

The Forest Rights Act and Large Development Projects¹

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Background

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006, provides a significant opportunity to counter some of the biggest threats to forests and forest-dwellers in India. The diversion of forest lands for large-scale 'development' projects such as mines, roads, dams, and power stations, as also defence projects, is alarmingly high. Though for some time after the enactment of the Forest Conservation Act in 1980, such diversion had decreased, it has rapidly increased again as a result of the policies of economic globalisation necessitating the rapid setting up of infrastructure and industrialization. Figures obtained from the Ministry of Environment and Forests reveal that of the total forest land diverted since 1981 (when a system for central government permission for such diversion was put into place), over 55% has been after 2001. Over 70% of forest land cleared for mining since 1981, has been in the period 1997-2007.

Such diversion has serious consequences for wildlife, as also for some of India's most vulnerable communities. It is well established that a large part of the poor population in the country are dependent on forest for their livelihood, especially tribals and other forest dwelling communities. But forested and forest-dwellers' lands are also often the richest in mineral wealth, or as potential hydro-electricity sources.

Though forests have been integral to the lives, culture and economy of these communities, and have often been conserved by them, one big issue is the lack of clear legal tenure. This is a major bone of contention and conflict between forest-dwellers and the State, as it makes the former susceptible to dispossession, harassment, and loss of livelihoods. Added to this is the large-scale displacement caused by development projects (estimated by researchers of the Council for Social Development to be in the order of 60 million; the Planning Commission estimated that of about 21 million displaced in the states of Andhra Pradesh, Bihar, Gujarat, Maharashtra, Madhya Pradesh, Rajasthan and Orissa between 1951 and 1990, 40% were tribals...undoubtedly many of them forest-dwellers).

The Scheduled Tribes and Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, or Forest Rights Act (FRA) in short, has created an opportunity not only to secure local communities' rights to forests, but also their governance. The FRA provides rights to hold and live in the forest land for habitation or cultivation, right of access, use and sale of minor forest produce, and right to protect, regenerate, conserve or manage any community forest resource, amongst other rights. Critically, this Act for the first time tries to address important livelihood security issues, while also stressing the empowerment and responsibilities of forest dwellers in

¹ This note does not deal with the entitlement to development projects that the Forest Rights Act provides to forest-dwellers, under Section 3(2); these would be requested by or be with the consent of gram sabhas anyway. The note deals with externally imposed, mostly large-scale development projects.

maintaining sustainable forest use patterns and the conservation of forest biodiversity. This space has immense scope to draw up plans for community-based or collaborative forest governance with tenurial security granted to communities. The FRA also mandates the lowest tier of the local self governance, the Gram Sabha, for implementation.

Key provisions relevant to development projects

The major provisions in the FRA which provide a legal tool in the hands of the community to fight against large development projects or forceful eviction are:

- Section 3(1)i provides forest-dwellers the right: *“to protect, regenerate or conserve or manage any community forest resource which they have been traditionally protecting and conserving for sustainable use.”*

Implications and use: once this right is claimed and granted over any forest area, the diversion of the area or any part of it will have to happen with the consent of the community. It is less clear whether in the period between the claiming of the right, and its being granted, such forest area can be diverted by the government; certainly the spirit of Section 4(5) (see below) is that it should not be possible.

- Section 3(1)e grants: *“rights including community tenures of habitat and habitation for primitive tribal groups and pre-agricultural communities:”*

Implications and use: This grants rights to the primitive tribal groups and pre agricultural groups to claim for their habitat and habitation under the provisions of community right. Thus under section 5 they can assert their power to protect and conserve, and the implication should be that this cannot be diverted for any other purpose without their consent. A claim has been made under this provision by tribal groups in Orissa to claim for protection of their habitat against a mining project proposed by the corporate giant Vedanta.

- Section 4(2) provides that: *“the critical wildlife habitats from which right holders are thus relocated for the purpose of wildlife conservation shall not be subsequently diverted by the state Government or the Central Government or any other entity for other uses.”*

Implications and use: If communities claim CF rights within a PA, and ask for parts of it to be declared a CWH with their own voluntarily agreed to relocation (which could include foregoing of lands previously under cultivation or having temporary shelters, which at times takes place in community conserved areas), this would allow them to use this provision.

- Section 4(5): *“Save as otherwise provided, no member of a forest dwelling Scheduled Tribe or other traditional forest dweller shall be evicted or removed from forest land under his occupation till the recognition and verification procedure is completed.”*

Implications and use: This provision states that until recognition of rights is complete, no person who satisfies the requirements of being an FDST or OTFD can be evicted or removed. Thus this bars any displacement of forest dwellers for any project requiring forest land, so long as it was forest land as on January 1, 2008, until the completion of the rights recognition and verification process.

- Section 5 empowers the Gram Sabha to:
 - (a) *“protect the wildlife, forest and biodiversity;*
 - (b) *“ensure that adjoining water catchment area, water sources and other ecological sensitive areas are adequately protected;*
 - (c) *“ensure that the habitat of the forest dwelling scheduled tribes and other traditional forest dwellers is preserved from any form of destructive practices affecting their cultural and natural heritage”*
 - (d) *“ensure that the decisions taken in gram sabha to regulate access to community forest resources and stop any activity which adversely affects the wild animals, forest and the biodiversity are complied with”*

Implications and use: The term ‘empower’ is crucial, for it implies that the community has the legal powers to ensure all the measures listed above, which would clearly include the power to stop any project or process which could threaten the forest, wildlife or biodiversity. Given that development projects often end up affecting ‘cultural and natural heritage’, and adversely affect wildlife and forests, the implication is that the gram sabha has the powers to stop such projects, and that project proponents need to get its consent.

Government response

The Ministry of State for Environment and Forests (MoEF) is reported to have written to the Principal Secretary, Orissa, in a letter in April 2009, that diversion of forest land in Niyamgiri (for proposed mining), should adhere to the provisions of the FRA. Such a view from MoEF is most welcome, and would be in line with the above interpretation.

Indeed MoEF and/or MoTA should issue a circular to all state governments to respect this view, using the provisions pointed out above.