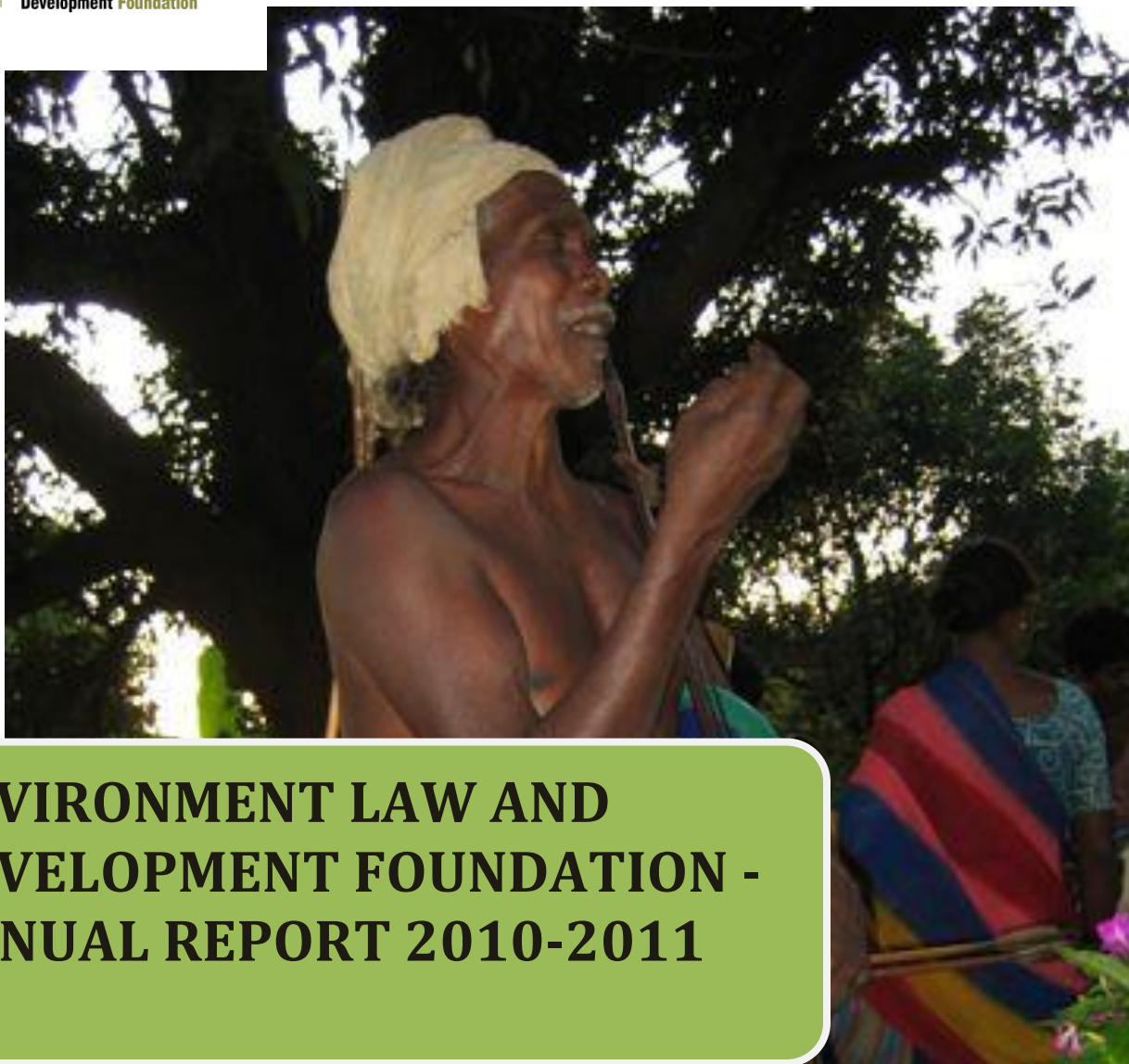




**ELDF**  
Environment, Law &  
Development Foundation

**Practicing beyond court rooms**



**ENVIRONMENT LAW AND  
DEVELOPMENT FOUNDATION -  
ANNUAL REPORT 2010-2011**



**Bridging the gap between the field and courts**

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## FOREWORD

*The Year of 2010-11 was a watershed for the Foundation. In its existence since 2004, never before did the Foundation seek any external resource support and always worked on charity that was primarily through the personal time and resource contributions of the lawyers associated with it. Perhaps, for the first time the Foundation was supported at a fairly large scale where Access to Justice program was carried out in three states on a very special theme affecting the country i.e. forest and scheduled area governance which has a clear link to the mitigation of left wing extremism. Two key legislations namely the Forest Rights Act and Tribal Self Rule law are beginning to take roots and significant handholding to the most vulnerable is need of the hour. Successful results in terms of understanding, outreach and more importantly reaching out to the remotest areas of Burmu, Umaria, Sidhi, Sarguja were the key highlights. The feedback into the policy loop to two Ministries i.e. Tribal Affairs and Panchayati Raj is something that the Foundation is proud of.*

*The other programs of Advice and Referral, outreach and support to ELAN lawyers continued in small but significant way. The other key work perhaps for the first time was the “Commons and law” project. Very few agencies have looked into the legal aspects of state based commons that includes forest, land, water and fisheries. This would be a seminal contribution to the legal discourse on commons.*

*The journey of ELD Foundation as a strategic support based organization in the field of environment and development law has truly begun this past year.*

*I hope and pray that the Foundation reaches newer heights and continues the good work in the coming years.*

**(Sanjay Upadhyay)**  
**(Hony. Managing Trustee)**

## OVERVIEW

The Environment Law and Development Foundation, a Charitable Trust was set up in 2004 under the aegis of the Enviro Legal Defence Firm, India's first environmental law firm, to carry out its charitable objectives. It was set up to make a change in the structure and role of environmental law organizations particularly since much of today's research does not clearly identify the enviro-legal issues it wishes to address or provide clear steps to its legal solution. Many of the cases or legal conflicts which come to law firms are last minute, badly prepared or unfocused. In order to be more proactive in research, policy work, and training whilst being more strategic in litigation, the Foundation was created. The Foundation has now become the research, education and training arm of the enviro-legal sector, whilst the law firm continues to pursue issues through litigation, either through victim-lead cases or Public Interest Litigation (PIL) and consultancy, among other things. The research could feed the litigation, whilst the litigation could feed the research-a system of praxis. Further there are several emerging challenges in the environment and development sector that need to be taken up on a proactive basis by the Foundation for which there may not be ready "clients" through the law firm approach.

The Foundation provides legal aid and support, focusing on strategic interventions on the basis of its expertise in specialized areas through documentation, litigation support, legal advice and public advocacy. Over a short span, it has successfully worked in different areas providing Litigation Support Background, Field Research, Advice & Referral (A&R), NGO support service (NSS), consultancy based research, Training and Workshops. It has various publications to its credit and also constantly updates the latest news in the field in the form of enviro-legal updates via its site [eldfindia.org](http://www.eldfindia.org). It has provided legal support to many campaigns and made several submissions especially to the Ministry of Environment and Forests (MoEF) besides several other Ministries such as Ministry of Tribal Welfare, Ministry of Panchayati Raj, etc. It has also created an infrastructure for action-oriented lawyering and research.

The Foundation has an illustrious Board with over forty years of experience in the field of environment, development and policy work amongst them. The Foundation is backstopped by the Enviro Legal Defence Firm, India's foremost and first environmental law firm on all legal aspects. It has a wide pan India network of volunteer lawyers and students. (See <http://www.eldfindia.org/elan.php>); Field Partners (See [http://www.eldfindia.org/field\\_partners.php](http://www.eldfindia.org/field_partners.php)) Alumni (<http://www.eldfindia.org/alumni.php>). In fact the Foundation also anchors an informal network on environmental law and policy across South Asia called SANEL (See <http://www.eldfindia.org/sanel.php>).

## **OBJECTIVES**

- To mainstream natural resource and development law and policy, resolve conflicts over resources and strengthen environmental jurisprudence.
- To provide legal representation and assistance to those sectors of the population that have little or no influence in decisions relating to environmental and natural resources management and lobby for their inclusion and participation in decisions affecting their well-being.
- To undertake in-depth research on the entire gamut of natural resource and development law and policy to forge new areas in jurisprudence.
- To conduct education, training and advocacy programs to build capacities of those who affect and are affected by the laws and policies on natural resource development.
- To provide analyses of International Instruments, Policies, Laws and Regulations and provide assistance in drafting them.
- To facilitate negotiation, mediation and arbitration (at National and International levels) of disputes over natural resources and development and develop skills in conflict resolution and problem solving.
- To provide a forum to encourage and enhance capacities in young lawyers to strengthen the field of Natural Resource and Development Laws through National and International internship and fellowship programmes.
- To provide various organizations (Government, Non Government, Individuals, International Agencies) with a systematic and strategic legal support and assistance in the areas of natural resource law and development.
- To support or sponsor workshops, conferences, seminars, and other meetings for providing forums where free and fair exchange of ideas on natural resource development law and policy may take place.
- To maintain a state of the art Management Information System and documentation centre and serve as a Centre of Excellence.
- To do all other lawful acts and deeds as are incidental or conducive to attainment of any of the above mentioned objectives.

## **VISION**

Access to environmental justice for all;

Creating an environmentally sustainable and just South Asia

## **MISSION**

ELDF aims at mainstreaming the discipline of environment and development law and bridge the gap that currently exists between the formal forums of dispute resolution and the grassroots through research, advocacy and outreach. It aims to be a centre for excellence and the hub of environment law resource for South Asia through numerous interventions including capacity building, legal aid to marginalized communities and appropriate interventions for incorporation of

a framework for environmental protection within the domestic laws of the country in accordance with international jurisprudence.

## **STRATEGIES**

The overarching strategies used to meet the Foundation's objectives include:

- Advance effective advocacy for shaping of environmental policies towards management of natural resources and upholding the rights of marginalized communities;
- Investment in the capacity of leading and emerging environmental organizations;
- Support those communities most affected by environmental degradation through advocacy, awareness building sessions and creating linkages between these communities and respective government agencies;
- Investment in organizations that work collaboratively with nonprofits, government, businesses and the public;
- Seeking projects that identify solutions and create opportunities for negatively affected communities;
- Utilization of location-based strategies and indicators;
- Support processes of community mobilizing for systemic changes in the domain of environmental jurisprudence/governance;
- Identify and amplify innovative, game-changing ideas and;
- Leveraging additional funds to further our programmatic goals.

## **GUIDING PRINCIPLES**

The following are the over arching guiding principles for the Foundation work in all the programme areas:

### ***Rule of Law:***

- Promoting rule of law and contributing to environmental and development law jurisprudence
- Helping any one who approaches us with clean hands.

### ***Social/ Institutional***

- Equity/Equality (especially of gender) in participation and decision-making.
- Sustainability of the institutional mechanism.
- Mainstreaming concerns of gender in activities/projects of Foundation as appropriate and where applicable.
- Increased involvement of grass root level stakeholders in environmental governance
- Capacity building

### ***Economic***

- Equitable distribution of resources at community level
- Enhanced incomes at household/ individual level
- Promoting sustainable use



### ***Environmental/ Ecological***

- Sustainable use of resources
- Conservation and regeneration

## **LONG TERM DESIRED GOALS**

The long term desired goals involve the following:

- To make Environment Law and Development Foundation as the regional center for excellence in the field of environment and development law.
- To bring out a world class Environmental Law and Development Journal (ELD) on environmental law and related development issues in South Asia. The aim of the Journal is to encourage new and innovative writing on the subject. Environmental journals have, in the past, failed for lack of resources or contributions.
- To setup a Fund for Targeted Research in order to support our own research priorities through our experiences as a Foundation and a law firm. The research projects would be chosen by an advisory group of experts chosen from inside and outside the Foundation. The Foundation's Board of Trustees and external funders would ensure that the fund is properly utilized. Some concepts for projects arising out of our recent experiences (for which we are yet to attract funding) are as follows:
  - *Promoting and strengthening the Environmental Law Associate Network (ELAN) in India.*
  - *Promoting and strengthening the South Asian Network on Environmental Law and Policy (SANEL) and leading to the setting up of the South Asian Center for Environmental Law and Policy (SACEL)*
  - *Anchoring the Advise and Referral service and increasing its outreach.*
  - *Creating village-registers of resource management practices and its compliance with national laws and norms.*
  - *A "best practice guide" to investing in and setting up a decentralized off-grid renewable energy generating system in India.*
  - *A review of environmental cases in India at tribunal, High Court and Supreme Court level identifying areas of legislation which may need changing and highlighting areas in which there are gaps. The study could also incorporate data from the advice and referral service, once it is set up.*
  - *Funding certain activities currently carried out pro bono by the firm such as its representation on the drafting committee of the Forest Rights Act as well as Rules, the Wildlife Protection Act, Reviewing Sikkim's Environmental and Social Policies amongst others.*

- To setup a Litigation Fund for use by the most impecunious and vulnerable clients. It is self-evident that those who can least afford to obtain legal relief through the courts suffer some of the worst effects of environmental problems. We have seen cases to protect wildlife habitats and tribal ways of life come to nothing because of the high costs facing claimants. Whilst the fund would have to be strictly managed, we feel that it could assist us in bringing cases that could otherwise never come up and more importantly contribute to the environmental law jurisprudence of this country in particular and the region in general.
- To setup a Training and Education Fund in order to support our out-station legal training, which is given for free or on an expenses basis only. As a Foundation, one of our principles is to ensure that training is provided whenever and wherever possible. Clearly there is a cost in terms of travel and time away from money-generating work. The fund could be used for such work, but also allow us to give training on an all-India basis on issues which we think are of national importance. Our experience tells us that one of the major problems in India is that many of those tasked with implementing environmental laws are simply ignorant of their content or meaning. The aim of this fund would be to ensure that the progressive laws are properly understood, disseminated and enforced.
- To setup a Fund for Internships and Volunteers who conduct research, administrative work and organize events. In our Foundation, we have wanted to provide a national focus to our work, not only through our core activities, but also by providing internship opportunities to new advocates, law students and other activists from around India. Hence, we conduct two kinds of Internship Programs: one for national students from law schools across the Country and the other which is an International Internship Program. We have trained over fifty lawyers from within and outside the country so far. The Internship Programmes continue to be an important component of the firm's work in the future and hopefully through the Foundation. The aim of these programmes is to inspire law students to work in the environment law sector, thereby widening and deepening the network of environmental protection. The internships are generally six to twelve weeks long as we feel that this is just sufficient time for someone to begin to understand our work and gain an interest. However, we are at present unable to pay anything towards the substantial expenses incurred for someone outside Delhi to reside here during that period. Clearly for many, this financial burden precludes them from undertaking an internship at the Foundation. We want each intern to have a stipend and each volunteer's expenses to be paid, so that they can freely immerse themselves in the Foundation's work without worrying about the financial implications.



## GOVERNANCE AND STRUCTURE

Environment Law and Development Foundation is a Charitable Trust registered under the Indian Trust Act, 1882. The Foundation is also registered in 2004 under 12A of the Income Tax Act, 1961. The Foundation is governed by a Board of Trustees which is led and represented by the Hony. Managing Trustee.

## BOARD OF TRUSTEES

The Board of Trustees consists of three members. The Board meets at least once every year. It is responsible for setting the strategic direction of the organization as also for taking decisions on policies and system related matters. In 2010-11, Foundation's Board of Trustees met on 19<sup>TH</sup> August 2010.



**Sanjay Upadhyay**, Hony Managing Trustee and Founder and Managing Partner of the India's first environmental law firm, has been practicing environmental law since 1993. An India Visiting Fellow at the Boalt Hall School of Law, University of California, Berkeley (Fall 1996) and a legal intern to the Earth Justice Legal Defense Fund, San Francisco, he started his professional career at the World Wide Fund for Nature – India at the Centre for Environmental Law. Sanjay has served as an environmental and development law expert to most well known International, Multilateral, National and State Institutions. He advises and holds key policy positions in National as well as State governments within India. The recent appointments include being appointed as the Supreme Court Advocate Commissioner for Andaman and Nicobar Islands, drafting Committee Member for two key legislations of Government of India; the Wildlife Protection Act and the much talked about Forest Rights Act as well the Rules. Most recently Sanjay has been commissioned to draft the Renewable Energy Law for India. Sanjay has also been a Member, with a rank of Minister of State for the Commission on Environment and Social Policies and Programs appointed by the Government of Sikkim. He is currently the member of the State Environment Impact Assessment Authority for the State of Arunachal Pradesh in North East India. Sanjay has also been instrumental in drafting the first Forest Sector Policy of the hill State of Himachal Pradesh.

His areas of expertise are environment and development law and more specifically legal and policy dimensions of natural resource management, energy especially renewable energy, climate policy, environment impact assessment, integrated water resource management, decentralization and tribal self rule, biodiversity, forestry, joint forest management, eco development, wildlife conservation, national parks and sanctuaries, marine and coastal ecosystems and environmentally sustainable residential/commercial housing in urban areas and financial sustainability of tiger reserves, among others.

He is a visiting resource person to most premier environmental institutions and law schools in India such as the National Law Universities of Hyderabad, Bangalore, Delhi, Kolkata; Indian

Institute of Forest Management, Wildlife Institute of India, the National Forest Academy, National Judicial Academy, among others.

Sanjay has authored fourteen books and the best known is a three Volume Hand Book on Environmental Law covering forest, wildlife laws, water, air laws, environment protection, land and energy laws published by Butterworths-India the Lexis Nexis Group. He is also a member of the IUCN Commission on Environmental Law. Sanjay was awarded the Global Fellowship at the Nicholas School of Environment at the Duke University, U.S.A and also the Oak Foundation, U.S.A Global Fellowship to understand Ocean Laws in India.

*Sanjay is also a Ghazal singer.*



**Professor Bhaskar Vira**, Foundation Trustee's research interests span the fields of political economy, development studies and environmental studies, with a regional focus on South Asia. He is particularly interested in natural resource use and management (especially forests) at a variety of scales, and state-society interactions over institutions and institutional change, and has published extensively in these areas. Over his time at Cambridge, he has co-ordinated research grants in excess of £350,000 from a number of external funding sources, including the Wellcome Trust, Nuffield Foundation and the Department for International Development (DFID). He was a co-ordinating lead author for the Millennium Ecosystem Assessment, and is one of two international advisors to a major DFID-funded research initiative undertaken by the International Institute for Environment and Development exploring markets for watershed protection services. He is presently appointed as University Senior Lecturer, Department of Geography in University of Cambridge and is a Fellow at Director of Studies and Graduate Tutor, Fitzwilliam College.



**Dr. C.M. Tiwary, Foundation Trustee** is a well known pathologist known for his numerous medico-socio contributions in eastern Uttar Pradesh. He also brings in the lay persons perspective and guides us to the real field based needs in the enviro-legal sector.

## ELD FOUNDATION TEAM

The ELD Foundation team is coordinated by Geetanjali Dhankar and Vikram Srivastava who are responsible for the day to day functioning of the Foundation. They also received support from the other staff members as well as from the Enviro Legal Defence Firm as is where is basis and under the overall guidance of the Trustees led by the Hony. Managing Trustee Shri Sanjay Upadhyay. To ensure effective implementation of the projects a team of programme, finance and administrative personnel work together.

## **FIELD OFFICES**

ELD Foundation sets up field offices in places where it is involved in direct project implementation. Currently there is a field office, in Sarguja, Chhattisgarh. ELDF is also supported by informal networks of lawyers in Ranchi in Eastern India and Bhopal in Central India and in Guwahati in the North East.

## **FIELD PARTNERS**

ELD Foundation works in partnership with grass root NGOs or community based organizations depending on the nature and location of the project. It has been conceived on the concept of caring and sharing of each others' efforts and knowledge in the field of Natural resources law so that as per the requirement or the nature of the problem, the network can be mobilized and scaled up to deal with conflicts in a particular region. List of NGOs, community organizations and professional networks with which the Foundation partnered with in the year 2010-2011 are as follows:

- Tiger Initiative Group for Earth Revival, New Delhi
- Vindhya Environment & Livelihood Trust, M.P
- Path Pradarshak, Chhattisgarh
- Sewa Bhaskar Samaj Kalyan Sansthan, Chhattisgarh
- Institute of Community Forest Governance, Jharkhand
- Educational & Research Society, Chhattisgarh

## PROGRAMMES

Keeping the vision of ELDF in mind - to work for the marginalized sections (women, tribals, dalits and other resource poor) among forest dwelling and dependent peoples, so as they can manage and utilize forest and other resources sustainably; with due regard to conservation of biodiversity and attaining livelihood security through skill diversification- ELDF has taken up programs under following major themes.

## ACCESS TO JUSTICE FOR MARGINALISED PEOPLE

*Undoing Historical Injustice through Forest Rights Act and PESA – A Field Based, Solution Oriented plan for improving access to justice of marginalized community in Schedule V areas through the tool of Panchayat Shivirs.*

The project on Access to Justice (A2J) commissioned by UNDP for the marginalized communities was initiated in three Scheduled States of Chhattisgarh, Jharkhand and Madhya Pradesh, with the aim of empowering the Scheduled Tribes and other vulnerable communities in Scheduled Areas especially to secure control and authority over community resources through historic legal instruments such as Forests Rights Act and PESA. The project operation areas in these three states comprised of the districts of Korea and Sarguja in Chhattisgarh, Umaria and Sidhi in Madhya Pradesh and Ranchi in Jharkhand.

### Initiating the Process

In the first quarter, the focus was on identifying the blocks /Panchayats/ villages with multiple issues related to Forest and Scheduled Area Governance. With this as one of the key objective, field visits were made by the ELD Foundation team to all the five districts in three states. Local lawyer (LL) for each district was also identified to strengthen the respective state teams. During the visits conceptual discussions were also held with the Local Partner Organization (LPO) and LL on forest and scheduled area governance with the aim of building their capacity to take up related issues. Also, discussion on the methodology and multi-stakeholder engagement has been one of the prime focuses of discussion, making the district forum as the key platform for information sharing, problem identification and solving, and advocacy for effective implementation and policy influencing.

In the second quarter, as the dialogue was becoming regular and continuous the community started sharing the real problems behind the slow movement with regard to recognition of rights. Problems more related to social dynamics and core issues of lack of conviction towards their own rights entitlement emerged. The fact that tribals have been kept deprived for so long, lack of Panchayati system forcing them out from participating in governance and atrocities by non-tribals and forest and other government officials have really made them hopeless as to their situation. So when rights are provided in written form, the community is unable to realize and gather the requisite confidence to take forward.

## **Stakeholders Engagement**

The project conceptualized engagement with all stakeholders from the village to the highest level (esp Judiciary) for ensuring access to Justice, which is just not an issue of information dissemination to generate demand from community but also correcting and strengthening the supply side. In the whole process, Panchayat Shivirs is seen as the point of generating the debate and empowering communities and District forums as the solution point and also a point of convergence for various stakeholders. District forums are the meeting point for various stakeholders and especially for government agencies, are the level where accountability is quite clear within the governance system. A process has begun from the bottom at the Panchayat level and similar process has been initiated at the highest level of bureaucracy in the states, informing the project, its objective and ensuring that an adequate assurance for support from all relevant departments are there as support. Several meetings have been held with senior officials at both the district and state level. Inception meetings were held in over 14 Panchayats in five districts of three states, reaching over 500 people on the issue of Forest and Scheduled Area governance as an initial step towards building the momentum.

- At the Panchayat meetings apart from basic orientation in a problem solving mode, the issues concerning jurisdiction, claims, control and management of natural resources, critical wildlife habitat, and tiger habitat issues, among others were discussed and decided to be taken forward. This also worked as an on job training for the LPOs and LL to garner skills to identify and deal with such issues.
- Similarly, various issues concerning PESA and tribal self rule were discussed in a problem solving mode. The exercises on powers of Gram Sabha and role of Panchayat body have been extensively debated. Themes such as minor water bodies, minor forest produce, intoxicants, minor minerals have generated a lot of interest and debate.
- Inception consultation was held at Raipur with LPOs and Local lawyers and specific discussions were held with local lawyers and LPOs during the field visits. 8-10 lawyers were introduced to the concept of Forest and Scheduled Area governance including 3 Law School students. As a follow up, lawyers have been asked to study the relevant laws and engage in the field with the LPOs and identify the issues concerned for a more practical understanding of the law.
- Meetings were held with key individuals within and outside the government to strengthen the programme. These are state level advocacy and would impact a larger geographical area even beyond the project area.

## **Panchayat Shivirs and District Forums**

Panchayat Shivirs and District forums happen to be pivotal towards empowering the community to create demand and strengthening the delivery mechanism to ensure supply, under the Access to Justice Project. The first quarter has been more towards gauging the situation, issues and mood of both the communities and government machinery. The laws undertaken under the project has

wider implications at both the ground and state level. FRA for that matter is seen and misunderstood by many as anti conservation / pro-encroachment law; which in reality strengthen the conservation regime, while ensuring the livelihood of communities, lessening the conflicts. Similarly PESA has long been neglected at the state level and various line departments have done precious little beyond lip service towards actual devolution of power to the Gram Sabha.



In such situation any attempt towards generating debates and action among communities through Panchayat Shivirs and ensuring/ demanding accountability in a rights based framework through district forum, has to be a well thought, carefully grafted process. First quarter went in such analysis based on observations, discussions, sharing and knowledge gathered. District forum have been initiated in District Sidhi, MP and other district offices have been identified with LPO and LL initiating the formation process.

### **Legal Literacy Manual**

The primary and core document of the whole *Access to Justice Project* is the manual being produced for all the states on Forest and Scheduled Area Governance. After much thought, discussion and our past experience, we have concluded to prepare two sets of manuals for each of the three states. In total there will be six documents, two for each. Whereas one will be *Technical Manual* with loaded legal information that can be used at any level and by anyone, such as government officials, NGO heads, lawyers etc; the other will be a *User Manual*, which will be distributed and widely used by grassroots workers, activists and community at large for information dissemination and action. During the quarter in-depth research has been undertaken towards preparation of the manuals. The state manuals are at different stages of preparation; for Jharkhand the draft manual is complete, for Chhattisgarh the draft manual is half done and for MP the background work for the manual is complete. In the second quarter, the Technical manuals were finalized and field tested.

### **Tracking back administrative and legal issues in the course of implementation of FRA and PESA**

During engagements with community in the course of field visits, some or other new issues were thrown before the larger team [LL, LPO and ELDF]. At the ground level there is lack of procedural clarity among members of FRC and gram sabha for verification and recognition process of FRA claims. There is lack of awareness at community level as to what is a 'community claim' and 'community forest resource' and the manner of preferring a 'community claim' that is sustainable under FRA. People are facing problems as understanding the appellate mechanism under FRA to challenge rejection of claims by SDLC.



All such issues have social, legal and administrative complication to it. These complex matters are being discussed within the team and efforts towards resolving them through community effort and imitative is underway. The effort is towards community empowerment and community initiated process rather than team driven processes and solution. While community based processes are ideal, parallel action on part of LL and LPO to understand the problem in more detail is already on. Various legal cases which are emerging are being studied in detail and follow up actions are being undertaken. Choice of legal solution is always an option with ELDF and LL, however social and administrative solutions are the first options towards fruitful resolution of the problems. Further the choice of legal action will always be based on community decision and never unilaterally by the team.

#### ***Case Study from Chhattisgarh***

***Facts:*** In Irgawan village there are many cases of persons who were not able to prefer a claim under FRA due to non-availability of FRA forms. The FRA form was distributed by the panchayat secretary in the village. These persons otherwise have evidence to prove occupation over forest land. The photocopied FRA form was not permitted to be submitted. This situation led to non-grant of pattas and moreover the timeline fixed by the state government for completion of the process of verification and recognition of FRA claims has come to an end.

***Way Forward:*** There is no bar in the act for non-acceptance of FRA application which is on a photocopy. Accordingly, the Sarpanch has been advised to make a representation to the State Level Monitoring Committee and the Ministry of Tribal Affairs to bring forth such cases so that the process of recognition can again be started for persons who have been left out from this process.

#### ***Case Study from Jharkhand***

***Facts:*** Inhabitants of Naudi village have informed that more than half of the forest land measuring approximately 99 acres bordering their village which they claim to be “Malik Rakhat Jungle” i.e. land belonging to the village community has been sold off for the construction of a factory without the permission of the gram sabha. The details of purchaser could not be known. It was also told that villagers have gone to the D.C and forest department to complain about the matter and have filed a case also due to which the work for setting up of the factory was stopped for some time only to be resumed later. However, the details of the case could not be known.

***Way Forward:*** Since the information provided by the villagers is inadequate to initiate any legal action at this stage, first of all the facts of the case needs to be clearly ascertained and relevant documents needs to be collected such as copy of the record of rights to ascertain the nature and status of the land, copy of the case filed by the community, details of the purchaser and seller, copy of sale deed if any to identify the conditions and purpose of the sale. Therefore, LPO and local lawyer are engaged in collecting complete information on the matter and formulate an action plan.

#### ***Case Study from Chhattisgarh***

***Facts:*** There are Pando tribals that are residents of the village in possession of traditional knowledge relating to medicinal properties of certain constituents of animal articles. This traditional knowledge is only known to the community. FRA specifically recognizes and vests community right to intellectual property and traditional knowledge related to biodiversity and cultural diversity.

***Way Forward:*** The Pando Tribe is to be assisted in filing of a community claim for claiming ‘intellectual property and traditional knowledge’.



# PROTECTING & CONSERVING COMMONS FOR COMMON GOOD - NEED A FRESH LEGAL PERSPECTIVE - AN ANALYSIS OF THE LAWS OF STATES OF ANDHRA PRADESH, KARNATAKA, RAJASTHAN, GUJARAT, MADHYA PRADESH & ORISSA; FOUNDATION FOR ECOLOGICAL SECURITY

*Acts and Policy review based programme to prepare a report on identified gaps, contradictions/need for modification and suggesting additional provisions in the Act and Policies of the National and State Governments of two states for the management of such resources as common pool/property resources*

State wise desk review of the Acts and Policies of Andhra Pradesh, Karnataka, Rajasthan, Gujarat, Madhya Pradesh and Orissa related to issues of land, forests, water and fisheries with the perspective of common property/pool resources were to be done in the course of this programme. The acts and policies were to be screened with the perspective of rights, access and benefits to the tribal and marginalized sections. Further more, gaps, contradictions (across acts and policies) /need for modification were also to be identified along with suggesting additional provisions, if necessary in the Acts and Policies of the various states.

This review has been made in order to understand the role of law in regulating commons and how an inadequate legal framework can impact commons in terms of its use, access, conservations and acquisition. It is increasingly clear that conflicting laws and policies, different state priorities and legal uncertainties on commons can result in its total decimation and mostly affect the already affected –the marginalized especially in rural and tribal India. An attempt is made to critically examine the legal spaces within which common pool resources exist and how national and state actions in terms of their policy and legal choices are impacting them and thereby affecting the marginalized who perhaps are most dependent on them. It was therein examined whether there are patterns that demonstrate a design due to state priorities or there are also defaults where larger implications are misunderstood at the local contexts. Acts and policies of all six states were examined to demonstrate the contrasting examples with some good and some not so good practices on how legal spaces are being utilized for commons. What is increasingly becoming clear is that the past legal arrangements may not be adequate and the



commons need a fresh approach if they have to survive for the larger sustainability of the rural and urban poor.

**IMPROVING AND STRENGTHENING FOREST GOVERNANCE IN INDIA THROUGH PROMOTION OF LOCAL RIGHTS - ESPECIALLY COMMUNITY RIGHTS - BENEFITS AND CONTROL OVER FOREST RESOURCES, FOREST GOVERNANCE LEARNING GROUP (FGLG) AND INTERNATIONAL INSTITUTE OF ENVIRONMENT AND DEVELOPMENT, UK**

Its specific objective is *‘Improved forest governance in ten countries in Africa and Asia – securing local rights, developing forest product legitimacy and combating climate change’*. The overall objective of the Social Justice in Forestry project in India is *‘improving and strengthening forest governance in India through promotion of local rights - especially community rights - benefits and control over forest resources’*.

This programme is part of the ‘Social Justice in Forestry’ initiative coordinated at the international level by IIED and is funded by the European Commission and the UK Department for International Development. The Hon’y Managing Trustee was the Convener for FGLG-India in 2010. FGLG India took active support of the foundation in developing certain thematic papers and other support to carry out the various activities of the larger group. Some of the activities taken up under the guidance of the FGLG national convener are as follows:

**Review of FRA Implementation Status**

Interactions with different stakeholders on FRA in Chhattisgarh, Jharkhand and Madhya Pradesh have resulted in documentation of principle issues on FRA. These range from procedural inadequacies, substantive law hurdles, lack of understanding of basic processes, ambiguity in appellate processes in the recognition of forest rights, reluctance of the forest department which is the forest land controlling agency, lack of capacity in the nodal department of implementation of FRA i.e. the Ministry of Tribal Affairs and its weak counterparts at the state level and major disputes on substantive aspect of law such as ownership of forest produce and its management and most importantly the lack of initiatives on community forest management and exercise of community forest rights.



**Critical Tiger Habitat and Critical Wildlife Habitat: New challenges different legislative mandate**

There are critical issues especially from the conservation stand point and the new right regime. For example, the emergence of two new legal categories viz. critical tiger habitat and critical wildlife

habitat under apparently two conflicting regime has thrown new challenges in recognition of forest rights. A briefing note on Protected Area governance (critical wildlife habitat and critical tiger habitat) in the context of FRA has been prepared accordingly.

### **FREE ADVICE AND REFERRAL SERVICE**

One of the greatest impediments to addressing environmental issues in India is people's access to environmental justice. Environmental problems often go unaddressed because victims simply don't know whom to turn to, how to obtain correct advice and representation, or don't have the evidence to pursue the matter further.

The Foundation gets a number of legal queries almost on a daily basis from various corners of India from NGOs, CBOs, CSOs, urban and rural individuals, urban and rural tribals, non-tribals, activists, high profile, low profile, officials and non-officials, small time entrepreneurs and social workers irrespective of their background. Today the Foundation handles these queries through its own staff or takes technical help from the Enviro Legal Defence Firm housed in the same building to answer all these kind of queries to a variety of persons from all over the country.

The Foundation also draws upon and proposes to strengthen a national network of specialists in environmental law and technicians (toxicologists, hydrologists etc) who would be willing to look at a case or provide technical advice initially for free. Individuals or groups contact the service by post, by telephone, by email or personally with their complaints and are referred to an appropriate expert.

### **INTERNSHIP PROGRAMME**

With a view to providing a forum to encourage young lawyers to contribute to the discipline of environment and development law, Foundation conducts Internship Programmes for both National and International law students. The internship programmes are often a mix of field and theory, where law students and fresh professionals from various law schools undergo rigorous training under senior staff of Foundation for a period ranging from six to twelve weeks. We have trained over 50 lawyers from within and outside the country so far.

The students from various National Universities namely University of Delhi, Faculty of Law, NALSAR, Hyderabad, NLSIU, Bangalore, Symbiosis Law College, Pune, NLIU, Bhopal, Amity Law School, Indraprastha Law College, New Delhi, Lucknow University, Faculty of Law, Government Law College, Mumbai, Banaras Hindu University, GNLU, Gandhinagar, Faculty of Law, Government Law College under Guwahati University, National Institute for Advanced Legal Studies, Kochi, Kerala, and International Universities namely Louis & Clarke Law School, College of Law, London, Vermont Law School, USA, Michigan Law School U.S.A, Harvard Law School, U.S.A, UC Berkeley, USA and the University of Manchester, UK have participated in this programme. The Internship Programmes will continue to be an important component of ELDF's work in the future.





- Policy Brief- Community Forest Resource and Community Forest Rights – Implementation and Institutional Challenges under Forest Rights Act, 2006 for Forest Governance Learning Group (FGLG) India Initiative, 2010.
- Wildlife Protection Needs an enabling framework; Financial Express; 2010.
- Scheduled Areas Need a Fresh Legal Perspective
- Old Wine, new green bottle, Mint, 2009.

otherviews

LIVEMINT BLOGS  
Srinivas Kumar's  
Play Things  
at [www.livemint.com/analysis](http://www.livemint.com/analysis)

TRIBUNAL TRIALS

### Old wine, new green bottle

By SANKU SHARMA

Structure and substance  
The National Green Tribunal (NGT) was established by the Environment Protection Act, 1986. It was set up to deal with environmental issues through a specialised mechanism. The NGT is a quasi-judicial body with powers to hear and dispose of cases involving environmental damage. It has jurisdiction over all environmental issues, including air and water pollution, forest conservation, and other environmental matters. The NGT is a single-window mechanism for environmental justice, providing a fast and efficient way to resolve environmental disputes. It has the power to issue directions, orders, and awards, and to impose penalties on those who violate environmental laws. The NGT is a landmark institution in the history of environmental law in India, marking a significant step towards the institutionalisation of environmental justice.

Fundamental question therefore is whether it is the tribunal itself which was responsible for its institutional failure or whether there were other systemic reasons. Such a systemic examination is needed before mulling over yet another ambitious green tribunal, which itself is not defined.

Second, with three previous legislations under the aegis of Parliament and the subject matter of the bill, there were laws, the recently enacted Forest Rights Act and related off rule laws, which are giving rise to numerous conflicts, have been ignored.

Third, the Bill also limits the application of the tribunal to certain categories of cases, which may not be in the public interest. Considering the complexity of environmental issues, which only include matters where the consistency or integrity of the forest is likely to be affected, but exclude individuals or groups of individuals. It is, therefore, unclear whether this law will exceed the scope of the act.

Finally, the concept of environmental justice is a positive one, where it is not only the complainant's but also the

### Scheduled Areas Need a Fresh Legal Perspective

by Sanku Sharma

The Forest Rights Act (FRA) is the Scheduled Areas Act, 1956 and the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006. The FRA is a landmark legislation that recognizes the rights of forest-dwelling communities in Scheduled Areas and Other Traditional Forest Dwellers. It is a comprehensive law that covers a wide range of issues, including land rights, forest rights, and the protection of the environment. The FRA is a significant step towards the institutionalisation of environmental justice in Scheduled Areas and Other Traditional Forest Dwellers. It is a landmark legislation that recognizes the rights of forest-dwelling communities in Scheduled Areas and Other Traditional Forest Dwellers. It is a comprehensive law that covers a wide range of issues, including land rights, forest rights, and the protection of the environment. The FRA is a significant step towards the institutionalisation of environmental justice in Scheduled Areas and Other Traditional Forest Dwellers.

The FRA is a landmark legislation that recognizes the rights of forest-dwelling communities in Scheduled Areas and Other Traditional Forest Dwellers. It is a comprehensive law that covers a wide range of issues, including land rights, forest rights, and the protection of the environment. The FRA is a significant step towards the institutionalisation of environmental justice in Scheduled Areas and Other Traditional Forest Dwellers. It is a landmark legislation that recognizes the rights of forest-dwelling communities in Scheduled Areas and Other Traditional Forest Dwellers. It is a comprehensive law that covers a wide range of issues, including land rights, forest rights, and the protection of the environment. The FRA is a significant step towards the institutionalisation of environmental justice in Scheduled Areas and Other Traditional Forest Dwellers.

THE FINANCIAL EXPRESS

Special Feature: FRA's progress on setting legal framework

Published online: 2010-11-14 23:31:55:53

Environmentalists have long demanded that the government should, in addition to the Forest Rights Act, 2006, also pass a law to provide a legal framework for the implementation of the Act. The government has now taken a step towards this by introducing the Scheduled Areas and Other Traditional Forest Dwellers (Recognition of Forest Rights) Bill, 2009. The Bill is a landmark legislation that recognizes the rights of forest-dwelling communities in Scheduled Areas and Other Traditional Forest Dwellers. It is a comprehensive law that covers a wide range of issues, including land rights, forest rights, and the protection of the environment. The Bill is a significant step towards the institutionalisation of environmental justice in Scheduled Areas and Other Traditional Forest Dwellers.

The Bill is a landmark legislation that recognizes the rights of forest-dwelling communities in Scheduled Areas and Other Traditional Forest Dwellers. It is a comprehensive law that covers a wide range of issues, including land rights, forest rights, and the protection of the environment. The Bill is a significant step towards the institutionalisation of environmental justice in Scheduled Areas and Other Traditional Forest Dwellers. It is a landmark legislation that recognizes the rights of forest-dwelling communities in Scheduled Areas and Other Traditional Forest Dwellers. It is a comprehensive law that covers a wide range of issues, including land rights, forest rights, and the protection of the environment. The Bill is a significant step towards the institutionalisation of environmental justice in Scheduled Areas and Other Traditional Forest Dwellers.



## FINANCIAL STATUS

### ENVIRONMENT LAW AND DEVELOPMENT FOUNDATION BALANCE SHEET AS ON 31<sup>ST</sup> MARCH, 2011

LIABILITIES	CURRENT YEAR	ASSETS	CURRENT YEAR
<b><u>RESERVE &amp; SURPLUS</u></b>		<b><u>CURRENT ASSETS</u></b>	
Balance as per Last Balance Sheet	34,698.00	Cash in Hand	4,009.00
Add: Excess income over expenditure	84,348.00	ICICI Bank Ltd.	23,88,318.00
	-----		
	1,19,046.00		
		<b><u>LOANS AND ADVANCES</u></b>	
<b><u>CURRENT LIABILITIES</u></b>		Advance recoverable in cash or in	
UNDP Grant	24,36,259.00	kind or for value to be received or pending adjustment	1,72,393.00
(Project Activities in Progress)			
		Tax Deducted at Source 2010-11	70,000.00
<b><u>Outstanding Liabilities</u></b>			
Chaudhry Kumar & Co. Expenses Payable	23,714.00 55,701.00		
	-----		
	26,34,720.00		26,34,720.00
	=====		=====

AUDITORS REPORT

This is the Balance Sheet referred to in our separate report of even date.

PLACE: NEW DELHI  
DATED:

(HARISH KUMAR)  
B.COM, F.C.A.  
M.No. 080105  
FOR CHAUDHRY KUMAR & CO

TRUSTEE

**ENVIRONMENT LAW AND DEVELOPMENT FOUNDATION**  
**INCOME AND EXPENDITURE ACCOUNT - YEAR ENDING 31<sup>ST</sup> MARCH, 2011**

<u>EXPENDITURE</u>	<u>AMOUNT (Rs.)</u>	<u>INCOME</u>	<u>AMOUNT (Rs.)</u>
To Salary Paid	34,500.00	By FES - Receipt	7,00,000.00
To Printing & Stationary	768.00		
To Professional Expenses	465,000.00		
To Travelling Expenses	97,324.00		
To Bank Charges & Interest	3,170.00		
To Legal & Professional Charges	6,618.00		
To Audit Fees	8,272.00		
To Excess of Income over expenditure for the year	84,348.00		
	----- 7,00,000.00 =====		----- 7,00,000.00 =====

AUDITORS REPORT  
Annexure to Balance Sheet

PLACE: NEW DELHI  
DATED:  
080105

TRUSTEE

(HARISH KUMAR)  
B.COM, F.C.A. M.No.

FOR CHAUDHRY KUMAR & CO

**ENVIRONMENT LAW AND DEVELOPMENT FOUNDATION**

Schedule of UNDP Grant for the year ending 31.03.2011

**RECEIPTS**

Opening balance of Unspent Grant	2069700.00
Add: Received during the year	2759600.00
	<hr/>
<b>Total receipt</b>	<b>4829300.00</b>
	<hr/>

**PAYMENTS**

To Transportation Cost	503989.00
To Others (Publication) Cost	475000.00
To Personnel Cost	252371.00
To Premises Cost	578684.00
To Training/Seminar/Workshop cost	578585.00
To Contracts (Audit)	4412.00
	<hr/>
<b>Total payment</b>	<b>2393041.00</b>
	<hr/>

**NIL Balance grant of UNDP as on 31.03.2011** **2436259.00**

AUDITORS REPORT  
Annexure to Balance Sheet

PLACE: NEW DELHI  
DATED:  
080105

TRUSTEE

(HARISH KUMAR)  
B.COM, F.C.A. M.No.

FOR CHAUDHRY KUMAR & CO

**ENVIRONMENT LAW AND DEVELOPMENT FOUNDATION**

DETAILS OF ACCOUNTS AS ON 31.03.2011

**LOANS AND ADVANCES**

Advance recoverable in cash or in kind or for value  
to be received or pending adjustment

Institute of Community forest	159,538.00
Path Pradarshak Chhattisgarh	8,065.00
Sewa Bhaskar Samaj Kalyan Sansthan	4,790.00
	-----
	172393.00
	=====

## HUMAN RESOURCES

### BOARD OF TRUSTEES

SN	Name of Trustee	Position
1.	Mr. Sanjay Upadhyay, Hony. Managing Trustee	Advocate, Supreme Court of India Chamber: 419, MC Setalvad Chambers; Supreme Court; Bhagwan Das Road, NewDelhi-110001 Ph. No. +91-11-23070071
2.	Dr. BhaskarVira, Founder Trustee	Lecturer in Environment & Devt. Fellow Fitzwilliam College University of Cambridge Downing Place, Cambridge CB2 3EN England, t-+44-(0)1223 333399 t-+44-(0)1223 339823 (d) f-+44-(0)1223 333392
3.	Dr. C.M. Tiwari Founder Trustee	S C-179/159, (Opposite Hanuman Mandir), Betiahata, Gorakhpur - 273 001(U.P.) Tel: 0551-2337140

### TEAM AT ELD FOUNDATION (AS ON 31<sup>ST</sup> MARCH 2011)

S. No.	Name	Designation
1.	Ms. Geetanjali Dhankar	Legal Coordinator
2.	Mr. Vikram Srivastava	Legal Coordinator
3.	Mr. Tushar Thareja	Legal Coordinator
4.	Mr. Vishambar Dutt	Project Coordinator
5.	Izhar Ali	Accounts Associate
6.	Hitesh Arora	Accounts Associate
7.	Rajkumar	Driver cum Office Assistant
8.	Mukesh	Office Assistant

## FIELD PARTNERS

SN	Partners
1.	Sewa Bhaskar Samaj Kalyan Sansthan Bhaskar Bhavan, Kedarpur, Ambikapur, District Sarguja - 497001 Chhattisgarh <a href="mailto:sewabhaskar@gmail.com">sewabhaskar@gmail.com</a> +91-9826168359
2.	Path Pradarshak, Saksharta Marg (Bhatti Road), Kedarpur, Ambikapur District - Sarguja- 497001 Chhattisgarh tel: 0777-4230894 m-+91- 9406090669 <a href="mailto:p.pradarshak@rediffmail.com">p.pradarshak@rediffmail.com</a> <a href="mailto:pathpradarshak.tiproject@gmail.com">pathpradarshak.tiproject@gmail.com</a>
3.	Vindhya Environment and Livelihood Trust Near Pani ki Tanki, Dakshin Korondia Siddhi, Madhya Pradesh m-9752188878 <a href="mailto:em-churhatkk@gmail.com">em-churhatkk@gmail.com</a>
4.	Tiger Initiative Group for Earth Revival Bandavgarh Road, Village Tala, Khaira Gram, Post Office-Khaira, District-Umaria, Madhya Pradesh m-9868882400 <a href="mailto:tiger_initiative@hotmail.com">tiger_initiative@hotmail.com</a>
5.	Institute of Community Forest Governance, A-B/1 Abhilasha apartment 11 Purulia Road (behind Top Gear Motor Garage) Ranchi – 834001 <a href="mailto:sanjay_samar@hotmail.com">sanjay_samar@hotmail.com</a> 0651-2532067 m-09431103041
6.	Shri J.P. Srivastava Advocate

	Chamber No. 1, District and Session Court Ambikapur Sarguja– 497001, Chhattisgarh m-09826183783 JP.shri.197@gmail.com t-07774-220520
7.	Mr. Anuk Pratap Singh Tekam Advocate District and Sessions Court Ambikapur Sarguja– 497001 Chhattisgarh m-09406222265 m-09926860551 <a href="mailto:anuktekam@gmail.com">anuktekam@gmail.com</a>
8.	Rajiv Singh Chauhan Advocate, 11 “D” Lawyers Chamber District Court, Sidhi – 486 661 m- 0940 7354 200 m – 09425179586 <a href="mailto:sidhirajiv@yahoo.in">sidhirajiv@yahoo.in</a>
9.	Pushpendra Nath Dwivedi 09425472945 <a href="mailto:babadwivedi99@gmail.com">babadwivedi99@gmail.com</a>
10.	Rajesh Shankar Advocate, Madhya Pradesh m-09835116014 t-2311746 (R)