

# World Heritage Sites and Indigenous Peoples' Rights

Edited by Stefan Disko and Helen Tugendhat

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## World Heritage Sites and Indigenous Peoples' Rights

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## Western Ghats of India: A Natural Heritage Enclosure?

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*C.R. Bijoy*

### Introduction

Of the 981 properties inscribed on UNESCO's World Heritage List as of July 2013, 24 cultural sites and six natural sites are in India.<sup>1</sup> One of the natural World Heritage sites in India is the Western Ghats, inscribed at the 36<sup>th</sup> Session of the World Heritage Committee in Saint Petersburg, Russian Federation (24 June – 6 July 2012).

The Government of India's Ministry of Environment and Forests (MoEF) took responsibility for identifying potential sites in the Western Ghats, Eastern Himalaya and Terai Ecoregions in 2002 jointly with the Wildlife Institute of India (WII), Dehradun (a scientific institution), and two civil society organizations, Ashoka Trust for Research in Ecology and Environment, Bangalore (ATREE), and Nature Conservation Foundation, Mysore. The results of the assessment were discussed in a National Seminar on World Heritage Properties organized by WII on 23 September 2004. In 2006,

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<sup>1</sup> Another 33 properties have been included on India's tentative list of potential World Heritage sites, a prerequisite for inscription on the World Heritage List.

the Western Ghats Cluster was entered on India's tentative list as a potential 'serial' World Heritage site nomination.<sup>2</sup>

The seven Sub-clusters of the Western Ghats (see Figure 1) were then formally nominated as a serial natural site in January 2010 and first considered by the World Heritage Committee at its 35<sup>th</sup> session in June 2011. However, the nomination was 'referred' back to the State Party – which means that India had to provide additional information and meet some recommendations of the Committee for approval to be granted. The decision to refer was accompanied by a range of actions suggested to India, largely focused on ensuring that the size, complexity and scope of the proposed site were suitable and that appropriate management arrangements for the site would be formed. The decision also referenced, tangentially, a need for “participatory governance approaches”, “increased engagement with all stakeholders”, and greater “community membership and input” into the management of the site.<sup>3</sup>

The World Heritage Committee's lack of reference to local communities and indigenous peoples directly dependent on and living within the proposed sites was in contrast to local-level activism against the declaration of the site as World Heritage. The preparation of the nomination of the Western Ghats was met with protests from local inhabitants in various of the 39 component parts of the serial site – a population of approximately 100 000+ people is directly dependent on the 7,953.15 km<sup>2</sup> that was included in the proposed site. The tribal peoples living in these areas argued that they had not been involved in the preparation of the nomination of their lands, nor were they represented in the management structures that would take overall control of the sites. They also expressed concern that a World Heritage inscription would restrict their access to the lands and resources on which they depend.

## Western Ghats: Adivasi homelands

The Western Ghats, a chain of mountains, runs parallel to India's western coast, about 30-50 km inland, and traverses the states of Kerala, Tamil Nadu, Karnataka, Goa, Maharashtra and Gujarat. Spread over 140,000 km<sup>2</sup> in a 1,609 km long stretch, it is interrupted by the Goa Gap, Palghat Gap and Shencotta Gap. It is the source of at least 60 rivers, including three major ones (the Krishna, Cauvery and Godavari) and is a lifeline for over 300 million people. It influences the entire Indian peninsula.

The Western Ghats is the abode and homelands of Adivasis in southern and western India. The term 'Adivasis' is the more socially acceptable and recognized term of reference and translates to the literal meaning of 'indigenous peoples'; however, the officially recognized term 'Scheduled Tribes' is often used instead and has a very specific legal

<sup>2</sup> A serial nomination is any nomination that consists of two or more geographically unconnected areas.

<sup>3</sup> Decision 35 COM 8B.9.

meaning.<sup>4</sup> Scheduled Tribes are notified by the President of India in relation to a particular state or union territory. The states of Kerala, Tamil Nadu, Karnataka and Maharashtra together have a total of 121 Scheduled Tribe communities.<sup>5</sup> Of these, 14 are also categorized as 'Particularly Vulnerable Tribal Groups' (earlier called 'Primitive Tribal Groups') as they are considered as the most marginalised among the Scheduled Tribes. At the time of the 2001 Census, the southern region consisting of Kerala, Tamil Nadu and Karnataka together had an Adivasi population of 4,479,496 with a share of 5.31% of the total ST population of the country and Maharashtra with 8,577,276 had a share of another 10.17%.<sup>6</sup> An overwhelming majority of Scheduled Tribes in Kerala and Karnataka inhabit the Western Ghats while in Tamil Nadu and Maharashtra a significant section of Scheduled Tribes dwell in the Western Ghats.

Over 300 hamlets with about 75,000 to 100,000 tribals, and over 4,000 non-tribals are located within the sites in Western Ghats now conferred with World Heritage status. Another 100,000+ people live in areas bordering these sites. These are the minimum estimates as no clear figures are available.<sup>7</sup> There are at least 29 tribal communities inhabiting these sites, of whom four are categorized as Particularly Vulnerable Tribal Groups, namely Cholanaicken (semi-nomadic cave dwellers 'discovered' by the outside world about four decades ago), Jenu Kuruba (honey gatherers), Koraga ('untouchables' forced to do the most menial and dirty jobs) and Paniya (mostly landless agricultural workers and forest produce gatherers). There are also subsistence farmers such as Mannan, Muthuvan, Kurichiar and Hallaki Gouda. Forest-dependent nomadic hunter-gatherers, foragers, forest produce collectors, agricultural workers and cultivators include the Paliya, Ulladan, Hill Pulaya, Urali, Irula and Siddi. The Siddis are the descendants of African slaves who were brought to India mainly by Arabs, the Portuguese and the Dutch. Adiya and Paniya, former bonded laborers working on plantations, are mostly landless. The Beta Kuruba produce household items such as baskets and sieves from bamboo and other forest produce. Only the three sites in Maharashtra do not have any tribal population. The Western Ghats therefore contains a significant array of cultural diversity and a diversity of relationships between the different indigenous and tribal peoples and the lands on which they depend. Altering the protected status of the Western Ghats impacts on each of these peoples in distinct ways; however, this was not considered in the World Heritage nomination process.

4 'Scheduled Tribe' is defined under Article 366 (25) of the Constitution of India as "such tribes or tribal communities or parts of, or groups within such tribes, or tribal communities as are deemed under Article 342 to be Scheduled Tribes for the purposes of this Constitution". This status, conferred on the basis of birth of a person into a Scheduled Tribe, offers certain specific constitutional privileges, protection and benefits. Although not all Scheduled Tribes are Adivas and vice versa, by and large, the Scheduled Tribes as a category covers most of the Adivasi communities. Moreover, a community recognized as Scheduled Tribe in one state need not be recognized similarly in another.

5 Kerala state has 36 Scheduled Tribes, Tamil Nadu 36, Karnataka 50 and Maharashtra 45. A number of their inhabited areas are divided between states and so they find themselves listed in more than one state as STs. Taken together, there are 121 ST communities.

6 Census of India 2001.

7 The calculations are based on a variety of sources, incl. Government of India 2009, National Tiger Conservation Authority 2011, Johnsingh 2000, data of the Forest Department, Kerala (maintained by the Chief Conservator of Forests and as per working/management plans) and personal communications.

Environmentally, the area is a rich store of biodiversity. An estimated 23% (43,611 km<sup>2</sup>) of the original extent of forests (189,611 km<sup>2</sup>) remains intact.<sup>8</sup> The Western Ghats is home to around 5,000 species of flowering plants (of which 1,700 are unique to the area), 58 endemic plant genera, 267 species of orchids, nearly 650 tree species, about 139 mammal species, 508 bird species, 179 species of amphibians, 157 species of reptiles, 218 species of fish and 330 species of butterflies. It has the world's largest population of endangered 'landscape' species such as the Asian elephant, with around 11,000 elephants, gaur and tigers. At least 325 globally threatened (IUCN Red Data List) species live in the Western Ghats. It is ranked, together with Sri Lanka, as one of the most important biodiversity hotspots globally, and is one of the Global 200 most important ecoregions.<sup>9</sup>

## Whose land is it?

Spread throughout the states of Kerala, Tamil Nadu, Karnataka and Maharashtra, the Western Ghats serial sites total an area of 7,953.15 km<sup>2</sup>. All of the 39 sites are forest areas administered by the Forest Department under the jurisdiction of the Ministry of Environment and Forests and the respective state governments. Within this designation, however, there is a wide range of legal frameworks that apply to the various sites in the Ghats, which makes a singular analysis of the legal situation of the lands problematic. Twenty-two of the sites fall within the Protected Area (PA) regime of either national parks or wildlife sanctuaries (2,028.76 km<sup>2</sup> and 3,064.39 km<sup>2</sup> respectively). Of these, two are notified as Critical Tiger Habitats in Tiger Reserves (with one more likely to be notified) while five more sites are part of three other Critical Tiger Habitats (totaling 1,954.35 km<sup>2</sup> under Critical Tiger Habitat status). The remaining sites are classed as either reserve forests (2,144 km<sup>2</sup>) or forest divisions (716 km<sup>2</sup>). There are therefore five different legal classifications of protected status currently active in the 39 component sites, each with different restrictions and permitted activities.

The legal status of the lands involved and the complexity therein reflects a wider situation in India. The appropriation of forested lands by the state has a long history, beginning when large tracts of Adivasi homelands were declared forest under the *Indian Forest Act, 1927*.<sup>10</sup> This law is a piece of central legislation and, together with the respective state laws patterned on the central law, represents a colonial regime that treats the area and its inhabitants as 'conquered'. The law stipulates that the rights of the inhabitants are to be recognized while declaring the areas as 'forest'. Many areas in the Western Ghats were notified as forest during British rule and have continued to be classified that way since India's independence. However, the legal rights of their inhabitants remained largely denied, unrecognized or unsettled, which means that they are treated as though they are encroachers and criminals.

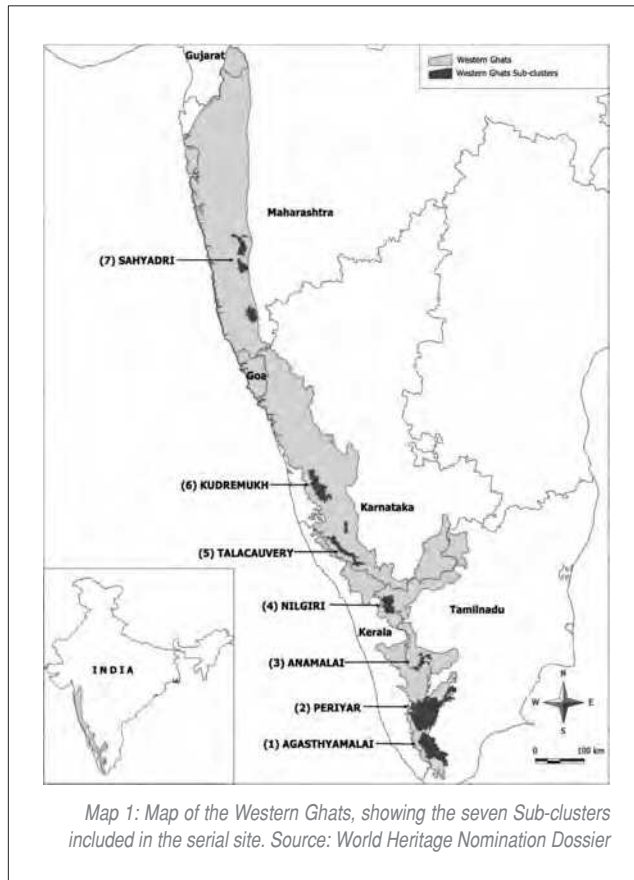
The *Wildlife (Protection) Act, 1972* provides for the demarcation and notification of sections of forest for wildlife protection either by restricting human activity via Wildlife Sanctuaries or totally prohibiting it via National Parks.<sup>11</sup> However, in a study of Protected Areas, it was found that 69%

8 Of this, 140 000 km<sup>2</sup> are mountainous.

9 Government of India 2009, pp. 1-13.

10 Act No. 16 of 1927 [21 September 1927].

11 Act No. 53 of 1972 [9 September 1972]. For details on the procedures and restrictions imposed, see Chapter IV of the Act.



of PAs surveyed had human populations living inside the declared area and 64% had community rights, leases or other customary concessions.<sup>12</sup> Consultative processes involving local people during the declaration of the PAs and subsequent regulation and restriction of resource use were generally found to be lacking.

The *Forest (Conservation) Act, 1980* marked a shift in three important ways: by introducing the element of conservation to the previous approach of maximizing revenue through forest extraction; by prohibiting encroachment into the forests since 1980 and regulating the diversion of forest for non-forestry activities; and by making control over the forests a joint management responsibility with the central government whereas forests had previously been

<sup>12</sup> Kothari et al. 1989.

the exclusive domain of the respective state governments.<sup>13</sup> The result was disastrous for the Adivasis. The slow process of settlement of rights of the traditional forest dwellers, an issue of persistent struggle since independence, came to an absolute halt, intensifying the crisis faced by Adivasis.

In 1990, the central government and the state governments jointly decided to settle some of the claims of these peoples and recognize a limited number of their rights;<sup>14</sup> however, the implementation of this joint decision never got off the ground and state governments ignored the relevant directives of the central government. The crisis of survival for Adivasis only deepened.

### Forest governance: from a colonial to a democratic regime

The widespread illegal evictions that were taking place across the country in 2002 under the guise of reversing encroachment into the forests, and the consequent state violence, led to a nationwide struggle of Adivasis asserting their traditional and customary rights, insisting that 'historic injustice' be rectified through the recognition of their rights to their lands and resources.<sup>15</sup> The rapid spread of the Maoists and their armed struggle – predominantly in forested regions – simultaneously brought forested areas to the attention of both central and state governments.

The result of these pressures was the enactment of what is now popularly known as the 'Forest Rights Act' in 2006, which became operational on 1 January 2008.<sup>16</sup> The Act was drafted amidst a heated and bitterly contested national debate, both in the media and in the corridors of power.<sup>17</sup> The Act seeks "to recognise and vest the forest rights and occupation in forest land in forest dwelling Scheduled Tribes and other traditional forest dwellers who have been residing in such forests for generations but whose rights could not be recorded; to provide for a framework for recording the forest rights so vested and the nature of evidence required for such recognition and vesting in respect of forest land". It recognizes that "forest rights on ancestral lands and their habitat were not adequately recognised in the consolidation of state forests during the colonial period as well as in independent India resulting in *historical injustice* to the forest dwelling Scheduled Tribes and other traditional forest dwellers who are integral to the very survival and sustainability of the forest ecosystem".<sup>18</sup> The passage of this Act was a significant victory for recognition of the inherent rights of Adivasis to their traditional and customary lands and resources.

13 Act No. 69 of 1980 [27 December 1980].

14 This process was to include: a review of the claims of inhabitants who had contended that their claims to lands were not enquired into or commuted before notifying these lands as forests, the regularization of 'encroachment' prior to 1980, and the restoration of titles, grants and leases of lands that were illegally cancelled at the time of notification of forests and conversion of forest settlement into revenue settlement.

15 Led by the Campaign for Survival and Dignity, a coalition of over a hundred Adivasi mass organizations from 11 states; for details see [www.forestrightsact.com](http://www.forestrightsact.com).

16 *The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006*. Act No. 2 of 2007 [29 December 2006].

17 For a detailed account of this, see Bijoy 2008.

18 Extracted from the preamble to the Forest Rights Act (emphasis added).

Arrayed against the interests and rights of Adivasi peoples in the passage of this Act were the powerful elite conservationists and environmentalists who not only angrily opposed any attempt at recognizing the rights of forest dwellers but blamed them squarely for the rapid decimation of forests and wildlife and demanded that they be forcibly evicted. This elite also targets those conservationists who show any support for community conservation.<sup>19</sup> This is despite the fact that conservation science itself has increasingly exposed the fallacy and myth of pristine inviolate wilderness while moving towards conservation with and by the people, especially indigenous peoples and forest dwellers.<sup>20</sup>

This period of heightened tension also occurred when the proposal to nominate the Western Ghats for World Heritage listing was first mooted. It is notable, however, that mention of the Forest Rights Act could be found neither in the 2009 proposal for nomination nor in the Supplementary Information submitted by MoEF at the request of IUCN in February 2011.<sup>21</sup> This is despite the fact that a significant part of the proposed sites fell within the customary and traditional boundary of Adivasi villages and the responsibility for conservation, including of the cultural and natural heritage in these areas, was legally vested in the *Gram Sabhas* or village assemblies (see below). For the MoEF, the Forest Rights Act (under which it is the *Gram Sabhas* who now have the power to protect and conserve forests falling under their jurisdiction) and its implementing agency, the Ministry of Tribal Affairs, simply did not figure in the proposed protection and management structure for the site. Neither did the IUCN evaluation see fit to point out this major flaw in the proposal.<sup>22</sup>

There was pushback against the rights recognized under the Forest Rights Act. In 2006, the *Wildlife Protection Act* was amended to provide for the establishment of a National Tiger Conservation Authority (NTCA) and the elevation of 'Tiger Reserves' from an administrative category to a legal category consisting of 'Critical Tiger Habitat', to be kept 'inviolable' from all human interference, and buffer zones where human activities were restricted.<sup>23</sup> Since the amendment was passed, there has been a rapid expansion in the number of areas declared protected and in which all human interference is banned. Assessment and recognition of the rights of the inhabitants was not carried out prior to a declaration of 'Critical Tiger Habitat', as legally required. The state governments did not follow the procedures for consulting and obtaining the informed consent of local communities legally mandated under the above

19 Sethi 2011.

20 Dowie 2009.

21 Government of India 2011.

22 IUCN's Advisory Body Evaluation mentions the Forest Rights Act only in the following context: "A number of sites have had their protection status and/or their boundaries altered since the nomination and this may have implications for management. In most cases this has strengthened protection, however, there are likely to be implications for ... relationships with local human populations. For example Tiger Reserves require core 'no go' areas which, in the past, required relocating people into buffer zones. The *Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act*, is leading to a redefined understanding of 'core', as property rights of forest dwellers have been recognised and forced relocation is banned. The implications of these changes need to be carefully weighed. The State Party did not provide detailed supplementary information on the changed protection status of component parts of the nomination." (IUCN 2011, p. 42).

23 *Wild Life (Protection) Amendment Act, 2006*, No. 39 of 2006 [3 September 2006].



*Adivasis at the gate of the Periyar Tiger Reserve, Kerala, one of the 39 sites included in the Western Ghats 'serial' World Heritage site. Photo: Ashish Kothari*

mentioned amendment to the *Wildlife Protection Act* nor did they negotiate the required resettlement packages with secure livelihoods prior to the identification and notification of a Critical Tiger Habitat.<sup>24</sup> Despite such criticisms and complaints, and despite active resistance by forest-dwelling communities, the MoEF and its National Tiger Conservation Authority have continued to demarcate Critical Tiger Habitat and relocate inhabitants through compensation packages that are not legally defensible.

### **Perpetuating historical injustice**

The Forest Rights Act acknowledges a set of 13 rights, both individual and collective, and prescribes a democratic and transparent process for determining the rights of the communities through their *Gram Sabhas*, to be subsequently recognized by the state governments. This, in effect, recognizes not only the prior failure of the state governments to protect such rights but also the need for full and effective participation of the communities in rectifying the historic injustice to which they have been subjected. One key change brought about by the law is the recognition granted to 'community

<sup>24</sup> For a detailed discussion on the law and practice, see Bijoy 2011.

forest resources', the "customary common forest land within the traditional or customary boundaries of the village" (Sec.2.a) where the communities were vested with the "right to protect, regenerate or conserve or manage any community forest resource which they have been traditionally protecting and conserving for sustainable use" (Sec.3.1.i). This right is to be exercised through the powers vested in the *Gram Sabha* for protecting wildlife, forest and biodiversity from "destructive practices affecting their cultural and natural heritage" (Sec.5).<sup>25</sup>

Expectations for change after the passage of the law were, however, disappointed. Even the official government Committee on Forest Rights Act concluded that "with notable exceptions, the implementation of the Forest Rights Act has been poor, and therefore its potential to achieve livelihood security and changes in forest governance along with strengthening of forest conservation, has hardly been achieved".<sup>26</sup> There has been a uniform reluctance to consider claims to community rights, particularly the most significant Community Forest Resource rights, across the country. At best, partial recognition to individual rights of occupation has taken place in some instances but rejection rates remain exceptionally high at over 50%.<sup>27</sup> One major impediment to the implementation of the Forest Rights Act has been the active resistance of the forest bureaucracy at all levels, with even numerous challenges to the Act itself being filed in a number of High Courts by retired forestry officers and in the Supreme Court by conservation non-government organizations, e.g. the Bombay Natural History Society,<sup>28</sup> Wildlife Trust of India, Wildlife Society of Orissa, All Assam Tribal Youth League, Wildlife First, Nature Conservation Society and Tiger Research and Conservation Trust.<sup>29</sup> MoEF has also been granting clearance, in violation of its own 30 July 2009 order, to hundreds of projects diverting the forest for non-forestry purposes without the consent of, and despite resolutions to the contrary by, the concerned *Gram Sabhas*.

In the case of Kerala and Karnataka, the implementation process has been particularly abysmal, and no titles have been issued at all in Tamil Nadu. Invariably, claims are not even considered in

25 In full, Section 5 of the Act ('Duties of holders of forest rights') states:

"The holders of any forest right, Gram Sabha and village level institutions in areas where there are holders of any forest right under this Act are empowered to—

- a) protect the wild life, forest and biodiversity;
- b) ensure that adjoining catchments area, water sources and other ecological sensitive areas adequately protected;
- c) ensure that the habitat of forest dwelling Scheduled Tribes and other traditional forest dwellers is preserved from any form of destructive practices affecting their cultural and natural heritage;
- d) ensure that the decisions taken in the Gram Sabha to regulate access to community forest resources and stop any activity which adversely affects the wild animals, forest and the biodiversity are complied with."

26 National Committee on Forest Rights Act 2010.

27 As of 30 September 2013, out of 3.54 million claims filed (3.47 million individual and 71,154 community), 3.08 million were disposed of, of which about 1.41 million titles have been distributed. Updated data, including data for the individual States, are available at <http://tribal.nic.in/Content/ForestRightActOtherLinks.aspx>.

28 The Bombay Natural History Society withdrew from the case under pressure in April 2012. It is still the petitioner in a legal challenge to the provisions of the 2006 amendment to the Wildlife Protection Act 1972, however, which provides for a consultative and democratic process with local communities in the determination of Tiger Reserves and stipulates that Scheduled Tribes or other forest dwellers shall not be relocated from Critical Tiger Habitats unless their prior and informed consent has been obtained and their livelihoods have been secured.

29 For a brief on the court cases, see <http://www.forestrightsact.com/court-cases>.

protected areas, which is in violation of the law. Adivasis await settlement of their claims and continue to wait despite the clear law now in place guaranteeing them protection of their rights to forest lands and resources. Outside the forest area, the story is no different.

Unlike in central India and in the north-eastern region, in southern India no tribal area has been brought under the Fifth or Sixth Schedules of the Indian Constitution, which provide for a certain degree of self-management.<sup>30</sup> The *Panchayats (Extension to the Scheduled Areas) Act* (PESA 1996) formally recognized the primacy of the *Gram Sabha* (the village assembly) over key areas of community life in the Fifth Schedule Areas.<sup>31</sup> Kerala, Tamil Nadu and Karnataka have not brought Adivasi settlements under the Fifth Schedule despite the recommendation of the Dilip Singh Bhuria Committee, which was constituted by the central government to recommend the framework for PESA 1996.<sup>32</sup> This has also been criticized by the National Advisory Council of the Government of India, which has recommended, as recently as 2012, that tribal areas in these states be brought under the Fifth Schedule.<sup>33</sup> In Kerala, such autonomy is a demand of the Adivasis, and forms one of the terms of the agreement of 16 October 2001 between the Kerala government and the leaders of the Adivasi struggle. In Tamil Nadu, too, the official recommendation of the Tribal Welfare Department in 2002 was that "All tribal habitations (hamlets/villages) should be declared as 'Scheduled Area' under article 244(1) of the Constitution", yet this recommendation remains unattended.<sup>34</sup> Article 244 also mandates the state to enact legislation to protect the Adivasis from alienation of their lands and to restore illegally alienated land. While such laws have been enacted in a number of states, both Tamil Nadu and Karnataka have no such legislation. In the case of Kerala, although a law was enacted as far back as 1975, this was not implemented and the law was instead repealed in 1999 and alternative land proposed.<sup>35</sup> The impoverishment resulting from this denial of land rights led to an uprising in 2003 that was brutally suppressed.<sup>36</sup> Land rights, limited mostly to homestead or residence, are conferred usually only as a result of the persistent struggles of the Adivasi.

30 There is also one area in western India that is a Fifth Schedule Area: Maharashtra.

31 Act No. 40 of 1996 [24th December, 1996]. The *Gram Sabha* was recognized as having, inter alia: the competence to safeguard and preserve the traditions and customs of the people, their cultural identity and community resources; the power to prevent alienation of land in the Scheduled Areas and to take appropriate action to restore any unlawfully alienated land of a Scheduled Tribe; the ownership of minor forest produce; the planning and management of minor water bodies; the right to be consulted on matters of land acquisition for development projects and before resettling persons affected by such projects in the Scheduled Areas; the power to exercise control over institutions and functionaries in all social sectors; the power to control local plans and resources for such plans, including tribal sub-plans; and the power to issue utilization certificates for government works undertaken in their village.

32 See Bhuria Committee 1995, para. 7(2): "The process of scheduling was commenced in the fifties and was resumed in the seventies as a part of making the tribal sub-plan and scheduled areas co-terminus. But somehow it has remained incomplete. It is necessary that the remaining tribal sub-plan and MADA [Modified Area Development Approach] areas as well as similar pockets in West Bengal, Tamil Nadu, Kerala and Karnataka should be covered by scheduled areas notification."

33 National Advisory Council 2012, p. 16.

34 Adi Dravida and Tribal Welfare Department 2002.

35 For details see Bijoy 1999.

36 Bijoy and Raman 2003.



*Gram Sabha meeting in Yelavali village, Bhimashankar Sanctuary, Maharashtra, in the process of claiming community forest rights under the Forest Rights Act. Photo: Ashish Kothari*

All these are consistent with what a recent study of constitutional, legislative and administrative provisions concerning indigenous and tribal peoples in India and their relation to international law on indigenous peoples summarizes as follows: “The seemingly impressive range of legal and policy instruments that exist in Indian law for indigenous peoples’ rights are vitiated by one fundamental flaw – the Indian state’s reluctance to respect the political rights of indigenous peoples and the subsequent widespread violations”.<sup>37</sup> Tamil Nadu and Karnataka, and to a slightly lesser extent Kerala, have failed to put in place the appropriate mechanisms to implement many of these impressive legal instruments and thus effectively denied recognition of the rights they protect.

## **Nomination of the Western Ghats**

In January 2010, the Government of India submitted a nomination to UNESCO for the Western Ghats to be listed as a ‘serial’ natural World Heritage site. The nomination was prepared by MoEF and based on criterion (vii) (“contains superlative natural phenomena or areas of exceptional natural beauty and aesthetic importance”) and criterion (x) (“contains the most important and significant

<sup>37</sup> Bijoy, Gopalakrishnan and Khanna 2010, p.10.

natural habitats for in-situ conservation of biological diversity, including those containing threatened species of outstanding universal value from the point of view of science or conservation”) of the World Heritage Convention’s Operational Guidelines.<sup>38</sup> MoEF constituted a Western Ghats Natural Heritage Management Committee on 31 August 2010 for the purpose of “deal[ing] with matters relating to the inscription and management of the Western Ghats Serial Sites”.<sup>39</sup> This Committee had 13 members but did not include any representatives of tribal peoples. It met in September of that year to review itinerary and logistics for the two-member IUCN team visiting to assess the scientific, technical and administrative aspects of the proposal through site visits and interactions with scientists, conservationists and government officials. From the report of the evaluation mission, it is evident that no meetings were scheduled with representatives of the Adivasis living in the 39 nominated sites.<sup>40</sup> The team travelled to the four states of Kerala, Tamil Nadu, Karnataka and Maharashtra, where the component sites are located, from 10-23 October 2010. Significantly, the team was confronted by various sections of the local population, including Adivasis, in some locations.<sup>41</sup> The local inhabitants were irked at the secrecy maintained by the forest officials and conservationists around the team’s visit. The secrecy seemed to give credence to the suspicion that the whole exercise had a sinister objective of depriving the local inhabitants of whatever little rights they had, and that local inhabitants would be displaced or evicted as a result of the World Heritage designation.<sup>42</sup>

Following the evaluation mission, IUCN sent a request for supplementary information to the Government of India, stating, among other things, the following:

“IUCN notes that evidence of a lack of community support for the nomination was witnessed by the evaluation mission through a demonstration that prevented the access of the mission to one of the nominated components of the property. Such a scale of protest by a local community is unusual in relation to IUCN’s experience and would seem to imply the need for further stakeholder consultation in relation to at least some parts of the nomination. IUCN would be grateful for the State Party’s advice on the nature and extent of community consultation it has carried out with regard to each of the nominated components of the property, and the degree to which there is presently community support for the nomination in each case... IUCN would also welcome the provision of more detailed advice by the State

38 While the original submission cited criteria (vii) and (x), IUCN considered that the property did not meet criterion (vii). It suggested that it instead be nominated under criteria (ix) and (x). The WH Committee in 2011 referred the nomination back to the State Party, noting its potential to meet criteria (ix) and (x), without mentioning criterion (vii). In 2012, the nomination was resubmitted under criteria (ix) and (x).

39 Government of India 2011, Appendix III (‘Constitution of Western Ghats Natural Heritage Management Committee’, 31 August 2010).

40 See IUCN 2011, p. 37, para 1d (Consultations).

41 See, for instance, *The Hindu* 2010. The Advisory Body Evaluation by IUCN states that the IUCN mission “witnessed strident opposition to NGOs, Government and the nomination in some places such as Kodagu and Karnataka” (IUCN 2011, p. 42).

42 See *Deccan Herald* 2010; *The Hindu* 2011b.

Party regarding the participation of local people foreseen in the proposed management system for the property, at both local levels and within the overall management system.”<sup>43</sup>

In its response to IUCN’s request for supplementary information, the Government of India asserted that “extensive stakeholder consultations” had been carried out both during the process of including the Western Ghats in India’s tentative list and also during the preparation of the World Heritage nomination dossier. The protests against the nomination were dismissed by the Indian government as follows: “The ‘one-off’ demonstration witnessed by the IUCN Evaluation Mission in one of 39 serial elements is no way a reflection of the lack of community support for this nomination. It was simply a manifestation of a local rivalry for seeking attention of the media and government.”<sup>44</sup> The government further claimed “that the incident at Kodagu in which some local residents demonstrated their ‘wrath’ to the IUCN Evaluation Mission against the proposed world heritage designation is basically a reflection of one vested interest group of people working against another group and cannot be considered as a generalized and popular view across the Western Ghats landscape... It is globally accepted that the world heritage designation to a site ‘per se’ does not lead to any economic hardships/loss of livelihoods to the local communities. In view of the above, it is our considered view that not much credence should be given to the said petition [sent by the protesters to the Director-General of UNESCO]”.<sup>45</sup>

The government acknowledged that “[t]he local communities including indigenous people living in and around these sites depend on a variety of resources mainly to sustain their livelihood needs” and that “[l]egal restrictions on the extraction of resources from the protected areas do affect the local communities and give rise to conflicts with the management”. However, the government maintained that “involvement of local communities and securing their support” was already a focus of current management plans for the sites and that “processes of Joint Forest Management in managed forest areas and eco-development in protected areas are being focused and pursued in all sites” in order to “address the issues of local communities participating in the conservation initiatives and to categorically understand the quantum, nature and seasonality of resource dependency from these areas and to strategically address the issues”. Although the government acknowledged that “[i]n some areas, the efforts being made are in the initial stages”, it promised that “these will improve as the process evolves”.<sup>46</sup>

It can be assumed that at least some of the indigenous peoples and organizations from the Western Ghats would not have been satisfied with these explanations and assurances by the Indian government had they been asked for their opinion and views. However, neither the original nomination document nor the supplementary information submitted at the request of IUCN was made public by the Indian government, or UNESCO, prior to the 35<sup>th</sup> session of the

43 IUCN Evaluation of Western Ghats (India) – Request for Supplementary Information’, 6 January 2010. Contained in Government of India 2011, Appendix I.

44 Government of India 2011, p. 19.

45 Ibid., Appendix II (Letter from the Inspector General of Forests).

46 Ibid., p. 23.

World Heritage Committee at which the nomination was considered. Indigenous organizations from Western Ghats were therefore not informed about the content of these documents and the various explanations and claims presented by the Indian government.

On 17 May 2011, a joint statement was delivered at the United Nations Permanent Forum on Indigenous Issues, endorsed by a number of Adivasi organizations from the Western Ghats,<sup>47</sup> in which they denounced the fact that the World Heritage nomination of the Western Ghats was “prepared without meaningful involvement and consultation of the Indigenous peoples concerned and without obtaining their free, prior and informed consent” and that insufficient consideration had been given to the indigenous cultural values connected to the nominated sites. The joint statement urged the World Heritage Committee to defer the nomination and call on the Indian government “to consult and collaborate with the Indigenous peoples concerned, in order to ensure that their values and needs are reflected in the nomination documents and management plans and to obtain their free, prior and informed consent”.<sup>48</sup> After being delivered to the UN Permanent Forum, the statement was submitted to the Bureau of the World Heritage Committee, the World Heritage Centre, the Director-General of UNESCO as well as the three Advisory Bodies, IUCN, ICOMOS and ICCROM, prior to the World Heritage Committee’s session.<sup>49</sup> In addition, the UN Permanent Forum called on the World Heritage Committee to “scrutinize current World Heritage nominations to ensure they comply with international norms and standards of free, prior and informed consent”.<sup>50</sup> It should also be noted that the government of Karnataka officially opposed the nomination of the 10 component parts within Karnataka, expressing concern, among other things, at the implications for the rights of the tribal peoples living within the forest areas.<sup>51</sup>

IUCN’s technical evaluation of the nomination (which was not made public until after the World Heritage Committee’s session) noted that “there are obvious concerns in some locations over what listing would mean” and that the IUCN mission “witnessed strident opposition to NGOs, Government and the nomination in some places such as Kodagu and Karnataka”.<sup>52</sup> While the IUCN evaluation

47 Budakattu Krishikara Sangha (Karnataka), Pothigaimalai Adivasi Kanikkaran Samuthaya Munnetra Sangam (Tamil Nadu), Adivasi Gothrajaan Sabha (Kerala), Adivasi Gothra Mahasabha (Kerala) and Kerala Girivarga Kanikkar Sangham (Kerala). Taken together, these organizations represent indigenous peoples from 20 of the 39 sites included in the serial nomination.

48 Endorois Welfare Council et al. 2011. ‘Joint Statement on continuous violations of the principle of free, prior and informed consent in the context of UNESCO’s World Heritage Convention’.

49 Additionally, the main concerns expressed in the joint statement were reiterated in an oral intervention of the International Work Group for Indigenous Affairs (IWGIA) during the World Heritage Committee’s session, on 23 June 2011 (the day before the vote on Western Ghats was taken).

50 Permanent Forum on Indigenous Issues 2011, para. 42. The same recommendation was repeated in an oral statement to the World Heritage Committee by Permanent Forum member Paul Kanyinke Sena on 22 June 2011.

51 See, e.g., *The Hindu* 2011a; *The Hindu* 2011c.

52 IUCN 2011, p. 42.



*Forest-dwelling community in southwest Karnataka. Photo: Kai Vara*

considered the local inhabitants of the nominated sites mainly in the context of discussing threats to the natural values of the sites,<sup>53</sup> it recognized that “property rights of forest dwellers have been recognized” through the Forest Rights Act and criticized the fact that the implications of this had not been sufficiently taken into account in the proposal.<sup>54</sup> The technical evaluation also noted that “there are some unclear land tenure issues”, due to the fact that parts of the property are private land or community-controlled land, making it “difficult to effectively evaluate adequate protection”.<sup>55</sup> IUCN therefore concluded, for these and other reasons, that “the management of the nominated property does not meet the requirements set out in the Operational Guidelines” and that “the protection status of at least parts of the nominated property does not meet the requirements set out in the Operational Guidelines”.<sup>56</sup> IUCN recommended that the Committee *defer* examination of the nomination to allow the State Party to address the various issues.

On 24 June 2011, the Committee instead decided to *refer* the nomination of Western Ghats back to the State Party, which meant that India needed to provide some additional information but could resubmit the nomination to the following Committee session for examination. (In contrast,

53 For instance, the evaluation observed that “many of the natural areas have been disturbed... with different types of cultivation... as well as human habitation” and that “[i]nvariably the presence of human settlements [within or in close proximity to the nominated sites] poses a threat to the natural values of the property components through issues such as encroachment, livestock grazing, fodder and fuel wood collection, illegal hunting and increasing interest in tourism-related activity among others”. Pilgrimage sites within some components of the property were also mentioned as a threat, due to the “resultant periodic heavy use and impact” (ibid., pp. 38-39).

54 Ibid., p. 42.

55 Ibid., p. 40.

56 Ibid. p. 41-42.

a deferral would have required substantial revisions or more in-depth research by the State Party and necessitated a complete re-evaluation and an additional site visit by IUCN.) The Committee's decision stated that the nomination was referred, among other things, in order to allow the State Party to "facilitate increased engagement with all stakeholders to build awareness and support, foster participatory governance approaches, and ensure equitable sharing of benefits" and to "strengthen community membership and input" in the management of the component sites. The decision further called on the Indian government to "harmonize arrangements between the 'Western Ghats Natural Heritage [Management] Committee' and the 'Western Ghats Ecology Expert Panel'", and to "review the scope and composition of the current serial nomination to take account of any recommendations of the 'Western Ghats Ecology Expert Panel'... to further enhance the protection of the values of the nominated property".<sup>57</sup>

The Western Ghats Ecology Expert Panel (WGEEP) was set up by MoEF in 2010 to "assess the current status of ecology of the Western Ghats region", "demarcate areas which need to be notified as ecologically sensitive" and "make recommendations for the conservation, protection and rejuvenation of the Western Ghats Region following a comprehensive consultation process involving people and Governments of all the concerned States".<sup>58</sup> The final report of the WGEEP was issued in August 2011, while MoEF was preparing the additional information requested by the World Heritage Committee.<sup>59</sup> The report stressed that "The Forest Rights Act (FRA) 2006 has yet to be implemented in its true spirit and the State Forest Departments to be alerted to the fact that implementation of this act is needed for future forestry governance".<sup>60</sup> In regard to the World Heritage nomination, the WGEEP concluded that there was "a need for greater participation of local people and communities in formulation and implementation of the Western Ghats National Heritage proposal", adding that the "objections raised at the UN Permanent Forum on Indigenous Issues to the Indian proposals on 17 May 2011" were "serious and quite genuine".<sup>61</sup> The Panel also noted that it was "inappropriate to depend exclusively on Government agencies for constitution and management of Ecologically Sensitive Zones". The Panel suggested that instead "the final demarcation of the Zones (...also in context of the UNESCO Heritage Site proposal)..., and fine-tuning of the regulatory as well as promotional regimes, must be based on extensive inputs from local communities and local bodies" and that the "process of fine-tuning the limits of the various zones, deciding on management regimes and the implementation be a participatory process going right down to gram sabhas". Such an approach, the WGEEP remarked, "would more effectively serve the objectives of the UNESCO Heritage Programme, than the proposals currently submitted by the Government of India".<sup>62</sup>

57 Decision 35 COM 8B.9.

58 Ministry of Environment and Forests 2010

59 The WGEEP's report was only made public by MoEF in May 2012 following a court directive, and with a disclaimer that it had not been formally accepted by the Ministry and was being analyzed and considered by the Ministry. See Dhar 2012; Garg 2012.

60 WGEEP 2011, Part II, p. 66

61 *Ibid.*, Part II, pp. 121, 322.

62 *Ibid.*, Part I, p. 40; Part II, p. 121.

Despite these recommendations of the WGEEP, the Government of India went ahead and resubmitted the Western Ghats World Heritage nomination to UNESCO in January 2012. The additional information submitted by India<sup>63</sup> continued to ignore the Forest Rights Act and the statutory authority of the *Gram Sabhas*, and the Government did not “strengthen community membership and input” as requested by the World Heritage Committee, nor did it “facilitate increased engagement with all stakeholders to build awareness and support, foster participatory governance approaches, and ensure equitable sharing of benefits”. In response to the Committee’s request that India review the scope and composition of the serial nomination taking into account the recommendations of the WGEEP, the government claimed that: “The matter of determining the inclusion/exclusion of sites in the serial nomination has not been dealt by the Western Ghats Ecology Expert Panel and accordingly there are no recommendations on this issue”.<sup>64</sup> In fact, however, the report of the WGEEP did deal with the subject, as outlined above.

IUCN evaluated the additional information submitted by India and recommended, once again, that the nomination be deferred. Among other things, IUCN saw a need for the State Party to “undertake a further consultation to facilitate increased engagement to ensure the views of all stakeholders, including local indigenous groups are considered, in order to ensure and demonstrate broad-based support for the nomination”. IUCN also recommended that the Indian government “review and refine the scope and composition of the current serial nomination to take into account the recommendations of the WGEEP noting the Panel was tasked to... define ecologically sensitive areas through consultation”.<sup>65</sup>

In the meantime, Adivasi organizations in the Western Ghats again submitted a joint statement to the 2012 Session of the UN Permanent Forum on Indigenous Issues, to UNESCO and to the World Heritage Committee urging the Committee not to approve the nomination of Western Ghats “or any other nominations of sites in Indigenous peoples’ territories, until it has been ensured that the Indigenous peoples concerned have been adequately consulted and involved and that their free, prior and informed consent has been obtained”. The statement noted:

“The Government of India has resubmitted a revised nomination in January 2012, however, there still has not been any meaningful involvement and consultation of the affected Indigenous peoples and their free, prior and informed consent has not been attained. This is underscored by the fact that the revised nomination documents have not been made public by the Indian Government and are also kept secret by UNESCO. It is clear then that the concerns raised in last year’s joint statement have not been adequately addressed... We are deeply troubled by the lack of transparency and the secrecy of the procedures.

It is noteworthy that the concerns raised in last year’s joint statement have been corroborated in the final report of the Western Ghats Ecology Expert Panel (WGEEP)... We

63 Government of India 2012.

64 *Ibid.*, pp. 10-11.

65 IUCN 2012.

are deeply concerned that the revised nomination..., which could only be obtained through unofficial sources, conceals the conclusions of the WGEEP regarding the World Heritage nomination. We are also concerned that the nomination documents still do not acknowledge nor recognize the Forest Rights Act according to which the village assemblies (gram sabhas) have statutory authority over the management and protection of significant parts of the nominated areas.”<sup>66</sup>

The statement was sent to all members of the World Heritage Committee on 23 May 2012 and receipt was acknowledged by the Chairperson during the Committee’s 36<sup>th</sup> session in Saint Petersburg.<sup>67</sup> However, the Committee – of which India was a member – resolved to inscribe the Western Ghats on the World Heritage List on the basis of criteria (ix) and (x), rejecting the assessment of IUCN and ignoring the objections of the Adivasi organizations.<sup>68</sup> The concerns regarding the lack of consultation of indigenous peoples were not discussed by the Committee, except for the fact that the Indian representative, Ambassador Vinay Sheel Oberoi, declared that India was a democracy and that each of the indigenous communities in the Western Ghats had been “a part and a party to the process”. He also maintained that the nomination had “gone through a process of community consultation mandated by law” and that the boundaries of the World Heritage site had been defined with “the greatest possible consultation”.<sup>69</sup> In essence, being a member of the Committee, India lobbied hard to make sure its nomination was approved and the Committee meeting was just a formality, a farce devoid of facts or science.

The Statement of Outstanding Universal Value (OUV) adopted by the World Heritage Committee states that all component parts of the serial site are “owned by the State and are subject to stringent protection under laws including the Wildlife (Protection) Act of 1972, the Indian Forest Act of 1927, and the Forest Conservation Act (1980). Through these laws the components are under the control of the Forestry Department and the Chief Wildlife Warden, thus the legal status is adequate.”<sup>70</sup> The OUV Statement fails to mention the Forest Rights Act, although this law overrides all the other forest laws, substantively and qualitatively changing the forest governance in most parts of the forests in the country.<sup>71</sup> What is thus being denied is the legal reality that the forest communities are now the statutory authority to govern and manage those forests under their traditional and customary usage, qualifying as ‘Community Forest Resource’ under the Forest Rights Act. Instead MoEF is projecting the so-called ‘Village Eco-development Committees’ as the sole effective instrument for community participation,<sup>72</sup> which, unlike the *Gram Sabhas*, are controlled by the forest bureaucracy and created

66 For the complete statement, which also contains a summary of the relevant recommendations of the WGEEP, see IWGiA et al. 2012.

67 See UNESCO 2012, p. 130.

68 See *ibid.*, p. 193 ff. and World Heritage Committee Decision 36COM 8B.10.

69 A recording of the debate is available at <http://whc.unesco.org/en/sessions/36COM/records> (See July 1, 2012, at 6:49 PM – 6:53 PM).

70 Decision 36COM 8B.10, para. 3.

71 It should be noted that IUCN, too, failed to list the Forest Rights Act among the laws governing the protection of the serial site (see IUCN 2011; 2012).

72 See Government of India 2012, pp. 23-24.

by administrative fiat. This reflects a disrespect for the law and a desire for hegemonic control over the forests, relegating conservation to the periphery. MoEF also refuses to acknowledge the existence of *Panchayat Raj* institutions (locally-elected governance bodies), or the elected members of the relevant state legislatures and of the Parliament, in its desperation to keep everything exclusively within the confines of the forest bureaucracy. In inscribing the Western Ghats on the World Heritage List, the World Heritage Committee therefore neither upheld the principles of the *UN Declaration on the Rights of Indigenous Peoples* nor Indian laws but instead provided prestige and legitimacy to something that is patently illegal and unjust with regard to indigenous peoples.

## Conclusion and recommendation

The designation of Western Ghats as a natural World Heritage site has to be contextualized and placed in the reality of its traditional inhabitants, the Adivasis or Scheduled Tribes, including the widespread violations of their rights both historically and to the present day. There is a fear, which was expressed by local peoples during the IUCN evaluation and afterwards, that the inscription of the Western Ghats on the World Heritage List will precipitate a survival crisis. Union Environment Minister, Jayanthi Natarajan, has tried to allay these fears by stating that “tribal communities living in and around the 39 serial sites will not be adversely affected by the World Heritage designation” and that listing would “in no way affect the present management regime of the sites, which would be managed... under the legal provisions of the Wildlife Protection Act, Indian Forest Act and the Forest Rights Act”.<sup>73</sup>

Such promises are hardly reassuring to the traditional inhabitants, considering that the Forest Rights Act was not even mentioned in the nomination documents and is routinely violated in India and Western Ghats. Moreover, the Forest Rights Act was violated during the World Heritage nomination itself, which was prepared without the full and effective participation of the *Gram Sabhas* concerned and submitted without obtaining their free, prior and informed consent. The decision of the World Heritage Committee to inscribe the Western Ghats without insisting on a substantial revision of the nomination that takes adequate account of the implications of the Forest Rights Act compounds the gross illegality of the Indian government agencies. This made the World Heritage Committee a collaborator in the violation of the traditional inhabitants’ rights. The added prestige brought to the site by international recognition and the pressure that inscription entails are likely to perpetuate injustices. World Heritage inscription in ignorance and violation of existing rights and without the consent of the traditional inhabitants delays the recognition of rights and is an incentive to continue denying those rights.

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73 Cited in Gandhi 2011. Similarly, the previous Environment Minister, Jairam Ramesh, stated in June 2011 that “these sites would continue to be managed under national laws and will not be subject to any additional legal provisions imposed by UNESCO. I would like to reiterate that the World Heritage designation will in no way affect the tribal and other local communities living in and around these sites” (*The Economic Times* 2011).

The World Heritage Committee is aware of these concerns. At its 35<sup>th</sup> Session in June 2011, the Committee adopted a decision that explicitly “encourages States Parties to... Respect the rights of indigenous peoples when nominating, managing and reporting on World Heritage sites in indigenous peoples’ territories”.<sup>74</sup> However, this decision was not reflected in the instructions given to India at the 35<sup>th</sup> and 36<sup>th</sup> Sessions regarding the Western Ghats nomination.

This situation can be redeemed only by ensuring that the rights of indigenous peoples are respected in the Western Ghats through a series of actions. First, there should be a complete and satisfactory implementation of the Forest Rights Act in the listed sites prior to any further action by MoEF to develop or implement new management and governance mechanisms for the World Heritage site. Any new management systems for these sites should incorporate the relevant *Gram Sabhas* as the authority with power to protect wildlife, forest and biodiversity from ‘destructive practices affecting their cultural and natural heritage’ in the customary and traditional boundary of Adivasi villages recognized as a ‘community forest resource’. As part of this, the free, prior and informed consent of the relevant *Gram Sabhas* must be obtained before any new governance or management mechanisms are introduced, not just as a matter of principle but as an implicit legal requirement under the Forest Rights Act. Finally, the Ministry of Tribal Affairs should be included on a par with the Ministry of Environment and Forests as the agency responsible for the sites. ○

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