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Issue 6

TRACKING THE FOREST RIGHTS ACT

STORIES ABOUT THE IMPACT AND IMPLEMENTATION OF THE
ACT FROM ACROSS INDIA

Editorial

Reflecting on one year of the Forest Rights Act

This issue of Kalpavriksh's newsletter marks one year of implementation of the Forest Rights Act. A lot has moved, but also a lot has remained motionless. Newsletter 5 reported that over 8 lakh claims have been received from forest-dwelling communities. Almost two lakh titles to forestland and resources have also been recognized. Of course, the pace and system of the claims and recognition of rights process has varied hugely between and within states. However, looking back at the year, a few issues jump out as being significant. These are worth our reflection.

- **“Tribal Land Rights Act”**

This law has been strongly perceived and acted upon as a law primarily to grant individual land pattas to Scheduled Tribes. As a result, two key results are apparent. Firstly, important provisions of the Act dealing with community forest resource (including biodiversity conservation), rights to minor forest produce, traditional knowledge, and empowerment of gram sabhas for conservation, have remained neglected. Secondly, in many areas, non-tribal forest-dwellers have expressed either a disinterest to engage with the claims process or anger at being excluded. Technically, the responsibility of accurate information outreach lies with State Tribal Welfare Departments (TWD) and in a few cases, TWD material has been factually incorrect. However, the perception of the Act as a land rights Act is also rooted in larger socio-political issues: vested political interests, the culmination of a long-standing struggle for land tenure and so on.

- **Implementation robust where civil society is active**

The implementation of this Act, i.e. processes of distribution of claims forms, information dissemination to forest-dwelling communities, support for filling claims forms, verification of claims, intimation to Sub-Divisional and Divisional Committees and action against violations, have been most robust where civil society (NGOs, community-based organizations and movements) are active. In some districts, Forest Department officials and proactive District Collectors have also taken the initiative for effective implementation. One such example in point is the application of “gram sabha” at either a panchayat or hamlet level. As we have reported in previous newsletters, civil society groups have been strong enough to demand gram sabhas at a hamlet level, arguing that the panchayat is a large and political institution. This is converse to cases where groups are not active. Here, gram sabhas have been constituted at a panchayat level.

- **Legal clarifications needed from State and Central Governments**

In spite of a year having gone by, a number of legal ambiguities continue to pester implementation of the Act. For example, Section 2 of the Act stipulates a list of basic development facilities (anganwadis, hospitals, schools, fair price shops etc.) that forest-dwelling communities are entitled to under this law. However, it is still unclear whether communities can claim these facilities or whether they have to be negotiated with relevant government departments. This is especially ambiguous given that the Ministry of Environment and Forests (MoEF) has stated that it is preparing guidelines on how forestland will be diverted for this purpose. Till date, the MoEF has not issued any guidelines and our understanding is that no communities have submitted claims for development facilities.

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There also remains a lack of clarity on the institutional arrangements between communities that claim community forest management rights and the Forest Department that has jurisdiction (under the Forest Act) over the areas being claimed; this would be compounded in the case of protected areas where the Wild Life Act also comes into play.

- **Writ Petitions and stay orders pending disposal**

Two writ petitions in the Supreme Court and seven in state High Courts have been filed calling for the annulment of the Act. While some State High Courts have issued stay orders against distributing of titles under the Act, there has been no stay from the Supreme Court. This issue of the newsletter also reports about the failure of the Ministry of Tribal Affairs to adequately deal with the petitions. So far, the petitions have not blocked implementation. However, as the claims processes come to a close and forest-dwelling communities expect quick responses to their submissions, State Governments will be forced to deal with the stay order against pattas.

- **Invisible Critical Wildlife Habitats**

Critical Wildlife Habitats were welcomed as a conservation opportunity. They were viewed as the chance to reevaluate important wildlife areas and develop adequate management strategies. However, very little movement has taken place vis-à-vis these habitats. As per official information from the MoEF, the Central Level Expert Committee for the declaration of Critical Wildlife Habitats was constituted on 31st October 2007. Furthermore, as of 21st January 2009, 14 States and two Union Territories have constituted State Level Committees for the identification of Critical Wildlife Habitats. However, no proposals from the State Governments have been received for consideration of the Central Expert Committee. No meetings have occurred and consequently, no wildlife areas have been declared Critical Wildlife Habitats.

As the year proceeds, it is difficult to predict if the above issues will remain, intensify, or get ironed out. However, whether this law will actually empower forest-dwelling communities or be an opportunity to re-strategize our conservation methods, remains to be seen.

NATIONAL NEWS

Over 94,264 forest-dwellers avail land rights

Official statistics from the Press Information Bureau, Government of India indicate that as of November, land claims of 94,264 forest-dwellers have been settled and 86,455 are ready to be settled.

Source: PIB, *Over 94 thousand Tribals and Forest Dwellers gets land rights, 29/12/08*,
<http://pib.nic.in/release/release.asp?relid=46215>

MoTA delays in disposing writ petitions

In 2008, the Prime Minister's Office had set up a committee (Ministry of Tribal Affairs (MoTA), Ministry of Environment & Forests (MoEF), Law Ministry) to report monthly on the implementation as well as monitor the several writ petitions against the Act in High Courts and the Supreme Court. However, the committee as well as the MoTA failed to ensure appearance of its counsel in a hearing in the Orissa HC in early December. Moreover, the Orissa Government's counsel argued in favour of a continuing stay order on the Act. The government had earlier decided to push for coalescing all the high court cases at the apex court. However, the failure of the committee to move concertedly has delayed the process to such an extent that it has not even been listed. In contrast, cases filed against the Act are moving forward. Earlier too, there had been almost a three-month delay by the tribal affairs ministry in hiring a counsel to represent the government in the cases.

Source: *Nitin Sethi. 'Forest Act hangs in limbo', Times of India, 21.12.08*

NEWS FROM STATES

GUJARAT

Vadodara: 1,000 tribals to be given land rights papers

About 1,000 tribals in Kawant taluka are to be given land deeds under this Act on January 26th. District Collector, Vijay Nehra said that this Act was the first time that such a large number of Scheduled Tribes would get land titles in the country. Teams from the forest and revenue departments are working round the clock in the area for completing all the formalities before January 26, Nehra said.

Source: '1000 tribals in Vadodara to be given land rights papers', *Press Trust of India*, 22/1/09
<http://www.ptinews.com/pti%5Cptisite.nsf/0/162D58BFC3871485652575460025B45A?OpenDocument>

MAHARASHTRA

Mumbai: Encroachment in Sanjay Gandhi National Park

Sanjay Gandhi National Park (SGNP) is facing fresh encroachment attempts by inhabitants in and around the park. Most of the encroachment has been in the Yeor range, which covers half the 103 sq.m of the park. According to the RFO Yeor range, 50 fresh cases have been registered against identified people trying to encroach 15 hectares. SGNP director, P.N. Munde said, "This is a clear case of land grabbing." Some forest officials feel that the new Forest Rights Act is partially responsible. The tribal people here are aware of their rights and get support from some tribal organisations," said a senior forest official. "They first try to stake claim on the land on the pretext of the Act and if we take action, they accuse us under the Atrocities Act that gives special treatment to them," said the official.

Source: Prashant Rangnekar, 'Encroachers close in on National Park' *Express India*, 18/1/09
<http://www.expressindia.com/latest-news/encroachers-close-in-on-national-park/412085/>

ORISSA

Bhubaneswar: Proceedings of meeting of SLMC, 24/10/08

The State Level Monitoring Committee of Orissa met to discuss the progress of the Act. The Commissioner-ST & SC Department conveyed that the PMO, as of 17/10/08 expressed the need to expedite the recognition of rights under this Act and urged the State Government to complete the process regarding the disposal of the writ petition in the state. Key decisions taken at the meeting include:

- Forest Department should ensure that all encroachments are settled in favour of tribal encroachers. Process to be completed within one month.
- Panchayati Raj Department should ensure that gram sabha meetings are conducted as per the Act, verify attendance in gram sabha and create more awareness about the Act.
- Forest Department to convene a meeting of all DFOs to clarify queries on implementation of the Act.
- Palli sabha / gram sabha may pass a joint resolution affirming that claimants belong to Scheduled Tribes. Such resolution shall be accepted by SDLC and DLC without a caste certificate. However, if the SDLC chooses to re-verify, they may require a proper caste certificate to be issued by the Tehsildar in special cases only.

Special Report

Bhubaneswar: Special palli sabha on 18th January, Vasundhara responds

The ST & SC Development Department, Government of Orissa has issued a letter (No.TD-II-11/08) on 6th January 2009 to where it is mentioned that as per the request of the ST & SC Development department the Panchayati Raj Department (PR) has requested all Sarpanchs in Letter No. 49408/PR dated 30.12.2008 to convene a special meeting of Palli Sabha/Gram Sabha throughout the state on 18.01.09 to consider the claim cases received by FRC/recommended by SDLC for consideration of SDLC as per statutory requirement. As per this letter, Vasundhara has issued a note on the purpose of the the special palli sabha:

- **To consider and approve claims received by the FRCs**

The PR Department letter (Letter No. 49408) informs that there are cases where the FRCs of some villages have directly submitted claims at the SDLC without going through the mandatory process of consideration and approval by the Palli Sabha/Gram Sabha. It further informs that the SDLC has returned claims to some of the villages after finding that those claims are preferred directly to the SDLC without getting them approved by the concerned Gram Sabha/Palli Sabhas. Therefore it is necessary that the concerned villages from where claims are directly submitted get approval on the claims in the Gram Sabha/Palli Sabha convened on 18th January 2009.

- **To consider and approve claims verified and recommended by the SDLC**

Note: It should be noted that the SDLC has initiated verification of claims through verification teams appointed by it after receiving claims from villages through the concerned Gram Sabha/Palli Sabha. It is a statutory requirement that the findings of the verification team as well as the recommendation of the SDLC on the basis of the verification findings are duly approved by the concerned Gram Sabhas/Palli Sabhas. Therefore it is necessary to ensure that the Gram Sabha/Palli Sabha proposed to be convened on 18.01.09 should consider in detail the findings/outcomes of the verification carried out by the SDLC and should proceed to approve the verification/recommendation only when it is convinced that the verification is complete in all respect following the due process and mandatory requirements and that all claims, both individual and community, submitted by the community through the Gram Sabha/Palli Sabha are duly verified by the SDLC during the verification process.

- **The Gram Sabhas/Palli Sabhas are required to discuss in detail the following before finalizing the approval**

- a. Whether all the eligible claimants have been able to file their claims at the FRC or there are still claimants who are left out of the process of determination of rights at the village level.
- b. There are instances where claims of only scheduled tribes are considered during verification leaving out the claims of the other traditional forest dwellers. Such instances could be identified and checked through the Gram Sabha/Palli Sabha.
- c. It is observed that the process of determination has left out some of the families who have migrated to other areas in search of work and therefore have not been able to participate in the process of claim making initiated at the village level. The proposed Gram Sabha/Palli Sabhas give opportunity to the community to take into consideration interests and claims of such migrant families. Resolution adopted by the concerned Gram Sabha/Palli Sabha should clearly mention cases of migrant families.
- d. There could also cases where eligible claimants have not been provided with opportunity to participate in the process of determination of rights for some reasons such as lack of information. The Gram Sabha/Palli Sabha should identify such cases and pass appropriate resolution to consider their claims.

- **Whether all the claims on both individual and community rights are duly determined and verified by the FRC and subsequently considered by the SDLC or not.**

- e. It is observed that in many areas the verification initiated by the SDLC appointed verification team has only verified individual claims and has not considered community claims. The Gram Sabha/Palli Sabha gives opportunity to the community to check if all the claims including both individual and community claims are duly verified by the verification team with due consultation with the claimants, community members and the FRC.

- **Whether conflicting claims or claims relating to common forest land used by more than Gram Sabha are properly addressed or not.**

- **Whether reasonable opportunity has been provided to interested/affected persons and concerned authorities before passing the final resolution.**

- **The Gram Sabhas/Palli Sabhas should approve the findings of verification by the SDLC and the recommendation of the SDLC on the basis of it only when it is convinced that all the claims are duly verified by the SDLC.**
- **While convening the Gram Sabha/Palli Sabha it should be seen that:**
 - f. A 15 days notice is issued by the Panchayat for convening the Palli Sabha/Gram Sabha.
 - g. The Gram Sabhas/Palli Sabhas should be held with the required 2/3rd quorum with active participation of women members.
 - h. The formats of the Gram Sabhas/Palli Sabhas are provided with the PR Department letter.

This note is prepared by FRA Facilitating and Monitoring Cell at Vasundhara based on the Circular Issued by PRI & SC & ST Development Department.

TRIPURA

Agartala: First recipient of land rights under Act

Rabirung Rupini of Khamtinbari in Tripura's West district is the first recipient of land rights under this Act in the forests of North East India. She was one of 35 recipients of the documents from Chief Minister Manik Sarkar in a public gathering. Altogether, 126,000 forest dwellers have claimed land rights under this Act. Of these, 22,000 claims have been found valid and 11,500 have already been settled.

*Source: 'Land rights documents to tribal forest dwellers', The Hindu, 18/1/09
<http://www.hindu.com/thehindu/holnus/004200901181322.htm>*

UTTAR PRADESH

Lucknow: Activists discuss implementation of Act in U.P.

Representatives of 16 organizations met in Lucknow to discuss the implementation of the Act in U.P., which has so far made little progress on the ground. Activists say that many communities like the Seharias and Kols may be excluded for lack of documentation. For example, while the Seharias, the second-biggest tribal community in the Bundelkhand region, has been given Scheduled Tribe status in Jhansi district, but are treated as Scheduled Castes in Lalitpur. The Vantangiyas or Tongiyas, a 30,000-strong tribal community living adjacent to the Nepal border in Gorakhpur and Maharajganj will also not benefit since they do not possess documents to prove they are forest tribals. "The government is asking for their residence records of the past 75 years. But traditionally, the Tongiyas have been a mobile community. They move every five years, although in and around the district. Hence, they may find it difficult to produce such records," said Utkarsh Sinha, a social activist from the region.

*Source: Tarannum Manjul, 'Activists get their Act together for tribals', Express India, 21/1/09
<http://www.expressindia.com/latest-news/activists-get-their-act-together-for-tribals/413321/>*

WEST BENGAL

West Midnapore: State Government wakes up to implement Act

The State Government of West Bengal has taken initiative to implement the Act, almost one year after its enactment. In West Midnapore district, 48,000 applications are being verified by the Tribal and Backward Classes Welfare Department. Tanmoy Chakraborty, a subdivisional welfare officer from Jhargram said that the government's delay in verification of claims was due to political agitation in some areas as well as pending panchayat polls. The State Government has also specified that the applications of non-tribals will need to be endorsed by the local panchayat and beat officers.

*Source: Sukumar Mahato, 'Land right for forest dwellers', Times of India, 27/12/08
http://timesofindia.indiatimes.com/Kolkata_/Land_right_for_forest_dwellers/articleshow/3898658.cms*

NEWS FROM CRITICAL WILDLIFE HABITATS

‘Future of Conservation Network’s’ study on the Act in PAs

‘Future of Conservation in India Network (FoC)’ is a network of ecological and social organizations and individuals committed to equitable conservation of biodiversity. FoC has been engaging with the Forest Rights Act through numerous fora. Most recently, FoC has launched a study on the impact and implications of the Act for Protected Areas in the country. The objective of this study to explore examples of implementation of the positive elements of the Act, which could be used to inspire and educate initiatives in other areas; as well as key issues of concern, which may need either amendments in the Act or clarifications through State implementation strategies. Based on the findings from the study, FoC believes that it will be essential to raise alerts in those instances where the Act may be having a negative impact, as also help in taking the positive provisions forward.

If you would like more information on this study or have some suggestions, please contact:
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UPCOMING EVENTS

New Delhi: Strengthening Women’s Rights in Scheduled Tribes and Other Traditional Forest Dwelling Communities with Respect to the Forest Rights Act, March 13th/14th, ISI

NCAS invites you to a two-day workshop which hopes to understand the processes of implementation of the Act with reference to women’s participation and role given in the legislation. In spite of clear articulation of women’s role and participation in Forest Rights Act implementation, the fact remains that most women are unaware about the Act and provisions made in favour of them. The FRA as a tool to empower women in scheduled tribes and traditional forest dwelling communities. Hence, there is a need to develop understanding and raising awareness among tribal and forest dwelling women about their role described in FRA. There should be a stronger intervention for their participation in decision making and implementation processes, in claiming entitlements and ownership on natural resources. It is the need to interpret Forest Rights Act not just land titles but a broad spectrum of community rights and role of women to collect and manage forest produces as well as in preserving biodiversity. Here we propose to the women activists and researchers working on the forest rights, indigenous people rights and forest workers rights to come together, share experiences and build national level strategies to advocate on FRA with gender perspective.

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READER'S WRITE IN

Voices from Bhimashankar **Pradeep Chavan, Kalpavriksh**

Bhimashankar WLS is situated on the crest-line of the Western Ghats, and is of great ecological significance. The Sanctuary is also an important religious site as the Bhimashankar temple, one of the twelve Lord Shiva Jyotirlingams, is situated within the sanctuary and visited by lakhs of pilgrims every year.

The claims process in villages in the sanctuary has not begun yet. Some villagers fear that if they claim forest rights under this Act, the Forest Department will use the claims forms as a tool to prove that the forest-dwellers cause harm to forests and wildlife. However, lack of awareness about the Act has also significantly slowed down the process. The Integrated Tribal Development Project office of Ghodegaon claims that it has trained all Forest Rights Committees (FRCs) in Bhimashankar. Yet, most villagers do not seem to have formed FRCs.

Recently, the Collector has issued an order to form FRCs immediately in all villagers. Gram sevaks have also received an order from the Block Development Officer to aid in constitution of FRCs. Some NGOs have also started to actively support the implementation process. However, my observation is that these efforts are either slowed down to halted altogether.

As Kalpavriksh, I have held numerous discussions with people from Bhorgiri about the Act's provisions to establish forest rights. But there was much hesitation to talk about the Act, as some feared that it would threaten their existence in the Sanctuary. In contrast, in Yelavali hamlet, people had heard about the Act via radio advertisements. However, they did not know the details of the claims procedure. Kalpavriksh along with the educated youth of the village, has conducted many meetings to inform people about the Act and recently an FRC of ten members (including women and youth) was also formed.

Recognition and vesting of forest rights under this Act is a one-time process. Therefore it needs to be initiated only once claimants are fully aware about the Act's provisions. If not handled with care, there is a chance that forest-dwelling communities may lose their rights and be unable to claim in the future. In spite of the seriousness of the situation, NGOs, government agencies like TWD appear to handle the situation lightly. A collective effort of all stakeholders is needed vis-à-vis the Forest Rights Act in Bhimashankar.

Some questions that we're asking:

- How is the Act being interpreted in its implementation?
- Which are best and worst cases of its implementation?
- What are the implications of 'Critical Wildlife Habitats' and how are they being implemented on the ground?
- What are the implications of Section 3(i) and how are forest-dwelling communities claiming the right to protect and conserve forests?
- How are the provisions of the Act being misused?
- Are fresh encroachments occurring as a result of the Act?
- What is the impact of tenure and livelihoods security of forest-dwelling communities on biodiversity?

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