



Legislation Brief

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (FRA) And Diversion Of Forests Under Forest Conservation Act 1980 (FCA)

**(A briefing note examining on-ground realities
in the implementation of the FRA in areas
facing forest diversion)**





India's economic development has been exerting relentless pressure on land which is the primary requirement for setting up industries, for developing infrastructure for transport, for distribution of goods and services, for expanding farm lands for agriculture, for hydropower projects and mines and for housing projects among many other such activities.

This land also hosts millions of people, who are primarily dependent on it not only for their subsistence, survival and livelihoods but also for socio-cultural associations. Consequently, as take-over of land continues, conflicts over land have also intensified over the years.

Forest land has been at the centre of this conflict for many years, its origins embedded in the pan-Indian consolidation of forests by the British Colonial State¹. Nearly 250 to 300 million people in India belonging to scheduled tribes and other vulnerable communities live or depend upon forest land for their livelihoods and other needs². Colonial forest and land laws and policies had ensured that ownership, use and access rights remained out of reach for a majority of the members of these communities.

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (herein called the Forest Rights Act or FRA) has to be seen in this context. The FRA has been enacted to recognise and vest forest rights in forest dwelling communities that have been residing in forests for generations but whose rights were not recorded. It provides for the recognition of tenurial and other securities governing the lives and livelihoods of forest dwellers, and empowers them with rights and responsibilities over governance, management, use of and access to forest land and its many resources. It thus is landmark legislation.

1. Significance of the FRA in the process of forest diversion:

Section 4(5) of the FRA Act attempts to prevent relocation and displacement of forest dwellers by providing that "no member of a forest dwelling scheduled tribe or other traditional forest dwellers shall be evicted or removed from the land under his occupation till the recognition and verification process is complete". The act therefore addresses the historical injustice done to forest dwellers including those who were forced to relocate due to State led developmental interventions³. Additionally, Sec 3(1)(i) empowers forest dwelling communities to protect, regenerate or conserve or manage their

1. Guha, R., & Gadgil, M. (1988). State Forestry and Social Conflict in British India: A Study in the Ecological Basis of Agrarian Protest. Technical Report No. 51, Indian Institute of Science, Centre for Ecological Sciences, Bengaluru.

2. FSI. (2002). State of the Forest Report 2001. Forest Survey of India. Dehradun.

3. Letter No. 48/9; dated 7th December 2012, from Kishor Chandra Deo, Minister of Tribal Affairs to Jayanti Natarajan, Minister of Environment and Forests.



community forest resource⁴ that they have been conserving traditionally for sustainable use, while Section 5 empowers the village gram sabhas (GS) to ensure that the habitat of forest communities is preserved from any form of destructive practices affecting their cultural and natural heritage. The same section also empowers the Gram Sabha to take decisions to regulate access to community forest resources and stop any activity that adversely affects wild animals, forest and biodiversity and to ensure that these decisions are complied with. Thus, the Act empowers communities and their community institutions as statutory authorities with the power to protect and manage forests⁵.

In August 2009, the Ministry of Environment and Forests⁶ issued a

4. 'Customary common forest land within the traditional or customary boundaries of the village or seasonal use of landscape in the case of pastoral communities, including reserved forests, protected forests and protected areas such as Sanctuaries and National Parks to which the community had traditional access' (as defined in Section 2(a) of the FRA).
5. Letter No. 48/8; dated 19th November 2012, from Kishor Chandra Deo, Minister of Tribal Affairs to Jayanti Natarajan, Minister of Environment and Forests.
6. The terms Ministry of Environment and Forests (MoEF) and Ministry of Environment Forest and Climate Change (MoEFCC) will be used interchangeably in this document since the MoEF was renamed as MoEFCC in 2014. The term MoEF will be used for referencing any circular passed by the Ministry before 2014.

circular linking the provisions for obtaining forest clearance under the Forest (Conservation) Act, 1980 (FCA)⁷ to these provisions of the FRA. The circular (from now August 2009 circular) asked for documentary evidence pertaining to the completion of the process of recognition and vesting of rights under the FRA in areas facing forest land diversion, in order to ensure that the provisions of the FRA are fulfilled⁸. Thus, the takeover of forest land under any law cannot take place unless it respects both these aspects of the FRA. It cannot take place,

- unless the entire recognition of rights process as laid down under the FRA is complete; and

7. The Forest (Conservation) Act, 1980 (FCA) attempts to regulate the dereservation of 'forest land' (the term now includes all land recorded as forests in government records, and forests as defined in the dictionary according to a Supreme Court (SC) order in the 1996 Godavarman Case, irrespective of the nature of ownership and classification of this land) for non-forestry purposes, identified in Section 2 of the Act as, assignment of forest land to a person or any agency/corporation or organisation which is not under the government, and for clearing trees for reforestation (Section 2).
8. For a detailed study of the circular and provisions of the FRA and FCA, please see, Desor, et al., April 2013. Exploring the role of FRA within the processes of Forest Diversion under FCA, Pune: Kalpavriksh. Available at: [http://www.kalpavriksh.org/images/Documentation/Advocacy/FRA-FCA%20policy%20brief%20\(1\).pdf](http://www.kalpavriksh.org/images/Documentation/Advocacy/FRA-FCA%20policy%20brief%20(1).pdf). The circular itself can be downloaded from: http://envfor.nic.in/mef/Forest_Advisory.pdf

- before the collective free prior informed consent⁹ of the forest dwellers affected by diversion has been sought and obtained (or just 'been obtained'), not only for the diversion of forest land but also for the rehabilitation/compensation measures proposed¹⁰.

In March 2014, the Forest Conservation Amendment Rules, 2014 were notified. The rules have incorporated some provisions of the August 2009 circular stating that the District Collector (DC) is responsible for completing the process of settlement of rights as provided under the FRA, and for obtaining consent from the GS wherever required in a format specified for the purpose (Rule 6(3) (e))¹¹. The DC's report should accompany the state government's proposal for diversion of forest land. The process has also been made time-bound.

9. The circular asks state governments to conduct meetings of gram sabhas which will be affected by the diversion of forest land (ensuring that a quorum of 50% members of the gram sabha are present) where the details of the diversion of forest land and its implications are placed before the gram sabha. A letter from the gram sabha either giving consent or rejecting the diversion is also to be considered before forests could be diverted for any non-forest activities.
10. Letter No. 48/9; dated 7th December 2012, from Kishor Chandra Deo, Minister of Tribal Affairs to Jayanti Natarajan, Minister of Environment and Forests.
11. The Rules are available at: [http://www.indiaenvironmentportal.org.in/files/file/Forest%20\(Conservation\)%20Amendment%20Rules,%202014.pdf](http://www.indiaenvironmentportal.org.in/files/file/Forest%20(Conservation)%20Amendment%20Rules,%202014.pdf)

2. Role of the ministries

Economic development requires large capital and the manipulation of and easy access to natural resources. The process of recognition and vesting of rights under the FRA, and of seeking free prior informed consent from gram sabhas (that may be affected by the extraction and manipulation of natural resources and the takeover of land and resources) is therefore often viewed as a 'major hurdle' in the path of economic progress¹². The role of the Ministry has increasingly begun to be focused on fast-tracking projects and streamlining the process of obtaining clearances and providing easy access to environmental and forest clearances¹³. There has thus been tremendous political pressure on the Ministry of Environment and Forests as well as the Ministry of Tribal Affairs (MoTA) to relax the insistence on adherence to the provisions of the FRA while deliberating on forest diversion, irrespective of the social and ecological costs that this would entail for this

12. See: Dhoot, V. (2014, Jan 17). Veerappa Moily rolls back Jayanthi Natarajan's decision on clearance for liner projects. The Economic Times. Available at: http://articles.economictimes.indiatimes.com/2014-01-17/news/46301209_1_forest-minister-veerappa-moily-forest-rights-act-linear-projects
13. See: <http://www.newindianexpress.com/nation/Promoted-Environment-Minister-Javadekar-announces-to-make-clearances-online/2016/07/05/article3514756.ece1>; <http://www.financialexpress.com/economy/faster-environmental-clearances-have-unlocked-investment-worth-crores-prakash-javadekar/263957/>



oversight¹⁴. Consequently, various orders and circulars have been passed by the MoEFCC¹⁵. These have diluted the provisions of the August 2009 circular to a considerable extent. Although the Ministry of Tribal Affairs initially

countered these circulars from time to time, in recent times a weakening of its stand against the dilution of the FRA can be observed. A summary of these circulars follows:

Pronouncements on compliance with provisions of FRA and the August 2009 circular from MoEFCC and MoTA

Circulars issued by MoEFCC	Directions/Office memorandums by MoTA
<p>20th September 2012 A circular was issued by MoEF to the Principal Chief Conservator of Forests (PCCF), Himachal Pradesh, following several appeals from the chief minister of Himachal Pradesh, requesting that the state be exempted from fulfilling the provisions of the August 2009 circular. The circular stated that for proposals seeking prior approval under the FCA in Himachal Pradesh, a certificate stating that no claims under the FRA exist or are pending in respect of forest land to be diverted, is sufficient evidence for compliance with provisions of the FRA. The circular explained that the CM had assured that rights and concessions on forest land throughout the state had already been <i>settled</i>¹⁶ and recorded in settlement reports, and no rights needed to be settled under the FRA.</p>	<p>1st April 2013 Countering this circular an office memorandum (MO) was issued by MoTA to the MoEF directing that this circular issued by MoEF to the PCCF, Himachal Pradesh on the 20th of September 2012 was to be withdrawn immediately and the state of Himachal Pradesh would be required to comply with the August 2009 circular and to ensure that all rights are recognised and vested before any forest land is diverted. The MO also stated that MoTA had to be consulted before directions were issued in matters relating to ensuring FRA compliance in forest diversion, in future.</p>

14. See: <http://www.cseindia.org/content/ministry-environment-and-forests-diverting-forestland-development-projects-much-faster-rate-;> <http://tribal.nic.in/WriteReadData/userfiles/file/PressRelease/Fontline%20Magazine.pdf>

15. Please see note 6 above.

16. The term 'settlement' has its origin in the colonial Indian Forest Act of 1927 (preceded by the Acts passed in 1865 and 1878), which empowered the colonial government to declare any forest land, or village common land as 'Reserved', 'Protected' or 'Village' forests. A government appointed settlement officer would record any pre-existing rights of communities living off this land, and could through a notification, 'extinguish' or 'modify' these rights based on the type of forest land declared. Thus, daily activities of these communities like grazing, fishing, collection of minor forest produce, using access roads connecting forest patches or activities linking their livelihood and cultural practices like shifting cultivation, logging trees for timber needs, could be curtailed by a government appointed officer. This continued even after independence. The term 'settlement of rights' is thus associated with the premise that sees forest land as 'State property', and therefore the State could reduce the association of communities developed with forests (and therefore their overall well being, culture and livelihoods) to rights that could be settled. The FRA however attempts to correct this historic injustice since it recognises records and vests such pre-existing rights with forest dwelling communities.



<p>5th February 2013 A Circular was issued by the MoEF to the Principal Secretaries of all states and union territories, stating that proposals seeking prior approval under the FCA for linear projects¹⁷ where diversion of forest land in several villages is involved were exempted from the requirement of obtaining consent from the concerned gram sabhas, unless recognised rights of Particularly Vulnerable Tribal Groups (PVTG) and pre-agricultural groups (PAC) were affected.</p>	
<p>5th July 2013 As a follow up to the circular issued on 5th February 2013, MoEF issued another to Principal Secretaries (Forests) of all states and union territories introducing formats of certificates to be issued by the District Collector as documentary evidence for guaranteeing compliance with provisions of the FRA for proposals seeking prior approval under the FCA.</p> <p>Form I (for linear projects): for Certifying that–</p> <ul style="list-style-type: none">• the process of identification and settlement of rights vis-a-vis the forest land to be diverted has been completed, with copies of all consultations and meetings of Forest Rights Committee(s), Gram Sabha(s), Sub-Divisional Level Committee(s) and District Level Committees attached;• the gram sabha(s) have/s given consent for diversion; and• the proposal does not involve rights of PVTGs and PAC. <p>Form II (for projects other than linear projects): for Certifying that–</p> <ul style="list-style-type: none">• the process of identification and settlement of rights vis-a-vis the forest land to be diverted has been completed, with copies of all consultations and meetings of Forest Rights Committee(s), Gram Sabha(s), Sub-Divisional Level Committee(s) and District Level Committees attached;• the proposal for diversion with full details of the project and its implications in (vernacular/ local language) have been placed before concerned gram sabha(s);	

17. This includes projects like construction of roads, canals, laying of pipelines /optical fibers and transmission lines etc.



<ul style="list-style-type: none">• concerned gram sabha(s) have certified that all procedures under FRA have been carried out, that they have given consent to the proposal and the compensatory/ameliorative measures, with copies of gram sabha resolutions attached;• Discussions have taken place when 50% quorum of the gram sabhas was met;• Rights of PVTGs and PACs have been safeguarded.	
	<p>7th March 2014 MoTA issued a circular to Chief Secretaries of all states and union territories; and to the MoEFCC reiterating that provisions of the FRA need to be strictly followed keeping in view the legislative intent of the Act and the primacy of the gram sabha in democratic governance.</p> <p>MoTA stated that the FRA does not provide exemption for bypassing its procedures in any category of projects. Therefore, failure to comply with the FRA before any forest land is diverted would be a violation of the law.</p>
<p>4th July 2014 MoEFCC sent a circular to all Principal Secretaries (Forests) of all states and union territories stating that proposals seeking prior approval under the FCA for prospecting for minerals in forest land are exempted from the requirement of submitting documentary evidence in support of <i>settlement</i> of rights under the FRA as stipulated in the August 2009 circular.</p>	
	<p>27th August 2014 MoTA passed an Office Memorandum stating that the FRA does not provide exemption for bypassing its provisions for any category of forests, projects, persons etc.</p> <p>MoTA also stated that gram sabha meetings under the FRA are a statutory requirement and the necessary quorum for gram sabha meetings required under the FRA Rules, 2012 needs to be met in every case.</p>



	<p>21st October 2014 In a subsequent Office Memorandum to the MoEFCC, MoTA stated that the FRA recognizes and vests pre-existing forest rights of Scheduled Tribes and Other Traditional Forest Dwelling communities, and provides detailed mechanisms for recording and vesting these rights; and that no agency of the government can exempt part or full application of the Act. It also stated that the MOTA has the right to review any decision taken against the provisions of the Act.</p>
<p>28th October 2014 In a circular to all Principal Secretaries (Forests) of all states and union territories the MoEFCC stated that in the case of diversion of forest land plantations notified as forests after 75 years prior to 13th December 2005, a certificate from the District Collector certifying the said forest land as a plantation with no population of 'Scheduled Tribes' or 'Other Traditional Forest Dwellers' (as defined in the FRA) is to be taken as documentary evidence for compliance of FRA as per the August 2009 circular.</p>	
<p>Several other circulars were passed by the MoEFCC in 2014 awarding 'general approval' under FCA; <i>for e.g.</i> Construction of roads in border areas; 'critical' infrastructure projects in Left Wing Extremism affected states.</p>	<p>24th February 2015 In an Office Memorandum to the MoEFCC, the MoTA stated that for forest clearance in cases involving diversion of forest land for strategic defence projects in the north eastern states, a certificate from the District Collector, certifying that no further procedure with regard to the FRA is required for the forest area being diverted, is to be taken as documentary evidence for guaranteeing compliance with provisions of the FRA. It opined that since most forest land is already under the control and ownership of communities and in areas declared as Reserved Forests, and rights have already been settled¹⁸, a certificate from the DC would suffice.</p>

18. The justification by MoTA, that most forest areas in the North Eastern states are under the ownership of the communities and that rights have been settled in areas declared as reserved forests, is in violation of the FRA. The FRA is a central statute providing for the recognition and vesting of forest rights for all forest dwelling communities, especially, with regards to developmental projects. The MoTA circular takes away the right of the community members in the north east to 'prior informed consent' over any developmental activity taking place on their customary forest land.



The circulars clearly indicate that there is an attempt to dilute the 'free prior informed consent' clause highlighted in the August 2009 circular. It is therefore important for communities facing diversion of forest land to understand the specific nature of debates between the state and central governments and the courts around the clauses of the August 2009 circular.

2.1 Role of the Forest Advisory Committee

Diversion of forests for any non-forestry purposes is regulated by the Forest (Conservation) Act, 1980. This Act provides for a process for applying for and clearing such diversion, which includes constitution of a Forest Advisory Committee (or FAC), established under Section 3 of the Act. Proposals seeking diversion of forest land up to 40 ha (with a few exceptions) are to be forwarded to the regional offices of the MoEF (situated in Bangalore, Bhopal, Bhubaneswar, Chandigarh, Chennai, Dehradun, Lucknow, Nagpur, Ranchi and Shillong) where Regional Empowered Committees (REC) need to be constituted under Rule 4A(1) of the Forest (Conservation) Act Rules. Proposals seeking diversion of land above 40 ha (with a few exceptions) are to be sent to the central ministry. The committees advise the MoEFCC on clearance of forest diversion proposals submitted by the state governments, which then takes a decision on these projects¹⁹. As per the notification and

19. The regional committee forwards their decision on the project to the regional offices of the MoEFCC. It is important to note that until recently (January 2015); the regional empowered committees had not been formed. The minutes of the REC are available at: <http://www.forestsclearance.nic.in/REC.aspx>

the amended Rules, while examining the proposals the FAC and REC now have to take into account documents indicating that requirements under FRA have been complied with while submitting the proposal. These documents include resolutions from all affected gram sabhas consenting to or rejecting the proposal, a letter from the District Collector stating that processes of recognition and vesting of rights in the area to be diverted are complete under the FRA, and that no pre-agricultural communities or primitive tribal groups are being affected by the diversion.

On the whole the processes of applying for forest diversion and those related to making decisions on these proposals as prescribed in the FCA, 1980 are bureaucratic and, till recently, had little space for communities who are affected by the diversion of the proposed forest land.

Analyses of the minutes of the meetings of the Forest Advisory Committee²⁰ show that the provisions of this circular are often not followed by states, the FAC itself as well as the Ministry of Environment Forests and Climate

20. The Forest Advisory Committee (FAC) has been set up under Section 3 of the FCA to advise the central government on forest clearances to be given under FCA and in other matters related to conservation which the central government will bring to its notice. The minutes of the FAC are available at: http://forestsclearance.nic.in/FAC_Report.aspx




Change (MoEFCC)²¹. These minutes reveal that the FAC now looks at FRA 'compliance' in forest diversion in the form of documents submitted by the states. This does not mean that the actual processes of vesting and recognition of rights (both community and individual) under the FRA are complete or titles for the same in the area being proposed for diversion have been distributed. Since the FRA compliance reports are not available for public scrutiny, even when documents related to FRA compliance have been submitted to the FAC and accepted, it is difficult to gauge their relevance; whether they function merely as one of the checklist of documents needed for clearance, or if the rejection of the project by the gram sabha is reflected in the decision-making processes regarding grant of forest clearance²².

3. Case studies of implementation on the ground

This section, through a few case studies, highlights the response of different state actors towards the provisions of the FRA. The cases especially point out the response towards free prior informed consent of forest dwelling communities where forest land is to be diverted. The state actors include the Forest Advisory Committee²³ and the MoEFCC as the arms of government responsible for the implementation of the Forest (Conservation) Act, 1980 and the August 2009 circular and the Ministry of Tribal Affairs as the nodal agency responsible for the implementation of the FRA, as part of the Central government. In a few instances, courts have intervened in the process of forest diversion and have passed some landmark judgements highlighting the FRA. The case studies also highlight the role of the state government and other state arms like the district administration towards upholding the provisions of the FRA.

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21. The FAC has recommended diversion of forest land without any documentary evidence as mandated by the Aug 2009 circular being provided nor any rights under FRA being recognised. Certificates from District Collectors saying no claims are pending under FRA are being accepted as compliance with the Aug 2009 circular, and Stage I and II clearances are being recommended on the basis of these certificates.
 22. Please see: Tracking the FAC minutes section in the Community Forest Rights at a glance newsletters. The newsletters are available at: <http://fra.org.in/>

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23. The Forest (Conservation) Act, 1980, provides for the formation of the Forest Advisory Committee (FAC) under Section 3. The mandate of the committee is to advise the MoEF on forest clearances and matters related to forest conservation. It examines proposals received for forest diversion and advises the Ministry of Environment Forests and Climate Change (MoEFCC) on these projects.



3.1 FRA and the states: Skirting compliance, faking resolutions and manipulating consent

In states like Himachal Pradesh, Uttarakhand and the North-Eastern states like Arunachal Pradesh, Manipur and others, where implementation of the Act is slow²⁴ anyway, compliance with FRA in areas facing forest diversion is very weak. In Himachal Pradesh, the government has taken the position that FRA is not applicable since the process of settlement of rights has already taken place under the Indian Forest Act during the consolidation of the forest estate. Several governments in the north eastern states have also said that recognition of rights is not required in these areas since most forests are under the ownership of the communities, where rights have been settled in areas declared as reserved forests.

In other states, in many districts, there are several known cases of district administrations being hand-in-glove with project proponents in forging gram sabha resolutions in favour of projects, holding fraudulent and illegal gram sabhas for obtaining consent and certifying completion of processes under FRA even while no claims have been filed by communities or when claims filed are under consideration. Several cases are also emerging where community claims of communities resisting take-over of their land are not being processed by the administration.

24. See: <http://tribal.nic.in/WriteReadData/userfiles/file/FRALetters/letterToCS.pdf>

Chhattisgarh

The Rowghat hills iron ore mining project²⁵ received final forest clearance for diversion of forest land in the Raoghat hills in Kanker and Narayanpur districts in 2009. Activists working in the area allege that in order to expedite the process of obtaining forest clearance the district administrations and the state government have prepared fake resolutions of affected gram sabhas giving consent for the diversion of forest land. These certificates deny people's religious and cultural rights over the area to be diverted, since they state that no claims over the area exist²⁶. This is despite the fact that nearly 40 villages (including forest and revenue) in the area will be affected while around 35 villages along the boundary of the mining lease area will lose access to their forests. The affected populations include Madia Gond (PVTG) and Gond communities. It is also important to note that no forest rights under the FRA have been recognised till date. Work

25. The hills are to be mined for the Bhilai Steel Plant. The project includes a 91 km railway line from Dalli Rajahara to Raoghat, an open cast mine in the Rowghat hills under the Matla Reserve Forests and setting up of 21 paramilitary barracks to be maintained as long as mining continues in the area.
26. See: Guilty Until Proven Innocent? A fact finding report on unlawful police activities in the two Panchayats of North Bastar, Chhattisgarh. (May 2013) People's Union for Civil Liberties: Chhattisgarh. And, Note on Objection to the proposed Raoghat Iron Ore Mines in of the Bhilai Steel Plant/SAIL in Kanker and Narayanpur Districts of Bastar Region of Chhattisgarh, dated 18th February 2014, by Chhattisgarh Bachao Andolan. Copies available with authors.



on the project has begun in the midst of intimidation of and threats to the communities.

In Dharamjaigarh tehsil of Raipur district, BALCO and Dainik Bhaskar (DB) Power Company have been allotted adjoining coal blocks for power plants. These blocks include forest land under the jurisdiction of three Panchayats of Dharamjaigarh block —Sahpur, Bayasi and Rupunga. The villages under these Panchayats have not filed claims under the FRA. However, villagers allege that gram sabha meetings were organised by the district administration in the three Panchayats to obtain consent from the villagers for the BALCO coal mine, and that these meetings were boycotted by the local villagers opposed to the project. In the case of the coal block allotted to DB Power, a Right to Information application filed by members of one village in 2013 revealed that the District Collector had issued a certificate of FRA compliance for forest diversion. It stated that gram sabha meetings were held in the villages of Taraimar, Bayasi and Medhmar to fulfil the provisions of the August 2009 circular, and no rights over forest land to be diverted exist since none were raised by the gram sabha. The Gram Panchayat office has no records of a gram sabha held on the dates specified in the collector's certificate, which clearly questions the authenticity of the collector's undertaking²⁷.

In January 2016, the Chhattisgarh government, through a letter jointly issued by the District Collector, Divisional Forest Officer and the Assistant Commissioner of Tribal Development Department, cancelled the Community Forest Rights (CFR) title of Ghatbarra village in Surguja District. The letter stated that the DLC was cancelling the CFR rights since the gram sabha was using the title to oppose mining in coal blocks outside the forest compartments allocated to them, and that the rights were recognised and vested after the diversion of forest land was already approved by the MoEF. The village is one of the many villages that have rights over the 1898.328 ha of forest land diverted for coal mining in the Parsa East and Kante Basan coal block of the Hasdeo Arand forests.

The final clearance was granted for the project in March 2012, before rights of these communities were recognised and vested. The Ghatbarra village gram sabha, along with 7 others gram sabhas handed over their CFR claims to the Sub Divisional Level Committee in June 2013. However, the title issued to Ghatbarra excluded the area under forest diversion. Thus, it seems that the District Level Committee deliberately excluded these compartments from the title.

27. Shared by a member of Bayasi village during the National Consultation on the relevance of Forest Rights Act in Forest Diversion organized by CFR-LA on the 5th and 6th of March, 2014 in Raipur, Chhattisgarh. (report available

at: <http://fra.org.in/document/NATIONAL%20CONSULTATION%20ON%20RELEVANCE%20OF%20FOREST%20RIGHTS%20ACT%20IN%20FOREST%20DIVERSION.pdf>



Subsequent to the letter of the District Collector cancelling the Community Forest Rights of Ghatbarra village, pressure from different sources prompted the MoTA to issue a letter to the state government in April 2016. However, the letter only asks the Chhattisgarh state government to 'ascertain the factual position' along with the provisions of the law under which the cancellation has been made.

Jharkhand

In Latehar district's Chandwa block, two coal fields (Ganeshpur Coal Block and Banharbi coal block) have been allocated to different industries. The Jala village had prepared a CFR claim over 456 ha of its traditional village forests, which also covers the 237 ha land of Ganeshpur Coal Block. In August 2012, the village passed a resolution against mining, under the FRA. However, in March 2013, two gram sabha meetings were conducted by the project proponent in the village. In these meetings, villagers' rights were verified and a resolution of consent for the project was taken.

The officials of the project proponent submitted this resolution to the district administration. Subsequently, several villagers registered a complaint with the governor claiming that these meetings were held fraudulently, and only with a few village elite. Following this, members of the Sub Divisional Level Committee visited the village, rejected the CFR claim and recognised rights over only two burial spots. Since then,

the villagers' attempts to organise gram sabha meetings are being thwarted²⁸.

Odisha

A fake gram sabha resolution of Hensmul village in Angul District, consenting the diversion of 127.09 acres of the village forest land in favour of Mahanadi Coal Fields Ltd's (MCL) extension of Ananta Open Cast Project was uncovered by the villagers. The resolution, passed in a meeting allegedly held in July 2011, was sent by the Block Development Officer of Talcher to the Sub Collector in August 2013. The villagers alleged that such a meeting was never held and they had not received any notice to be present for such a meeting. To substantiate their claim, the villagers filed an appeal under the Right to Information to the local panchayat which also revealed that no such gram sabha meeting was held in July 2011. This illegality was communicated to the Collector, Angul, by the villagers. An inquiry report filed by the District Panchayat Officer also revealed that the gram sabha meeting was indeed forged and no records of the meeting existed in the gram panchayat records. Accordingly, the gram sabha was declared void by the District Collector of Angul in February 2014 and the BDO was asked to hold a fresh palli sabha (i.e. gram sabha), which at the time of going for print had still not taken place.

In 2012, gram sabhas of seven villages in Jharsuguda and Sambalpur districts

28. Post made by Shri Sunil Verma on cgnetswara dated 28th August, 4th, 8th and 9th September, 2014.



had opposed two coal plants proposed over 2016.12 ha forest land. However, the district administrations forwarded resolutions allegedly from gram sabhas of these villages to the MoEF. These resolutions consented to the diversion, while also stating that no member of the scheduled tribe and other traditional forest dwelling community resides on the forest land required for diversion and none of the villages are in possession of the forest land to be diverted. The DCs also provided certificates stating that processes for settlement of rights were completed in all the villages. One of the villages, Partapalli, has filed a claim over 750 ha of this forest in 2011, but their claim has not been processed yet, thus clearly underscoring the fact of false undertaking provided by the DCs²⁹.

Madhya Pradesh

In the case of diversion of 967.65 ha of forest land for Mahan Coal Ltd in Surguja District, the villagers allege that a special gram sabha was called on the 6th of March 2013, to comply with the provisions of the August 2009 circular for obtaining final forest clearance. This gram sabha was held in one village only as opposed to all affected villages as stipulated by the circular. A resolution was passed in favour of the diversion of forest land for the mine, despite the fact that the required quorum of 50% attendance was not being

fulfilled. Villagers also allege that on the same day, the tehsildar along with the Sarpanch forced many people into signing the attendance register of the gram sabha. Later, names from the electoral rolls of the village were also added to the resolution. The villagers filed a Right to Information Report (RTI) for the copy of the village resolution in order to confirm their suspicions, and the report revealed these anomalies and confirmed their allegations. The RTI revealed that the names of several people who had passed away many years prior to the gram sabha being held had appeared in the resolution, confirming that the entire voter's list of the village was copied onto the resolutions unaltered.

Maharashtra

Construction of a drinking water project on the river Kalu in Murbad taluka of Thane district in Maharashtra began in October 2010 without forest clearance being obtained. The project proponents applied for forest clearance only in August 2011 after a PIL was filed against the project by a local group Shramik Mukti Sanghatana in the Bombay High Court in July 2011 on the grounds of it being illegal. In September 2011, gram sabha meetings were held in the 12 villages to give details of the rehabilitation package and not the details of forest land to be diverted and the impact of such diversion on the forests. Each gram sabha passed a resolution rejecting the proposals for forest diversion and construction of the dam as well as the rehabilitation package being offered by the state.

29. See: <http://www.thehindu.com/news/national/other-states/odisha-gram-sabha-resolutions-tweaked-to-divert-forestland-for-coal-mining/article6716430.ece>



In April 2012, the FAC recommended not giving clearance for the diversion of forest land for the dam since the gram sabha resolutions had not been submitted to the FAC. However, a year later in April 2013, the FAC recommended clearance for the project citing that gram sabha resolutions of eight gram Panchayats were submitted to the FAC and that details as per circular of Aug 2009 would be submitted before final approval. As per an appeal under the Right to Information, the Sanghatana found that the State Irrigation Department with the help of Contractor, local politicians and officers had submitted 8 fabricated gram sabha resolutions to substantiate the diversion proposal. A First Information Report has been filed by local villagers against these fake resolutions.

A pattern of Official Sabotage

Many such cases have been reported from several states. They seem to reveal that there is a steady attempt to veer away from genuine discussions with affected local gram sabhas around projects over forest land, and to try to sideline them from decision-making processes of projects. It can be seen through these examples that various local governmental functionaries such as Panchayat representatives as well as Block Development Officials, right up to the district administration are not following due processes under the FRA and those related to right to free prior informed consent of the communities.

Committees formed under the FRA, including Sub Divisional Level

Committees and District Level Committees are also seen to be withholding claims, manipulating the area in titles over CFRs, sometimes excluding areas being diverted from total area claimed by the gram sabhas, as well as cancelling of rights recognised over forest land.

Apart from these attempts to undermine the authority of the gram sabha, questions can be raised on the validity of undertakings given by the district collectors. Collectors have been providing undertakings of questionable validity certifying that rights of forest dwellers have been recognised and vested, when claims are pending with various committees or haven't been made at all. And concerted efforts are being employed to prepare false resolutions of consent in the name of gram sabhas, from local government representatives' right up to the district administrations.

The Forest (Conservation) Amendment Rules, 2014, make the collector responsible for not only overseeing that the processes under FRA and the August 2009 circular are followed, but also to provide a detailed report of compliance of the same. Holding the district collectors responsible for the effective implementation of the Act is now possible.

3.2 Niyamgiri judgement and its implications

In April 2013, the Supreme Court passed a landmark verdict upholding the free prior informed consent clause of the



August 2009 circular and the FRA. It was hearing a case against bauxite mining by Vedanta Alumina Limited (VAL) in the Niyamgiri hills (Rayagada and Kalahandi districts of Odisha). The judgement upheld the Gram Sabha as the only decision-making body under the FRA read with Section 4(d) of the Panchayats (Extension to Scheduled Areas) Act, 1996 ("every Gram Sabha shall be competent to safeguard and preserve the traditions, customs of the people, their cultural identity, community resources and community mode of dispute resolution"), and ordered the state government to ensure that all rights, related to religion, culture as well as all other community claims need to be kept before the gram sabha for its 'active consideration'.

In 1997, a Memorandum of Understanding (MoU) was signed between the state owned Orissa Mining Corporation (OMC) and the MNC Vedanta Alumina Limited (VAL) for the establishment of an alumina refinery at Lanjigarh in Kalahandi district and opening up of the Niyamgiri hills for mining to supply bauxite to the refinery. The refinery project required 723.34 ha of land of which 58.90 ha was forest land whereas for bauxite mining a total of 660.749 ha of forestland was proposed to be diverted. The refinery was constructed at Lanjigarh by violating several environmental and forest laws. However, the Dongria Kondh PVTG inhabiting the Niyamgiri hills had strongly opposed the mining. Over the course of more than a decade, several court cases were filed opposing the

mine by activists and well as members of the Dongria Kondh community. After the ruling of the SC on April 2013 in which it ordered the state government to put forward all rights under the FRA for the active consideration of all affected gram sabhas, the Ministry of Tribal Affairs issued a directive under Section 7 of the FRA which allows for the operationalization of the judgement and the August 2009 circular on the ground (See Box 1 below).

Even as the state of Odisha chose only 12 villages lying on the slopes of the Niyamgiri hills in both Rayagada and Kalahandi district to hold palli sabha (gram sabha) meetings, MoTA again expressed its disapproval and asked the state government to determine the exact number of villages in accordance with the directions given by MoTA and the SCs judgment. The people also protested against this decision of the state government and organized padayatras through villages to create awareness of SC's decision and the upcoming palli sabha hearings. However, in the end, the state government chose only those 12 villages in which the palli sabhas were held, and all the 12 palli sabhas passed resolutions rejecting the bauxite mining project.

Through these circulars, MoTA has been able to create widespread awareness about the FRA while the directions issued need to be used as guidelines for holding gram sabha meetings in compliance with the August 2009 circular in all states in the future.



Highlights of the MoTA circular following the Niyamgiri Judgment of 2013

Role of the state government (District administration represented by the District Level Committee and the Sub-Divisional Level Committee under the FRA, including officials of the Department of Tribal Affairs appointed by the State specifically for this purpose)

Prior to holding palli sabhas

- To issue advertisements in all newspapers (especially local) that all Scheduled Tribes and Other Traditional Forest Dwellers living in Kalahandi and Rayagada districts who wish to claim any right over the 660.749 ha of forest land which is to be diverted submit their claims to the concerned palli sabha with a copy to the officer of the department of tribal affairs designated for the purpose by the state government, and to MoTA at the centre.
- To send the advertisement to all civil society groups and NGOs active in the two districts as well as publicly post it in all villages and settlements within Kalahandi and Rayagada to maintain transparency in the identification of claims, and to maintain subjectivity in the selection of palli sabhas where meetings will be held.
- To prepare a list of all villages and settlements which may have traditionally been grazing cattle, collecting minor forest produce, protecting, worshipping deities or otherwise using the forest land to be diverted; including those with Particularly Vulnerable Tribal Groups who may wish to claim habitat rights (Sec 3(1)(e)) over the forest land to be diverted. To create such a list, old survey and settlement reports and forest working plans should be consulted, and also list villages from where community or habitat claims over the forest land to be diverted have been received before.
- To share the draft list of villages with the MoTA and make it public through newspapers and posting of the list in villages and settlements.
- To sensitize concerned palli sabhas and those having claims over the area regarding the SC judgment, and their rights under Panchayat Extension to Scheduled Areas Act (PESA) and FRA with the help of government officials and independent experts familiar with FRA.

While holding the palli sabha meeting

- To hold the meeting within the jurisdiction (geographical limit) of the palli sabha so that a large number of people are allowed to attend the meeting and express their views fearlessly.
- Ensure that the meetings take place independently and completely uninfluenced by vested interests or coercion.
- A full video and audio graphic record of the meeting should be made, records of which should be submitted to the MoEF and MoTA.



In the aftermath of the Niyamgiri Judgment, while hearing an appeal filed by the Paryavaran Sanrakshan Sangharsh Samiti, Lippla Village, Kinnaur District of Himachal Pradesh against the diversion of forest land for the Integrated Kashang Hydroelectric Project the National Green Tribunal gave its final judgement on the 4th of May 2016. The appeal challenged the final forest clearance granted to the project in March 2011 on the grounds that it violated the provisions of the FRA and the August 2009 circular by not seeking the consent of affected gram sabhas. The judgement directed the MoEFCC and the government of Himachal Pradesh to ensure that:

- the entire proposal for forest clearance is placed before the gram sabhas of Lippla, Rarang, Pangi and Telangi as prescribed in the FRA and as per the conditions of the forest clearance;
- the gram sabha considers all individual and community claims including religious and cultural claims under the FRA and the impact of the project on places of worship, on streams caused by silt load, on livelihoods caused by diversion of forest land, and the impact of landslides and loss of water sources;
- the gram sabha takes up the mitigation measures with the project proponent;

Thus, the court upheld the provisions of the FRA as well as the Niyamgiri judgement.

4. Conclusion

In the face of the dismal implementation of FRA in the country, many communities are losing out to diversion without their rights being recognized or vested. As seen from the examples above, different strategies are being used to muzzle the voices of communities in the decision-making process regarding any project. This indifference to communities' welfare and rights for the sake of growth, development and 'reducing bureaucratic procedures' in processes of obtaining clearances is reducing democratic spaces of contestations and perpetuating the very historical injustice that the FRA seeks to redress.

The MoEFCC, through a number of orders, resolutions and letters has attempted to dilute, provide exemptions from, or weaken the FRA. These are attempts to reduce the statutory rights and the decision-making powers of the GS. All such orders, resolutions and letters contributing to dilution of the FRA, need to be withdrawn with immediate effect.

The Ministry of Tribal Affairs is empowered under the Act to uphold the law and should be able to implement the Act effectively on the ground. MoTA should ensure that compliance with the FRA is monitored through state governments and reported on from time to time.

The Forest Advisory Committee and the Regional Empowered Committees



of the MoEFCC should also be made responsible for ensuring compliance of FRA procedure before providing forest clearance. A representative of the Ministry of Tribal Affairs included in the committees could help accomplish this. The committee should ensure adherence to the FRA processes in all matters pertaining to forest land.

In most parts of the country, awareness generation about the FRA and its provisions by the nodal agencies needs to be improved upon. This apathy is also reflected in forest areas to be diverted for developmental projects, where communities have hardly any

knowledge about the FRA, its provisions which allow them to claim rights over forest land, and the power of Gram Sabhas to make decisions on diversion of forest land for projects. Lower level government functionaries and district officials need to be held accountable for holding and reporting on the gram sabha meetings being held for diversion of forest land.

It is time that local communities are made aware of these procedures and effective monitoring of the decision-making processes in forest diversion is carried out.

*Note compiled by Meenal Tatpati with inputs from
Neema Pathak Broome, Neeraj Vaghlikar and Milind Wani.*

Briefing Note**January 2017**

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (FRA) And Diversion of Forests under the Forest Conservation Act 1980 (FCA)

Briefing note examining on-ground realities in the implementation of the FRA in areas facing forest diversion

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