A Socio-Economic and Legal Study of Scheduled Tribes’ Land in Orissa

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Tribal areas in Orissa are some of the most backward and poverty ridden areas in the country. They are also extremely resource rich. 72% of the tribal households in Orissa live beneath poverty line. The paradox of “rich resources, poor people” in the tribal areas has been a concern for us for quite some time. Our team has been doing preliminary work on this issue for last two years and rights and access to land and other natural resources has emerged as a central theme in the impoverishment and disempowerment of tribal communities. We are thankful that this short study has helped us to synthesize a coherent narrative, though extremely preliminary one, about issues of tribal land in Orissa.

The official discourse on tribal lands has been dominated by the issue of alienation of legal landholdings of the tribals by non-tribals. This issue has often overshadowed the large-scale loss of tribal access to land and forests through processes of land categorization, forest reservations and displacement, which have been facilitated by the State itself. This study has tried to study both the aspects. Given its limitations, it adds little to the literature on alienation of legal landholding of tribals, whereas the team feels that it makes a significant contribution in this brief study to the issue of loss of access to land through state led processes. This, for us, is an extremely important development, as resolving many of these issues only requires political and bureaucratic will by an avowedly “welfare state”, and are not as contentious as the redistribution and restoration of land for which laws already exist.

This study, given the short period, and extremely small sample size, is very preliminary in nature. Many of the ideas and research that is presented in this study is the outcome a research and information analysis process which started before the study was commissioned and will continue after the publication of the report. There is urgent need to carry out more rigorous research on many of the issues touched by this study, for great injustice has been done and is being done to the tribal people of Orissa.

We thanks the villagers of Dekapar, Chakarajhola and Podagarh, Bangusahi and Baragada for opening their lives and landscapes to us. Thanks are also due to the various people who helped us in the fieldwork, including Surendra Karan in Koraput and Jagannath Raju in Gajapati. I would also like to thank Vasundhara for deputing Somen, Pradeep and Sricharan for this study as well as providing infrastructural support. Finally, I thank Barbara Beverado, World Bank, for supporting this study and for her invaluable suggestions, both in the design and in the fieldwork.

Kundan Kumar
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Executive Summary

Scheduled Tribes, which constitute twenty-two percent of Orissa’s population are the most marginalized and poor social group in the State, with over 72% living under the poverty line. Though land and land based resources are central to the livelihoods of tribal people, they have poor access to land and forests. Most tribal communities in Orissa have strong cultural and social relationship with land, with many practicing communal ownership of land, especially swidden land. During the last two centuries, tribal communities have been affected by land loss through alienation of plain lands to non tribals and the swidden lands to the State, which has categorized these areas as forest land or revenue lands. The loss of private landholdings by tribals has been a cause of concern with a number of laws being passed by both pre-independence state and post-colonial state to check land alienation. These laws suffered from many shortcomings and were unable to check transfer of land from tribals to non-tribals. Also, as this study tries to show, the poor access of tribal land is not only the outcome of land alienation to non-tribals, but is also the outcome of land and forest policies followed by the State.

In Schedule Areas (tribal majority areas) of Orissa, three-fourth of land is owned by the State, and in districts like Gajapati and Kondhmal, less than 10% land is owned by tribals. At the same time, the per household land ownership among tribal households is extremely low at 1.12 standard acres per household. The situation of marginal ST households which constitute more than 50% of tribal landowners is even more precarious, with their average landholding working out to only 0.44 standard acres. Given that land is most important source of tribal livelihoods, the extremely low holdings could be an important factor behind their extreme poverty as a social group. The paradox of abundant state owned land with the meager holdings of tribals is sought to be understood through this study.

The Study has identified the some of the main processes which have led to poor access to land for the tribals. This was done through carrying out four case studies and secondary literature survey. Attempt has been made to place these typologies in the legal and policy context, as well as historical context. Given the limited time available for the study, the discussions are necessarily indicative and point out directions for further investigations and research. The study brings out the need for a paradigm change in tribal development in Orissa, with access and rights over land and land based resources as the central focus of development strategy in tribal areas.

The major typologies affecting tribal access to land have been categorized into:
- Loss of land settled with tribals through private transactions
- Lack of proper recording of occupation rights through survey and settlements
- Forests, Forest land and Tribal land
- Displacement through land acquisition under development projects
- Poor implementation of land regularization and distribution

The summary of the various modes of land loss and poor access is as below:
1. Loss of land settled with tribals through private transactions
1.1 Private Land loss through debt Mortgages: Informal mortgaging of land is one of the most important modes of private land alienation in both the case studies and in secondary literature. The most important reason for mortgaging of land was ceremonies of marriages and deaths. The laws regulating moneylending
are ineffective and impractical in cultural context of tribals, who mostly rely on oral transactions. Possible remedies are promotion of thrift and credit groups, community level funds etc.

1.2 Sale of land by tribals: This was another important reason for alienation of private tribal land, especially before 2002. In 2002 the law was amended to totally ban sale of land by tribals to non-tribals. However, benami transactions continue. The current law provides for detection of illegal land transfers from tribals and non-tribals after 1956 and restoration of the land to tribals. The implementation of this law, especially detection of illegal transfers and land restoration needs to be strengthened.

1.3 Land transfers before the current protective laws were in place: Much of the land transfer to non-tribals had taken place before the current protective laws were passed, as there were periods when no protective laws were in place, or the protective laws were full of loopholes.

2. Lack of proper recording of occupation rights through survey and settlements

2.1 Non Recognition of rights on shifting cultivation Land and their categorization as state land: Shifting cultivation land on hill-slopes, estimated variously as ranging from 5298 sq. km. to 37,000 sq. km of area haven’t been settled with tribal communities and are categorized as State land, either Forests or revenue land. The tribal communities have no or very little rights on these lands. Though Government of Orissa has initiated some steps to provide rights on these lands, in absence of proper implementation, these measures haven’t been effective.

2.2 Unsurveyed areas: Large areas of the State have been left unsurveyed and rights haven’t been settled on these lands. This includes officially unsurveyed areas (over six hundred thousand acres), as well as areas which were categorized as deemed forests and land over 10% slopes in shifting cultivation areas. This has led to non-settlement of rights of tribals on these lands.

2.3 Permanent cultivation land not recorded in name of tribal tenants: Often land cultivated by tribals but fallowed at the time of settlement was not recorded in their names. During revisional settlements, government land cultivated by tribals who, as per law, should have been settled with them was often not done because of their inability to gratify the responsible authorities.

3. Forests and tribal lands: Forty six percent of land in tribal dominated districts is categorized as forest land, making it one of the most important constrains in tribal access to land.

3.1 Forest land where proper rights settlements haven’t taken place

3.1.1 Deemed Forests: All the forests lands which were brought into the state of Orissa from the princely states as well as areas under Madras Presidency areas were deemed to be Reserve Forest or Protected forest in 1954. The rights of the cultivators were never settled before the notification of these lands as forests by the princely states or even in Madras Presidency areas. Many of these forests have tribal settlements inside them which are being treated as encroachers.

3.1.2 Poor Rights settlement during declaration of Forests: Even where rights settlement processes as per law have taken place, the actual implementation
was extremely poor. In absence of literacy and awareness of the tribal population, no special efforts were made to inform them properly, which meant that many of them couldn’t claim their rights.

3.1.3 Shifting Cultivation areas declared as forests: Large areas of shifting cultivation land were declared as forests both pre-independence and after independence. This affected the availability of land for the tribal communities and criminalized shifting cultivation on these lands, giving rise to continuous conflict and repression.

4. Displacement through land acquisition under development projects: Even though the Indian Constitution provides for protection of rights in land for scheduled tribes, in Orissa, the scheduled tribes have been affected by large scale displacement by dams, industrial and mining projects. Land for land as compensation was generally not provided, and displacements have led to severe cultural, social and economic dislocations for tribals. Empirical studies point out that displacement has led to large increase in extents of landlessness amongst affected tribals.

4.1 Loss of land through plantations: Surprisingly, in two of the case studies, plantations on government land cultivated by tribals emerged as a major reason for land loss. For instance, in last five years alone, 54,835 ha. of plantations have been carried out by Forest Department in four tribal dominated districts of Koraput, Rayagada, Malkangiri and Nabarangpur. Much of the land being used for plantations is land under occupation of tribals. Some of these schemes have the provision for usufruct rights to tribal families. In two case studies out of four taken up, it was found that large extent of government land under cultivation by tribals have been taken up for plantations under various schemes. In one of these cases, scarcity of land due to plantations was seen to have led to out migration of 23 families. In a more revealing case, Juangs (primitive tribal groups) in Kadalibari village in Keonjhar were displaced from 43 hectares of their tradition swidden land for compensatory plantation taken up in lieu of forest land diverted for mining elsewhere.

5. Poor distribution of Government wastelands: Compared to other States like Andhra Pradesh, Orissa has a poor record of distributing government wastelands to landless poor. The case studies revealed that though plenty of government land was available, and most of the tribals were landless or marginal landowners, very little land has been distributed under Government programs. This is a paradox, especially since most of such government lands are already occupied as customarily owned land by tribals. One of the case studies also revealed biased in settlement of government land, with tribals and dalits being settled with only low productivity uplands whereas the other castes have been settled with good quality lowlands. The program for land distribution to tribals has slowed down after 1980, and needs to be accelerated sharply to make.

Recommendations: Given the preliminary nature of the study, it was difficult to make detailed recommendations immediately useful for policy making purposes. However, the study does recommend some of the principles which can be accepted for improving tribal access and control over land. These include adoption of community ownership principal,
acceptance of tribal rights over shifting cultivation land, either communal or individual, adoption of minimum landownership principle, creation of exclusive homelands for Primitive tribal groups etc. The study also recommends that effective land administration and improving tribal access and control to land be made the core strategy for tribal development.

Few other key recommendations are as follows:

- Review of record of rights and ground checks through third parties to create checks and balance system
- Baseline survey of land ownership in the tribal villages before taking up watershed, irrigation and other area based schemes
- Removing 30% slope criteria for settling shifting cultivation land with tribal cultivators
- Revised guidelines for identification of cultivation on forest land before 1980
- Strengthening tribal land protection laws

Lack of good empirical research on the issue of tribal lands in Orissa has been a major constraint. The study identifies the many areas of research that need to be taken up for creating further policy recommendations.
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1. Background

Land and land based resources are central to the social and cultural existence of tribal societies. Majority of the tribal population in India resides in mountainous, forested landscapes in North East India and the vast forested upland tracts of Central India. The central Indian tribal homeland, located between 18 and 25 degrees north of the equator across the Indian subcontinent, operationally cover nearly 100 districts in eight states of the country stretching from Banswara (Rajasthan) in the west to Purulia (West Bengal) in the east. These districts together account for about 55 million tribal people (roughly 70 per cent of India’s tribal population) spread over 68 million hectares of geographic area (Phansalkar & Verma, 2004)

The British identified alienation of land from tribals as an important political and administrative issue leading to unrest and rebellions, and passed special laws to protect tribal rights in land. Protection of land rights of tribal communities was also incorporated into Indian Constitution through Schedule V and VI. Historically, alienation of land from tribals has been recognized as an important political and administrative issue.

Legally, alienation of land is defined as loss of patta or private land. This perspective doesn’t factor in the corporate ownership system practiced by many tribal groups traditionally. Except for North-East India, communal or corporate ownership of land was not formalized through the land and forest administration systems introduced by the British and further extended by the postcolonial Indian State. Loss of access to land and forests classified as state owned and diverted for various purposes have rarely figured in the official discourse of tribal land alienation.

However, review of literature dealing with poverty and livelihoods among tribal communities clearly brings out that apart from alienation of private land, diversion of land for different purposes by the state has also played an important role in reducing access to land by tribals. These diversions include diversion of land for development projects, notification of forests, large scale plantation programs etc. Thus understanding constraints on tribal access to land also needs to take into account these processes along with the alienation of land legally owned by tribals.

This study presents an exploratory analysis of factors that constrain access for scheduled tribes in Orissa. It takes into account the effects of rigid legal definitions of private property and state property on the more communal, diverse and complex customary property regimes of tribal communities. At the same time it tries to address the historicity of the current land tenure and rights situation in tribal areas, and the fact that often these have been based in injustice and appropriation.
1.1 Objectives of the Study
The study was conducted with the following objectives:

- To identify typologies of factors constraining access of land for tribals\(^1\) and the consequences for tribal livelihoods and welfare
- To explore causes and modalities of poor access of land for tribals
- To explore constraints and opportunities to guarantee, restore and enforce tribal land rights
- To explore positive and negative impacts of the existing legal and regulatory framework for tribal lands on the welfare and livelihoods of tribals.
- To identify outcomes of laws and policies aimed at improving tenure security for tribal groups and possible policy changes required to improve access to land and land based livelihoods by tribals.

The findings of the study are preliminary, yet they have broad policy implications which need further consideration, including more empirical research.

1.2 Methodology
The broad methodology for the study included the following:

- A review of the legislative and regulatory framework governing access to land to scheduled tribes as well as preventive laws for tribal land alienation
- Four village level case studies in different districts of Orissa to understand the dynamics of land alienation and constraints on access to land by Scheduled Tribes.

Three out of four case studies were taken up in Scheduled V areas, two in Koraput district (Podagada & Dekapar) and one in Gajapati district (Bangusahi). These three case studies are located in hilly areas and illustrate the impact of land settlement and forest declaration creation policies on the access to land for tribals. The fourth case study was taken up in Jharsuguda district (Baragada) in an area which has seen multiple displacements and acquisition of land for development projects. The case studies were used to identify the various types of constraints on access to land and land alienation.

The report is presented in three parts. While, the first part provides background information, the second part deals with typologies of land access and rights issues and the third summarizes the recommendations. The various typologies have been illustrated with examples and information generated from the case studies as well as secondary literature.

1.3 Shortcomings of the Study
The report suffers from inevitable shortcomings on account of the short period of research and the small sample of four villages considering the scope of the issue addressed. Another shortcoming of the study is that except for the displacement linked case study (Baragada), other three samples were mostly homogeneous settlements of

\(^1\) Tribal land alienation in this study is used to mean alienation of access to both land which belongs legally to the tribals as well as other lands forming integral part of tribal habitat which has been customarily used by them to meet livelihood and cultural needs. This implies that the study also addresses the historical processes of land categorization and whether that has been a factor in reduced access to land or land alienation
scheduled tribes, and therefore land alienation through transfers (sale and mortgage to non tribals) may have been underestimated. However, this strategy was deliberately chosen since most tribals tend to live in homogeneous settlements and we wanted to extract other typologies of land alienation which are more acute in such villages.

There is little understanding about most of the typologies of land loss and alienation described in the report, and each of these typologies are worthy of separate research studies. This report barely scratches the surface of the various processes through which tribal people in Orissa have lost access to land. Land and forest tenure issues in tribal Orissa have been a neglected field of study, in spite of its critical importance for millions of the most deprived people in the country.

We see this study as a very preliminary roundup of issues relating to land facing the tribal people. In absence of sufficient time, we couldn’t do an assessment of the impact of the latest amendment in laws protecting tribal interests in private land (Orissa Scheduled Area Transfer of Immovable Property (by Scheduled Tribes) Regulation, 1956 which was amended in 2002) and examine the efficacy of the procedures. We also couldn’t explore in details the various types of processes leading to loss of tribal access to land; neither could we rank them by importance.
Section I

1. **Scheduled Tribes in Orissa**

   Scheduled Tribes constitute nearly 22.21% of the total population of Orissa. 62 tribal communities have been designated as Scheduled Tribes of which 13 have been recognized as Primitive Tribal Groups. Nearly half the State’s area (44.70%) is under Schedule V of the Indian constitution, with a total population of 8,870,884 (1991 census), out of which 68% is constituted by tribal population and 20% is constituted by Scheduled Caste population.

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2 Following areas are under Schedule V in Orissa: Mayurbhanj, Sundargarh, Koraput, Rayagada, Nabarangpur and Malkangiri districts in whole, Kuchinda tahasil of Sambalpur district, Keonjhar, Telkoi, Champua, Barbil tahasils of Keonjhar district, Khondamal, Balliguda and G.Udayagiri tahasil of Khondamal district, R.Udayagiri tahasil, Gumma and Rayagada block of Parlekhemundi tahasil in Parlakhemundi Sub-division and Suruda tahasil of Ghumsur sub-division in Ganjam district, Thumul Rampur and Lanjigarh blocks of Kalahandi district and Nilagiri block of Balasore district. The total area of the scheduled areas contain almost 70% of the forest areas of Orissa even though they form only 44% of the State area.
Behura classifies the Orissa tribes into various types i.e. hunter-gatherers, pastoral, artisans, hill and shifting cultivators and settled cultivators. Kharia, Mankidi, Mankadia and Birhor are the few tribes which are exclusively hunter gatherers and who stay in the forests of Mayurbhanj, Keonhjar and Sundargarh. Koyas of Malkangiri are classified by Behura as pastoral communities, though they also carry out settled and shifting cultivation. Mahali and Kol-Lohara are two tribes dependent on artisanal work i.e. basket weaving and blacksmithing.

Kondhs are the largest tribal group in the State with population of over a million. They live all over the state, but are mainly concentrated in Kondhmal, Koraput, Rayagada, Nabarangpur, Kalahandi and Gajapati districts. They are an agricultural tribe, and carry out both settled and swidden cultivation. Saoras are shifting cultivators mainly found in Gajapati district. Parojas and Gadabas stay mostly in Koraput and are swidden cultivators. Perenga, Didayi, Bondo, Dharuas are other south Orissa tribes which practice shifting cultivation. In North Orissa, Juangs and Bhuiyans practice shifting cultivation.

The main settled peasant tribes are Gonds, Santals, Mundas, Oraons, Bhattadas, Bhumij etc. The population of Gonds is approximately seven hundred thousands, concentrated in Kalahandi, Sambalpur and Koraput. They are settled cultivators. Santals are concentrated in Mayurbhanj and are settled peasantry. Mundas, Oraons, Bathudis and Bhumij stay in north Orissa districts of Mayurbhanj and Keonjhar. Bhattadas and Bhumias live mostly in Nabarangpur district and are settled cultivators.

The Primitive Tribal Groups in Orissa include Paudi Bhuiyans (Keonjhar, Bonai block of Sundargarh district, Pallahara or Angul District), Chukta Bhunjias (Sunabeda Plateau of Nuapada district), Birhors (Mayurbhanj and Keonjhar districts), Bondos (Bondo Hills of Malkangiri), Didayi (Konda Kamberu hills of Malkangiri district), Juangs (Keonjhar and Pallahara Block of Angul district), Dangaria Kondhs (Niyamgiri Hills, Rayagada district), Kutia Kondhs (Belghar area in Kondhmal district), Hill Kharias (Mayurbhanj), Lodhas and Lanjia Saoras. Annexure-I shows the population of the various tribes and the areas inhabited by them.

![Picture 1: Dongaria Kondh Youth](image1.jpg)  ![Picture 2: Kondh Kids, Dekapar, Koraput](image2.jpg)
Orissa is one of the poorest states in India, with an estimated 47% of its population living on less than a dollar a day (Haan & Dubey, 2003). A regional and social group-wise analysis of poverty in Orissa highlights the fact that the population in Scheduled Areas is comparatively much poorer than the population in non-Scheduled Areas, and that Scheduled Tribes are the poorest groups. In 1999-2000, 73% of the Scheduled Tribes in Orissa were below poverty line as compared to 55% and 33% respectively for Scheduled Castes and General Castes (Haan and Dubey, 2003). The same pattern is observed for all socio-economic indicators.

2 Customary land tenure and landuse systems of tribal societies

The tribes in Orissa show a variety of customary land tenure systems which have been often modified and changed by the state imposed tenure systems. Most tribes tend to follow a clan based land tenure system which provides customary rights in land, trees, forests etc. For instance, the Kondh clans were called muttahs, which may be further subdivided into lineage based territories as in the case of Dongaria Kondhs and Kuttia Kondhs.

Tribes like Kondhs, Saoras, Parojas, Gadabas, Bondos, Juangs and Bhuiyans traditionally carry out shifting cultivation along with paddy cultivation in valley lands. The landuse and tenure systems varies from tribe to tribe, but most swiddening tribes broadly cultivated four types of land – valley bottom paddy lands or wetlands, homesteads/backyards, uplands and swidden or shifting cultivation fields. Some of the tribes such as Saoras also prepared terraced lands. Juangs, Bhuiyans, Kuttia Kondhs etc. have community ownership of the hill slope lands used for swidden cultivation, which are distributed by the village community and revert back to the community after each cycle.

Picture 3: A typical landscape in Tribal areas of South Orissa: Valley bottom paddy land and uplands are generally under legal ownership. The swiddening hillslopes are either Government Revenue land or Forest Land
Most other tribes tend to accept individual ownership of swidden lands, i.e. the same family reverts back to a plot of land after each cycle, though community maintains a number of control mechanisms. The clan or lineage based systems of different tribes tends to be territorial i.e. certain valleys and hillsides belong to certain clans or lineages. For example, amongst Kuttia Kondhs, villages occupy territories with well defined boundaries marked by natural landmarks like rocks, streams, ridgelines etc. and everything within the boundary belongs to the village. Trespassing or encroachments across boundaries are extremely rare and seen as a serious offence. Wylly’s had this to say about the Kondhs

“I find xxxx that the Khond is by inheritance and possession a cultivator; that he is proud of his calling and tenacious of his rights. He calls himself a zamindar when asked as to his caste and he resents any encroachment onto his village boundary by even neighboring Kondhs” (Proceedings of the Lt. Governor of Bengal, Jud(Pol) July 1896 as quoted in Rath, 2005)

Similar territoriality is exhibited by most tribes, wherein the territory of clans or lineages is clearly known and demarcated. In such clan/lineage based system, the community could allow outsiders to settle in the village based on community decision or traditional leadership decision, and even allot land for cultivation. Non-clan members generally couldn’t settle in the villages without permission from the village community. In Mahulpada village of north-eastern Bonai, the first settlers were the Pauri Bhuiyans who called themselves matiali (literally son of soil) as against the “Parja” (meaning tenants) used for Chetanga Kols who came into the village later (Mohapatra, 1965).

Clan based systems were also followed by tribes who primarily practice settled agriculture such as Gonds, Oraons, Santhals, Mundas etc. Apart from Gonds, most of these tribes reside in North Orissa in areas contiguous to Jharkhand. In the princely state of Mayurbhanj, the Santhals and other Mundari tribes cleared forests and the first settlers and their dependents were known as the Khuntkattidars, who were supposed to be the collective owners of the whole area included in the village boundary. Even where the tribes were paying land taxes, the territorial integrity of a clan or lineage was respected by the rulers or the intermediaries, and customary practices generally respected.

In almost all hilly tribal areas, the tax systems imposed by the rulers were village based, providing reasonable flexibility on village level land use. Former feudatory chiefs of Bonai and Keonjhar used to realize plough tax in cash from the whole village of Bhuiyan swidden cultivators (Mahapatra, 1993).

The traditional land tenure system of the different tribes has been dramatically modified by increasing pressure on land, reservation of forests, imposition of formal land tenure system, sanskritisation and interaction with markets. The traditional tenure system and the existing practices of a number of tribes have been given in Table no I.
Table I: Customary land tenure and rights systems of some tribes of Orissa

<table>
<thead>
<tr>
<th>Name of the Tribe</th>
<th>Types of Land and Traditional System of Ownership</th>
<th>Existing System of Ownership</th>
<th>Pattern of Inheritance on Privately Owned Land</th>
<th>Remarks</th>
</tr>
</thead>
<tbody>
<tr>
<td>Saoras, Gajapati</td>
<td>i. Homestead land</td>
<td>i. Swidden (Barron) lands in the past*</td>
<td>i. Sacred sites like ritual places, funeral and cremation sites</td>
<td>Patrilineal ownership. Only son can inherit the property of the father. In case of heirless family ownership transferred to the nearest paternal kin or to the adopted male-child from the birinda. Swidden lands are not under (ROR).</td>
</tr>
<tr>
<td></td>
<td>iii. Paddy land (Saroba)</td>
<td>i. Swidden lands</td>
<td>i. Sacred sites like ritual places, funeral and cremation sites</td>
<td></td>
</tr>
<tr>
<td>Bondos, Malkanagiri</td>
<td>i. Wetland (Liun) acquired through inheritance, purchase, gift and mortgage. ii. Dry land/Up land</td>
<td>i. Wetland (Liun) acquired through inheritance, purchase, gift and mortgage. ii. Sacred places like Sitakkunda and other socio-culturally</td>
<td>i. Swidden land (Kunda/Dangar) is owned collectively by the clan members. A family can cultivate as per the capacity and need. ii. Sacred places like</td>
<td>Patrilineal system of inheritance</td>
</tr>
<tr>
<td></td>
<td></td>
<td>i. Wetland (Liun) acquired through inheritance, purchase, gift and mortgage. ii. Sacred places like Sitakkunda and other socio-culturally</td>
<td>i. Swidden land (Kunda/Dangar) is owned collectively by the clan members. A family can cultivate as per the capacity and need. ii. Sacred places like</td>
<td>Sale, mortgage, loan, gift, etc at the time of need are allowed within the community and decided by the</td>
</tr>
</tbody>
</table>

* The lands were distributed among the family heard of the Birinda for cultivation. During that time one village was consisting of only one birinda (lineage).
<table>
<thead>
<tr>
<th>Juangs, Keonjhar</th>
<th>Kuttia Kondhs, Belghar, Phulbani</th>
</tr>
</thead>
<tbody>
<tr>
<td>i. Wet land paddy (Bila/Beda) + ii. Homestead land and Kitchen garden (Bakedi)</td>
<td>i. High land (Padar) can be inherited, sold, shared, and mortgaged if needed. ii. Wetland</td>
</tr>
<tr>
<td>i. Wet paddy land (Bila/Beda) distributed to the HHs for cultivation by the village headman and priest. ii. Upland (Guda) allotted to the family up to its left for fallow. iii. Village grassland iv. Cremation ground, ritual places, common plot of land cultivated (Ganriatkain) by the villagers for village common fund (Ganbua)</td>
<td>i. Swidden (Gudia or Nela) lands belong to the village. Distributed according to the size, work capacity and need of the families and revert back to the community.</td>
</tr>
<tr>
<td>i. Wet paddy land (Bila/Beda) recorded legally in the name of the owners. ii. Homestead land and Kitchen garden (Bakedi) granted ‘pattas’.</td>
<td>i. High land (Padar) can be inherited, sold, shared, and mortgaged if needed. ii. Wetland (Mera) through legal claim</td>
</tr>
<tr>
<td>i. Swidden (Taila) land distributed to the HHs for cultivation by the village headman and priest. ii. Upland (Guda) allotted to the family up to its left for fallow. iii. Village grassland iv. Cremation ground, ritual places, common plot of land cultivated (Ganriatkain) by the villagers for village common fund (Ganbua)</td>
<td>i. Swidden (Gudia or Nela) lands belong to the village. Distributed according to the size, work capacity and need of the families and revert back to the community.</td>
</tr>
<tr>
<td>Only patrilineal descent</td>
<td>Patrilineal system of inheritance</td>
</tr>
</tbody>
</table>

* All the lands under Juang territory were owned communally and there was very little availability of wetland. Wetland paddy cultivation came much later into the tribal land use pattern.

village elders. Dominant Bondo lineage occupies more land due to their power and influence. Every Juang village is an autonomous boundary and everything within it belongs to that village. Swidden lands revert back to the common village property once the land is left for fallow.
<table>
<thead>
<tr>
<th>Community</th>
<th>Land Tenure and Use</th>
</tr>
</thead>
</table>
| Dongria Kondhs, Niyamgiri Hills, Rayagada | i. Kitchen garden and homestead lands.  
   ii. Swidden (Donger) land according to the Mutha division.  
   iii. Upper hill slopes.  
   iv. Ritual sites, cremation ground, funeral sites and sacred grove (Sapangada).  
   v. Hill slope paddy lands were rarely available. |
| Desia Kondh, Kondhmal | i. Kondhs living in plain land areas individually owned lands basically paddy lands.  
   ii. Swidden lands on hill slopes distributed in common village meeting for cultivation.  
   iii. Sacred places, ritual sites and lands of communally important affairs.  
   iv. Hill slope paddy lands were rarely available. |
| Santhals, Mayurbhanj | i. Originally no permanent human habitation was there.  
   ii. Khuntkatidars, were migrant and, the first inhabitant commonly owned the lands.  
   iii. Sacred grove in each village consisting of Sal, Asan and Neem trees.  
   iv. Common land used to grow thatching grass.  
   v. Pal land on the river banks.  
   vi. Jal lands created in course of valley.  
   vii. Dahi-Uplands.  
   viii. Patrilineal inheritance.  
   Original Khuntkatidar system. |

**Note:** The table represents the land tenure and use practices of different communities in the specified regions. The entries include swidden lands, grazing land, sacred groves, kitchen gardens, ritual sites, and paddy lands, among others. The tenure systems described are Patrilineal inheritance in Dongria Kondhs, Desia Kondh, and Santhals.
| Pauri Bhuiyan | i. Bila/Jami-permanent paddy plots constructed by the individual family  
ii. Kitchen garden and homestead land (Bakadi). | i. Swidden land (Biringa/Kaman) distributed to individual family for cultivation. Once, the land is left for fallow its ownership reverts back to the village. 
ii. Jhad-Virgin village forest reserved to provide timber and other house building materials to the villagers. 
iii. Sacred places and socio-culturally important places | i. Swidden land (Biringa/Kaman) distributed to individual family for cultivation. Once, the land is left for fallow its ownership reverts back to the village. 
ii. Jhad-Virgin village forest reserved to provide timber and materials to the villagers. 
iii. Sacred places and socio-culturally important places | Patrilineal Inheritance System. |

Sources: Saoras, Bondos (THRTI, 1994a), Juangs (THRTI, 1994b), Kuttia Kondhs (Mohanti, 1992), Dongaria Kondhs, Desia Kondhs, Santhals (Mohanty, 1994), Paudi Bhuiyans (Mohanty, 1992)
3 Historical aspect of tribal land and forest issues

During the British rule, tribal dominated areas were categorized as “excluded” and “Partially excluded”, since the British recognized that the tribal communities need to be dealt through a separate administrative setup then rest of the country. Tribal parts of Orissa have inherited their land and forest administration systems from Madras Presidency (South Orissa), Central Provinces (Parts of western Orissa), Bengal Province (coastal Orissa) as well as many princely states such as Mayurbhanj, Keonjhar, Bamra, Bonai, Boudh, Kalahandi, and Rairakhol etc. The extension of state power to remote tribal areas was an uneven process, based in conflicts and conquests. During Pre-British period most tribal areas were comparatively autonomous with high degree of political and economic independence in tracts on the borders and peripheries of kingdoms (Padel, 1995). The British period led to increased incursion of state and administration in tribal areas, where it was often resisted violently. Many of these resistances were put down brutally with support of the British army. As Padel puts it in context of Kondhs, the local chiefs and rajahs, who were earlier dependent on tribal goodwill and compliance for the legitimacy of their rule, were able to seek their legitimacy from the british backing and military power….the Rajahs became the figureheads of British rule and ‘sucked the blood’ of their kond subjects for their own aggrandizement (Padel, 1995).

The need for revenue by both the British and the princely states was often the most important motivation behind increasing administrative control of tribal areas. Land survey and settlements and cash land revenue monetized the economy and led to large-scale indebtedness amongst tribal societies. The rulers also preferred to settle lands with non-tribals who carried out settled cultivation rather than shifting cultivation on hills. Slowly, tribal intermediary tenure holders were replaced by non-tribal tenure holders in many areas. In the Gangpur Princely State, most gaontias (intermediary tenure holders responsible for rent collection) were tribals in the early 1800s, but by 1890s there was a greater preference for non-tribal gaontias from Agharia and teli castes (Pati 1993). Influx of non-tribal peasantry into tribal areas was actively encouraged and facilitated by the rulers, and opposition of tribals to this influx was suppressed by force wherever required. In 1882, the policy of the Kalahandi King to settle Kultas, an agricultural caste, in tribal areas led to a Kondh rebellion which was suppressed with great brutality with the support of the British (Kalahandi District Gazetteer, 1980). The policy of encouraging Oriya cultivators in tribal areas had led to a rebellion by 20,000 Juangs in Dhenkanal and Keonjhar princely states in 1868, again bloodily suppressed with the help of British (Padel, 1995). The process of loss of territory by tribals was aided by creation of intermediary tenure holders who were mostly non-tribals and had effective administrative control of the area under their jurisdiction. The influx of non-tribals peasantry facilitated by the rulers led to transfer of land from tribals to non-tribals and in plain areas converted tribals into landless laborers or pushed them onto marginal lands. The non-tribal was interested in plain cultivable lands, leading to large-scale alienation of such lands.

Simultaneously, increasing importance of forest (timber) based revenue led the British rulers as well as the Princely estates to reserve or notify more and more areas as forests under various forest laws and rules, imposing restrictions upon the tribals using these forests. Restrictions on shifting cultivation on areas designated as forests were one of the key strategies for increasing the commercial value of these lands. These restrictions
were often instrumental in sparking tribal unrests. The takeover of forested lands was based on non-recognition of customary tribal land rights over these areas by the state. Clan and lineage territories were not recognized in the forest settlement operations. Often such forest notifications were carried out without proper survey and settlement of even recognized rights of permanent cultivation. For example, in Jeypore Zemindari, an area of 1615 sq. miles was declared as Reserved Lands and Protected Land by 1939, as these categories didn’t require the estate to do detailed settlement of rights before notification.

In these Reserved and Protected land, clearing of land for shifting cultivation was expressly forbidden. No survey and settlements of pre-existing rights were taken up in the Reserved and Protected Land (Behuria, 1965). Similar restrictions on shifting cultivation were imposed in land notified as forests in all other areas of Orissa.

Box no 1: Verrier Elwin’s comments on reservation of forests in Orissa

“The Saoras of Jeranga Muttah in Parlekhamundi Hills (in current Gajapati district) threatened violence in 1912 if reservation of local forests were not stopped xxxx in 1927 males of Taraba invaded the Velladi block and cleared forests for cultivation. They were sentenced to jail for six weeks xxxx” (Elwin, 1945 quoted in Rath, 2005).

Elwin provides interesting accounts of undue reservation of tenants land as “forests” on the basis of his visits to the Kandha areas of Southern Orissa in 1940s. In several villages he came to know that the forest officials demarcated village areas as reserve forests because the poor villagers failed to satisfy them with bribes. (“Elwin V. Notes on the Khonds” quoted in Rath 2005)

Land became to be conceived as either private or state property, rather than in terms of a territory that a village held in common (Padel, 1995). Thus tribals faced loss of land on two accounts in the pre independence era – the lowlands and paddy lands held under private ownership were lost due to influx of non-tribals, non-recognition of rights, indebtedness and inability to pay land revenue. The shifting cultivation swidden were lost due to notification of this land as forests or Government land. Both these processes were aided by the expansion of state and markets into the tribal areas. These trends have continued even after independence.

However, the diverse land administration in pre-independence era still provided some space for customary rights on land of tribals, either due to the land tenure systems or due to poor ability of state apparatus to penetrate remote areas. Most of the land administration systems in tribal areas left the control of the village land in hands of the local intermediary tenure holder, which meant that the village lands were administered within the community or by the local intermediary tenure holders, who were often at liberty to allow tenants to convert wastelands to cultivated land. In most areas, swidden cultivation was either not taxed or nominal rents were taken by the rulers.

The former feudatory chiefs of Bonai and Keonjhar had realized plough tax in cash and some animals as tribute from the whole village of Bhuiyan swidden cultivators. In Kalahandi Dangarlas³, during the pre-independence settlement, the cultivation area of

³ Dangarlas were the hilly part of the Kalahandi princely state inhabited mainly by tribals and included the current Kashipur block (Rayagada district) and Thuamulrampur and Lanjigarh blocks (Kalahandi district)
each Kondh raiyat (peasant) was noted in terms of seed capacity and rent fixed in consultation or rather persuasion with the raiyat (Das, 1962). In Rayagada and Gunupur areas, both paddy land and dangars (shifting cultivation land) of the Kondhs and other tribes were assessed by the Jeypore Zemindary. Though none of the Forest Acts (Indian Forest Act, 1927 and Madras Forest Act, 1885) explicitly allowed for shifting cultivation, yet forest rules framed by some of the princely estates provided for shifting cultivation. For example, Jeypore Forest Rules allowed shifting cultivation on forest category called Unreserved Land only after obtaining express permission from the Collector.

As per Ramdhyani (1947), among the feudatory states, shifting cultivation was permitted in regular manner in the Juangpith of Keonjhar and in tracts of Bamra (current Deogarh district), Pallahara (currently part of Angul district), Bonai (part of current Sundergarh district), Ranpur (Part of Nayagarh district) and Kalahandi where a plough tax or house tax was levied on the shifting cultivators. In Bamra shifting cultivation was being assessed every year (Ramdhyani, 1947).

The period immediately after independence was a time of flux and change for the land and forest governance in Orissa, with the princely states and ex-Zemindary areas being merged into Orissa and emergence of uniform administration systems for the whole state. For land administration this implied moving from an intermediary based system to a raiyatwari system all over the state, following the principle of “tillers as owners”. This was sought to be done through abolishing intermediary tenure holders. This was accompanied by laws to regulate concentration of landholding through process of fixing land ceiling.

However, the process of land reforms in Orissa was piecemeal and full of loopholes, failing in its goals to ensure equity and efficiency in agriculture. The Orissa Estates Abolition Act, 1952, provided for abolition of all intermediary tenure holders, and vested all land rights in the State. However, it also allowed the intermediary tenure holders to hold up to 33 standard acres of land for their personal cultivation. This has had major implications in tribal dominated tracts with non-tribal intermediary tenure holders, who could often evicted longstanding tribal tenants and got the land settled in their own names. This process was facilitated by the absence of proper land records in many of these areas.

The Orissa Land reforms Act, 1960, provided for permanent, heritable and alienable rights on land for the tiller. It initially continued with the ceiling of 33 standard acres, then reduced it to 20 standard acres in 1965 and 10 standard acres in 1972. However, the period between 1960 and 1972 provided enough ample scope to the large landowners to transfer the land in the name of relatives while maintaining de-facto control to escape land ceiling provisions (Mearns and Sinha 1999). This high ceiling limit was again used to evict tenants on a large scale. Tenancy reforms have also been weak in the state, even though Orissa Land reforms Act, 1960, provides full ownership rights to tenants to the land in their possession and bans tenancy. The tenants have found it very difficult to prove their possession of land as large landholders resort to rotating informal tenants among their holdings and periodically evicting them to escape the provisions of

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4 One Standard acre is defined as in the Orissa Land Reforms Act, 1960, as unit of measurement of land equivalent to one acres of Class I land (irrigated land with two or more crops a year), one and a half acres of class II land (irrigated land with one crop a year), three acres of Class III land (unirrigated land used for single crop of paddy) and four and a half acres of class IV land.(any other land).
the law. The major effect of the tenancy laws has been to drive tenancy underground, making it more insecure and exploitative (Mearns and Sinha 1999).

For Forest administration, a uniform legal governance system was only achieved in 1972 with the passage of Orissa Forest Act, 1972. The process included the incorporation of ex-princely state forests, Zemindary forests and forests under the Madras Forest Act, 1882. The whole process was done in fits and starts, and problems and shortcomings in forest administration consolidation have major consequences for both forests and tribals as discussed later in Section II (4) of the report.

4. Legal frameworks affecting tribal lands

The administration of land in the State is affected by acts which govern private land and agrarian relationship such as Orissa Land Reforms Act, 1960. The categorization of land and settlements of rights is also affected by Orissa Survey and Settlement Act, 1958 and Orissa Government Land Settlement Act, 1962. Apart from these, as large extents of the land in tribal areas are categorized as forests, the laws related to forests also have major impact on access to land for tribals. The most important are Forest Conservation Act, 1980 and Orissa Forest Act, 1972. Forest land included both forests under the control of Forest Department (40% of the forest area) and forests under the control of Revenue Department (60% of the forest area).

<table>
<thead>
<tr>
<th>Category</th>
<th>Applicable laws</th>
</tr>
</thead>
</table>
| Forest Land including revenue forests | ▪ Orissa Forest Act 1972  
▪ Forest Conservation Act 1980  
▪ Orissa Forest (Grazing of Cattle) Rules 1980, Sections 5 and 6 |
| Non-Forest State owned land | ▪ Orissa Prevention of Land Encroachment Act 1972  
▪ Orissa Prevention of Land Encroachment Rules 1985  
▪ Orissa Government Land Settlement Act, 1962  
▪ Orissa Government Land Settlement Rules 1983 |
| Patta land | ▪ Orissa Survey and Settlement Act 1958  
▪ Orissa Land Reforms Act 1960  
▪ Orissa Scheduled Areas Transfer of Immovable Property (by Scheduled Tribe) Regulation 1956 (Only for Scheduled areas) |

4.1 Laws governing government land

Section 2 of OPLE, 1972, defines government land as all land save those which are the property of a person in forms defined in section 2a (i-vi). Government lands excluding forest lands can be categorized as follows:
▪ Land belonging to Revenue Department
• Land treated as property of Government, including land owned, controlled or managed by any state government department or undertaking, land acquired under Land acquisition act, 1894 etc.
• Land treated as public premises under Orissa Public Premises (Eviction of unauthorized Occupants) act, 1961.

The largest extent of Government land is held by the Revenue Department under four categories:
  o Abad Jogya Anabadi (cultivable wastelands)
  o Abad ajogya anabadi (uncultivable wastelands)
  o Rakshita (reserved Lands)
  o Sarbasadharan (communal land)

Abad Ajogya Anabadi lands include “uncultivable wastelands” such as water bodies (including rivers, lakes and sea), hillocks, mountain, hilly areas and sandy areas. This category often forms the most important category of non-forest government land in tribal areas where hills and sloping areas have been categorized as abad ajogya anabadi. This category is also treated as “objectionable” for settlement, as it is presumed to be uncultivable.

Abad Jogya anabadi (Cultivable wastelands) include cultivable land within village boundaries not settled with ryots, abandoned holdings, surrendered holdings, land reserved for Panchaysts and armed forces personnel. These lands are “unobjectionable” for regularization, and can be settled with raiyats.\(^5\)

Reserved lands or Rakhit Lands include acquired lands (under Land Acquisition Act, 1894) but not transferred, irrigation works, lands transferred to gramya Panchayats, Gochar lands (grazing land), land for village settlement, poramboke land, Gramya jungle\(^6\) etc.

Sarbasadharan land is defined in section 2(b) of the Orissa Government Land Settlement Rules, 1983, as communal land used by village for community purpose such as graveyards or cremation ground, places where festivals or melas are held, playgrounds, temples, mosques and other religious places of worship, village roads and other land reserved for public purposes. In tribal areas these include Dhangada or Dhangidi Ghar (common dormitories for boys or girls) (Dash 2004).

As discussed earlier, during the colonial period, the intermediary tenure holders were often at liberty to convert wastelands into cultivable holdings. This was based on explicit principle that wastelands belonged to the State though it allowed for the principle that rights of user may be claimed by other persons which need to be compensated for before state can exercise complete control. Various tenancy and land revenue laws enacted after 1879, provided for leasing out of wastelands for agricultural and other purposes (Dash, 2004).

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\(^5\) By section 5(2) of Orissa Tenancy Act, 1908, raiyat is defined as a person who has acquired right to hold land for the purpose of cultivation. By Section 2 (n) of Orissa Estates Abolition Act, 1951, it means any person holding the land for cultivation and who has acquired right of occupancy.

\(^6\) Gramya Jungle is owned by the Revenue Department, but the provisions of FCA, 1980, apply on these lands, prohibiting their diversion for non-forestry purpose.
In Raiyatwari areas, the local revenue authorities (collector/tahasildars) were empowered to lease out wastelands for cultivation. The Gaontias\(^7\) under the Central Provinces systems were allowed to exercise the power of disposal of wastelands in villages. In Kalahandi, cultivation on wastelands with or without permission of the gaontias was not seen as encroachment. All such encroachments permitted by the Gaontias as well as encroachments three years old even without Gaontia’s permission were to be settled with the raiyats. The proprietors in the Zemindary estates under Bengal system also exercised the rights to dispose wastelands. The Madras Estate Land Act, 1908, applicable in Madras Presidency areas, recognized intermediary tenure holders as having the right to lease out wastelands but prevented tenants from acquiring rights of tenancy over such land.

The right to lease out wastelands by local officials and intermediary tenure holders was a reflection of the need of the State to increase area under cultivation to get more land revenue. However, the rights to give out the land were with bureaucracy and intermediary tenure holders, with little protection for tenants i.e. the actual tillers. This was sought to be rectified in Orissa Tenancy Act, 1913, by inserting a clause that when a raiyat was found to be cultivating a wasteland for four years, he should be deemed to have obtained his landlord’s consent and be entitled to retain the land on payment of rent. A similar protection was provided in Ganjam raiyatwari area.

The liberal laws for leasing out or settling of wastelands led to many problems, and after independence, the Government withdrew these powers from intermediary tenure holders. To prevent alienation of wastelands, forests and communal lands by estate holders and intermediary tenure holders, the Orissa Communal Forests and Private Lands (Prohibition of Alienation) Act, 1948 was passed with retrospective effect from 1946. The law prohibited the landlords to sell, mortgage, lease or otherwise assign or alienate or convert into raiyati land any communal, forest or private land without prior concurrence of Collector. A similar law was passed in context of Private forests called “The Orissa Forest Preservation Act, 1947”.

Section 5(i) of the Orissa Estate Abolition Act, 1951, empowered the Collector to set aside all settlement lease or transfer in violation of the above two acts with retrospective effect from January 1946. In 1961 and than in 1966, lease principles were issued which laid down the guidelines for settling government lands. The priority was given to landless scheduled tribes, Scheduled castes and other backward castes. The settlement could be done up to an extent of five acres.

These provisions were formalized through the Orissa Government land Settlement Act, 1962 (applicable from 1965). This act was later amended in 1974 (Section 3(e)), which allowed the Revenue Officials to settle cultivable wastelands to cultivators subject to the restriction that 70% of such land in a village was to be settled on priority basis with Scheduled Tribes and Scheduled castes (Section 3(2)). Such settlement was to be made in following priority: co-operative farming societies of landless agricultural laborers, any landless laborer, ex-servicemen or members of armed forces resident in the village and any farmer who doesn’t cultivate more than one standard acre of land (Section 3(3)).

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\(^7\) Gaontias were local tenure holders in ex-central provinces areas as well as some princely states. They served as rent collectors for the village, and were mostly allowed to also keep land for personal cultivation. Gaontia system was present in current Kalahandi, Balangir, Sambalpur and Sundergarh districts i.e. western Orissa before being abolished after independence.
However, uncultivable wastelands (abad ajogya anabadi) were treated as not fit for agriculture and are therefore termed as “objectionable” for purposes of settling them for agriculture (Government of Orissa Instructions for Reservation of Government Land for Specific Purposes in Rural Areas dated 28 Jan, 1966). Thus uncultivable wastelands were not to be given out for agriculture but could be settled for other purposes.

Another important legislation which has bearing on Government lands is the Orissa Prevention of Land Encroachment Act, 1972 (OPLE, 1972), which governs eviction or regularization of encroachments on Government Land. In the case of encroachments on Revenue Wastelands, only landless persons were eligible for allotment of ‘unobjectionable’ land for agriculture (Section 7(a, b)). Under this act, landless encroachers, though legally entitled to claim rights to ‘non-objectionable’ land, must first commit an unlawful act (encroachment) and the Revenue Inspector⁸ should detect the case and report it to the Tahsildar⁹ (Section 3(1), Orissa Prevention of Land encroachment Rules, 1985). The Tahsildar is empowered to initiate the proceedings in the encroachment case, ascertain if the encroacher is to be evicted or is eligible for land being by virtue of landlessness and then settle the land in name of the encroacher (Section 15, OPLE Rules, 1985). Only then, and after due process of law, can the landless be issued with the patta which regularizes their land rights. The entire process hinges upon whether or not the encroachment is reported by the Revenue Inspector in the first place and whether the case proceedings are initiated by the Tahsildar. There are few or no incentives for these officials to do so and frequently bribes are demanded or eviction threatened (Mearns and Sinha 1998).

Besides allotting land to the landless and other eligible categories (under Orissa Government Land Settlement Rules, 1983) for agriculture, the government can put this land to use for development projects, or allot land to industries, projects, government departments, state or private corporations, local statutory bodies, or cooperatives societies (Schedule II, Orissa Government Land Settlement Act, 1962). In doing so, the government is not accountable to inhabitants of the village in whose boundary these lands are settled, and who may have been using the land for agriculture or as commons. This has been a serious problem with acquisition and transfer of land, including government land for development projects or forests without consent of the local communities.

4.2 Laws for prevention of tribal land alienation

In order to prevent alienation of tribal lands to non-tribals, various laws were passed in different parts of pre-independent Orissa. Most Princely states regulated transfer of land owned by tribals to non-tribals. In areas directly ruled by the British with tribal populations, there were laws and regulations to check tribal land alienation. In the agency areas of under Madras Presidency¹⁰, the Agency Tracts Interests and Land Transfer Act (ATILT Act) 1917 was applicable to protect the interests of Adibasis in land. It provided that all transfer of land by a member of hill tribes to a non tribal without

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⁸ Revenue Inspector (RI) is the local level Revenue department functionary who is in direct contact with the cultivators. The RI maintains the Land records for the area under his jurisdiction (normally a few villages) and is responsible for the Revenue Department controlled land.

⁹ Tahsildar is responsible for the revenue and land administration of a Tahasil (revenue sub-unit in a district).

¹⁰ At present this area includes Rayagada, Koraput, Malkangiri, Nowrangpur and Gajapati districts.
permission of competent authorities was null and void. Similarly Angul District regulation, 1894 was in operation in Kondhmal (present Kondhmal district). In the Central Provinces area of Sambalpur and Bargah, Central Provinces Tenancy Act, 1898 restricted transfer of land from tribal to non-tribal people.

Most of these laws were ineffective, full of loopholes and implemented only in default. For example, the list of communities to be considered as Hill tribes in ATILT, 1917, included Malis and Goudas (currently classified as other castes) as hill tribes between 1927 and 1950. Even dombas (currently classified as Scheduled Castes) were included as hill tribes during the period 1927-1943. This meant that during this period, any transfer from tribal communities like Kondhs or Gadabas to Goudas/Malis or Dombs was valid and didn’t attract the provisions of this act.

In exercise of the powers conferred by Fifth Schedule to the Constitution, the President of India, after consultation with the State governments, had passed “The Scheduled Areas (Part A States) Order, 1950” and “The Scheduled Areas (Part B States) Order 1950” to set out the Scheduled Areas in the States and notified 42 communities as Scheduled Tribes in Orissa. This implied that the term Hill tribe and similar terms used in various statutes were replaced by the term scheduled tribes.

The Orissa Scheduled Tribes (Transfer of Immovable Property) Regulations, 1956 was made applicable to the scheduled areas in 1956, and repealed the existing laws providing for protection of tribal land in these areas. In non scheduled areas, protection to tribal lands was afforded with the Land Reforms Act, 1920 which was enforced only from 1965. The OSATIP, 1956 and the OLR Act, 1960 are the present statutes governing transfer of tribal land i.e. land settled in the name of the tribals.

The details of laws protecting tribal rights in land are provided as below in Table. 3.
<table>
<thead>
<tr>
<th>Areas</th>
<th>Categories</th>
<th>Rules Applicable for protection of tribal land</th>
<th>Landmark Years</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mayurbhanj</td>
<td>Ex-princely States (or parts therefore) included in Scheduled areas in 1956</td>
<td>Ex-state laws</td>
<td></td>
</tr>
<tr>
<td>Sundergarh</td>
<td></td>
<td>No restriction on transfer</td>
<td>OSATIP Regulations, 1956 applicable</td>
</tr>
<tr>
<td>Kuchinda Tahasil (Sambalpur district), Keonjhar, Telkoi, Champua and Barbil Tahasils (Keonjhar District), Thuamulrampur and Lanjigarh blocks (Kalahandi District), Nilgiri block (Balasore district), Kashipur Tahasil (Rayagada District)</td>
<td>Ex-princely States (or parts therefore) included in Scheduled areas in 1979</td>
<td>No restriction on transfer</td>
<td>Orissa Land Reforms Act, Section 22, 23 applicable</td>
</tr>
<tr>
<td>Tigiria, Athgarh, Baramba, Narsinghpur (undivided Cuttack district), Ranpur, Nayagarh, Khandapara, Daspalla (Nayagarh district), Boudh ex-princely state (Boudh district), Dhenkanal, Athamalik, Hindol, Talcher, Pallahara ex states (Undivided Dhenkanal district), Part of Kalahandi ex-state (Kalahandi district), part of Keonjhar ex-state</td>
<td>Ex-Princely states not under schedule V</td>
<td>No restriction on transfer</td>
<td>Restrictions through Merged State (Laws) Act, 1950, Section 7b (1)</td>
</tr>
<tr>
<td>--------------------------------------------------------------------------------</td>
<td>----------</td>
<td>---------</td>
<td>---------</td>
</tr>
<tr>
<td>Koraput, Malkangiri, Nowrangpur, Rayagada (excluding Kashipur tahasils) districts, Agency portion of Ganjam (current R.Udaygiri tahasil, Gumma and Rayagada block of Gajapati district and Sorada)</td>
<td>Areas under Vizag agency tracts</td>
<td>No restrictions</td>
<td></td>
</tr>
<tr>
<td>Undivided Balasore district (except Nilgiri block), Undivided Cuttack district (excluding ex-princely areas), Undivided Puri</td>
<td>Areas under direct British rule</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Khondmal Subdivision (Current Khondamal District)</td>
<td>Areas under direct British rule</td>
<td>Angul Laws Regulation</td>
<td></td>
</tr>
<tr>
<td>Angul Sub-division</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Khariar Ex-State (Nuapada district)</td>
<td>Khariar ex-state</td>
<td></td>
<td>No restrictions</td>
</tr>
</tbody>
</table>

Adopted from Rout, 1998, Panigrahi, 2001
At present, in Scheduled areas of Orissa, the transfer of private land from scheduled tribes and castes to non-scheduled groups is regulated by Orissa Scheduled Areas Transfer of Immovable Property (by Scheduled Tribe) Regulation 1956 (OSATIP Regulation, 1956). Section 3(1) of this law originally stated that any transfer of property by a member of a scheduled tribe shall be null and void unless it is made to another member of a scheduled tribe or with the prior consent of the competent authority. It provided for restoration of land transferred illegally from tribals to non-tribals (Section 3(2)) and provided for a penalty of up to Rs.200/- per acre of land for each year the property was held (Section 7(1)).

The above law was amended in by regulation I of 1997, wherein a clause had been inserted that no Scheduled Tribe shall be allowed to transfer land if after such a transfer the total land owned by ST will be reduced to less than one standard acre (as defined in Orissa Land Reforms Act, 1960). The amendment also increased the maximum fine amount from Rs. 200/- per acre per year to Rs. 2000/- per acre per year.

Based on a number of studies\(^\text{11}\) which showed alarming trends in alienation of tribal land, the GOO amended the Regulation once again by regulation 1 of 2002 and has made the act much more stringent. The salient features of the amended laws are:

- **Section (3)** of the law states that any transfer of property by a member of a scheduled tribe in Scheduled areas to a non-tribal is not permitted.
- No tribal owner can transfer land to even another ST if the total land remaining with the tribal is less than two acres of irrigated land or five acres of unirrigated land.
- All transfers from ST to non-STs between 4th October, 1956 and 4th September, 2002 shall be verified to ascertain their genuineness and the persons possessing such land must prove that such transfer was carried out legally to the sub-collectors concerned by 04/09/2004. Those who don’t provide such proof shall be treated as illegal encroachers and the land shall be restored to the original tribal owners.
- Persons in fraudulent possession of tribal land shall be liable of fine up to Rs. 5000/- and two years of rigorous imprisonment.

In non-scheduled areas, the Orissa Land Reform Act, 1960 (Section 22 and Section 23) also forbids the transfer of patta land by a scheduled tribe person to any person who is not a scheduled tribe, unless written permission is obtained from the competent authority. The OLR Act, 1960, also provides for penalty of Rs.200 per acre per year of land held illegally under this section. The dramatic protection provided in Scheduled areas under the amended OSATIP Regulation, 1956 as amended in 2002, have not been extended to the non-scheduled areas where protection to tribal land is provided by the Orissa Land reforms Act, 1960.

The performance of the amended OSATIP Regulation, 2002, hasn’t been evaluated till date. It seems to have reduced the incidence of land alienation and sale from tribals, as ascertained through informal discussions. It also seems to have driven incidences of land alienation underground through informal transactions such as debt mortgages and through benami transactions.

At the same time, the Government of Orissa has followed up with the local revenue officials to detect cases of land alienation and institute cases under sections 3(2), 3A and 7(2) of the regulation. As per the latest information available, 103,474 cases have been filed involving 103,189 acres of land. A total of 54,250 acres of land has been restored to over 60,000 ST households. This is a remarkable achievement, at least on paper, though the actual situation on ground needs to be evaluated through empirical studies.

\(^{11}\) Apparently, it was a large, exhaustive study carried out by Council of Professional Social Workers (CPSW) and Integrated Rural Development of Weaker Sections in India (WIDA) on land alienation (Rout, 1998), which was presented as an evidence of large scale alienation, along with reports submitted by Revenue Development Commissioner (South) about large scale land alienation in Bissamcuttack area of Rayagada district.
5. **Current status of tribal Land Holdings in Scheduled districts**

A Tribal and Harijan Research and Training Institute THRTI study taken up in 1978-80 in all tribal sub-plan areas showed that 22.84% of tribal households are landless whereas 40.46% owned less than 2.5 acres each. It was found that tribals in South Orissa had greater incidences of landlessness. Tribes which carry out settled cultivation were seen to have higher landholdings than the tribes which carry out shifting cultivation. An analysis of the *Agriculture Survey data of 1995-96* in the tribal districts shows that the percentage of tribal landholders having less than one standard acre of land ranges from 41% in Malkangiri to 77% in Gajapati, whereas 62% to 86% of the land in these districts is state owned (Graph I). At an average 74% of the land in these districts is categorized as state land, with forest land at 46% and non-forest land at 26%.

Gajapati has only 14.82% of its total area under private landholding, with the rest of the land belonging to the government including 46% categorized as forest land. Small and Marginal farmers own only 9% of the total land of the district, even though they constitute 58% of the rural households. Another 35% of the households can be assumed to be landless. Thus around 93% of the rural households can be said to have legal title on only 9% of the district’s land area.

Kondhmal is another district where almost 86% of the land is owned by the State, with 75% of the land categorized as forests. Private landholdings consist 14% of the area of district only. 25% of the rural households can be said to be landless, and they along with 41% of the rural households categorized as small and marginal farmers own only 7% of the total land area.

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12 Sources of Data in the sub-section: Apart from where expressly cited, all the data in this section has been based on the analyses done by the authors based on following sources of data: a) Operational land holdings in acres or standard acres from the Agriculture Survey Data, 1995-96 b) Forest land area data from “A Decade of Orissa’s Forestry (GOO, 1995), total number of rural households from Census, 1991. Data on Primitive Tribal Groups have been obtained from the Annual Reports of various Special Projects being run for these PTGs.

13 These districts are Koraput, Nabarangpur, Malkangiri, Rayagada, Sundargarh, Mayurbhanj (wholly under Schedule V), Kondhmal and Gajapati (mostly under Schedule V)

14 The landholdings in standard acre were calculated on basis of the extent of irrigated and un-irrigated holdings. The irrigated holdings were assumed to be having two irrigated crops of paddy each year (Class I land- one acre equals one standard acre) whereas un-irrigated lands were assumed to be equivalent to Class IV lands (4.5 acres of Class IV lands is equivalent to one standard acre)

15 Non-forest state land was calculated by subtracting the Forest land area and the total operational landholdings in the district from the total area of the district. This could therefore be on higher side and include areas under reservoirs etc.

16 There is no official data on landlessness. To calculate the same, we have taken the total rural households (1991 Census) and subtracted the number of landholdings based on Agriculture Census, 1995-96, from the total. Sources of error are different base years for data, joint operational holdings, lack of official records of operational landholdings divided informally etc.
of the district. Thus 66% of the rural households own only 7% of the land in the district.

The fact that most of the land in tribal districts is owned by the State reflects in the landholding patterns in these tribal dominated districts. For instance, the Scheduled tribe average holdings in Orissa works out to 1.12 standard acres as compared to 1.43 standard acres for general castes17, even though the General castes mainly stay in plains areas with much lower proportion of state owned land and much higher population density. Scheduled tribe landowners categorized as marginal landowners comprise 14.8% of the landholdings of Orissa, but they own only 4.8% (in standard acres) of agricultural landholdings with an average holding of only 0.44 standard acres. More than 50% of the all scheduled tribe landowners in Orissa are marginal landholders.

Even in the remote areas inhabited by the Primitive Tribal Groups (PTGs) in Orissa, most of the land is owned by the State. Though many of these PTGs practice communal land ownership of swidden land, no communal ownership rights have been provided in the Survey and Settlements and swidden cultivation lands have been classified as state land.

17 When just the landholding is taken without converting it into standard acres, the average landownership of the STs is slightly more than that of general caste landowners of the state. However, this doesn’t reflect the fact that much more of the land owned by general castes (concentrated in plain areas of the state) is irrigated as opposed to land owned by ST (concentrated in the hilly tracts of the state). Conversion into standard acres provides a more balanced perspective.
This makes the tenure of the PTGs over their communal land extremely vulnerable (please refer to case of Kadalibadi Village). Even individual legal landownership amongst PTGs is extremely low (Graph above shows legal landownership in the area where five PTGs live). Most of the households among the PTGs are either landless or marginal farmers as evident from the graph (Showing land ownership pattern amongst six PTGs).

Box II: Landownership status of Lanjia Saoras, a PTG, in Sagada Panchayat, Rayagada district (Mohanti, 1996)
The 767 households of Lanjia Saoras in Sagada Panchayat, Rayagada district own only 1192 acres of land, almost all unirrigated and poor quality, even though the state owned land in the 21 hamlets they stay in is 8936 acres. 82% of the PTG households are either landless or own less than 2.5 acres of land, though 88% of the land in their villages is state owned. 738 out of 767 households are involved in shifting cultivation on state owned land without any...

One of the main reasons for state ownership of majority of the land in these districts seems to be the policy not to recognize customary landholding systems, including communal or individual ownership on swidden land. A comparison between tribal districts mainly inhabited by the tribes which don’t carry out shifting cultivation (Mayurbhanj, Nowrangpur and Sundargarh) and where shifting cultivation was being practiced (Rayagada, Malkangiri, Koraput, Kondhamal and Gajapati) brings out the difference clearly. Only 20% of land in districts with high incidence of shifting cultivation is settled with cultivators whereas 32% of the lands in other tribal districts are settled with cultivators.
In sum the above analysis brings out that
* In tribal districts, three-fourth of the land is owned by the State
* At the same time, the landholding patterns of the scheduled tribes is comparatively worse than that of non-tribals
Majority of the tribal households have extremely poor access to land.
Section II

Typologies of tribal land loss and alienation

Typologies of processes which have constrained and reduced access to land for tribals

Loss of land through private transactions

1. Land mortgaging
2. Sale of land after permission
3. Illegal Sale of land
4. Encroachments by non tribals
5. Loss of land before S & S

Loss of land through displacement

1. Permanent Cultivation land categorized as government land
2. Shifting cultivation land categorized as state owned land
3. Unsurveyed areas

Landlessness

1. Encroachments eligible for regularization but not regularized
2. Forest Land where proper settlement has not taken place
3. Poor settlement of rights during reservation
4. Shifting cultivation areas categorized as forests

Notification of forests

Poor distribution of Government wastelands
1 Loss of land settled with tribals through private transactions

Three fourths of the land in the tribal districts belongs to the State. Our analysis shows that of the rest 25% settled with the landholders in these districts, 64% of the land belongs to tribals. The average landholding of tribal households in these tribal districts is only 1.06 standard acres, with approximately 20% of households being landless and 65% being small and marginal farmers. Even this land is being lost by the scheduled tribes through different processes, including informal mortgaging and sale of land, legal and illegal. Transfer of land to non-tribals was forbidden through OLR Act, 1960 for the non-scheduled areas and OSATIP, 1956, for the scheduled areas, except with the permission of competent authorities. Large number of permissions was given up to the year 1995. In 2002, the Orissa Government amended the OSATIP, 1956, banning outright all transfer of tribal owned land to non-tribals in the scheduled areas.

Debt mortgaging is another means through which tribal land is lost to moneylenders. Money lending in scheduled areas is regulated by the Orissa (Scheduled Areas) Moneylenders’ regulation, 1967 and Orissa (Scheduled Area) Debt Relief Regulation, 1967. In other areas, money lending is regulated by the Orissa Money Lenders Act, 1939 and the Orissa Money Lenders Rules, 1987 and the Orissa Debt relief Act, 1980. However, these acts and rules have been singularly ineffective in checking money lending and land mortgaging as is evident from the case studies.

1.1 Private land alienation through debts mortgaging

Almost all the literature relating to tribal land alienation in Orissa focuses on the alienation of patta land through mortgages and sales. Viegas’s study in four districts of Orissa found that scheduled tribes had lost almost 56% of their private land, out of which 40% was lost through debts and mortgages and rest 16% through personal sales (Viegas, 1991). Another study by Dash in 18 villages in Koraput district found that ST families in these villages lost 13.72% of their land during the period 1990-94. Out of these, 51 % was lost through sale after permission from district authorities, 26% through mortgage and 15% by oral transfer (Dash, 2001). A four village study with a sample of 483 households found that 49 tribal households had mortgaged out a total of 44.5 acres of land. Of the 49 households, 17 (35%) needed the money for marriage and funerals and 23% borrowed money for health related factors (Panigrahi, 2001). The table below refers to the various studies conducted earlier and the current study to show the importance of mortgaging as a source of land loss.

<table>
<thead>
<tr>
<th>Cases</th>
<th>Sample size</th>
<th>% HHs who lost land through mortgaging</th>
<th>% owned land lost through mortgaged</th>
<th>Rank of mortgaging in reasons for Patta Land alienation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Four districts of Orissa (Viegas, 1991)</td>
<td>244 HHs in 53 villages of 13 blocks in four districts</td>
<td>7%</td>
<td>42.47%</td>
<td>1</td>
</tr>
<tr>
<td>Koraput district, CPSW/WIDA</td>
<td>3637 households in 64 villages</td>
<td>7%</td>
<td>42.47%</td>
<td>1</td>
</tr>
</tbody>
</table>

Patta is the word used for the ownership documents for land

19 Land lost through mortgage out of the total land owned by the family who have mortgaged their lands
Informal Land mortgaging was found to be the most important form of loss of private land in Dekapar, Podagarh and Bangusahi.

The main condition of Land mortgaging is that the person who lends the money cultivates the land till the money is returned. In all the case studies, legally privately owned land was preferred for mortgages. Even within patta land, paddy land (valley bottom land irrigated by stream flow) was mortgaged most often, consisting of 57% and 68% of mortgage transactions within Dekapar and Podagarh respectively.

Of the 107 households surveyed in Dekapar, 40 (37%) have mortgaged part of their land in lieu of credit. In only two cases the mortgaged lands were non-patta land. The total amount of land mortgaged is 22.72 acres (0.50 acres per farmer) for an amount of Rs. 3850/- per borrower. Almost 60% of the mortgage is more than five years old, and only two pieces of mortgaged land amounting to 0.3 acres have been redeemed till date. In Podagarh, within the sample of 58 tribal HHs, 16 (19%) were found to have mortgaged their lands to fellow tribals only. In Bangusahi, only 7 households (13% of the sample) have mortgaged their land, all to fellow STs.

It was found that mortgaging of land in the sampled villages Dekapar, Chakarajhola (tribal hamlet of Podagarh village) and Bangusahi was mainly within tribals themselves, and was more in a form of exchange within community. Concentration of land through mortgage was not observed in Dekapar village, where 47 households have mortgaged land to 37 persons. The largest amount of mortgaged land cultivated by one lender is 2.2 acres obtained from five mortgages for a total sum of Rs. 18,500/-. The lender is also a tribal.

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20 The study has sampled only those families which have undergone land alienation. All the other studies took samples of general tribal population.
In Podagrah, one tribal lender obtained land on mortgage from six persons for a total sum of Rs. 13500/-. Another tribal person also has loaned money against land to five persons for a total amount of Rs. 12,000/-. In Bangusahi, all seven loans were from different lenders. In the case study villages the main reasons for borrowing with land mortgages were ceremonial (marriages and funerals) and Bullock purchase. Borrowing was also taken up for health emergencies and house building etc. All the above mortgages are completely informal, and are normally based on oral transactions taken in front of a group of elders.

Table 5: Mortgage in three villages (Current Study)

<table>
<thead>
<tr>
<th>Village</th>
<th>Dekapar</th>
<th>Podagada</th>
<th>Bangusahi</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sample Size</td>
<td>107</td>
<td>58</td>
<td>54</td>
</tr>
<tr>
<td>HHs who have mortgaged land</td>
<td>40 (37%)</td>
<td>16 (27%)</td>
<td>7 (13%)</td>
</tr>
<tr>
<td>Total land mortgaged</td>
<td>23.87</td>
<td>NA</td>
<td>5.0 acres</td>
</tr>
<tr>
<td>Land mortgaged as percentage of patta land owned</td>
<td>41%</td>
<td>NA</td>
<td>47%</td>
</tr>
<tr>
<td>Total loan size</td>
<td>Rs.180,900</td>
<td>Rs. 53,000</td>
<td>Rs. 19300</td>
</tr>
<tr>
<td>Loan/acre</td>
<td>Rs. 7578</td>
<td>NA</td>
<td>Rs. 3860</td>
</tr>
<tr>
<td>Loan/farmer</td>
<td>Rs. 3848</td>
<td>Rs. 2757</td>
<td></td>
</tr>
<tr>
<td>Borrowed from (caste/group)</td>
<td>42 from STs 5 from Dombas of Matiguda</td>
<td>All 16 from STs</td>
<td>All 7 from STs</td>
</tr>
<tr>
<td>Ranked reasons for borrowing (by amount)</td>
<td>Marriage (24%) Death Ceremony (22%) Bullock Purchase (22%) Health (14%) House construction (9%)</td>
<td>Marriage (45%) Death Ceremony (28%) Bullock Purchase (22%) Consumption (5%) Health (4%) House construction (7%)</td>
<td>NA</td>
</tr>
</tbody>
</table>

Orissa (Scheduled Areas) Money Lenders’ Regulation 1967 regulates money lending to STs in scheduled areas. The regulation was amended in 2001. As per the amended regulations, prior recommendation by the Gram Panchayat in consultation with the Gram Sasan (general body of the Gram panchayat) is mandatory before a scheduled tribe can be advanced loans by
any moneylender within scheduled area. Without prior permission from the Gram Panchayat, the borrower is not liable to return the money or interest on it.

However, money lending is mostly an informal activity in tribal areas, and oral transactions are common. In such a situation, the above amendment is unable to achieve much and remains on paper. The Orissa Scheduled Areas (Transfer of Immovable Property) Regulation, 1956 also precludes mortgaging of land by STs. As evident from the case studies, informal mortgaging where lender cultivates the land is common. At the same time, the STs find it very difficult to obtain loans from banks because they can’t mortgage their land. Recently, a committee constituted by the GOO has suggested that the OSATIP Regulation, 1956, be amended to allow mortgaging of land to banks and other financial institutions for loans. (GOO, 2005)

The fertile valley bottom land are generally mortgaged or sold by tribals

The solution to mortgaging land for loan lies in improving incomes as well as access to sources of cheap credit. This needs to be supplemented by monitoring of land mortgaging at local level, and prompt legal action under the law when such mortgages are detected. The thrust on Self Help Groups under various government and Non-government programs has been an important step forward towards improving credit access to tribals. It will be very useful to conduct further studies to understand whether the increased role of SHGs is having any impact on land alienation through debt mortgaging. It is also important to build in action to address land mortgages in all local development programs such as watershed projects which lead to inflow of wage income and other investments into the villages.

1.2 Sale of land by tribals after permission

The transfer of lands from Scheduled Tribes to non-tribals is regulated by Section 3 of OSATIP Regulation, 1956, in Schedule V areas and Section 22 of Orissa Land Reforms Act, 1960 for non-scheduled areas. Both laws provided for sale of land after obtaining permission of the competent authorities. However, in 1989, an amendment in OSATIP Regulation, 1956, restricted sale of land from tribal landholders to non-tribals if the total landholding after sale was less than 2 irrigated acres or five unirrigated acres.

Approximately 8550 acres of land has been sold through permission during the period 1957-1997 in Orissa U/S 3(1) of the Regulation 2 of 1956 in Orissa (Panigrahi, 2001). Out of this, almost half was transferred in the four districts of Malkangiri, Rayagada, Nowrangpur and Koraput (undivided Koraput district).
In 2002, this provision was deleted from the regulation 2 of 1956, and now sale of land by Scheduled tribes to non-tribals in scheduled areas is absolutely forbidden. In the case study villages, there were a few land sales by scheduled tribes before 2002. Most of these were to scheduled tribes only.

1.2.1 Sale of land by STs in case study villages

In Dekapar, officially there have been seven sale of land for a total of 3.96 acres as per the Record of Rights. Two sale of land to the extent of 0.66 acres were to other Kondh tribals of Dekapar, three instances of sale of land were to Malis (OBCs) of Sorisiopada village for 1.63 acres. Out of the seven sales, five were for paddy lands. In Bangusahi, out of 54 households, four have sold land, all to fellow tribals from the village itself. The total area of land sold is 4.21 acres, and except one acre planted by cashew, the rest is paddy land. In Podagada, within the sample, there was one kondh family (original settler of the village) which has purchased 6.06 acres, 0.25 from a Kondh of the same village and rest from other caste persons.

1.2.2 ROR analysis of Sorisiopada Village

An analysis of the Record of Rights was carried out for the sale of land by ST in the Sorisiopada village (Revenue Village of Dekapar). A total of 38 sales transactions involving

![Land Sale by STs in Sorisiopada Village](image1)

<table>
<thead>
<tr>
<th>No. of Transactions</th>
<th>Amount of land Sold</th>
</tr>
</thead>
<tbody>
<tr>
<td>To STs</td>
<td>0</td>
</tr>
<tr>
<td>To SCs</td>
<td>7</td>
</tr>
<tr>
<td>To Ocs</td>
<td>22</td>
</tr>
</tbody>
</table>

![Sale of paddy land by STs to OCs in Sorisiopada](image2)

<table>
<thead>
<tr>
<th>No of transactions</th>
<th>Area in acres</th>
</tr>
</thead>
<tbody>
<tr>
<td>Non-Paddy Land</td>
<td>17</td>
</tr>
<tr>
<td>Paddy Land</td>
<td>6.52</td>
</tr>
</tbody>
</table>

Table 6: Transfer of tribal land through permissions in Orissa (1957-1997)

<table>
<thead>
<tr>
<th>S No</th>
<th>Districts (undivided)</th>
<th>No of permissions to transfer land between 1956-1997</th>
<th>Extent of land alienated legally (acres)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Balasore</td>
<td>124</td>
<td>51.69</td>
</tr>
<tr>
<td>2</td>
<td>Mayurbhanj</td>
<td>2681</td>
<td>1463.53</td>
</tr>
<tr>
<td>3</td>
<td>Koraput</td>
<td>834</td>
<td>1298.53</td>
</tr>
<tr>
<td>4</td>
<td>Rayagada</td>
<td>708</td>
<td>1251.45</td>
</tr>
<tr>
<td>5</td>
<td>Malkangiri</td>
<td>318</td>
<td>423.10</td>
</tr>
<tr>
<td>6</td>
<td>Nabarangpur</td>
<td>1010</td>
<td>1558.71</td>
</tr>
<tr>
<td>7</td>
<td>Kalamandi (undivided)</td>
<td>107</td>
<td>236.65</td>
</tr>
<tr>
<td>8</td>
<td>Ganjam (Undivided)</td>
<td>70</td>
<td>57.02</td>
</tr>
<tr>
<td>9</td>
<td>Phulbani</td>
<td>724</td>
<td>196.70</td>
</tr>
<tr>
<td>10</td>
<td>Keonjhar</td>
<td>963</td>
<td>587.55</td>
</tr>
<tr>
<td>11</td>
<td>Sambalpur</td>
<td>506</td>
<td>528.39</td>
</tr>
<tr>
<td>12</td>
<td>Sundargarh</td>
<td>1493</td>
<td>896.49</td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td>9538</td>
<td>8549.81</td>
</tr>
</tbody>
</table>

(Adopted from Panigrahi, 2001)
sale of 27.53 acres of land by ST were found. At the same time, it was found that nine STs had bought land, all from other STs, to the extent of 7.42 acres. Thus in the Sorisiopada village, the scheduled tribes have ended up losing a net of 20.11 acres through sale to non-tribals, showing a clear transfer of land away from the STs.

Interestingly, for the last 40 years, there has been no sale of land from other castes to either scheduled tribes or scheduled castes in Sorisiopada Village, though other castes have purchased 18.87 acres from STs and SCs. Almost 80% of these purchases have been valuable paddy land and all sales have been carried out before 1997.

1.3 Loss of land to non-tribals before 1956 in scheduled areas and 1965 in non-Scheduled area

The OSATIP, 1956 became applicable in 1956 in the Scheduled areas, whereas the Orissa Land Reforms Act, 1960 became applicable in non-scheduled areas in 1965. Before these laws became applicable, different laws for protection of tribal lands were present in different parts of Orissa. Most of these laws were full of loopholes and were of little practical use in reducing land transfers to non tribals. For example, from 1927-1950, Goudas and Malis (OBCs) and Dombas, SCs, were included among the list of hill tribes as per the ATILT Act, 1917, in the undivided Koraput district. This meant that they could freely purchase land from tribals like Kondhs, Parajas, Gadaba, Koyas etc.

Most of the feudatory states had rules banning transfer of land from tribal tenants to non-tribals. This was also observed mostly in breach, as there was little administrative infrastructure and will to regulate such transfers, and the control of local land administration rested with intermediary tenure holders which were mostly non-tribals. The Survey and Settlement of Kalahandi found that the Gountias in contravention of the Gounti Patta had settled land belonging to aborigines/tribals with himself or his relatives in 164 cases (Das, 1962). Similarly in the four Zemindaries of Kalahandi, it was found that in 123 cases these restrictions were infringed by the Gountias (Sunderrajan, 1963). The Koraput Survey and Settlement noticed 604 cases of land alienation from members of hill tribes/scheduled tribes to non-members covering an area of 1790 acres during the Survey and Settlement operation (Behuria, 1965). The above figures seem to be underestimates, given the fact that the records were not maintained properly by the intermediary tenure holders and that castes like goudas (milkmen), Dombs (SCs) and Malis (OBCs) were included in the category of hill tribes.

An important period when the laws for protection of Tribal land were not applicable in many areas of the State was the period between 1948 and 1965. Almost all the ex-state areas having tribal populations had restrictions on land transfer from tribals to non-tribals. However, on merger with Orissa, such protection was automatically repealed and was replaced by the Merged Estate (Laws) Act, 1950 which provided protection against land alienation by “aboriginal tribes” to non-tribals. However, this provision remained ineffective as the State Government didn’t define “aboriginal tribes” till 1962. Thus in the ex-princely state areas, the protection to tribal lands were non-existent between 1948 and 1962 in non-scheduled areas and between 1948 and 1956 in scheduled areas (please refer Table 3).

Thus laws for protection of tribal land were more or less ineffective till the respective implementation of OSATIP, 1956 and Orissa Land Reforms Act, 1960. Much of the transfer of private land from tribals to non-tribals through sales or mortgages took place before this period. This seems to be the case in Sorisiopada Village (the revenue village for Dekapar). The village was originally settled by Kondhs and Parajas. Later the Parajas shifted to what is now the Sorisiopada Village and owned most of the land there. Apparently Malis, the OBC peasant caste moved to the area later and requested the Parajas for some land to cultivate. According to the Dekapar villagers, the Parajas lost much of their land to Malis and Dombas through debt
mortgaging and sale. At the time of the Settlement, almost 35% of the patta land in Sorisiopada Revenue Village belonged to the Malis, whereas Parajas owned only 19.7% of the land.

There seem to be little scope of undoing the transfer of tribal land to non-tribals before 1956 in scheduled areas and 1965 in non-scheduled areas. The only possibilities lie in acquisition or purchase of land from non-tribals by the state and distributing them to the tribals in areas where there is shortage of land. This step, among others could specifically be taken up in areas inhabited by PTGs, where land owned by non-PTGs should be examined and wherever necessary be acquired and distributed to the PTGs, on individual or communal basis as per their social and cultural practices.

2 Lack of proper recording of occupation rights through survey and settlements

In many of the tribal areas, the Survey and Settlement process didn’t formalize the ownership of the land occupied by the tribals for agriculture. All over the state, land over 10% slopes was categorized as state owned land, even though it was often used for shifting cultivation and in many cases even terraced permanent cultivation. Land below 10% slope was often not settled with tenant if it was fallowed at the time of settlement.

Clan and lineage based territories practiced by tribes were not recognized in the Settlement processes. The communal nature of ownership of land, especially swidden land amongst tribes like Juangs, Kutia Kondhs etc. was totally ignored, and such areas were classified as Government Land (Rath 2005, Padel, 1995). Even in tribes where customary individual ownerships over hillsides were recognized, the cultivated hill slopes were settled as government land. This has been one of the most critical constraints on tribal access to land, especially in South Orissa and in the hilly areas of Keonjhar and Sundargarh inhabited by the swiddening tribes.

![Picture 5: Land-use in upper part of Dekapar village, Koraput: The villagers own only the valley land. The hillsides, though cultivated, are categorized as Government Revenue Land](image)

2.1 Non-recognition of rights on shifting cultivation land and their categorization as state owned land:

The most important factor in loss of land by scheduled tribes in Orissa has been the non-recognition of rights on shifting cultivation lands. Estimates of the area under shifting
cultivation in Orissa range from 5298 sq. km. to 37,000 sq. km. (Pattanaik, 1993, Thangam, 1987). It is estimated that 44% of the forest area (highest in India) of the state is under shifting cultivation, of which 8.8% (5298 sq. km.) is under active shifting cultivation and the rest is either dormant or abandoned (Mishra, 1995).

That these areas were traditionally under shifting cultivation is clear from a number of reports from the colonial period21. The Forest Enquiry Committee Report of 1959 mentioned that 12,000 sq. miles (almost 30,720 sq. km.) of land in Orissa were under shifting cultivation (GOO, 1959). During the Survey and Settlements, the shifting cultivation lands on hill slopes were categorized as government land, with no recognition of tribal rights over it, either individual or collective. Section 10 of Indian Forest Act, 1927, also dismisses the rights of shifting cultivators during declaration of Reserve Forests, only providing that the forest settlement processes should keep aside some area for shifting cultivation (Kumar, 2004). Details of policies followed in various regions of Orissa are given below.

**Undivided Koraput District**: In undivided Koraput, during the first Survey and Settlements (1938-1964), the Board of Revenue ruled that since shifting cultivators are not in continuous possession of land for 12 years, they can’t be treated as ryots as per Madras Estate Land Act, 1908, and therefore these lands were not to be settled in their names (Behuria, 1965).

### Box no 3

**Board of Revenue’s decision on Shifting cultivation in Koraput during Survey and Settlement (Behuria, 1965)**

Regarding the manner of recording the podu lands the Board ordered as follows:

- All lands in **continuous cultivating possession for 12 years prior to vesting of Jeypore Estate in State Government whether there are situated above or below 10 percent slopes**, may be recorded as ryoti lands in favour of the person in actual cultivating possession of the same.
- All lands which are above or below 10 percent slopes which are unoccupied will be recorded as Government lands.
- All lands on hill slopes **which are not in the continuous possession of 12 years** at the time of vesting of Jeypore Estate in the State Government may be recorded as Government lands. But the concerned plot in the remarks column of the Record of Rights it may be noted that so and so is in the forcible possession of the lands from such and such years.

**Kalahandi District**: In Kalahandi Survey and Settlement of 1946-56 and the Settlement of Kashipur, Karlapat, Mahulpatna and Madanpur-Rampur ex-zemindary areas (part of Kalahandi ex-princely estate area), the Board of Revenue asked the Survey and Settlement Officers to prepare Dongar Khasras for the hillsides cultivated by tribals. The BOR pointed out “The Board doesn’t consider it desirable to have regular settlement in the unsurveyed areas as that may encourage podu cultivation. The systems of levy of “Kodki” should, therefore be **continued xxxx at the rate of eights annas per Kodki**”22 (Board of Revenue, No 1665-XXI-75/52-LRS dated 22/06/1953). The Dongar Khasra was prepared “**only in villages where shifting cultivation on the hill slopes is in practice. It contains the name of the cultivator with parentage, caste, name of the Dongar, cultivated crops grown, seed capacity of the slopes under cultivation, number of Kodkis (spades) possessed by the cultivator and rent settled for cultivation. A stereotyped note to the effect that no occupancy right accrues over the slopes**”

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22 For shifting cultivation, tribals use hoe (kodki in local language). The assessment was made on the basis of Kodkis owned by a family i.e. the number of working hands in a family.
The Board of Revenue was forced to provide for the provision of Dongara Khasra in the Kalahandi ex-state area, as the earlier settlement by the ruler had assessed the shifting cultivation land and had prepared Dongara Khasras. In Kalahandi ex-state area, 25000 Dongara Khasras covering 125000 acres in 850 villages were prepared in just two blocks of Thumulrampur and Kashipur exist, though without any occupancy rights. Such Dongara Khasdas haven’t been prepared in other districts with prevalence of shifting cultivation.

Decisions not to settled shifting cultivation land were also taken in the tribal parts of then Ganjam district (current Gajapati), Phulbani District (now Kandhamal district), Juangpirh and Bhuyanpirh of Keonjhar district. The vast shifting cultivation areas passed to the exclusive ownership of Revenue Department or Forest Department.

Thus the approach was to use the pre-independence system of land tenure to convert shifting cultivation lands to state land wherever possible, and only to concede some ownership when absolutely forced to do so by law as in Kalahandi. Tactics such as treating the shifting cultivation land as non-continuous cultivation were used to dispossess the tribals under the prevalent laws such as MELA, 1908 (as in Koraput district) which provided raiyati rights only to continuous possession of land. These decisions have had far reaching impact on tribal economy and welfare by denying them rights over land that they had cultivated for generations.

The communal tenure of tribes like the Juangs and Kutia Kondhs on their swiddens was completely ignored and these lands settled as government land. This is having wide repercussions on these Primitive tribal groups, often leading to displacement (Please refer to Kadalibadi Case study, Section 4.4.1). Three out of four case study sites had prevalence of shifting cultivation. Kondhs in Dekapar and Podagarha and Saoras in Bangusahi had been traditionally doing shifting cultivation on hill slopes. In case of all three villages the shifting cultivation area has been traditionally owned by individual families, though the land within the customary boundary of the village is owned by the settling clan.

2.1.1 In Dekapar, terracing on hillsides used for shifting cultivation has been practiced traditionally. None of the shifting cultivation areas including the terraced areas were settled with the Kandh tribals, and they were categorized as State owned uncultivable wastelands (Abad Ajogya Anabadi) in the Record of Rights. Out of approximate 1100 acres of land within the traditional boundary of Dekapar village, only 152 acres\(^{23}\) of land have been settled with the cultivators. Approximately 126\(^{24}\) acres of area located on government land are being cultivated as of now, and the villagers claim to have lost access to an additional 142 acres of land due to plantations taken up under different programs. Thus as per the information collected from the villagers, apart from the 152 acres settled with as patta land, approximately another 287 acres, almost all of them on higher slopes, was their customary shifting cultivation land. Even this seems like quite an underestimate, as almost the whole of the hillsides next to the settlement have been under cultivation at one time or another and one or other family lays claim to such lands.

In spite of the fact that none of the land on the higher slopes was settled with them, the villagers continued to cultivate them. Over time, with increasing population and reduction in area available for shifting cultivation, cultivation on hill slopes practice has been converted into short fallow cultivation, with the fallow cycle reducing to almost two to three years. In Dekapar, the tradition of creating stone terraces on hill slope continued, both on patta land and government land customarily owned by families continued. Almost 100 acres of land terraced through stone bunds are presently under cultivation on government land. Another 90 acres of

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\(^{23}\) This figure was obtained from the Record of Rights

\(^{24}\) The government land under cultivation is very approximate, as the estimates are not based on any measurement. It was based on the claims made by the individual households.
terraced land has been converted into plantations under various government programs. Thus almost 190 acres of government land has been terraced by Dekapar villagers, more than the land legally owned by them.

Picture 6: Stone Bunding on hill slopes, Dekapar Village, Koraput: The land is categorized as Government Revenue Land, even though it is customarily claimed by the Kondhs of Dekapar

In the 1970s, the Dekapar villages shifted to plough based cultivation of crops like wheat on the low slope terraces, and rue that it led to destruction of the rootstock of forest vegetation and caused the fertility to go down. They are only able to grow mandia and alsi on these lands now. The reduced rotation on higher slopes cultivated through hoeing has also led to poorer regeneration, and large areas of these lands were also stone bunded over time to stop soil from washing down. Some of the stone retaining walls are almost two meters high. The Dekapar villagers have, for the last decade, started protecting the regeneration on over 200 acres of hill slopes, which has grown into a decent forest. The families customarily owning land in this patch have stopped cultivation voluntarily, even though 7.9 acres of such land was terraced. Total customarily owned area relinquished by farmers for forest protection is estimated to be 22 acres.

2.1.2 In Podagarh, the customary shifting cultivation area was categorized as Uncultivable wastelands as well as forest (jungle block). In approximately 150 acres of the uncultivable wastelands, the soil conservation department planted cashew which was later handed over to Cashew Development Corporation ltd for commercial exploitation.
Land claimed customarily by the tribals has been converted to cashew plantations leased out to a Govt. corporation. Tribals have no rights on this land or the plantations.

Forest Department plantations were also taken up in the shifting cultivation areas on forest land—almost all the plantations have been cut down by the local people. Short fallow cultivation continues on the forest land and part of the uncultivable wastelands, with fallows as short as two years. Out of the sample of 57 hhs, 38 hhs are cultivating around 85 acres of Government land on the hill slopes. Out of this, approximately 12 acres is forest land.

In Bangusahi, the total area encroached by the villagers is approximately 208 acres, which is almost three times the 70 acres legally owned by them as patta land. Out of these 208 acres, 160 acres is Dongar land, i.e. land customarily used for shifting cultivation called...
Bagada in this area. Much of the Dongar land is now covered with cashew plantations. In early 80s, Soil Conservation Department planted cashew on part of the shifting cultivation land and eleven persons from the village were given usufructory rights on these plantations to the extent of 2.25 acres each. Cashew, because of its imperishability, its survival without much care on poor soil, and its ready market, was readily adopted by the villagers, who have planted it over much of their customary shifting cultivation land. Cashew on shifting cultivation lands has become one of the most important sources of cash income to the villagers. Apart from the usufructory rights over the 25 acres of land originally, the villagers have no rights on the cashew planted by them on their customary lands. Another 42 acres of padar (low slope uplands) and 6 acres of lowlands being cultivated by the villagers are categorized as government land.

3.1.1 Policies regarding shifting cultivation on revenue lands

The original approach to shifting cultivation has been to deny rights over the shifting cultivation land, so that the practice dies out on its own. Shifting cultivation on revenue land was treated as an encroachment, and cases could be filed against the cultivators. Since most of the shifting cultivation was on “objectionable” land i.e. categories of revenue land not eligible for issuance of ryoti rights as per law, such land were not settled under the provisions either OLR, 1960 or Land encroachment laws (OGLS 1962 and OPLE, 1972).

Various measures like establishment of Tribal Colonies, allocation of agricultural land for settled cultivation were taken up to wean away the tribals from Shifting cultivation. These measures could not significantly change the situation. During the 1960s and 1970s, large areas of shifting cultivation were planted with cashew and sisal. Most of these cashew plantations on revenue lands to the extent of 36,000 ha. were leased out to Cashew Development Corporation ltd in 1980 for commercial exploitation (e.g. as in Podagarh). The Cashew development corporation ltd. auctions these plantations on an annual basis.

In 1980, the GOO initiated the program of Economic Rehabilitation of Rural Poor (ERRP), which provided for usufructory rights to rural poor on plantations taken up under the program on state owned land. Barren hills or hills with shrub jungles (mostly shifting cultivation area under fallow cycle) were taken up for plantations, mostly horticulture, through ERRP. The Tehsildar could confer dafayati (usufructory) rights to the eligible beneficiaries in respect of plantations of various categories when they bear fruit. However the rights over land were to remain with the state and the allotee was not supposed to cut any tree in the plantation though collection of deadwood was allowed. This usufruct right was heritable and transferable in favor of similar beneficiaries with approval of Tahsildar.

Another initiative taken by the GOO for shifting cultivation areas was the allotment of “Podu-affected Government land for plantation by Podu Cultivators” vide circular no. GE (GL) – S.–69/79–3755/Rev, Revenue Department, GOO, dated 18th January 1980. The scheme envisaged plantation of commercial fruit bearing like mango, tamarind, jackfruit, guava, and orange etc. by the podu cultivator with a bulk of investment on plantations being carried by the podu cultivator. The scheme was implemented by Horticulture Department with finance from Department of Tribal welfare. Under this approach, separate schemes were

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25 Circular no GE(GL)-S.-*/81-37565/REV, Revenue Department, GOO laid down the operation guidelines for provision of usufructory rights on plantations taken up under the program on Government land (except reserve forests). Each beneficiary was to be given usufructory rights (Dafayati rights).

26 For different plantation crops like sisal, cashew, coffee, mulberry and tusser dafayati rights on plantations are conferred at the rate of 3 acres, 2 acres, one acre, half acre and one acre respectively only when they yield reasonable income after proper development by the concerned department.

prepared for podu cultivators of each village or a group of village. Only podu affected govt.
land in the last year or last two years of podu cycle in actual occupation of the podu cultivators
was selected. The cultivator was to be given usufructory rights of trees and intercrops raised
only. These rights are heritable, but not alienable by the right holder. The same cultivator was
authorized to take up plantation from year to year over different piece of land in which he
practices SC and which are in last year or last two years of podu cycle subject to a condition
that the total area under these plantations along with any other land he may be having shall not
exceed the ceiling limit permissible for him under Orissa Land Reforms Act, 1960.

The IFAD (International Fund for Agriculture Development) sponsored Orissa Tribal
Development Project (1988-97) was aimed at 12,500 tribal families and another 4,000 local
non-tribal households of Kashipur block in Rayagada District. During the project, record of
rights for dongar (hills) land was issued to 6,837 tribal households in 236 villages covering a
total area of 17,175 acres. For the first time, GOO accepted the need to settle hill slopes with
cultivators and issued an order28 which allowed for settlement of land with ryots up to 30%
slope and usufructory rights beyond 30% slope. The incentive in form of allocation of property
rights on lands on hill slopes has reduced shifting cultivation practices in the areas targeted.
However, there have been conflicts over land ownership because often the land settled with
one household customarily belonged to another household.

The Kashipur order was extended to all tribal areas of the State vide GOO letter no.
14643-R-S-60/2000 dated 23rd March 2000 which has allowed for settlement of land up to 30%
slope with tribal shifting cultivators. This is one of the most important policy initiatives which
have the potential to transform tribal landownership patterns in shifting cultivation areas.
However, the actual implementation of this circular has been very tardy, mainly because lack
of political will and pressure and the problems in surveying the hill slopes.

The Orissa Tribal Empowerment and Livelihood Project (funded by IFAD and DFID)
have been initiated in 30 tribal blocks of Orissa and would be implemented on watershed basis.
One of the main components of this project is to facilitate settling of land as per the above
circulars. However, till date these processes have not been operationalised in the Project.

### 3.2 Unsurveyed areas:

As per the Board of Revenue, approximately 640,702 acres of land in Orissa have not
been covered by Survey and Settlement at all. Most of these are remote hilly areas inhabited by
tribals, including primitive tribes. Thus, there has been no settlement of rights in these areas at
all.

<table>
<thead>
<tr>
<th># no</th>
<th>Name of the Districts</th>
<th>No. of unsurveyed villages</th>
<th>No of unsurveyed patches/tracts of land</th>
<th>Area in acres</th>
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</thead>
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<td>Gajapati</td>
<td>06</td>
<td></td>
<td>17660</td>
</tr>
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<td>Kandhamal</td>
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<tr>
<td></td>
<td></td>
<td>114</td>
<td>177</td>
<td>640752</td>
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</tbody>
</table>

28 GOO letter no TD-I(IFAD)-18/91/2628/HTW dated 10th April 1992 issued following a review meeting on
Orissa Tribal Development Project sponsored by IFAD under the chairmanship of Chief Minister of Orissa.
However, this seems to be an underestimate of areas which have not been surveyed. Survey and Settlement Processes in undivided Koraput district left out vast stretches of land including all the Reserve Lands and Protected Land, as well as settlement of land was stopped at 10% slope line. The extent to which such land was being cultivated by tribals is illustrated by the fact that in just two tribal blocks in neighboring Kalahandi district, 125,000 acres of sloping shifting cultivation lands were included under Dongara Khasra during Survey and Settlements i.e. shown as land cultivated by the tribals. No such exercise has been carried out for rest of the Scheduled area where the land over 10% has not been surveyed and settled. Given the estimates of shifting cultivation, such land which was under cultivation by tribals on slopes more than 10% (i.e. left unsurveyed) could easily be in the range of one million ha. Box no 4 shows the areas in Koraput which were left unsurveyed (and unsettled) during the Survey and Settlement, 1938-1964. It actually works out to almost half the total area of the undivided Koraput district was not surveyed and settled. Later surveys were taken up in the Bonda Hills.

In absence of settlement of rights in these areas, effectively rights were denied. This is especially true of land categorized as forests which have not been surveyed and rights settled, including the vast areas categorized as deemed forests. Similarly, the areas above 10% slopes have been simply categorized as government land of various categories without settling rights of tribal cultivators.

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**Box no 4**

Areas left out of survey and settlement in Undivided Koraput district

The Survey and Settlement in Koraput were carried out in 1938-1964. The S&S covered an area of 6740 sq. miles (17254.40 sq km) out of a total area of 25320.96 sq. km., and excluded the following areas:

- All Reserved and Protected Land
- Forests proposed for Reservation in 239 villages of Mathili and Malkangiri
- Police station area and 199 villages in Modu, Kalimela, Podia and Padmagiri areas of Malkangiri subdivision (now Malkangiri district)
- Thickly forested tracts in 1763 villages in Bissamcuttack and Gunupur tahasils and Narayanpatna area (Now part of Rayagada district), Pattangi, Padwa, Laxmipur,Gumma, Kakirigumma and Dasamanthpur areas (now part of Koraput district).
- Bonda Hills and Kondakamberu areas covering approximately 446 sq. miles (Now Malkangiri district)

(Behuria, 1965)

Thus the Survey and Settlement left out **approximately 8000 sq. km. of area**, part of which has been surveyed later. However, the Reserved and protected land have never undergone rigorous survey and settlement.

Apart from the above, all land above 10% slope line was left unsurveyed without any settlement, and was mostly categorized as either uncultivable wastelands or Jungle Blocks. Thus out of the total area of 17254.40 sq. km. which was supposed to have been surveyed, **5289.08 sq. km. was classified as Abad Ajogya Anabadi** (Uncultivable wastelands), most of which would be the lands located above the 10% slope in the surveyed areas used for shifting cultivation. (Behuria, 1965).

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3.3 **Permanent cultivation land not recorded in name of tenants**

In many tribal areas even land under permanent cultivation was not settled with tribals because of various reasons. Often this occurred because the land was categorized as forests. In other cases, even land on lower slopes left fallow was settled as government land. In remoter areas there are anecdotes which say that many tribals were scared to approach the Survey and Settlement Officers as they felt that the rent assessment on their cultivation would be
increased. In Dekapar, villagers pointed out that many of the fallowed plots at the time of settlement were recorded as government land as they had bushy growth on them.

In revisional Settlements, often permanent cultivation by tribals on land categorized as government land was not regularized in their names, even though they were eligible for settlement. Tribals make allegations that Settlement officers ask for bribes for settling such lands in their names. (Please refer to the Vedanta case study, Box no 5 for illustration)

<table>
<thead>
<tr>
<th>Box no 5</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Eviction of landless tribals from Land acquired for Vedanta Alumina Ltd., Lanjigarh Block, Kalahandi district</strong></td>
</tr>
</tbody>
</table>

Almost 64 landless Kondh households (Scheduled Tribes) of the Jaganathpur Village had been cultivating Khesara no 186 categorized as Revenue land for the last 30-40 years. Encroachment cases for the cultivation had been filed by the Revenue Department against many of these people. The encroachment notices show that these Scheduled tribe persons have been in physical possession of these lands for at least last seven to eight years. However, the tribals claim that even their forefathers were cultivating the land. Both as per the principal of adverse possession and as per the section 7(a) of Orissa prevention of Land Encroachment Act, 1972, such land should have been settled with the landless persons to the extent of one standard acre (equivalent to 4.5 acres of uplands). The last revisional Survey and Settlement of Lanjigarh block took place in the late eighties, and the tribals claim that when they tried to get the land regularized in their names, they were asked to pay bribes up to Rs. 5000/- per acre, which they couldn’t afford. Even after the settlement, they have been trying to get the land regularized through revenue department, but have been asked for bribes by the Revenue department personnel.

In 2003, instead of settling this land with the tribal cultivators cultivating these lands, the district administration summarily evicted these 64 families by force without any compensation, thereby taking away their main source of livelihoods. The land has been handed over by the district administration to Vedanta Alumina Ltd. for the construction of their rehabilitation colony. In law, this action violates not only the rule of adverse possession and section 7(a) of OPLE, 1972 but it also it violates the protection provided to the Scheduled tribes in Schedule V of the Constitution and the section 3(iii) of the OSATIP Regulations (1956) by turning scheduled tribes “effectively” landless. The section 3(iii) of OSATIP regulation (1956) provides a minimum benchmark of 2 acres of irrigated or five acres of unirrigated land for ownership by scheduled tribes before any land is their possession can be transferred. By not recognizing their cultivation rights and by evicting landless scheduled tribe persons from the land cultivated by them for generations, the provision is violated.

Non-settlement of government land cultivated by them is one of the most common complaints by tribals. Regularization of encroachments invariably requires speed money, and those who can’t pay, don’t get their land regularized either during the settlements or through the revenue administration.

### 4 Forests, Forest land and Tribal land

Forty-six percent of the land in tribal districts is categorized as forests. Declaration of customary tribal lands as forest has been an important factor in loss of land for tribals. According to official data, Orissa has 58135 sq. km of its area under forests belonging to the following legal categories:

<table>
<thead>
<tr>
<th>Table no 8: Types of Forests in Orissa</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Type of Forest</strong></td>
</tr>
<tr>
<td>Reserve Forests</td>
</tr>
</tbody>
</table>
Demarcated Protected Forest | 11685 | Land under control of Revenue Department. Declared as Forest under section 33 of OFA, 1972 or deemed as protected forests under Section 33(4) of OFA, 1972
Undemarcated Protected Forest | 3838 | Land under control of Revenue Department
Unclassed Forests | 20.55 |
Other Forests | 16261 | Land under control of Revenue Department. Legal status is not clear.
Total Forest Area | 58135 |

Only 48,838 sq. km. of forest land has forest cover of 10% or more (FSI, 1999). Thus almost 10000 sq. km. has a crown cover of less than 10% i.e. either they are scrub forests or have no forests at all. The total extent of Reserved Forests in Orissa increased from 22457.76 sq. km. in 1960 to 26329.12 sq. km. in 1996 and the process of reservation of forests is still ongoing.

The main legislation affecting forest land is the Forest Conservation Act, 1980 and the Orissa Forest Act, 1972 (which repealed Madras Forest Act, 1885 in ex-Madras Presidency areas and Indian Forest Act, 1927 in rest of Orissa). The Orissa Forest Act, 1972, defines two categories of forests, Reserved Forest and Protected Forests. Reserved Forests can be notified as such under section 21 of OFA, 1927 only after settlement of rights as per section 4-20 of the OFA, 1972. As per section 33 of the Orissa Forest Act, 1972, State Government can also declare any land which is the property of the Government as Protected Forest only “if the nature and extents of rights of Government and of Private persons and village communities in or over the land comprised therein has been inquired into and recorded at a Survey and Settlement or in such other matters as prescribed”.

Thus prima facie, the forest laws provide protection for settlement of rights of the local people and communities before declaration of forest land. However, this presumption often doesn’t hold true on the ground because of a number of factors. These include:
- Declaration of deemed Reserved Forests and Protected Forests
- Non-recognition of rights on land used for shifting cultivation
- Lack of settlement of rights and faulty settlement of rights

These factors have ensured that large areas of land which have customarily belonged to tribal communities have been categorized as forest lands without recognizing their rights on these lands. These are discussed in details in section 3.1.

The situation has become aggravated with the passage of the Forest Conservation Act, 1980. The Forest Conservation Act 1980 states that no forest land may be diverted for non-forestry purpose without permission of the Government of India. Forest land is defined as land recorded as forest land in any government records. The Forest Conservation Act, 1980, (FCA) was initially applicable to land legally notified as forest under the Orissa Forest Act, 1927 (hereafter mentioned as IFA) and all lands recorded as forest in any government records. In 1996, the FCA’s purview was expanded to all lands conforming to the dictionary definition of forests (i.e. land having forest growth) irrespective of ownership, by an order of the Supreme
Court in 1996\textsuperscript{29}. All such ‘forest’ land can’t be converted to any non-forest use without the permission of the Ministry of Environment and Forest, GOI. A recent Supreme Court order\textsuperscript{30} has banned the dereservation of any forest land without permission from the Supreme Court.

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

In 2002, the MOEF issued a letter to all states and Union Territories suggesting that the Supreme Court had asked for the eviction of all forestland encroachers within a period of five months. Though this blanket order was later withdrawn due to widespread protests, the process of removing supposed ‘encroachers’ has continued in many states. This has serious implications for the Scheduled areas of Orissa, where hundreds of thousands of tribals continue practicing both settled and rotational cultivation (podu) on several hundred thousand hectares of land which has been officially categorized as ’forests’.

4.2 Forest Land where proper settlement has not taken place

4.2.1 Creation of Deemed Reserved Forests -Amendment 20(A) in Indian Forest Act (IFA), 1927 and Section 33(4) of Orissa Forest Act, 1972:

There were 24 princely states that merged with the State of Orissa post independence. Almost all of these princely States had their own forest Acts or Rules based on Indian Forest Act, 1927 or Madras Forest Act, 1885. The princely states, as per the provisions of these acts or rules declared certain forested areas as reserve forests or as other classifications of forests. In most cases proper survey and settlements of rights as prescribed in the IFA, 1927 or the Madras Forest Act, 1885, were not followed and forests were created in ad hoc fashion. Ramdhyani, in his inquiry of the princely states during 1940s, pointed out “Reservation of forests has so far been made with little consideration for the interests of cultivators and probably by summary orders”. Often the areas declared as forests had existing settlements, especially for those tribal areas where no detailed Revenue survey and settlement had taken place. For example, in the year 1943, the Maharaja of Kalahandi had converted 14 whole revenue villages along with a belt of surrounding reserve forests as Leliguma Reserve Forest, without settling the rights of the villagers (Sunderrajan, 1963)

Post independence, the GOO was faced with the problem of status of the forest areas transferred from the ex-princely states. This was resolved by amending the IFA, 1927 in 1954. The amendment through Section 20-A (1) provided that all areas which were reserve forests in the princely states would automatically be deemed to be Reserve Forests under the IFA, 1927. Through the amendment, the Section 20-A(4) of the IFA, 1927, also laid down that “forests recognized in the merged territories as Khesara Forest, village

\textsuperscript{29} The Writ Petition 202 of 1995 (popularly known as Godavarman case) resulted in an interim order by the Supreme Court on 12-12-1996 which clarified certain provisions of FCA 1980. The Court held that the word “forest” must be understood according to dictionary meaning of forest and covers all statutorily recognized forests. Thus FCA, 1980, was held to apply on “forests” as per dictionary meaning and on any land designated as forests in any government record. The order also directed that all ongoing activity within any forests in any state throughout the country, without the prior approval of central Government, must cease forthwith (Dutta and Yadav, 2005)

\textsuperscript{30} Supreme Court’s order dated 13-11-2000 in Center of Environmental Law, WWF India v. Union of India, WP© no 337 of 1995
forest or protected forests or forests by any other name designated or locally known, shall be deemed to be protected forests within the meaning of the act.” Thus the blanket amendment 20-A, IFA, 1927, managed to convert all the “Reserved Forests” and other forests in merged ex-state areas into Reserved forests or Protected Forests as defined under the IFA, 1927, even though most of these areas had not been properly surveyed and rights settled as required by the law.

Similarly, in the erstwhile Agency Tracts of Madras Presidency i.e. the undivided Koraput district and Gajapati districts, Reserved and Protected land created under Chapter III of the Madras Forest Act, 1882, were deemed to be Protected Forests under Orissa Forest Act, 1972 (Section 33(4)). These forest areas were neither surveyed nor the rights of the cultivators and inhabitants settled at any time.

Thus Saxena points out
“The Reserve Forests which are constituted under section 21 or deemed to be RF under section 81 of the O.F. Act are excluded from Survey and Settlement” (Saxena, 2001).”

“Protected Forests, demarcated and un-demarcated are invariably classified as non-forest areas in the Record of Rights (R.O.R.) prepared and maintained under the Orissa Survey & Settlement Act and instructions issued by Revenue Department (G.O. No. 4898 of 1966) for reservation of Government land for specific purposes in rural areas. There is dual control of both the departments over such land/forests and virtually no management exists. Most of P.F.s are either declared as such under sub-section 4 of section 33 of the Orissa Forest Act, 1972 or deemed to be Protected Forests under sub-section 4 of section 81.”(Saxena, 2001)

In short, no survey and settlement has taken place on such lands and they are neither notified as Protected Forests under section 34(1) of the Orissa Forest Act, 1972, nor are they recorded as Protected Forests in the R.O.R. maintained by the Revenue Department. Thus in almost all the above forests which are treated as deemed forests, Reserved or Protected, no proper settlement of rights of the inhabitants have been carried out either through Forest Settlement process under forest laws or through the Survey and Settlement processes under the Revenue laws. Large numbers of people, especially tribals, continue to live inside these forests since generations, and are now considered as encroachers.

4.2.2 Poor settlement of rights during forest creation

However, this kind of violation of the tenancy rights as detailed above was also common in in areas directly under the control of the British. For instance, in the government estate of Khurda (now in Puri district) many areas were declared as 'forest land' though they had no forests:

“In Khurda, there are in all 461 sq. miles of land recorded as forest. Of this area 117 sq. miles constitute the RFs, 91 sq. miles the Demarcated Protected Forests and 253 sq. miles a further aggregate tract known as the Undemarcated Protected Forests. The last category which includes roads, ponds, rivers and even a part of the Chilika lake, has, it is interesting to note, an euphoric name given to it, and merely serves to create an exaggerated idea of the total extent of the forests available in the Estate. A vast area of it is simply barren waste land without any trace of forest.” (Govt of Orissa, Khurda Forest Enquiry Committee Report, para 15, 1938 quoted in Rath, 2005).

In princely states like Bamra (present day Deogarh district and Kuchinda Tahasil of Sambalpur district), Athamalik, Pallahara (presently part of Angul district), Boudh (Boudh district), Bonai (currently part of Sundargarh district), Daspalla (currently part of Nayagarh
district) and Rairakhol (currently part of Sambalpur district), all wastelands not declared as reserved forests or protected forests were declared as Khesara Forests, whether they had forests or not. Thus all land not declared as forests or land settled with tenants or as other categories of land was by default Khesara forests in these areas. This meant that government land not settled in post independence Survey and Settlement as tenant land or specific category of government land, were automatically retained as Khesara forests in the records. After passing of FCA, 1980, such areas couldn’t be converted to non-forest categories without MOEF, GOI, permission, and hence are frozen as Forest Land, even though there is cultivation in some of these areas.

Even where Reserved Forests and Protected Forests have been declared after independence, the forest settlement processes were often not properly implemented. This has happened where forest areas had been left out of Revenue Settlement processes and therefore the rights of the inhabitants hadn’t been formalized. For example, in the Sunabeda Sanctuary area, there are 30 revenue villages and 34 unsurveyed settlements, mostly inhabited by the Chukia Bhunjias, a primitive tribal group. As per the Forest Department, these 34 settlements are encroachments in the forest, even though this area is the ancestral homes of the tribals. In Belgarh area of Kondhmal district, there are a large number of unsurveyed Kutia Kondhs villages inside reserve forests (now declared as a sanctuary) whose rights haven’t been settled. The same situation exists inside Lakhari Sanctuary in South Orissa. In many cases, the procedure of rights settlement during reservation has been followed on paper, but due to lack of literacy of the tribal people and their inability to negotiate the procedures, rights have not been recorded. This has again meant that settled cultivation areas have been included inside Reserved Forests (please see the case of Mallaguda Village, Box no 6).

There are large numbers of examples where tribal villages are located inside reserved and protected forests whose rights haven’t been settled. 25 villages are located within Beheda Reserved Land of Umerkote Range of Nabarangpur (Nabarangpur Working plan, page 275). Another 24 villages are also located within Reserve and proposed Reserve forest of Nabarangpur, Jharigam and Umerkote range (Nabarangpur Working plan, page 275). One of these settlements, Dongriguda was in national news in 2004, when 11 tribal children died of malnutrition. As per the Census, 2001, twelve villages with a population of 3528 (almost 80% tribal) are located within reserve forests in Boipariguda and Kotpad Police Stations of Koraput District.
4.2.3  Shifting cultivation areas categorized as forests

Forest reservation and notification in shifting cultivation areas has been a constant source of tension and conflict. Much of the area that were used as forest falls for shifting cultivation by the tribal communities have also been declared as Reserve Forests, thereby disallowing any access to these lands for cultivation. The renowned anthropologist Verrier...
Elwin pointed out that that in 1930s-40s, Kondh Villagers were approached by Forest Guards who had orders to demarcate "Reserve Forests", and how in almost every case the Forest Guards demanded bribes, and if the villagers refused to pay, he designated forest fallows which the Konds habitually used for shifting cultivation as Reserves (Padel, 1995).

The Working Plans of the forest divisions in shifting cultivation areas illustrate the extent to which shifting cultivation areas were sought to be converted to forests and plantations. Constitution of working circles in Rayagada Forest Division’s Working Plan illustrates this:

<table>
<thead>
<tr>
<th>Working Circles</th>
<th>Total area</th>
<th>Shifting cultivation affected area</th>
<th>Remarks</th>
</tr>
</thead>
<tbody>
<tr>
<td>Improvement Working Circle</td>
<td>41526 ha.</td>
<td>Part of the circle</td>
<td>All the blocks having congested crops at pole stage mainly of podu origin were included in this circle</td>
</tr>
<tr>
<td>Rehabilitation-cum-soil conservation Working circle</td>
<td>27768 ha.</td>
<td>Part of the circle</td>
<td>It included podu areas thoroughly degraded due to repeated hacking</td>
</tr>
<tr>
<td>Teak Plantation Working Circle</td>
<td>2507 ha.</td>
<td>2288 ha. podu affected area.</td>
<td>Podu areas and existing teak plantations</td>
</tr>
<tr>
<td>Protection working circle</td>
<td>987 ha.</td>
<td>Half of Rafukona RF (647 ha) under shifting cultivation</td>
<td></td>
</tr>
</tbody>
</table>

Source: Rayagada Division Working Plan,

Almost all Working Plans in the shifting cultivation areas have identified it as the most important reason for forest degradation and often used terms like “evil” or “pernicious” for shifting cultivation, and are full of strategies to counter it. For example, the Balliguda Working Plan states “Large forest areas in the division have been destroyed since time immemorial due to the pernicious practice of podu and this has changed the complexion of some of the forest areas completely. Some of the podu areas which once supported lofty trees are now bereft of vegetation. Extensive forest areas now bear a crop of poles and young saplings due to recent podu”. (GOO, 1989)

There was little appreciation of the livelihood dependence of the scheduled tribes on shifting cultivation, and the fact that much of the areas that the department wanted to convert to forest were in effect traditional swidden area. Balliguda forest division is the home of the Primitive Tribal Groups Kutia Kondhs, who customarily practice shifting cultivation.
In the case study villages, Podagarh and Dekapar are located next to forest blocks. In Podagarh, most of the forest land is under short fallows cultivation, though the villagers of Podagarh are also protecting two hills which have regenerated profusely. In Dekapar, the forest area next to the village was under shifting cultivation, but now part of it is being protected by the villagers and has regenerated into a good forest area.

4.3 Cultivation on forest land eligible for regularization but not regularized

Apart from the settlement of rights through Survey and Settlements, there are different ways in which cultivation on state land could be settled before 1980. There was a decision by the Government in 1972 to settle the rights of cultivators on forest land, wherein the encroached forest areas by tribals, harijans and landless persons would be released for settlement. Order was issued for constituting sub divisional committees for conducting comprehensive surveys of all forest lands to identify areas which would be set apart for agricultural use and areas which would be managed as forests.

The State Govt. brought in a resolution in 1972\(^{31}\), to release those areas for settlement of rights in favor of tribals and other backwards groups and landless\(^{32}\). However, the survey of those areas as planned could not be carried out fully even after extensions till 1975, resulting in this vital decision remaining confined to govt. files. The statistics concerning 11 districts (out of the total 13) showed that a total area of 0.276 million acres of forestland was under cultivation while 0.316 million acres of govt. wastelands were fit for being reserved as forests.

As this couldn't be carried out, another GOO Resolution dated 8th July, 1975, extended the deadline to December, 1975. However the identification work couldn't be completed till 1980 when Forest Conservation Act, 1980 was passed effectively freezes the process of regularization of cultivation on forest land. This left large patches of permanent cultivation in forest area unregularised and now these areas are being treated as encroachments in contravention of FCA, 1980.

In 1990, MOEF, GOI, issued an order (No 13-1/90/-FP (I) dated 18\(^{th}\) September, 1990) which provided guidelines on regularization of eligible forest encroachments. Based on these guidelines, a GOO letter dated 6\(^{th}\) November, 1992, along with the Guidelines, were sent to all collectors asking for regularization of eligible forest lands encroached before 1980. Nothing seems to have happened at the ground level despite repeated reminders. After a 1996 order of

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\(^{31}\) Resolution no. 32823GE (GL)- 69/72-R dated 10\(^{th}\) June 1972 of State Government of Orissa

\(^{32}\) A household with less than one standard acre of land is treated as landless as per OPLE, 1972
the Supreme Court in the Godavaranman Case, a meeting of the Tribal Advisory Council in January 1997, under the chairmanship of the Chief Minister, took the decision to expedite the process of land settlement as per the above MoEF, GOI, guidelines. In 2000, the GOO has submitted a proposal to the MoEF, GOI, for regularizing 4429 ha of forest area for cultivation. The figure of 4429 ha is a complete underestimation of the ground situation (Table no 10). This proposal is pending from last five years due to the Supreme Court ban of regularization of forest land.

<table>
<thead>
<tr>
<th>Data submitted by GOO to MOEF/Supreme Court on forest encroachments</th>
<th>Data from other official sources</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>42605 hectares</strong> in whole of Orissa (Both pre 1980 and post 1980 encroachments)(^{34}).</td>
<td>As per Nowrangpur Working Plan, 1999-2009, in Nowrangpur Forest division, <strong>35,000 hectares</strong> of forestland are under settled cultivation in contrast to the figure of 18129 hectares reported by the GOO in the data submitted to MOEF. Another official document of the Forest Department estimates that in 1998, <strong>46,126 hectares</strong> of forest lands were under encroachment in Nowrangpur Division alone.</td>
</tr>
<tr>
<td>Pre-1980 encroachments for the whole state submitted for regularization by the GOO: <strong>4729 hectares</strong> for 5113 families(^{35}).</td>
<td>In Nowrangpur Division, the Working Plan enumerates 23039.45 hectares as pre-1980 encroachments. Pre-1980’s claims collected by Campaign for Survival With Dignity (CSD) from a small part of forested areas of Orissa for only settled cultivation add up to approximately 20,000(^{36}).</td>
</tr>
</tbody>
</table>

Along with the 1990 Circular on Regularization of Forest Land encroachments, the MOEF, GOI, has issued another circular which pertained to review of Disputed claim over Forest Land arising out of Forest Settlement. The circular deals with situations wherein rights of inhabitants on forest land were not inquired and settled as per law before the land was notified as forests. The Circular provides for the review of disputed claims arising from

- “deemed Reserve Forests”
- Claims in tribal areas where there is prima facie evidence that forest settlement was not proper because of incorrect maps/records or because the affected persons were not provided information properly
- Claims in tribal areas where the forest settlement is over but the final notification under section 20 of the IFA, 1927 is yet to be made.

The Circular asked the State Government to constitute committees, examine the above cases, and submit proposals to the MOEF, GOI, for providing titles to genuinely affected persons. In spite of the fact that most of the Reserved forests in Orissa are deemed Reserved Forests, and

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\(^{33}\) Supreme Court has given orders dated 13.11.2000 restraining de-reservation of forests till further orders and another order dated 23.11.2001 restraining regularization of encroachment on forest land till further orders.

\(^{34}\) The data was submitted through an affidavit by GOO to the Supreme Court. It is also reflected in a reply from MOEF, GOI, to a query raised by a MP from Orissa (GOO, 2004)

\(^{35}\) ibid

\(^{36}\) The Campaign for Survival and Dignity is a coalition of tribal organizations and NGOs which is advocating for the Draft Tribal Forest Rights Bill. As a part of the strategy, the Orissa Chapter of NCSD has embarked on filing applications of regularization of pre-1980s cultivation on forest land. This data is collated from the applications which have been filed.
that there are large areas of forests where settlements have been done, but the final notification
under section 21 of OFA, 1972 (equivalent to section 20, IFA, 1927) has not been done, there
has been no effort from the State Government to submit claims with respect to these areas.

The issue of tribal rights on forest land was included in the Common Minimum
Program of the current Government at Centre, and a draft bill called “The Scheduled Tribes
(Recognition Of Forest Rights) Act, 2005” is proposed to be introduced in the Parliament
in the current Monsoon session. The Bill legislates the provisions contained in the MOEF’s
guidelines of 1990, and allows pre-1980s cultivation on forest land to be regularized only
for Scheduled tribes. The Bill is facing strong opposition from conservationists and Forest
bureaucracy.

5 Displacement through land acquisition under development projects

Displacements through development projects, especially dams, mining and industrial
projects have been an important reason for land loss of tribals. Almost all the dam projects are
in undulating, hilly tracts and have higher proportion of tribal population. In many cases the
official displacement figures are underestimates, and many of the major projects like Hirakud
provide no figures about the tribal households displaced. Balimela, Upper Indravati, Upper
Kolab, Machkund, Salandi, Subarnarekha etc. are some of the major dam projects taken up in
scheduled districts, displacing tens of thousands of scheduled tribes households. Even dam
projects in non-scheduled areas tend to have large number of Scheduled tribes as displaced.

Most of the mines and industries in Orissa such as Rourkela Steel plant, HAL,
NALCO Alumina Refinery and mines for iron ore, coal, bauxite, limestone etc. are also located
in tribal areas. The casualness with which displacements of tribals have been treated is evident
by the fact that out of 13 major dam projects, no data is available on ST families displaced in 7
projects. Similarly out of 10 major industrial projects, no data on proportion of STs displaced
is available for seven projects.

There is no authentic data on actual displaced persons in the state. One study estimates
the total displacement by development projects in Orissa from 1950-1993 to be 79,621
households (Pandey, 1998). However, this is based on government data, which has been
challenged by researchers. For instance, as per the State Government, only 110,000 persons
were displaced by Hirakud dam, whereas other studies put the number as more than 180,000
(Patnaik, Das and Mishra, 1987 quoted in Pandey, 1998). Another estimate is that of 1.5
million people being displaced by development projects between 1951 and 1995, of which
42% were tribals. As per this estimate, less than 25% of the displaced tribals were ever
resettled even partially. Ota estimates that till 2000, about 2 million people in Orissa have been
directly affected by Development Projects in varying degrees out of which about 0.5 million
have been physically displaced losing their home & hearth from their original habitat.
Statistical figures further indicate that while Dam/Irrigation Projects alone have displaced
nearly 0.35 million people which is roughly 70% of the total displaced persons, industrial
Projects have displaced about 60,000 people which is 12% of the total displaced whereas the
Mining Projects, Urban Development Projects, thermal Projects & Wild Life Sanctuaries have
displaced 3.37%, 12.86%, 2.60% and 0.5% of the total displaced people in the State of Orissa
(Ota, 2001). The undivided Koraput district alone has lost 7.42% of its land area to 18
development projects.

Except for few irrigation projects, development projects have not provided land as
compensation. Even where the principle of land for land compensation was accepted, often
cash compensation was given as suitable land was not available. This has meant that Scheduled
Tribes have lost their ancestral lands for which they were provided legal rights. A study of
seven development projects with a sample of 301 hhs ( with 43.8% tribal households within the
sample) showed that legal landlessness increased from 15.6% of the households to 58.8% after displacement (Pandey, 1998).

More important, since large areas of land cultivated by scheduled tribes are not legally settled in their names, they receive no compensation when such land is taken up for development projects. Ota, in his study of displacement in upper Indravati Project\(^{37}\) found that on an average, each displaced family had been cultivating 1.50 acres of state owned and 2.34 acres of private land before displacement and that 49% of the sampled family were landless. After displacement, landlessness increased to 85.25%, the average legal landholding declined to 0.62 acres and the average government land cultivated came down to only 0.2 acres. (Ota, 2001). In Mangara village of Koraput district, 32 landless households will lose their access to the 20 ha of government land that they have been cultivating since long as these will be submerged by the Telengiri medium irrigation project (Kumar, 2004).

\[\text{Picture 9: Four major reservoirs in the tribal Koraput district (undivided). Together they submerge over 528 sq. km of the valley bottom land. Another 71 sq. km of this schedule V area has been acquired for HAL and NALCO}\]

\(^{37}\) Ota took a sample of 500 affected families. Of this 42% are tribal households.
<table>
<thead>
<tr>
<th>Name</th>
<th>Area (ha)</th>
<th>No. of hhs affected</th>
<th>Tribals hhs as % of total HHs affected</th>
<th>Source</th>
</tr>
</thead>
<tbody>
<tr>
<td>Machkund</td>
<td>6477</td>
<td>2938</td>
<td>1500 (51%)</td>
<td>Fernandes et al, 1992</td>
</tr>
<tr>
<td>Balimela</td>
<td>17496</td>
<td>1900</td>
<td>1507 (79%)</td>
<td>Diwakar, 1982</td>
</tr>
<tr>
<td>Upper Kolab</td>
<td>11350</td>
<td>3179</td>
<td>1421 (44.7%)</td>
<td>GOI, 1993</td>
</tr>
<tr>
<td>Indrawati</td>
<td>17263</td>
<td>5534</td>
<td>42%</td>
<td>Ota</td>
</tr>
<tr>
<td>HAL, Sunabeda</td>
<td>3764</td>
<td>468</td>
<td>NA</td>
<td>Pandey, 1998</td>
</tr>
<tr>
<td>NALCO, Damanjodi</td>
<td>3444</td>
<td>788</td>
<td>398</td>
<td>Pandey, 1998</td>
</tr>
</tbody>
</table>

Another important cause of displacement in schedule V areas is largescale mining and industrial projects. As much as 1019.47 sq. km. of land has been leased out for mining in Orissa, with most of these being in the Scheduled areas. The most important mining zones within scheduled areas are iron ore and manganese mining in Sundargarh and Keonjhar districts, coal in Sundergarh district, bauxite in Kalahandi, Koraput and Rayagada districts. Apart from displacement, mining and industries lead to large-scale influx of non-tribals, which often leads to social and political marginalization of the tribals. The environmental impacts are drastic and affect much larger number of people than directly displaced. Given the liberalization of mining and industrial policies which allows for direct foreign investments, large number of mining and industrial projects is in the pipeline, mostly to be located in scheduled areas. Some of these propose to carry out mining in areas inhabited by Primitive Tribal Groups, such as Dongaria Kondhs in Lanjigarh, Kalahandi and Juangs and Paudi Bhuiyans in Keonjhar and Sundergarh districts. A satellite picture of mining areas in Keonjhar district shows the massive impact of mining on forests and environment. These mines are located in Scheduled V areas.
Picture 10: Satellite picture (picture covers approximately 1000 sq. km. area) of mining in Schedule V areas of Keonjhar district. Part of these areas is the homelands of Paudi Bhuiyans and Juangs, Primitive tribal group.

Within the study villages, displacement through development projects has taken place in Badagada, Sambalpur district, through the Hirakud Dam project in the 1950s and the IB Valley thermal power station (ITPS) in the 80s. Some displacement has also taken place in Bangusahi village where land has been acquired for a canal.

5.4 Displacement and land loss in Badagada Village, Jharsuguda District

Badagada is a small village in the Jharsuguda district with a mixed population including scheduled tribes. The village is perched on the edge of Hirakud reservoir, sandwiched between the water and the high walls of Ib Thermal Power Station. The location tells a story of loss of land and habitat, twice in fifty years. In the early fifties, almost half the land of the village was submerged in the Hirakud reservoir. Again, in 1987-88 sizable land was acquired from the remaining village by Orissa Power Generation Corporation (OPGC) to set up the IB Thermal Power Station (ITPS). Only one-fourth of the pre Hirakud land is available to the villagers now.

At present, Badagada has 47 households, out of which 23 households belong to Schedule Tribe, 22 households belong to OBC and 2 households to the Schedule Caste. The first land loss came about in 1957, when 219 acres out of 382 acres of land owned by the villagers was submerged in the Hirakud Reservoir, leaving the villagers with a total of only 163 acres. Mainly good paddy lands were submerged, and therefore STs, who mainly owned marginal lands, lost comparatively less land, around 42 acres out of 122 acres owned by them.
The villagers got meager compensation for the lost land. At that time, a sort of land for land system was worked out under which the District Commissioner provided lease on government land to the oustees or people who lost their lands. This is known as DC lease. Within the village apparently 123 acres of DC lease was given. The condition of the lease was that the land should be developed and mutated within two years. Most of the people couldn’t do that and the DC lease land remained in Government ownership in the records, even though over a period of time, the villagers slowly developed these lands for agriculture. In the Major Settlement (the last Survey and Settlement in Sambalpur district), all the land for which DC lease had been given were retained as Government land, including forest land, even though most of these lands had already been developed by the villagers.

The next land acquisition for ITPS came in 1987-88, when the villagers lost a total of 63 acres of patta land in land acquisition and were left with barely 99 acres of patta lands.

This time the eastern part of the village, including the uplands was acquired, and STs lost almost half the land owned by them, leaving them only with a total landholding of 41 acres amongst 23 HHs. The ITPS also acquired most of the land which was being cultivated under DC lease as well as otherwise encroached by the villagers. The area acquired by ITPS also has large number of Mahua trees and Char trees, and the villagers lost the income that they used to get through selling mahua flowers and fruits and char seeds. The villagers, along with others agitated strongly against the acquisition of land, but to no avail. However, the agitation continued even after ITPS acquired the land, as people received no compensation against the DC lease land which was being cultivated by them since last 30-40 years. It is after prolonged agitation led by the local CPI MLA, the Government decided to allot land pattas against DC lease and to compensate those people who had lost their DC lease land in ITPS. After 40 years of losing land in Hirakud dam, pattas have been issued against Hirakud DC leases for 37 acres of land. Most of these are virtual pattas i.e. the land is already under occupation by ITPS and therefore the persons who own such pattas are eligible for getting compensation for these.
lands. Thirteen of the ST families eligible for getting compensation from ITPS haven’t received it till date.

At present, in view of the extreme shortage of land, villagers have taken to fishing in the reservoir as their main livelihood source. They also cultivate summer paddy in the area which emerges out of the Hirakud reservoir in the lean season, using the wastewater released by ITPS. This wastewater is highly polluted and ITPS has put boards asking people not to use the water. However, the villagers even use this water for bathing as well as irrigating their summer crops.

In last fifty years, the Scheduled tribes of Baragada village have lost 65% of the land originally owned by them, even though the number of households has increased from eight to twenty three. This has created a crisis of livelihood, forcing the tribals to shift from agriculture to fishing in the reservoir. For submergence in Hirakud, the compensation was very little (around Rs. 100/acre) and only part of the DC lease were converted to Patta, that too after a hiatus of forty years. Even now scheduled tribes persons like Ugrasen Naik are waiting for the compensation that was due to him for displacement in Hirakud dam, around fifty years back. In the ITPS the ST not only lost almost fifty percent of their patta land, but also the government land cultivated by them. A majority of them have yet to receive compensation.

5.5 Ongoing displacement in Scheduled Areas –Kashipur and Lanjigarh

Kashipur and Lanjigarh have become the byword for tribal resistance against displacement from mining and the environmental impacts of mining. In Kashipur, the local tribals have been resisting the bauxite mining and alumina refinery project of Utkal Alumina India Ltd (UAIL) and till date hasn’t allowed the project to come up, even though the administration has tried its best to push the project through, using both coercion and money. In 2000, the matters came to a head when three tribal protestors were shot dead by the police. Similarly in Lanjigarh, there have been strong protests by the local tribals against the establishment of an Alumina Refinery and proposed mining of Niyamgiri Hills for bauxite. In spite of continuous repression by the administration, the tribals are continuing to resist these projects.

Part of the reason for the strong resistance is the bitter experience of the tribals of Koraput and Rayagada with the earlier projects such as Upper Kolab, Indrawati, HAL, NALCO etc. which has led to destitution of a large number of tribals. Another important reason is that inspite of most of the land in the area proposed to be acquired being categorized as Government, most of the land is under cultivation by the tribals. Thus in Lanjigarh, while acquiring land from Vedanta, the local tribals cultivating government land were simply evicted without any compensation, destroying their livelihoods (Please see box no 5). Even those tribal families whose patta lands have been acquired haven’t received land for land, and have been dumped into a boxhouse colony totally inappropriate to tribal lifestyle. The compensation was given in cash only, which in absence of land has little use for the tribals. Similar situation exists in Kashipur, where those persons who have accepted compensation are not being offered land in lieu of land.

Both in Kashipur and Lanjigarh, acquisition of land from STs have been carried out in violation of OSATIP Regulation, 1956, Section 3(1), as the tribals have been made landless. In order to escape the legal consequences, the GOO is planning to amend the OSATIP Regulation, 1956, through inserting a clause allowing scheduled tribes to donate land for development purposes and lease out land to any corporate body. Such an amendment will remove all protection for tribal land alienation, as any non-tribal could float such a company and bribe the local administration to “arrange” a donation by the tribals.
5.6 Threat of livelihoods displacement in Dekapar Village

The large hill next to Dekapar village, called the Maliparbat, is being allocated to Hindalco, an aluminium producing company, for mining of bauxite. Apparently, the State Government has already signed MOU with the Company and only the environmental clearance from the Central Government is awaited. The local Revenue Inspector has asked the farmers cultivating the slope of this hill to stop using the land. It is estimated that 21 families will lose part of their customary land due to this hill being given for mining.

The villagers are even more worried about the supply of water from the hill. Two major springs flow from Maliparbat, and all the paddy fields of the village are located along these springs. Water from both the springs has is also diverted by the villagers and brought to the area just next to the settlement, where it is used to cultivate around 20 acres of vegetable cultivation in “bada” land. This vegetable cultivation is the most important source of regular cash income to the villagers, who sell them in nearby “Kunduli” hat. The water from one of the spring is also piped for drinking and domestic use, giving a continuous piped supply of water in the settlement the year round. The Villagers attribute the existence of spring to the bauxite deposit on the hill and believe that mining on the hill top will destroy the springs. One of the villagers said “In case the mining comes, the springs will dry out, and without the water from the springs, we will all die”.

All the villages around the Maliparbat are extremely opposed to the proposed mining, and while we were conducting fieldwork, a number of people from neighboring villages came and checked on us as people felt that we were working for the Company.

4.1 Loss of land through plantations

Plantations were used as a means to rehabilitate shifting cultivation land since the 1950s, both on forest land and on revenue department land. This has led to loss of access to large areas of shifting cultivation land and created constant conflicts between tribals and plantation implementing agencies. After 1980s, the state government initiated policies for providing usufructory rights on plantations taken up on revenue land – however, in many cases, such allocation of usufructory rights have conflicted with the pre-existing customary ownership, creating conflicts.

Within the study villages, it was found that large areas of customary land have been taken up for plantation by state agencies. In Podagarh, almost 150 acres of land used for shifting cultivation was planted with cashew by the soil conservation department in the 1970s. The plantation was later handed over to Orissa Cashew Development Corporation Ltd which auctions it annually for sums of approximately one hundred thousand rupees. The person who gets the auction protects the crop and sells the harvest in the open market- there is no access to the villagers to the produce of these plantations, even though their forebears customarily cultivated these lands.
Kondh women work as daily wage labor for harvesting of cashew nut from the OSCDC ltd plantation leased out to upper caste villager from Podagarha. The tribals claim this land as customarily belonging to them which has been taken away from them for the cashew plantation.

In Dekapar, large areas of the hill slopes were taken up for plantations by the Forest Department and Soil Conservation Department repeatedly, even though much of this land has been terraced by the villagers for cultivation. Most of the initial plantations were destroyed by the villagers, leading to fines and harassment by the forest department.

Since 1980-81, Government of Orissa launched Economic Rehabilitation for Rural Poor (ERRP) under which plantations were carried out on government land and then usufructory rights were to be given to landless poor. Large areas of such plantations, especially cashew, were carried out and usufructory rights given to landless. However, the allotment of these usufructory rights often creates conflicts between customary owners and those allotted the rights. No usufructory rights are provided on plantations on forest land. Since last few years, usufructory rights on plantations carried out on revenue land under various development programs are supposed to be provided. However, the allocation of usufructory rights is not a priority and is often done in a slipshod manner, creating conflicts and confusion.

In the last four years, most of the slopes in Dekapar have been planted under various schemes such as Coffee plantation (initial shade tree), cashew plantation by soil conservation department and a watershed project. The villagers haven’t destroyed these plantations as they have been promised rights over them- however, no action has been taken regarding issuing of usufructory rights. The villagers of Dekapar have lost as much as 142 acres of cultivable land within these plantations. As many as 25 households have migrated out of Dekapar in the last twenty five years. Out of these, as may as 23 households have migrated permanently because they had little or no patta land, and plantations were carried out on their customarily owned lands. These families have migrated to neighboring Nowrangpur district and to Andhra Pradesh. Little is known about their current situation.
4.1.1 Compensatory afforestation in Kadalibadi, Juangpirh, Keonjhar:

In Kadalibadi, a Juang village in Keonjhar, compensatory afforestation has led to displacement of Juang tribals, a PTG, from their customary swidden land not recorded in their names. In this village, only 25 ha out of total 283 ha in the village is legally available to the village residents. 37 out of 44 families hold 25 ha with an average holding size of only 0.66 ha. The access to agricultural land is seen to worsen further when the types of holdings are analyzed. It shows an abysmally low holding of 0.09 ha of paddy land per household, 0.21 ha of other land including homestead and 0.36 ha of orchard land (bagayat). The households have only usufructory rights on the orchard lands (43% of total holdings).

During 1993-1999, 77.186 ha38 (27% of the village area) was leased to Forest Department to carry out plantations. This area of 77.186 ha has been diverted from un cultivable waste land of the Village lying under the control of Revenue Department. Plantations have already been carried out in these lands. In 2005, another 43 ha. (12% of village area) in the village have been leased out to Forest Department for compensatory afforestation for Ingani Jharan Mining Company. Compensatory afforestation is taken up under the Forest Conservation Act, 1980 in case of diversion of forest land to non-forest use such as mining, reservoirs etc. The land which is afforested has to be recategorised as forest land.

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

The above process has violated many laws, apart from its ethical and social justice implications. The most important violation is that of the Schedule V of the constitution which enjoins the State to protect the Scheduled tribe’s rights in land. The **section 3(iii) of the OSATIP Regulations (1956)** is also violated by turning scheduled tribes “effectively” landless. This section provides a minimum benchmark of 2 acres of irrigated or five acres of unirrigated land for ownership by scheduled tribes before any land is their possession can be transferred. By not recognizing their cultivation rights and by evicting scheduled tribe persons from the land possessed and cultivated by them for generations, this provision is violated. Both as per the principal of adverse possession in Orissa Land Reforms Act, 1960 and as per the **section 7(a)** of **Orissa prevention of Land Encroachment Act, 1972**, such land should have been settled with the landless persons to the extent of one standard acre (equivalent to 4.5 acres of uplands).

5 Poor implementation of land regularization and distribution as per OLR Act, 1960, OGLS Act, 1962 and OPLE Act, 1972:

The laws and policies dealing with land and forest rights settlement have many weaknesses which have manifested in insecure rights of tribals over their land and natural resources. However, the implementation of existing laws which could have helped ameliorate the

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38 khata no 32/1 in ROR of Kadalibadi, Telkoi Tehsil, Keonjhar Sub-Division, Keonjhar District

http://bhulekh.ori.nic.in
situation has also been lacking greatly. These include implementation of Orissa Land Reforms Act, 1960, Orissa Government Land Settlement Act, 1962 and the Orissa Prevention of Land Encroachment Act, 1972 in the spirit they were formulated.

The case studies bring out the poor implementation of provisions of these Acts relating to settlement of Government land with landless and poor specially Scheduled Tribes and Scheduled castes. The provisions in OGLS Act, 1962, which provides for the settlement of land with SC and STs to the extent of 70% of the state land eligible for settlement doesn’t seem to have been followed anywhere in the case studies. Similarly, the provision of OPLE, 1972 (Section 7(2a), regarding regularization of encroachment up to one standard acres doesn’t seem to have been followed in any of the case studies.

Thus, in the Scheduled areas, almost 50% of the scheduled tribe cultivators are marginal and landless, with an average landholding of 0.45 standard acres only. As per the State Government, there are 150,000 landless tribal families in the State, with 14,913 families in Mayurbhanj, followed by Rayagada (14,120 families) and Koraput (11,672 families). The State Government also claims to have distributed 377,000 acres of land to 224,000 scheduled tribe families since 1974-75.

However, most of this land was settled in late 1970s. In the decade of 1980-1990, a total of only 23,540 acres were distributed to 16,580 ST families. In 1988-89 to 1998-99, a total of 13,804 acres of land was distributed to 12,752 families. In the last five years, 11,173 acres of land were distributed to 10,540 families. Thus at this rate, distributing land to 150,000 landless families will take at least twenty years.

There is a clear need to accelerate land distribution program to tribal households, especially in districts where sufficient revenue land is available. This included districts like Gajapati, Rayagada, Koraput, parts of Kalahandi (Thuamulrampur and Lanjigarh blocks), Kondhmal, Malkangiri, the scheduled areas in Keonjhar etc.

The number of landless tribal families as provided by the State Government seems to be an underestimate when compared to the Agricultural Census Data, 1995-96. A very preliminary analysis shows that out of 1.7 million operational landholdings held by Scheduled tribes, nearly 50% are marginal landholdings (approximately 0.58 million hh) with an average holding of 0.44 standard acres each. Calculations based on number of operational landholdings and the census data also show that the number of total rural households (based on 1991 census data) is approximately 0.3 million households more than the number of operational holdings in 1995-96. It is a moot question that whether this figure reflects the actual number of landless scheduled tribe households or not. There is also the need to identify the landless and the marginal ST households through thorough surveys and study of land records and prioritize settlement of land. At the same time, Bhoodan land and Ceiling surplus land lying with the Revenue Department which have not been distributed to landless SC and STs should be distributed expeditiously.

5.1 Allocation of Government Land in Dekapar Village

In Dekapar village, out of the 107 tribal households surveyed, 74 were either marginal farmers or completely landless, and the average legal landholdings of these 74 households was only 0.37 standard acres. The total amount of land owned as patta land by these families was approximately 150 acres only. However, the same 74 households are cultivating government owned land to the extent of 69.20 acres. More important, these 74 households have lost access to 86.30 acres to plantations taken up under various programs and have mortgaged out 11.13 acres to other farmers. The Revenue lands which are seen as being within the customary area

39 This data is based on calculations carried out on basis of Agricultural Census, 1995-96.
of Dekapar village amount to approximately 967 acres\(^{40}\). Out of a total area of 1113 acres within Dekapar’s customary boundary, only 140 acres is patta land.

Even though the average landholding of 107 families surveyed in the village was only 0.37 standard acres, only 13.52 acres of revenue land has been settled with 24 families in Dekapar till date. Out of this, only 1.01 is paddy land (2 households), 0.36 acres is homestead land (to 9 households) and 12.15 acres is Dongar i.e. uplands (to 13 households).

An analysis of the caste wise settlement of Government land in the last 40 years brings out very interesting facts to light. In Sorisiopada (the revenue village of Dekapar), 69% of SC households (29 out of 42 hhs) have received 27 acres of government land, whereas 14% of the tribal households (38 out of 182 hhs) have received government land of extent 23.81 acres. For other castes, only 9% of the households (17 out of 182 hhs) have received land to the extent of 15.37 acres.

However, it was observed that almost all the land allocated to SCs and STs are uplands, with poor productivity, whereas almost 60% of the land allocated to General Castes is low land suitable for paddy, which is highly productive. If the land allocated is converted to standard acres, the situation looks like this:

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\(^{40}\) This was calculated by adding the area of the plot numbers of Revenue wastelands in the cadastral map which lie within the customary area of Dekapar.
In spite of the liberal and pro SC/ST legislations like the OGLS, 1962 and OPLE, 1972, this illustrates a bias against settling land with scheduled tribes and Scheduled castes.

5.2 Bangusahi Village, Gajapati
The Bangusahi village in Gajapati districts provided an even more dismal picture of implementation of the above laws. 54 households in the village have only 62.5 acres of land, of which 90% is quality IV land. This translates to approximately 15 standard acres, implying that the average landholding in the village is only 0.28 standard acres. This is in spite of the fact that 85% of the village area is categorized as government land, with 75% being uncultivable wastelands used for podu cultivation for generations. In most of the shifting cultivation land, the tribals have planted cashew trees, and take intercropping between the cashew trees. The cashew trees are planted and managed by the families which had been using the land for shifting cultivation. However, except for Usufructory rights given to 11 families over 2.25 acres each on these lands, others have no formal rights on these lands.

5.3 Ceiling Surplus land in Podagarh, Koraput
An analysis of the Podagarh Village Record of Rights brought out that one family, that of the local intermediary tenure holder, held approximately 180 acres of land at the time of Survey and Settlement, out of the total 895 acres of land settled in the Podagarh village. Out of this 180 acres, 52 acres was transferred as ceiling surplus land to Abad Jogya Anabadi Khata (Cultivable Wastelands category) in 1974. This land continues to remain in the Cultivable Wastelands Category till date, even though it should have been distributed to the landless ST and SC families in the village who are still available in the village.

6 Summing up the issues of tribal land access
The above discussion of typologies brings out the complex matrix of policies, laws and local contexts which frames the issue of tribal access to land. In policy circles, land issues have been seen through the simple lens of alienation of tribal land, which provides only a partial picture. It is obvious that the issue of alienation of patta land by non-tribals through land mortgages and sale is extremely serious. Historically, this has been the most critical mode of loss of good quality agricultural land by tribal. However, given that there is a strict law which forbids it since 2002 and allows for restoration of land which has been illegally transferred since 1956, the major intervention in this regards would be ensure better implementation of this law and extension of similar provisions to non-scheduled areas.

The flaws in the Survey and Settlements, revenue administration and forest declaration which have led to non-recognition of customary tribal land ownership has meant that
cultivation by tribal on such customary lands has become criminalized. Often such lands are diverted by the government for plantations or other activities. Even where tribals continue to cultivate such lands, uncertainty of tenure means that they can’t invest on these lands nor can they access formal credit for such development. In two of the four case studies, it was found that tribal households have lost access to such land occupied by them by government plantations. The same situation was observed in Kadalibadi case study with the Juangs. In Dekapar, this led to out migration of 26 families, whereas in Kadalibadi, the Juangs have not been able to plant paddy this year at all.

Lack of secure rights over their customary landscapes, has meant that the state has been at liberty to displace tribal from their livelihoods and resources easily, even without paying any compensation. Hundreds of thousands of tribals have been displaced in this manner by dams, industries and other development projects as well as wildlife sanctuaries. Displacement has a devastating impact on tribal psyche, given their cultural attachment to their land and their clans, and their inability to adjust to new locations. The rehabilitation and resettlement packages have been dismal, even not providing land for land in most situations, leaving the vulnerable tribal to their own devices.

From all metrics the situation of Tribals in Orissa remains dismal. The current situation continues to exist because of many reasons. The tribal communities are held in contempt by the dominant caste based Hindu society, which holds the reins of power in the State. Evolutionism and negative stereotypes about tribal from the colonial era has merged with the Indian elite’s ideas of “assimilationism” to produce a disdain for tribal culture that is almost universal among the non-tribals who live near adivasis and have power over them (Padel, 1995). This contempt and disdain is reflected in the prevalent discourses of “shifting cultivation” being a “pernicious and evil” practice, tribals being socially and culturally backward etc.. Any discussion with local officials or local non tribal elite will bring out these biases - that tribals are dirty, superstitious, ignorant, backward, addicted to drinking, with loose morals etc. etc. At the best, they are “simple, innocent, straightforward people” who need to be protected and whose culture needs to be preserved.

At the same time, a normality of extortion and exploitation (Padel, 1995) has been established, with lower level policemen, forest guards and revenue officers demanding bribes and benefits from tribals in a routine way. The lack of rights on land and the dependence on forests for livelihoods play into the hand of these petty officials, who extract bribes for each and every “criminalized” activity necessary for tribals’ survival. Thus lack of rights over land and other resources not only leads to extraction of rent from tribals, it also disempowers them vis-à-vis the local officials and non-tribals which are much more familiar and conversant with the laws and procedures of bureaucracy.

Even when the culture of tribals is admitted to be special, it is sought to be captured in museums and monographs as show pieces. Padel goes to the extent of calling the present situation in tribal India as “internal colonialism” (Padel, 1995). The Vedanta and the Kadalibadi cases illustrate the contempt and ease with which tribals are displaced from their customary land. The same processes have been repeated time and again in all tribal areas where development projects have been implemented.

Such exploitation and dispossession explains the growing disenchantment of tribal communities with current governance processes, as it fails to address these critical issues. Improving tribal access to land and other natural resources is not even a part of the development discourse in tribal areas, even though hundreds of millions of rupees are being spent on tribal development programs. Even watershed development programs, with explicit focus on development of natural resources and land on a watershed basis, have nowhere addressed these issues. This raises doubt about the very relevance of these development programs to tribal situation.
The situation in scheduled areas continues to deteriorate, with increasing conflicts, ingress of non-tribals, increasing mining and industrialization. The scheduled areas of Orissa are part of the forested heartlands of India, where incredible poverty and dispossession exists in tandem with a vast potential for violence and conflicts. This study, though an exploratory one, hopes to be a frontrunner for a number of studies and research which go into the structural causes of poverty and conflicts in these areas.

The study is a preliminary one, which has touched on various issues relating to tribal land without carrying out a statistically valid analysis of any of these issues. There is an urgent need to validate some of the findings through more detailed studies with larger and more representative samples. In spite of this, we have made some recommendations, many of them tentative, which need to be discussed in both political and policy making circles. However, it needs to be clear that nothing short of political empowerment of the tribals is going to change the situation in the tribal areas of Orissa- the moot question is whether this empowerment will come from the barrel of guns or through a process of negotiations and enlightened governance.
Section III

Some Recommendations

1  Some basic principals which need to be adopted:

1.1 Adoption of community ownership concept

Some of the tribal communities practice communal ownership of land, specifically in case of swidden cultivation. Even other tribal communities which practice individual ownership on swidden, often exercise customary communal ownership over forests, common lands etc. The individual ownership is often embedded in the larger context of communal or clan control. The principal of communal control over land within the customary jurisdiction of a settlement or village needs to be recognized. At present, the control of these lands is with Revenue Department in case of Revenue land and Forest Department in case of Forest Land. As shown earlier, these two categories of land controlled comprise 75% of the land in Scheduled districts. In individual villages cases it is found that most of the land within the village is comprised of these categories, on which the local tribal communities have no say or control even though they use most of these lands for livelihoods. The control over these lands must be shifted to tribal communities.

This was precisely the premise of Bhuria Committee Report, Panchayati Raj Extension to Scheduled Areas(PESA), 1996 as well as that of Orissa Panchayati Act, 1964. The Orissa Panchayati Raj Act, 1964, clearly mentions in Section 71(4), that properties vested in the Gram Sasan and under its management, direction and control include Wastelands and communal lands and Protected Forests within the meaning of Indian Forest Act, 1927 and Unreserved Forests within the meaning of Madras Forest Act, 1882 in respect of management, protection and maintenance thereof for timber, fuel, fodder and other purposes. However, this section has never been operationalised.

1.2 Acceptance of rights over swidden cultivation land which needs to be settled with individuals or communities:

The greatest injustice against the tribal communities has been the denial of rights over their customary swidden. It is made doubly tragic by the fact that most of this land grab was carried out after independence. This single factor has been the most important source of land loss to swiddening tribal communities. Shifting or swidden cultivation has been demonized without much scientific proof, and the state took the expedient path of denying rights to the land used for shifting cultivation by converting it into revenue wastelands or forest lands. This had led to a situation where these lands are still used by the tribal community but without any tenurial security, thereby reducing the incentive to manage these lands better.

1.3 Adoption of Samata Judgment

Development projects have been a major source of loss of land and livelihoods to the tribal people. By various means, the state administration has circumvented the protection in land provided to STs in the Indian Constitution. The increasing industrialization and extractive mining in Orissa is concentrated primarily in scheduled areas. Such activities not only lead to displacement of the scheduled tribes, but also disrupt their social-cultural milieu through invasion of outsiders. It is with such a perspective that the Supreme Court’s Samata Judgment was passed, which enjoined upon all States to pass laws similar to that of Andhra Pradesh to protect tribal interest in land. The GOO has ignored the judgment, with consequences which
are illustrated in the case studies of Vedanta and Kadalibadi, Keonjhar as well as the situation in Kashipur. It is imperative that in transfer of land to non-tribals in scheduled areas be banned completely, as it is in AP at present and as enjoined by the Supreme Court in its Samata Judgment.

1.4 Adoption of minimum landownership principle

The existing laws for regularizing encroachments say that a person is to be considered landless if the household owns less than one standard acre of land. The OSATIP Regulations, 1956, lays down that if a tribal household owns less than 2 acres of irrigated land or five acres of unirrigated land, no land can be transferred from them. These two acts can be read together to mean the legislature perceives that an area of two irrigated acres or 5 unirrigated acres is the minimum a tribal household needs to survive. However, our analysis shows that average landholdings of a marginal ST farmer in scheduled areas is only 0.44 standard acres. This implies that there is acute land shortage for most of the tribal households, even though there are large extents of state owned land, including forest lands, available in the tribal districts and which are often under the occupation of the tribals.

1.5 Declaration of exclusive PTG homelands

The Kadalibadi case of Juangs, the Vedanta controversy and the plight of Chuktia Bhunjias in Sunabeda sanctuary, illustrate the vulnerability of the Primitive tribal groups in face of laws and rules of land and forests. This is combined with an utter insensitivity among the local staff of the forest and revenue departments regarding the special situation of these tribes and their customary rights over land. Development projects, including mining (Bhuiyans and Juangs affected by iron ore mining, Dongaria Kondhs to be affected by bauxite mining) and afforestation and in other cases, conservation itself (Kutia Kondhs in Kotgarh sanctuaries, Lanjia Saoras in Lakhari sanctuary, Chuktia Bhunjias in Sunabeda Sanctuary and Mankadias in Simlipal sanctuary) pose threats to these primitive tribes. It is necessary to declare the homelands of these tribes as inviolate ancestral territories and stop all mega development in these areas. Conservation in their ancestral areas should be focused on the PTGs as well as the biodiversity, and operation of laws such as FCA, 1980, WLPA, 1972 should be withdrawn through the special powers given to the Governor in respect of Schedule V areas. Possibilities of framing special laws under these powers may also be explored including laws banning non-PTGs ownership of land in these areas and communal rights to PTGs on land and forests.

1.6 Transparency and simplification of land administration

One of the most important principles that need to be followed is transparency and simplification in land administration. At present, it is extremely difficult for a layperson (and researchers) to be able to access land records, both for their own holdings and for the village as a whole. The local revenue and forests officials are not at all accountable to the local self governments and local people. The lack of transparency and accountability gives tremendous powers to the local officials over landholders, especially over illiterate tribals. Computerization of land records has helped in increasing transparency, yet in absence of proper record maintenance, it has been only partially useful.

1.7 Effective land administration and land distribution as a core development strategy for poverty alleviation and development in tribal areas

Large amounts of funds are being pumped into tribal areas for tribal development and poverty alleviation. The development strategies include watershed development, plantations of horticulture species among other initiatives. Many of these initiatives, specially land based ones, tend to founder because of land tenure related issues. Even the capacity to take risk in
non-farm sector activities is aggravated by the fact that most tribals are landless and marginal farmers. A study on watershed development carried out by the author shows that much of the investments in watershed development is unsustainable in absence of proper land tenure and access to tribals. Without proper access to land and land based resources, it is difficult to perceive how poverty alleviation in tribal areas can be carried out. Unfortunately, there seems to have been little synergy between land administration and development administration, and land reforms haven’t been integrated till now into development strategy. Given the situation as described in the study, and the central role of land in tribal livelihood and culture, land administration reforms should be made the core of the development strategy in tribal areas, and all other development process should be built around the issues of land access and rights.

2 Recommendations relating to land alienation through private transactions

2.1 Definition of standard acre
The current definition of standard acre doesn’t take into account the lower production in hilly tribal districts, and therefore there is a need to enhance the area of different categories of land equivalent to one standard acre. A new category V which includes agricultural land on hill slope should also be introduced.

2.2 Review of land records
With computerization of land records, it has become easier to monitor the land transactions in a village. It is suggested that third parties may be engaged to select villages on a random sample basis and carry out detailed review of landownership as per ground reality vis-à-vis the records, and to identify cases of land alienation from tribals, including through oral mortgages, and to take action to get the land restored.

2.3 Baseline survey of land ownership in the villages before taking up watershed, irrigation and other area based schemes
In tribal areas, for any area based scheme to be taken up in a village, including programs like watershed development, irrigation projects etc. a land ownership survey and analysis should be made mandatory. Such a survey should analyze land in actual possession of each household in the village, legal status of such land and amount of land mortgaged out by STs and others. The survey and analysis should be used to formalize ownership over state owned land eligible for regularization and to ensure recovery of land mortgaged out. Such a survey, analysis and projected action plan should form an integral part of any microplanning or participatory planning for rural development projects.

2.4 Ceiling surplus land
It was observed that ceiling surplus land has not been allocated to the landless SCs and STs in Podagarh, even though Section 51 of the OLR Act, 1960 clearly specifies that at least 70% of the ceiling surplus land should be settled with SC and ST in proportion to their respective population in the village where the ceiling surplus land is situated. A review of all ceiling surplus land in tribal districts must be carried out

2.5 Creation of tribal land bank
Given that the ST can’t sell or transfer their land to non-tribals, the land market for tribal owned land is depressed. This creates a situation where benami transactions or informal mortgages at very low rates become common, leading to effective land alienation with very low returns to the STs. To avoid this, the State Government may think of setting up a tribal land bank in scheduled areas, which could offer loans to tribals in lieu of land mortgage or
could purchase tribal land when tribals can’t get fair market price for land. Land which is transferred to the Tribal Land bank either through purchase or through failure to redeem mortgage could be allocated to landless ST in the same village.

2.6 Land restoration
Section 3(b) of OSATIP Regulation, 1956, makes it mandatory for any person who is in possession as on 4th sept, 2002 of agricultural land belonging to a Scheduled Tribe at any time after between 1956 and 2002, has to submit to the sub-collector details of how the person has come to be in possession of such land within two years. In case the person fails to do so, it will be presumed that the land has been transferred illegally and the land will be reverted to the original tribal owner. The deadline for the submission of the details was September, 2004, which apparently have been extended to September 2005. The State Government should take this deadline seriously and strictly deal with those persons who illegally possess land after the deadline.

2.7 Land acquisition/purchase from non-tribals for transfer to non-tribals
In locations where tribal landlessness is very high and there are no other sources of land, Government could consider purchasing or acquiring land from non-tribals for allocation to tribals. This should be specially made applicable to areas where Primitive Tribal Groups reside.

2.8 Local credit systems
It is vital to promote local community based thrift and credit systems from which scheduled tribes could borrow money at time of need. The spreading network of SHGs and grain banks in the tribal areas is extremely significant in this regards, and such groups could be provided further support to ensure that tribals can receive credit within community without mortgaging or selling land.

3 Recommendations related to lack of proper recording of occupation rights through survey and settlements

3.1 Individual ownership rights on shifting cultivation lands categorized as revenue lands
In most tribes the shifting cultivation area of a settlement or clan is well delineated in comparison with other clans or settlement. For most tribes such as Kondhs and Saoras within the traditional boundary, the individual lineages tend to have well defined areas where households return after every fallow cycle. This in effect is individual ownership of swidden land, and now in many areas the cycle has become shorts enough for it to be considered as short fallows. However during the Survey and Settlements, such areas were deliberately considered as discontinuous cultivation and were therefore not considered as eligible for ryoti rights. In spite of all attempts to curtail shifting cultivation, the practice continues due to its vital economic and cultural importance for the swiddening tribes. In the study we observed attempts by the tribal cultivators to develop their customary land through stone bunding and cashew plantations. Providing rights to them on these lands will create greater incentives for improving and regenerating these lands. In spite of the various government orders and circulars, there has been little progress in settling these lands with the private cultivators. Such lands should be expressly settled with the tribal households which cultivate them. A reasonable ceiling could be imposed on how much land of this category could be settled with each household.
3.2 Removing 30% slope criteria for settling land with cultivators
The criteria of settling land only below 30% slope as raiyati land is not necessary as tribals cultivate and use land even above 30% slope. There is little evidence that state ownership and management will lead to better and more sustainable management of these lands. However, there is sufficient evidence that tribals are capable of managing these lands through terracing and agro forestry/ agri-horticulture systems (e.g. terracing in Dekapar, cashew plantations in Bangusahi and Podagarh). Such land should also be settled with the customary cultivators.

3.3 Communal rights on land within traditional boundary of the village
Based on the Section 71(4) of Orissa Panchayat Act, 1964, all wastelands and protected forests within the village should be brought under the control of the Gram Sasan. This needs to be implemented in scheduled areas and the Palli Sabha and Gram Sabha be given management control of all the land that is not patta land. Suitable rules under Gram Panchayat Act, 1964, can be framed for this purpose to ensure that the control of these lands rests genuinely with local communities and not with bureaucracy. Amendments may also be needed to be made in the Orissa Government Land Settlement Act, 1962.

3.4 Unsurveyed areas
Survey and Settlement in these areas should be taken up as soon as possible. The principle of settling the cultivated land, including land on hill slopes, with cultivators and the rest of the land within the village with the Palli Sabha should be followed. In areas where tribals are not interested in individual landholdings, the land within the traditional village boundary should be settled in the name of the community. Suitable amendments in the Orissa land Settlement Act, 1958, and Orissa Government Land Settlement Act, 1962, should be passed to allow community control and ownership of land within traditional village boundaries.

3.5 Primitive Tribal Groups
The Land Settlement processes in PTG areas have been carried out on the same line as any other part of the state. This has left the PTGs extremely vulnerable and at a disadvantage. The Kadalibadi case illustrates how lack of rights on communal lands has led to land alienation of these extremely vulnerable sections. Similar situation exists for Chukta Bhunjias and Kutia Kondhs, whose ancestral areas have been declared as Sunabeda Wild Life Sanctuary and Kotgarh Sanctuary respectively, where they have no rights on forests or its produce or on their traditional swidden lands. The Dongaria Kondhs are threatened by mining of their most sacred mountain, the Niyamgiri, for bauxite. The PTGs generally live in the most remote areas, very rich in forests and water, and which often is the source of major river systems. It is essential to protect both the unique culture of these PTGs and their habitat. Legislation on lines of “ancestral lands” in other countries or on lines of North-East India, which confers rights on all land within their ancestral areas to the communities, may be considered for the PTGs. In the meanwhile, a strong policy decision must be taken to stop all transfer, alienation or acquisition of land in their ancestral area. This restriction should also include transfer of land categorized as Government land, as most of the customary land in the homelands of PTGs has been settled as Government Land. Land owned by non-PTGs within these areas could be purchased or acquired and distributed to the PTGs on community or individual basis. No new forest lands of any type should be declared in PTG areas.
4 Recommendations related to forest land

4.1 Till date, the State Government has not taken the problem of forest land seriously, as evidenced by the meager area submitted by it for regularization to MOEF, GOI and the lack of follow up. The reasons are manifold, but fundamentally arise from the lack of political voice of the tribals in Orissa. Therefore an important intervention in the area would be to sensitize political and community leaders through campaigning backed up by good data and analysis.

4.2 Draft Tribal Forest Rights Bill
The Draft Forest Rights Bill, if it becomes law, and if implemented properly, may resolve a number of problems that have become urgent in the tribal districts. It provides for rights to pre-1980s cultivation on forest land to the scheduled tribes in scheduled areas to the extent of 2.5 ha. of land a household. It will also provide rights on forests and forest products in scheduled areas. In the event of the passing of the Bill, a coordinated effort will be required from the civil society, including NGOs and tribal organizations, to ensure that the law is implemented properly.

However, the bill is strongly contested by a strong conservation lobby. In case it is not passed, the 1990 MOEF Guidelines will need to be pursued with renewed vigor in Orissa. In both these cases, proactive action need to be taken to create information bases on the extent of forest land under cultivation by tribals, the legal situation of such cultivation and how these lands can be regularized with the cultivators.

4.3 Revised guidelines for identification of cultivation on forest land before 1980
The Government of Orissa, while identifying the pre-1980s encroachers, took into account only those households against whom cases of forest encroachments filed before 1980. Such cases are very limited in number as very few forest cases were filed. In Maharashtra, the Government has passed a resolution which allows different types of evidences to be used to confirm residence or cultivation on forest land, including voter IDs, census data etc. Evidence submitted by Gram Sabha of the panchayat is also allowed. This resolution has led to accelerated settlement of forest land issues in Maharashtra under the 1990 Guidelines of MOEF, GOI. A similar resolution from Government of Orissa which accepts alternate proofs for pre-1980s cultivation in Orissa needs to be issued which will accept other proofs of pre-1980 possession of forest land, including census data, voter registration etc.

4.4 Implementation of circular no 13-1/90-FP92 of the MOEF, GOI on review of Disputed Claims over Forest Land arising out of Forest Settlement: Since a large proportion of the cultivation by tribals on forest land will fall in the category of disputed claims as per the circular no 13-1/90-FP92, the State Government should review the whole issue of disputed claims arising from declaration of Deemed Forests, areas known as proposed Reserved Forests and areas where prima facie problems in forest settlements exist. Providing the responsibility of such a review to Forest Department and Revenue Department is unlikely to yield proper results. It is suggested that such a review should be taken up by an independent committee set up for this purpose, preferably under the auspices of a House Committee of the Legislative Assembly.

5 Displacement in tribal areas

5.1 Re-examining displacement policies in Scheduled Areas
The issue of displacement in scheduled areas needs to be revisited, specially in view of the pre-existing situation arising out of poor settlement of rights of tribals on land. The various cases and examples cited in the study show how state itself has violated protection of tribal rights in land as provided in Schedule V of the constitution (Kadalibari case, Juangpirim; Vedanta case, Kalahandi; Mallaguda case, Malkangiri etc.). In cases like Kadalibadi and Vedanta, carried out after the 1996 amendment and 2002 amendment in OSATIP Regulations, 1956, there is legal violation of section 3 of OSATIP Regulations, 1956. In other cases of displacement which were prior to 1996, where large number of tribals have been converted into landless, the protections in Schedule V of the constitution have been violated, at least in spirit.

The GOO has been in the process of preparing a common Rehabilitation and Resettlement Policy. The draft circulated for comments does indicate the need to provide land for land, especially for scheduled tribes, but doesn’t make it mandatory. It also provides for pre-displacement survey of the land to identify government land under occupation by the Scheduled Tribes and to treat this land as equivalent to Raiyati land to the extent permitted by OPLE Act, 1972. This included land cultivated up to 30% slope by tribals. It also allows for either compensation in form of land, or as a job in the concern causing displacement or in case the above two are not available, cash compensation. A SC or ST family which is completely displaced with be provided one and half times the compensation provided to others.

Given the extremely poor record in terms of displacement in tribal areas, the new rehabilitation policy doesn’t seem to address the fundamental problems in tribal areas i.e. the communal nature of ownership of land and the extreme cultural and social dislocation faced by displacement as well as inevitable influx of outsiders which accompanies any development project. Most irrigation projects provided for land for land compensation, but inevitably ended up handing out cash compensation to most of the displaced. The ability of subsistence based peasantry to handle large amounts of cash compensation to start a new life is extremely poor and most of them end up being pauperized. To allow large-scale displacement in scheduled areas in such a situation, especially given the constitutional protection in land, needs to be questioned.

5.2 Strengthening OSATIP Regulation, 1956, on lines of the Andhra Pradesh Scheduled Area Land Transfer regulation, 1959 (as amended in 1970)

The AP regulation absolutely bans all transfers of land in scheduled areas to non-tribals whereas OSATIP regulation, 1956 (amended in 2002) forbids all transfers from Scheduled tribes to non-tribals in scheduled areas. The High Court of Orissa has used this distinction to rule that the State Government can acquire land owned by scheduled tribes for transfer to non-tribals through Land Acquisition Act, 1894. Large areas of land in Scheduled Areas, including in territories of Primitive Tribal Groups (PTGs) are being acquired in districts like Keonjhar and Sundargarh (iron ore and manganese mines, steel factories) and in scheduled areas of South Orissa (Kalahandi, Koraput, Rayagada) for bauxite mining and alumina refineries, along with associated infrastructure. These area all private companies. In many areas such land acquisition is being fiercely resisted by tribal communities, as in Kashipur and Lanjigarh, leading to considerable state repression.

Both in Kashipur and Lanjigarh, acquisition of land from STs have been carried out in violation of OSATIP Regulation, 1956, Section 3(1), as the tribals have been made landless. In order to escape the legal consequences, the GOO is planning to amend the OSATIP Regulation, 1956, itself through inserting a clause allowing scheduled tribes to donate land for development purposes and lease out land to any corporate body. Such an amendment will remove all protection for tribal land alienation, as any non-tribal could float a company and bribe the local administration to allow such a transfer. The role of state machinery in facilitating private capital’s control of natural resources, specially minerals, in the scheduled
areas of Orissa has been well documented by various Human Rights Organizations (PUCL, 2005). In many instances even existing laws are being contravened with impunity by private companies in collaboration with administration.

Removal of even the fig leaf of protection provided by the Section 3(1) of OSATIP Regulations, 1956, will leave the scheduled areas totally open to mining and industrial sector without any control. It is doubtful whether the protections provided in Schedule V can be reconciled with the political economy of profit oriented resource extraction from backward areas inhabited by disempowered and voiceless tribal people. The record of the State in upholding the sanctity of Schedule V has been extremely poor, as is well documented in this study. It is suggested that instead to diluting the law, the spirit of Samata Judgment and the Schedule V of the constitution be followed and all land transfers in scheduled areas to non-tribals be forbidden.

5.3 Review of Plantation programs in Scheduled areas

State Plantations, especially by Forest Department, seem to have emerged as a major source of land loss to scheduled tribes. Government land cultivated by scheduled tribes was and is often targeted for plantation programs. It is also emerging that in order to achieve targets, tribals are being removed from the land occupied by them even at present. This must be immediately put a stop to. A review of plantations under various schemes, including exiting plantations on ground and plantations planned in the future should be taken up urgently, and an analysis of their impact of local tribal economy and access to land be carried out. No plantations should be allowed in any scheduled areas without the permission of the Palli Sabha and the scheduled tribe already cultivating the land. It is suggested that all forest species plantations on non-forest revenue land be suspended in case the plantation would lead to conversion of such land to Forest Land. It is also recommended that forest tree plantations under Forest Development Agency and other forestry programs may be scrutinized from the perspective of tribal access to land (For example of use of forest plantations to displace tribals, see Mallaguda case study, Box 6).

Plantations taken up before 1980s were without any usufructory rights to the tribals, including cashew plantations now being managed by Orissa State Cashew Development Corporation ltd. All such plantations may be immediately transferred to either individual tribal beneficiaries or to the communities. OSCDC ltd can continue to facilitate extension of cashew plantations and marketing in tribal areas, as cashew has slowly been accepted as an important cash crop by south Orissa tribals, and there is massive scope of its expansion on slopes.

All plantations in Government Land in Scheduled areas on non-forest land should be handed over to scheduled tribe individuals or the Palli Sabha for management, with the total benefit going to the concerned individual or the community. Plantations on forest land as well as natural forests close to settlements should also be handed over to Palli Sabha for management and control, with Forest Department support for preparing micro-plans for these plantations to comply with Supreme Court’s directive. In case of legal problems, these forests lands can be converted to village forests as per section 28 of Indian Forest Act, 1927.

6 Suggestions for further research

The study brought out a number of issues where further detailed research needs to be carried out urgently. These are detailed as below:

6.1 Study on impact of amendments to Orissa Transfer of immovable Property (By Scheduled Tribes) Regulation, 1956: A more detailed study needs to be carried out with a much larger sample selected in a scientific manner in all the scheduled areas of Orissa. The study should examine the impact of banning of the sale of tribal land to
non-tribals as well as examine the processes of land restoration as per the 2002 amendment the Regulation.

6.2 Assessment of distribution of government wastelands, ceiling surplus land and bhoodan land to scheduled tribes

6.3 Assessment of impact of programs which have provided usufruct rights to scheduled tribes on state land

6.4 Evaluation of impact of various plantation programs on land access and livelihoods of scheduled tribes

6.5 A more detailed organizational study of the Revenue Department’s functioning in tribal areas

6.6 Study on displacement in scheduled areas

6.7 Study of functioning of PanchayatiRaj extension to Scheduled areas Act, 1996

6.8 Detailed district wise profiles on tribal land issue for all tribal districts

6.9 Evaluation of sample Record of Rights to understand the trajectory of land ownership since independence
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### Annexure I: Populations of major tribes in Orissa

<table>
<thead>
<tr>
<th>Name of the community</th>
<th>Total population in the State(^{41})</th>
<th>District with major concentration(^{42})</th>
</tr>
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<tbody>
<tr>
<td>Kondh/ Kandha</td>
<td>1140374</td>
<td>Koraput, Phulbani, Kalahandi</td>
</tr>
<tr>
<td>Gond / Gondo</td>
<td>701139</td>
<td>Kalahandi, Sambalpur, Koraput</td>
</tr>
<tr>
<td>Kolha</td>
<td>404864</td>
<td>Mayurbhanj, Keonjhar, Baleswar</td>
</tr>
<tr>
<td>Kisan</td>
<td>266371</td>
<td>Sambalpur, Sundargarh, Dhenkanal</td>
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<tr>
<td>Kharia</td>
<td>168407</td>
<td>Sundargarh, Sambalpur, Mayurbhanj</td>
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<tr>
<td>Bathudi</td>
<td>171074</td>
<td>Mayurbhanj, Keonjhar, Balaswar</td>
</tr>
</tbody>
</table>

\(^{41}\) The Population is provided as per the 1991 census

\(^{42}\) The districts are undivided districts. Most of the original districts of Orissa were subdivided as following:
- Koraput undivided – Koraput, Malkangiri, Rayagada, Nowrangpur; Kalahandi undivided – Kalahandi and Nuapada; Sambalpur – Sambalpur, Jharsuguda, Deogarh, Rairakhol; Dhenkanal- Angul and Dhenkanal; Gamjam-Ganjam and Gajapati; Phulbani- Kondhmal and Boudh; Cuttack- Cuttack, Jajpur, Jagatsinghpur and Kendrapara; Balasore – Baleswar and Bhadrak, Puri- Puri, Khorda, Nayagarh; Balangir- Balangir and Sonepur