



FOREST GOVERNANCE STRATEGY GROUP

DRAFT PROCEEDINGS OF THE THIRD BRAINSTORMING SESSION

Council for Social Development, 53 Lodi Estate, New Delhi

October 3, 2015

Background:

The third meeting of the Forest Governance Strategy Group (FGSG) was conducted on October 3, 2015 to welcome new potential members, to follow up on the policy products planned in the last meetings, and to build a clear and consultative statement of intent and roadmap for the group. This was followed by a detailed discussion on identified forest governance topics by the group and setting priorities to be pursued by the group within fixed timelines.

The group requested the meeting to be chaired by Mr. Sanjay Upadhyay, Managing Partner, Enviro Legal Defence Firm. The meeting commenced with a round of introductions by the participants. About 14 members attended this meeting in person while two members joined via Skype. *The list of participants has been annexed as Annexure I. The agenda of the meeting has been annexed as Annexure II.*

1. Mr. Sanjay Upadhyay, Advocate, Supreme Court of India and Managing Partner, Enviro Legal Defence Firm, New Delhi

Mr. Upadhyay started with a brief discussion on what has been accomplished by the forest governance learning group (FGLG) in the past and the last two meetings for members who joined for the first time under the aegis of FGSG. He differentiated between forest sector experts rather than forestry expert, since in his opinion, it's the forest sector which is the more encompassing term and has an impact on forestry per se. FGSG, in Mr. Upadhyay's view, is the melting point of all these experts of the forest sector to provide tenable solutions to the issues and challenges involving forest governance in the country. He echoed vision of the group that the thinkers from forest sector are keen to build a national platform and find solutions for national priorities in the forest sector.

He shared his understanding of FGSG objectives with the members and requested all the attending members to help draft 'FGSG statement of intent' and roadmap. Further, he shared the decisions taken by the members in the past two meetings, as follows:

- To fill the communication gap between different sectors that influence forest sector in India, including media, administrators, law makers, activists, among others.
- To focus on four major themes on forest governance: Forest & People; Law, Policy, Regulatory Mechanisms; Climate, REDD, and PES; and Role of Market and Private Sector.
- To limit the membership to past interested FGLG members, individuals who are governance-connected and independent forest sector experts from different disciplinary approaches. New members to be added with the consent of the existing group and what would finally emerge as FGSG.
- To critique and make constructive responses to new developments in forest sector in India which were partially discussed in the last meetings.



He also requested the members to visit the FGSG website (<http://fgsgindia.org/>) and share insights on improving the same.

2. Open House

QUESTIONS RAISED BY MEMBERS

Following comments and questions were raised by the members attending the meeting:

- It was agreed that FGSG must emerge as the foremost forest sector think tank in India. This can be achieved by analyses, publications and constant communication with MoEF&CC. The group would draw solutions, critique on critical forest issues, and communicate the views with the government directly and with other stakeholders through FGSG website for inputs.
- Questions were raised as to the position of FGSG with respect to government, whether it is for or against the government. The group agreed that there is no either-or position. The group will brainstorm and share its considered views on forest governance. Further, the group would proactively act towards the objectives of FGSG rather than respond to upcoming government policies or actions.
- The members wished to set out the approach and rules of the house to ensure frank discussions during the meetings. It was decided that every meeting should follow Chatham house rules¹ since some of the issues are highly contentious. Also, every meeting should have a thematic focus and members should present their views on the same to add value to the final outcome.
- The group shall be flexible when it comes to endorsing a view on a certain issue. The members who want to endorse an idea or policy recommendation can give consent to the same after a consensus-building exercise. If there is majority consent to an idea then it should go ahead as group's idea. However, consensus-building does not imply that the group would shy away from frank and conflicting opinions in forest sector which is part of the process. The objective is to have a well thought-out opinion after exploring all aspects and conflicting views.
- FGSG's richness as a group would be to define which issue should be pushed and ways to pursue it with the government.
- The views of FGSG should be constructive and relevant because government or MoEF&CC is not to be considered a monolith. We must understand that there are officials who have the best of intentions and they need support.

STATEMENT OF INTENT

The following draft FGSG Statement of Intent was shared for brainstorming within the group:

To constitute a think tank to strengthen forest governance in India and South Asia, hoping that the strength of the group is enhanced by constant communication of gaps within the system.

After a thorough deliberation, the group enlisted the following intentions of FGSG:

¹ Chatham Rules in simple terms would mean that the discussions and statement would not be attributed to the individual members of the group.



Overall - To strengthen forest governance in India and South Asia keeping forest dwelling communities at the centre

Specific

- To act as a network platform (at National and Regional levels) for knowledge exchange and responding to issues and challenges
- To influence forest sector policies towards strong forest governance -by engaging with the executive, legislature, and judiciary
- To garner support and sensitise political parties, stakeholders and media for strengthened forest governance

In the process of determining the statement of intent, the group deliberated on various issues such as what includes stakeholders, forest-dependent versus forest-dwelling community, and engagement versus communication, among others.

The above statement is subject to comments from all the FGSG members till October 12, 2015. Thereafter the comments will be included in the existing draft and will be sent for final approval from all the existing FGSG members.

3. Activity Planning

PROGRESS ON POLICY PRODUCTS & WORKING PAPERS

The chair, Mr. Upadhyay followed up on the status of the previous policy products and requested the group to share their comments on the following two policy papers: a) PFM & Forest Governance in India, and b) Forest Governance Assessment by 10th October 2015. Thereafter, the authors of the policy papers would incorporate the comments received and the group would then consider a communications strategy of the policy recommendations of the group to the Government and other stake holders.

Moving ahead on the agenda, the members discussed the topics identified in the past meeting under the four themes of FGSG with the rest of the group. This exercise aimed to seek inputs from all the members on each of the identified topic in a systematic manner and to prioritize which topics should be taken up immediately and by whom.

Scrutiny of National Forest Policy

The group was informed that the new forest policy is likely to include not only policy vision but also strategy and action plan. It was felt that clarity on the requisite roles and resources is a must at this stage. MoEF&CC has been conducting consultations through IIFM to review what has been achieved from the forest policy of 1988 and to identify gaps. Second stage is to revise the forest policy based on such review. The review of forest policy is likely to conclude till December 2015.

The following action plans were suggested to contribute the draft National Forest Policy:

- There are two ways to participate in the drafting process of National Forest Policy: either to make an independent draft policy or to comment on the draft made by other organization.
- The draft policy may be reviewed by FGSG members to establish FGSG as a national platform for rich discussion on forest governance. The group voted against drafting its own zero draft of



the policy before the government releases its draft for public comments. A meeting will be convened after the zero draft is open for public comments. In this regard it was learnt that a concept note has been prepared by the Ministry which will be obtained and used for commenting on the zero draft as and when it is prepared.

- The policy drafts from IIFM would be analyzed and commented upon by the FGSG to give an independent view to the government.
- Also, a report on the Constitutionality of Forest Rights Act (from ICFRE) would be analyzed and commented upon by the FGSG to give an independent view to the government.

Bamboo Mission (NTFP)

The chair asked the group whether FGSG should engage in the debate on Bamboo Mission and the recent developments around it including its shifting from Ministry of Agriculture to MoEF&CC or Ministry of Commerce. It was also debated whether the group should only focus on Bamboo as an NTFP or overall NTFP management. The group decided not to react to this topic on priority. Some of the FGSG members would share documents on this issue among the group to keep the discussion active. A note on NTFP management by the government of Madhya Pradesh would be shared before the next FGSG meeting to have a constructive discussion on the topic.

Definition of Forest

The group felt that an immediate response can be developed on the current government's attempt to redefine the term 'forest. This is a window where inputs from a group as versatile and experienced as FGSG would be valuable. The following were the key highlights on this topic:

- The definition given by the Indian judiciary was primarily in the context of Forest Conservation Act. With a clear understanding of the legal aspect of forest definition according to judiciary as well as availability of proper documentation (state affidavits) on their understanding of forest (developed through a joint exercise of the collector and DFO), FGSG can contribute to definition of 'forest'.
- The group needs to focus on areas which fall under dictionary meaning of forests since what is notified and recorded as forest is not disputed.
- The current government cannot ignore the past processes, judicial precedents from the cases such as Godavarman and La Farge judgement. The group may contribute by ensuring that the current exercise of the government does not ignore such previous exercises on this exercise. If the new definition surpasses the past judgements, approval of the Supreme Court of India would be needed to amend the 1996 Order.
- Mr. Chetan Agarwal would lead this policy intervention document on behalf of FGSG, along with Mr. Sanjay Upadhyay who would give his comments on the legal concerns and solutions to this issue.

IFA Amendment

The group was informed that a committee is being constituted for the purpose of revamping the Indian Forest Act completely. There was a general concern that the vision of this amendment to make it in consonance with the National Forest Policy might be a political way to create ease of business. The group felt that working on National Forest Policy might be the most important intervention at this



stage along with its clear action plans to avoid any such ease of commercial exploitation. The idea is not to oppose development but to ensure that involvement of private sector contributes to overall sustainable management of forests. The group agreed that to amend the Indian Forest Act, it is not only policy but political will that needs to be strong.

Private Sector Involvement in Forest Sector

It is one of the most hotly debated topics in forest sector today. Some of the members felt that the premise itself is contradicted because forest is needed for 300 million people who are directly dependent on it and yet government wants private sector should benefit from it. The group felt the new MoEF&CC 'Guidelines on participation of private sector in Afforestation of degraded forests' should be a priority of the group. The following was the key comments made by the group on the new guidelines:

- The definition of degraded forests (anything less than 10% forest cover is degraded) would include grasslands, deserts, among other ecosystems which have important functions on their own. This is misleading definition. It needs to be clarified that degraded forests based upon forest cover criteria applies to certain category of ecosystems. An objective criterion is needed from government to define degraded forest while investment is needed to improve them.
- Forest Conservation Act has provisions facilitating leasing of forest areas to private sector but there is no policy/guideline for the same. Therefore, MoEF&CC guidelines are needed to lease forests to private sector. However, these should clarify the roles and provide procedural details. The guidelines fail to mention an average leasing period. The group felt that private sector involvement is necessary but not in the manner outlined in the draft guidelines.
- Given the already complex forest administration system, the parallel processes of strengthening JFM, giving rights to forest people under FRA, and at the same time leasing forest land to private sector may lead to a complete failure and to irreversible forest loss.
- The group deliberated if private sector can be involved in the development and afforestation of wasteland (non-forest) through these guidelines. If 43% of land is wasteland and a number of institutions were established for improving the land use (State Land Use Boards; SLUBs) then the group should find potential windows for using such institutions and make recommendations to MoEF&CC.
- The group needs to find out what necessitated such guidelines. Forest Survey of India statistics show almost 45% of the forest cover falls under degraded forests. The quality of forest is not good, and invasive species have taken over large swathes of forest cover. This needs resources and intensive work which can be ensured from private investment and technology. MoEF&CC has limited time to do forestry work given its administrative responsibilities. However, there is enough funding in the MoEF&CC kitty under the Supreme Court of India orders. It is important to inquire: a) if there is enough unutilized money then is this guideline just to attract investments per se? b) Is the government using the inefficiency of forest department or the entire governance system for bringing private sector into Afforestation activity?
- The group agreed that FGSG should intervene by giving comments on the existing guidelines and make case for new guidelines. FGSG can lead the drafting of new guidelines if needed. The group should provide models where commercial plantations or afforestation went beyond monoculture plantation.



- The operative word “leasing” was flagged as a participatory arrangement for afforestation under the guidelines. This is completely against the forest policy itself because the policy states that forest land cannot be leased. This should be analyzed on legal grounds.
- The group decided that Mr. Sanjay Upadhyay should take the first attempt at drafting comments on the guidelines. It cannot be challenged on technical grounds but on merits each paragraph needs to be countered with evidence. PMO office is looking at achieving ‘ease of business’ in approving such guidelines for private sector involvement.

4. Fundraising Opportunity

The chair informed the group about the seed grant from IIED to initiate and continue the FGSG meetings for this year. The grant amount cannot cover professional time of the members for attending the meetings however, authors of leading paper and transportation costs of attending meeting shall be covered for members. The group was informed that ELD Foundation has received FCRA clearance and will be eligible for foreign funding to carry the FGSG baton. Potential resources from USAID, ADB, AfD, GIZ, Forest-Plus are being looked into.

The members suggested that FGSG as a policy research institution can be pitched to MoEF&CC under its research funding. It was also suggested that having a membership fee can be a good way to ensure sense of commitment and ownership among the group members. Further, affixing a membership fee could also cover some finance needed for logistics and coordination.

5. Summary of Action Plan

- Forestry is intensive work especially matched with the administrative tasks of MoEF&CC. Thus, a group such as FGSG is need of the day and would be welcomed if its vision reflects constructive aid to government and more importantly forest dwelling communities for improved forest governance.
- Draft Statement of Intent of FGSG will be circulated within the group till 12th October 2015.
- Note on CAMPA Bill by Mr. AN Prasad and the policy brief on CAMPA Bill by ELDF to be circulated for peer Review till 20th October 2015.
- Comments on policy products: Forest Governance Assessment, and PFM and Forest Governance in India to be send to the respective authors by 8th October 2015.
- Mr. Subhash Chandra to share ‘zero draft of National Forest Policy’ with the group. The group members to send their core inputs on zero draft.
- Ms. Vishaish Uppal to share the IIFM draft on Forest Policy as well as draft NTFP Management (Madhya Pradesh Government).
- Mr. Sanjay Upadhyay to take lead on drafting comments on MoEF&CC guidelines on private sector involvement in afforestation of degraded forest.
- Mr. Chetan Agarwal to lead a working paper on the definition of forest.
- Mr AK Bansal will prepare a status paper on bamboo for circulation for comments.
- Members who have not submitted the thematic papers would be reminded to do the same.
- Another agreed point was that mere invitation to attend meeting would not make those invitees as permanent members. The core FGLG and other initial members would draw up criteria for the same.
- Fourth FGSG meeting is planned on 21st November 2015



Annexure I

FGSG India Third Meeting

October 3, 2015

Council for Social Development, 53, Lodi Estate, New Delhi – 110003

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Annexure II

Forest Governance Strategy Group: Third Core Member Meeting Strategy & Planning Session

October 3, 2015

Venue: Council for Social Development (CSD), 53 Lodi Estate, New Delhi- 110003

AGENDA

10:30 am to 10:45 am	Opening Remarks and Purpose of the Meeting (Sanjay Upadhyay)
10:45 am to 11:00 am	Remarks by the Chair
11:00 am to 11:30 am	Exercise to Develop official 'FGSG Statement of Intent'
11:30 am to 01:00 pm	Planning policy products and activities on identified topics: <ul style="list-style-type: none">• CAMPA Bill• Scrutiny of Forest Policy• NTFP- Bamboo Mission• Definition of Forest• Role of Private Sector• The IFA amendment on anvil
01:00 pm to 01:45 pm	Progress on policy products and Working Papers Fundraising opportunities Road Map Ahead
01:45 pm to 02:00 pm	Vote of thanks
02:00 pm to 03:00 pm	Lunch