source:Ministry of Tribal Affairs, GOI	

Thus it is clear that the State while suggesting that it will benefit the communities who have actually the rights, has kept the entire decision of diverting forest land under its control. Further it has a quorum that would enable it decide faster. The other ploy being used is to divert forest land for mining and industrial purposes and declare these areas as urban settlements thereby denying the forest rights.

4. Environment Clearances to Projects

4.1 Contextual Background

Western Ghats with its uniqueness to different ecological subsets i.e. coast, inland, hills, favourable climatic conditions and tourism destination has attracted a different portfolio of projects like thermal (inland and coast), nuclear, mining (both inland and coast), tourism and construction (hills, inland), Connectivity (railways, roads), Dams (River Valley Projects) – most of them seeing a suitability advantage of mobility and resources. Among these construction projects under tourism tag take promotional advantage from the state and railway projects are not required to get environmental clearance from the MoEF whereas these cut across long distances in the highly networked forests of the region. Accountability becomes greater once decisions are to be taken for a biodiversity hotspot regions but the process of environmental clearance is going on “as usual”.

The Ministry of Environment and Forests had imposed a moratorium on 41 industrial clusters / critically polluted areas, now the moratorium has been lifted from 25 such clusters and for the remaining 18 clusters, the moratorium is extended upto March 2012.⁷ In April 2011⁸, the moratorium to mine sand in Ratnagiri and Sindhudurg (non-CRZ zone) was proposed to be lifted due to want to sand for infrastructure projects but it was eventually extended to December 2011 after the report of Western Ghats Ecology Expert Panel.

EIA related issues have been the focus of many of the environmental struggles in the Western Ghats. Examples in recent times where projects located in the around the western Ghats which have attracted national attention are the Nutrino Observatory planned in the Niligiris in Tamil Nadu but shifted due to opposition from conservationists⁹; the Kalsa Bhandura project involving the diversion of Mahdei River by Karnataka while reducing the flow to Goa¹⁰ the Athirapally hydro electric project in Kerala's Thrissur district to the Railway projects such as the Chamrajnagar – Mettupalyam project in Tamil Nadu and Karnataka and the Hubli Ankola project at Karnataka to the recent stoppage of the Hankon Thermal power plant at Karwar in Karnataka to name only a few. The legal victory in stopping the Kudremukh Iron Ore company after three decades of operation was among the most significant successes in recent time with respect to the Western Ghats. It is however interesting to note that not all of the above projects required an EIA although it is beyond doubt that most of them surely have environmental impacts.

There have been cases of faulty EIA reports, negligence to the cultural and archeological aspects which are found abundant in this region, misinformation has become a norm which not only shows poor monitoring or backup but also it downplays the rights of the people, poor quality of reports on key environmental aspects like water, air, flora and fauna, discouraging people to attend public hearings and disregarding their opinions by not including them in the final EIA report.

There has been no stringent emphasis on stipulating prior conditions on ensuring Forest Rights claims before granting the Environment Clearance which has left a void as the states are held responsible for implementing the FRA, once assurance is given by the state on the state of settlement, clearance is granted if it is stuck on that account. Again, there has been no consistent and measurable monitoring and evaluation framework existing; it looks like a loose system wherein irregularities are high. If the environmental governance in the country and for regions which are ecologically sensitive like the Ghat and other regions, a measurable and time bound monitoring, reporting and compliance has to be placed in order, it shouldn't be turned down merely on human

resources scarcity or self reporting. PCBs need to look beyond the fee collection from consent procedures and move strictly to precautionary principle, only then there could be some rule in the house. There has been very little emphasis on the freshwater species while doing environmental assessments; these are far less explored or assessed.

The EIA process as is in force broadly follows the following sequence: Screening, Scoping, Public Consultation, and Appraisal. The four-stage process introduced in 2006 also led to division of power between the Central and State Government. The process as it exists essentially involves the project proponent applying to the concerned authorities at the Central and State Government level for prescription of Terms of Reference (TOR's) for preparation of Environment Impact Assessment reports;

- a. the preparation of EIA reports by consultants engaged by the project proponent.
- b. a public consultation at the project site or in close proximity to the project site for obtaining the views of local affected persons and others who have a plausible stake in the environmental impacts of the project, and
- c. the minutes of the Public hearing proceedings are then sent to the Expert Appraisal Committee of the Ministry of Environment and Forests or the State Impact Assessment Authority (SIAA) for appraisal.
- d. 'Appraisal' involves the detailed scrutiny of the Environment Impact Assessment report as well as the minutes of the public hearings as well as written representations received from concerned persons.

4.2 Problems in EIA Process

The process as it exists is fraught with serious problems. They can be briefly stated as follows:

1. Poor Quality of EIA report:

The quality of EIA report is generally poor. Based essentially on outdated secondary data, it rarely questions the project and proceeds on the assumption that approval is bound to take place. The overall thrust of the EIA report is to justify the project on larger social and economic goals. Recently the Supreme Court of India¹¹ observed:

"We would also like to point out that the environmental impact studies in this case were not conducted either by the MoEF or any organization under it or even by any agencies appointed by it. All the three studies that were finally placed before the Expert Appraisal Committee and which this Court has also taken into consideration, were made at the behest of the project proponents and by agencies of their choice. This Court would have been more comfortable if the environment impact studies were made by the MoEF or by any organization under it or at least by agencies appointed and recommended by it."

The Ministry of Environment and Forests had last year initiated the step of accreditation of EIA consultants through the Quality Council of India and the National Accreditation Board for Education and Training. Although it is a step in the right direction, it can by no means guarantee an unbiased report since the EIA consultants will continue to be engaged and financed by the project proponent.

2. Poor Quality of Appraisal:

The quality of appraisal done by the Expert Appraisal Committees (EAC) is generally very poor. The fault for the same can be located at two levels:

- a. ***The Composition of the EAC:*** The EAC's are generally composed of retired bureaucrats and representatives from various scientific institutions as well as academicians. There is a lack of independent ecologist, environmentalist and civil society representatives in the EAC. The EIA notification of 1994 did provide for independent ecologist and environmentalist including members of NGO's as part of the EAC. However the subsequent amendments in the Notification had done away with the requirement for independent members who are environmentalist or civil society representatives and replaced it with the term 'Professionals'. What is of greater concern is the fact that at times EAC's were (and also is) constituted of persons who have a direct conflict of interest. The Delhi High Court¹² while considering the approval granted to a mine in Goa (Borga mines) critically looked at the composition of the EAC for mining projects. The High Court held as follows:

'As regards the EAC (Mines) it is surprising that the 12 member EAC was chaired by a person who happened to be Director of four mining companies. It matters little that the four mining companies are not in Goa. Appointing a person who has a direct interest in the promotion of the mining industry as Chairperson of the EAC (Mines) is in our view an unhealthy practice that will rob the EAC of its credibility since there is an obvious and direct conflict of interest'

The situation has not changed much as even the present EAC's for thermal power plants and river valley projects reveal a clear conflict of interest and is clearly inimical to objective appraisal.

- b. ***The manner in which EAC deliberation takes place:*** The EAC's present mode on functioning does not provide scope for critical appraisal or detailed scrutiny. Several projects are considered during a single day. Infact there are records of over 75 Industrial projects being considered on a single day for appraisal. The results are quite evident. Hardly any detailed scrutiny takes place, minutes of the public hearings are rarely ever considered and projects are approved subject to general conditions which are applicable to all projects. Commenting on the manner in which appraisal are done by the EAC, the Delhi High Court¹³ while considering the challenge to the environmental clearance granted to a mine in Goa made the following observation:

"As regards the functioning of the EAC, from the response of the MoEF to the RTI application referred to hereinbefore, it appears that the EAC granted as many as 410 mining approvals in the first six months of 2009. This is indeed a very large number of approvals in a fairly short time. We were informed that the EAC usually takes up the applications seeking environmental clearance in bulk and several projects are given clearance in one day. This comes across as an unsatisfactory state of affairs. The unseemly rush to grant environmental clearances for several mining projects in a single day should not be at the cost of environment itself. The spirit of the EAC has to be respected. We do not see how more than five applications for EIA clearance can be taken up for consideration at a single meeting of the EAC. This is another matter which deserves serious consideration at the hands of MoEF. "

Unfortunately, responses obtained using the Right to Information Act shows that no serious consideration was given to the suggestions given by the High Court and projects far in excess of five continue to be appraised by the EAC.

3. Poor level of Compliance and Monitoring for projects:

The existing monitoring and compliance mechanism of the Ministry of Environment and Forest is extremely weak. While approving a project a number of conditions are imposed but there is very limited monitoring so as to ensure that the conditions are complied with. This takes place both with forest as well as environmental clearances issued by the Ministry of Environment and Forest. While considering the challenge to the environmental clearance granted of the Shakti Bauxite Mine at Salcete and Quapem Taluk, South Goa, the National Environment Appellate Authority¹⁴ observed the following with respect to the monitoring system of the MoEF:

'It is necessary to point out the weakness in existing monitoring system in practice in the MoEF....the Monitoring Mechanism as practiced in the MoEF, as on date, appears to be weak. It has many pitfalls such as lack of effective follow up on compliance with conditions imposed in EC order....It is imperative that the existing Monitoring System is examined, so far as it relates to implementation of conditions attached to the EC order, pit falls identified and necessary remedial action taken so as to achieve broad objectives of the Environment (Protection) Act, 1986'

4. Cumulative Impacts of Projects are ignored

While individual projects are considered on the basis of the assurance that the project will not pollute beyond "permissible limits", the cumulative impact of projects in a valley or a region are neither studied nor demanded by the appraisal process. Infact the current process does not even have a mechanism to know if there are other projects in the region that will adversely affect the environment.

5. Despite Poor History of Compliance the Promoter is granted clearance for new projects

Some industries and establishments have a documented history of poor compliance. An example is of the Vedanta group, which includes mines in the Western Ghats. Despite this the new projects are cleared without questioning the intent or ability of the promoter. Same is the case with the Nuclear Power Corporation which has shown poor record in Kaiga but is now being considered for a mega nuclear power project in Jaitapur. Instead of penalising and barring such agencies and securing better performance in existing units, the clearance of new projects weakens the whole process.

6. Unfair Sequencing of the Clearance Processes

In most projects, the land is either acquired or purchased first and the process for seeking environmental and forest clearances is initiated. This is in violation of the procedure for free and informed consent from the affected people. Having lost their land, there is very little interest and meaning left of the public hearing process under the EIA regime.

5.**Case Studies**

In order to draw up a framework for environmental governance related reforms in the Western Ghats it is essential to focus on some of the projects granted approval under the EIA process in recent years. The case study is not limited only to projects located directly within the Western Ghats but also those in proximity to it. The case studies will help identify key shortcoming of the EIA process, as it exists today:

5.1 1200 MW JSW Thermal Power Plant at Ratnagiri, Maharashtra

The Ministry of Environment and Forests granted environmental clearance on 17th may, 2007 to the 1200 MW coal-based Thermal Power Project (TPP) of JSW Energy Ltd in Jaigarh, Maharashtra. This was challenge before various judicial (Bombay and Delhi High Court) as well as quasi judicial forums (National Environmental Appellate Authority). The legal challenges were done by local farmers groups as well as affected persons specially mango farmers. These legal fights led to a detailed judgment by the Delhi High Court in the case of Bhikaji Nalwade Vs Union of India. The Delhi High Court directed the Ministry of Environment and Forest to re-examine the environmental clearances since the appraisal by the Expert appraisal committee was found to be inadequate. It is imperative to focus on the procedure followed while according environmental clearance, since it identifies the principle short coming in the process of appraisal as is currently followed by the EAC.

The Court took note of the fact that the project proposal was considered in the Expert Appraisal Committee meeting held from 9-10 January 2007, during which the Committee sought further information on several points. The last paragraph of the minutes of the Committee meeting read as-

“it was decided that the proposal may be considered further only after the study on the impact of the project on alphonso mango plantations has been completed and the report submitted in addition to the information as mentioned above. Till such time the proposal may be kept in abeyance.”

Despite this observation, the EAC in its meeting held March 2007 considered the Project. The minutes of the meeting reflect the reliance placed by the proponent on a report submitted by the Konkan Krishi Vidyapeeth, Dapoli (KKVD). The report of the KKVD concludes-

“Based on the impact assessment studies conducted by the EQMS India Pvt. Ltd., New Delhi and prediction levels of pollutant mentioned by Maharashtra Pollution Control Board and Central Pollution Control Board, New Delhi, it appears that the activities to be undertaken by JSWERL for power generation at Jaigarh are not likely to affect horticultural plantation and mango plantation in particular as well as marine life significantly provided JSWERL’s strictly maintains its adherence to its commitments made for preventing environmental pollution from time to time in long run. However, Alhponso mango being the choicest variety of mango and a premium quality, branded variety in national and international market is necessary to undertake detail study for a period of 4 years to evaluate impact. Similar type of research is also necessary for marine fisheries.”

After taking this on record, the Committee recommended the Project for approval. The Delhi High Court found there to be contradiction in the minutes of the two meetings of the EAC. In the first meeting, it has been decided that the application would be kept in abeyance for six months till the

report of the KKVD was complete. Therefore, the report before the EAC during its March 2007 meeting was a preliminary report. The minutes of this meeting also record that as per the report submitted by KKVD it would take four years to undertake a detailed study to effectively evaluate the impact of the project. The report of KKVD was extremely guarded and cautious and was not based on studies done by them. Certain facts were brought to light by the Petitioner before the Court which proved that KKVD was not fully equipped to undertake a detailed study of the nature required to assess the impact of the Project on the mangoes when the Project was granted clearance. The Court found that the EAC was aware and conscious of the fact that no scientific study with certainty was available on the basis of which it could be stated that the increase in the pollution levels and release of gases as a result of the Project would not cause any damage to the eco system in the area and the mango plantations. Yet it recommended the project for approval. The Delhi High Court therefore directed the EAC to re-examine the clearance granted to the Project after considering the reports of KKVD on the basis of the data collected and analyzed by them. The Court asked the EAC to keep in mind the principles of Sustainable Development as explained by the Supreme Court in mind while re-examining the issue. The Project would not be made operational till the EAC had granted an approval after re-examination; although the Court allowed the Project Proponent to undertake tests and trials until then.

Subsequently the project was granted environmental clearance in 2010 by the Ministry of Environment and Forest. This has now been challenged before the National Green Tribunal by the same petitioner on the ground that the project has again been approved without studies having being completed. It is interesting to note that one of the grounds for granting environmental clearance for the second time was in view of the visit of the Sub Group of the EAC. An inspection of the Project site was carried out by a group headed by Prof (Dr.) CR Babu and the recommendations were placed before the EAC in its December 2009. In the minutes of the EAC Meeting held on 12 December 2009 it has been reported that Prof CR Babu stated that “emission from TPP can be drawn more or less parallel with vehicular emissions. Hence in the absence of existing operating TPPs in Ratnagiri, the Sub-Group observed that Mango plantations in the vicinity of major roads where heavy vehicular traffic are present seem very healthier than those further away from town. It was felt that the reason could be SO₂ emission gets converted into sulphate and NO_x into nitrate form, which may be good for the mangoes or other vegetations.” Prof. Babu also stated that, “impact on flowering and fruiting due to vehicular emissions even if drawn parallel to TPP emission however need to be studied for which KKVD is to complete the study]. Prof. Babu further stated that the representations of NGOs and locals seem motivated and are apparently biased. He stated that impact zone, if any, cannot be further beyond maximum 5.0 km from the source of emission.

The manner in which the Environmental Clearance was dealt by the EAC and MoEF as well as the subsequent litigation reveals the following:

The EAC failed to carry out detailed scrutiny of the project despite being located in an ecologically fragile area. The EAC recognised the fact that the studies are yet to be complete and yet recommended the project for approval.

The MoEF did not independently verify the facts and merely accepted the recommendation of the EAC unmindful of the large scale concern of the local farmers and fisherfolks.

The High Court order recognised the shortcoming in the working of the EAC and directed the MoEF to do a reappraisal. The MoEF still is yet to insist on the four year study before the project is made operational. Infact the project was subsequently made operational based on MoEF approval.

The High Court noted that the approval granted to the project was not in accordance with the precautionary principle. It needs to be emphasised that the approval to JSW was not an isolated case and such approval without adherence to the precautionary principle is more of a norm than an exception.

5.2 Mining at Village Pirna by Sesa Goa, Bardez, North Goa, Goa

Ms Sesa Goa (a Vedanta owned company) is located at Village Pirna and Nadora in Bardez Taluk, North Goa. The project was granted environmental clearance by the Ministry of Environment and Forest on 09-06.2009. This clearance was challenged before the National Environment Appellate Authority, New Delhi by a local group called Pirna Naroda Nagrik Kruti Samiti.

The main ground for challenge was that at the Public hearing held for the project, there was 100% opposition on behalf of the local people to the mining project. Yet the Expert Appraisal Committee decided to overlook the opposition and in a mechanical fashion recommended for grant of environmental clearance. The minutes of the EAC meeting did not reveal that the EAC even bothered to look at the minutes of the Public Hearing. Further, the EAC at the time was headed by one M.L Majumdar who himself was on the board of four mining companies and therefore the decision was biased has held by the Delhi High Court in the case of Uttakarsh Mandal Vs Ministry of Environment and Forests.

SESA Goa however took the stand that 53 people supported the project. The NEAA however did not accept this contention since none of the 53 persons supporting the project were present at the Public Hearing. The NEAA in its order directed that the Ministry of Environment and Forest should constitute a sub committee of the EAC to visit the area and examine the reasons for the opposition to the mining and reexamine its impact on agriculture horticulture, school children, health, habitation, river and ground water etc and also in the light of the fact that the Ministry of Environment has imposed a moratorium on mining in Goa. The NEAA further directed that the Committee should have three environment experts and one mining expert and advance intimation be given to the persons of the area who opposed the project.

5.3 Mining in Ratnagiri by Ashapura Minechem Ltd

On 29 December 2006, the Union environment ministry signed off on the environmental clearance for a bauxite mining project located in Ratnagiri, Maharashtra, to be operated by Ashapura Minechem Ltd, a listed Indian firm that is on the verge of starting the mine. On the face of it, the clearance, given by the ministry on the recommendation of an internal expert appraisal committee on mining, consisting of 11 members, was fairly routine but vital to Ashapura moving ahead on the project. But, it turned out that the critical environmental impact assessment, or EIA, the basis on which the expert group gave its approval, was based on data simply copied from a Russian bauxite mine report that had nothing to do with Ratnagiri's vegetation or ecology. The EIA was a critical element of the process of granting the licence to Ashapura.

EIA Response Centre through an RTI filed on 22 August obtained a copy of the EIA, on the basis of which the project was cleared. ERC then sent the EIA to E-law, a US-based global network of environmental lawyers, for comparison with other EIAs. E-Law discovered that large portions of the Ratnagiri EIA were actually copied from a Russian EIA for a bauxite mine. "The Indian EIA is a pirated version of another one for a proposal by a Russian aluminium company to mine bauxite in the Komi Republic of Russia. It was submitted to the European Bank for Reconstruction and Development in April 2004," according to Mark Chernaik, a lawyer who works with E-law. Indeed,

Rob Hounscome, the author of the original EIA for a Russian mining project, said in a telephone interview: “Clearly there has been liberal and uninformed cut-and-paste of our work.” Apart from the obvious mistakes on vegetation, there are numerous examples in the Ratnagiri EIA of text copied verbatim from the Russian report, including variables in surface water quality, precipitation, bird and mammal densities, and number of species and impacts of the project.

5.4 EIA Study for Mining Project of Careamol Mine, South Goa

The Ministry of Environment and Forest granted environmental clearance on 18-07-2007 to the Mining project of Jaisinh Mangall at Village Pirla, Quapem Taluk, District South Goa. Mining was proposed to be carried out on an area of 98.76 ha. A local farmers association - Gomantak Shetkar Sanghatan - challenged the project before the National Environment Appellate Authority. The ground for challenge was the following:

The Mining lease is close to Village Pirla and thereby will have adverse impact on the people and the environment. The Rapid EIA report had concealed the presence of natural forest in the area and also the fact that the area had good agricultural land, plantation of coconut etc. There were rock carvings within 500 metres downstream of the lease area. Mining will change its landscape and would affect the plan of the State in developing the area into a cultural tourism destination.

The Goa State Agricultural Marketing Board had objected to the grant of mining rights since the area is cultivated with crops such as coconut, cashew, areca nut, and banana. The Public hearing for projects was held more than 50 kms from the project site and thereby making it difficult for the affected people to attend the same.

The issue was examined by the NEAA and it observed as follows:

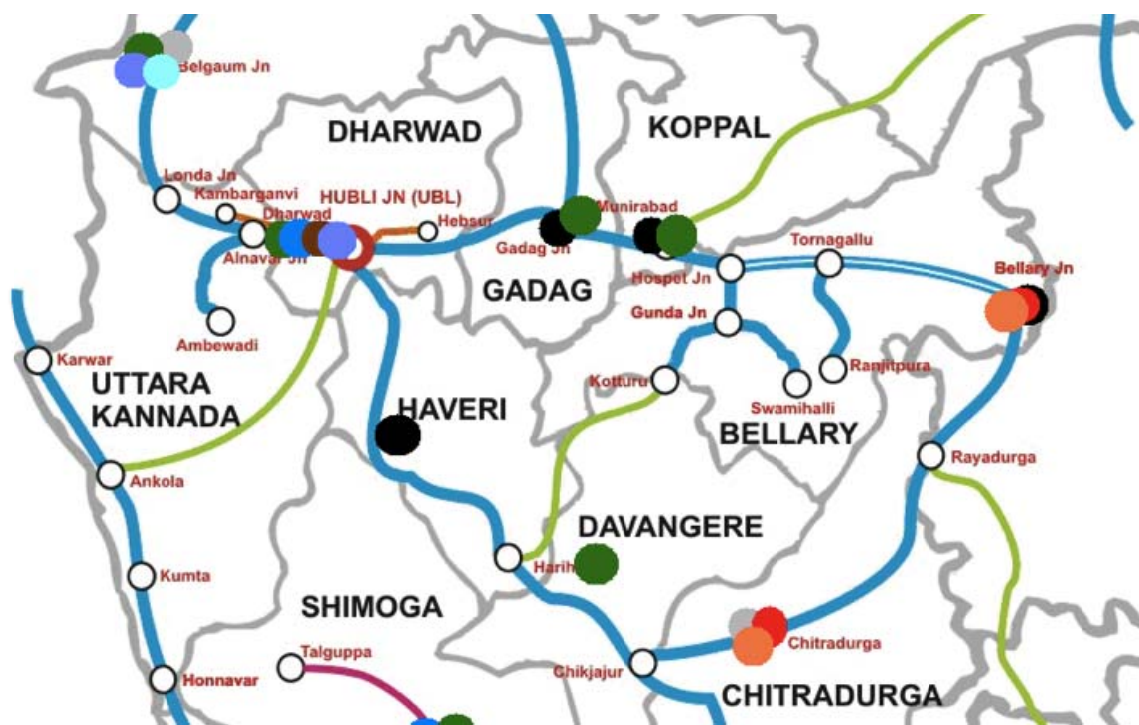
“The Authority also perused the minutes of the 12th EAC meeting which examined the report of the Sub Committee sent to assess the impact of mining on wildlife and forest. The Sub committee seems to have noted the presence of well-vegetated slopes and the rest of the area containing moderately thick vegetation but the EAC had failed to consider the impact of mining on it and also on agriculture and other plantation crops in the area including dairying and archaeological site located in the vicinity. The objections raised by the people during the Public Hearing have also not been considered by the EAC in its deliberations.”

The NEAA conducted a site visit of the area and noted the presence of thick forest growth and also three streams. It concluded that removal of vegetation followed by excavation will cause serious impacts on river flow and on adjoining agricultural lands. The NEAA concluded:

‘the authority has thus come to the conclusion that the EAC has failed to appreciate the vital impact of mining on the livelihood of the people of the area and the long term impacts on the ecology and environment. It was also observed that the mitigative measures and the safeguards proposed can hardly take care or compensate the damage mining would cause to the area in the short and long term. Authority also feels that the contribution of this inferior iron ore to the States exchequer does not call for striking a balance between development and environment protection of the area.’

5.5 Hubli – Ankola Railway Line

THE construction of a long pending railway line from Hubli to Ankola, Karnataka, has been stayed by the Supreme Court's Central Empowered Committee (CEC) for violating the Forest Conservation Act, 1980 (FCA). The 168-km broad-gauge line, earlier the Hubli-Karwar project, will cost an approximate Rs 1,153.08 crore and require 1,384.40 hectares (ha) of land, of which 965 ha is reserved forest and 173 ha categorised as wetland. The Union ministry of environment and forests rejected the project proposal a few months back under the FCA. The Karnataka chief conservator of forests says the project will harm the hydro-logical system of major rivers in the Western Ghats.



But even without the approval of the centre, work on the project, a joint venture between the ministry of railways and the Karnataka Rail Infrastructure Development Enterprise, has commenced 40 km of the stretch. This stretch includes 1.1 km of forest land, for which the proposal has been rejected. Under FCA, in case a proposal for diversion of forest land is rejected, work cannot begin even on non-forest land. Besides, this track is meant only for freight. It will help only the iron and manganese mines of the Bellary-Hospet region for transportation of minerals to Goa, Tadri and Dharwar ports.

Centre for Environmental Sciences (CES), Indian Institute of Science that conducted the scientific survey has said that it was possible to lay the line with minimum impact on environment and wildlife. The team, which held a public hearing, on the line in Bangalore opined that the railway line was better than having a four-lane highway between Hubli and Ankola, as the highway will use up more than 20 times the forest area than used by the railway line. "The damage to the environment in terms of destruction of trees, wildlife corridor, and sub-terrain water veins can be minimised by using modern techniques of construction since, in most of the distance in the environmentally sensitive areas, the railway line would pass through tunnels, there would be no danger of cutting across the wildlife corridor or destruction of trees," said scientist VN Nayak of Uttara Kannada Vijnana Kendra at Karwar. He said that the issues that came up for public hearing in Bangalore revolved mostly around the environmental aspects, but the antagonists of the railway line had

forgotten the environmental damage the four-lane highway would inflict in the region. “The savings on fuel and environmental damage caused by the exhaust of the thousands of vehicles passing on the highway was far more damaging than the fuel used and pollution created by railway engines. Since the highway would be nothing less than 100 metres wide and not less than 180 km between Ankola and Hubli, the wildlife corridors will be permanently severed and forests cannot be regenerated in the area.”

The above studies are only illustrative. It is a fact that only a fraction of projects are actually challenged before appropriate forums and the fact that few of the decisions of the Government can withstand judicial scrutiny is testimony to the poor level of appraisal that takes place. The reality is that no appraisal takes place. Projects are approved without going through the EIA report or the Public hearing proceedings. No site visits are carried out and no independent members are present during the deliberation. It is therefore no surprise that most projects are approved by the MoEF despite its impact on the ecology. The Western Ghats is unfortunately facing the brunt of this environmental maladministration.

6.**Towards Better Governance**

Western Ghats occupy without doubt a key role in the maintenance of local and global biodiversity and have been considered as a biodiversity hotspot. Way back in the year 2000, the Supreme Court¹⁵ while examining the issue of deforestation observed that 'there should not be any further depletion of forest cover in the sensitive areas such as the Himalayas and the Western Ghats'. It is therefore imperative that the flaws with the existing mechanisms have to be critically addressed and a road map evolved. Today the Ministry of Environment and Forests is at a cross road without the ability to withstand the diverse pressures because of the social and environmental impacts. Institutionally too, there have been various changes effected and are in the process. The exponential increase in the number of projects and the "lackadaisical" ¹⁶ manner the Ministry has been performing demands significant public involvement to ensure that due diligence prevails. Further there are several international covenants to which India is a signatory whose adherence is imperative in the context of the globalizing world.

6.1 Reforms in the existing clearance procedure:

At present, projects requiring prior environmental clearances from the Ministry of Environment and Forest are required to be appraised by sector specific EAC's. At present the following EAC's are in existence: EAC for Thermal, Industry, Mining, Infrastructure, CRZ, New Construction projects, River Valley and hydro electric projects. Projects are evaluated in terms of site specific factors without considering the overall geographical location of the site. Thus a mine project or industrial project is considered irrespective of its larger location. Given the sensitivity of the Western Ghats it is recommended as follows:

Specific Terms of Reference (TOR's) should be framed for preparation of EIA reports for projects located in the Western Ghats. This is critical given the fact that at present model TOR's are framed which do not take into account the larger geographical landscape. This should be prepared by experts including civil society members which make it imperative to focus on both likely ecological and social impact of the proposed project. Given the cultural significance of forests and natural features such as rivers and lake, Cultural Impact Assessment (as mentioned in the Akwe kon guideline of the Convention on Biological Diversity) should be followed.

The TOR's should be available for public comments so that issues which might have been overlooked are included.

A special Western Ghats Expert Appraisal Committee should be set up (or may be part of the function of the proposed Western Ghats Authority) to further appraise a project after it is recommended by the Sector specific EAC. The Western Ghats EAC will have the power to examine the in principle approval in the light of cumulative impacts of the project and sensitivity of the particular site and the net adverse impact likely due to addition of a new project. The Western Ghats EAC should have the power to reject any project which has obtained an 'in principle' approval from the sector specific EAC. It is essential that the EAC is composed of people well versed with environmental and social issues concerning the Western Ghats and have a proved track record in environmental protection and sensitivity to social issues. The Western Ghats EAC shall have jurisdiction not over Environmental clearance but also over approvals granted under the Forest (Conservation) Act, 1980 and the Wildlife (Protection) Act, 1972. Detailed guidelines should be put in place mandating the requirement for Site visits before a final decision is taken. Cumulative Impact Assessments and carrying capacity studies should be made mandatory for all projects.

6.2 Inclusion of projects having significant impacts within the ambit of the EIA:

The EIA notification as is in force excludes a number of projects from its purview. The context of Western Ghats many projects which have had significant impacts are not within the scope of the existing EIA regime e.g. the exclusion of irrigation projects such as the Kalsa Bhandura projects (which involves diversion of the West flowing Mahadei river to enhance the flow of water to the East flowing Malaprabha river) points to serious lacunae in the EIA system. Railway projects such as the Chamrajnagar Mettupallayam Broad gauge project between Tamil Nadu and Karnataka¹⁷ and the Hubli Ankola Railway Line in Karnataka do not require any Environment Impact Assessments to be done. In both the instances work on the project was stopped due to opposition by the Forest Department of the respective states as well as intervention of the Central Empowered Committee of the Supreme Court of India. But the larger environmental issues remain unaddressed. Recently the Central Government has initiated steps to revive both the projects and this is an issue of serious concern since existing EIA regimes are not applicable to railway projects¹⁸.

There are a range of other projects which needs to be included with the scope of EIA although prima facie they may seem to be ecologically friendly. Examples of such projects are: mini hydel projects, windmills, tourism projects and resorts specially located within or in proximity of forest land and other ecologically sensitive areas. A comprehensive list needs to be prepared keeping the ecological sensitivity of the Western Ghats in view.

6.3 Need for Redressal Mechanisms

Appropriate Grievance redressal mechanisms needs to be put in place for the Western Ghats. If one analyses the appeals filed before the National Environment Appellate Authority it is clear that the maximum number of cases have been filed from the Western Ghats region. It is clear that projects in the Western Ghats are legally opposed by affected communities and civil society groups. Given this fact it is essential that a dedicated grievance redressal mechanism is set up for disputes concerning the grant of forest, environment and wildlife clearances. In view of this it is proposed that the proposed Western Ghats Authority be empowered under Section 5 of the Environment (Protection) Act, 1986 to issue directions. The other suggestion is to set up a dedicated bench of the National Green Tribunal for the Western Ghats. Given the wide jurisdiction of the National Green Tribunal on laws such as the Forest (Conservation) Act, Environment (Protection) Act, 1986 and the Biological Diversity Act, 2002, the bench for the Western Ghats comprising of judicial and expert members familiar with the environmental issues of the Western Ghats will held in access to justice on matters concerning the environment and also help in ensuring uniformity of judicial decisions with respect to the western Ghats.

6.4 Proper Sequencing of the Steps Required for Approval of Projects:

There is a need to ensure that a fait accompli situation is not created with respect to projects seeking approval. Under the present law, the EIA process is largely independent of other approvals. Project proponents either acquire the land (e.g. Jaitapur Nuclear power project) or purchase the same (most mining projects) from the farmers or other landowners. The Public Hearing and Environment Clearance process generally is initiated after the process of purchase and acquisition of land has been completed. In such a situation, it cannot be expected that people will be free in expressing their views about a proposed project. The EIA process and Public Hearing is rendered a farce in such a situation. In respect of Forest clearance also a similar situation takes place wherein

despite the project being located in a forest area, the environmental clearance is obtained first. Also it has been noted that in many instances, work begins in the non-forestland with the hope of obtaining approval for the forestland based on the expenditure incurred on the forestland. This has been the case of the Hubli Ankola Railway line in Karnataka as well as the Kalsa Bhandura irrigation project in Karnataka. The EIA Notification states as follows with respect to clearances from other regulatory bodies:

Clearances from other regulatory bodies or authorities shall not be required prior to receipt of applications for prior environmental clearance of projects or activities, or screening, or scoping, or appraisal, or decision by the regulatory authority concerned, unless any of these is sequentially dependent on such clearance either due to a requirement of law, or for necessary technical reasons.

If one focuses on the last two lines, it is clear that unless the project is approved by the MoEF no work can begin hence there is no need for land to be either purchased or acquired prior to an environmental clearance being obtained. Once land is acquired or purchased it is unlikely that the participation and decision-making can be fair and informed. There is thus a need to stipulate the logical sequence to be followed for seeking approval.

6.5 Regional Plans to be Given Priority:

The EIA process does not take into account the fact whether a particular project is permissible in accordance with the local land use plan. Although, the Regional Plans have at times statutory backing they are largely ignored in the environmental planning and decision-making process. The questionnaire and the form's to be submitted along with the environmental clearance application mandatorily requires that the project proponent has to mention clearly as to whether the proposed project is in accordance with the approved management plan, it is unfortunately largely ignored in the appraisal process. Thus the Regional Plan, Ratnagiri- Sindhudurg resource Region 1981-2001 prepared by the Ratnagiri Sindhudurg Regional Planning Board. The Plan recognizes that the Ratnagiri-Sindhudurg region is a very ecologically sensitive region and therefore any development activity undertaken in this region has to be necessarily developed keeping in view the ecological considerations. It is specifically mentioned that in the plan that good agricultural lands or lands with good agro-horticultural potential may not be deprived of their potential while locating industries in the region. It is further stated that Legislative support could be provided to ensure that the green rich eco-system of the area is further enriched by industrial developments and not destroyed. However, despite this specific mention in the Regional Plan about the kind of activities, Environmental Clearances have been approved without any consideration of the Regional Plan.

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- ¹ <http://westernghats-paimohan.blogspot.com/2008/07/geopolitical-profile.html>
 - ² India Infrastructure Report, 2009
 - ³ FSI "India State of Forest Report 2009" 7.14 - Kerala
 - ⁴ As per Forest Department, Kerala
 - ⁵ *The report of the Working Group on Hill Area Development Programme for the Tenth Five Year Plan (2002-2007), Govt. Of India, Planning Commission, June, 2001 considers Ahmednagar (Maharashtra), Dharwad (Karnataka), Erode and Madurai (Tamil Nadu) as districts of the Western Ghats region.*
 - ⁶ <http://forestrights.gov.in/Claimreport/rptDWIC.jsp?state=29&&page=1>
 - ⁷ MoEF OM - No. J-11013/5/2010-IA.II(I)
 - ⁸ MoEF OM – No. J-21011/58/2010-IA-I
 - ⁹ <http://www.hindu.com/2009/11/21/stories/2009112154952000.htm>
 - ¹⁰ <http://www.downtoearth.org.in/node/8572>
 - ¹¹ T. N Godavarman Thirumulpad vs Union of India I.A No 2609-2610 in W.P (C) No. 202 of 1995 decided on 3-12-2010
 - ¹² Uttkarsh Mandal Vs Ministry of Environment and Forest. Order dated 26-11-2009.
 - ¹³ Uttkarsh Mandal Vs Ministry of Environment and Forest
 - ¹⁴ Chandrakant Kavelekar vs Ministry of Environment and Forest, Appeal No. 11 of 2008, order dated 31-5-2009
 - ¹⁵ T. N Godavarman Thirumulpad Vs Union of India. I.A 424 in W.P 202 of 1995. Order dated 8-1-2001
 - ¹⁶ CEC Commenting on MoEF in Lanjigarh case
 - ¹⁷ <http://www.hindu.com/2010/11/25/stories/2010112555450300.htm>
 - ¹⁸ <http://www.deccanherald.com/content/127802/hubli-ankola-railway-line-report.html>