

Investigating Community Forest Resource Rights
The Conservation and Governance Aspect
in
The Scheduled Tribes and Other Traditional Forest Dwellers
(Recognition of Forest Rights) Act, 2006

Introduction



Tribal women with NTFP collection in Mendha-Lekha (Maharashtra)

forest-dwelling communities (Scheduled Tribes and Other Traditional Forest Dwellers).

Section 3 (1) of the FRA includes- the rights of habitation and cultivation, community rights such as *nistar* or those exercised in intermediary regimes such as *Zamindari*, right of ownership (i.e. access, use and disposal of non-timber forest produce (NTFP)), rights over the products of water bodies and grazing grounds, habitat rights of Primitive Tribal Groups (PTGs) and rights to protect community forest resources; amongst other rights.

Section 3 (2) authorizes the government to divert forest land in order to provide communities with facilities for education, health and connectivity. Most of these rights can be claimed both as individuals and as a community.

The **Act** aims to establish a balance between forest dwellers' customary rights, which have been ignored so far; with economic and environmental objectives of the country's development policy. However, during its implementation over the past two years, it has been noticed that there has been an emphasis on only a few provisions of the Act rather than the Act in its entirety. The thrust of the implementation so far has been on claiming individual rights to land, while rights over Community Forest Resources (CFR) have largely been ignored. **The CFR provisions of the Act are extremely important for supporting community conservation where it is already happening, and also where communities are willing to take up**

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (hereafter called FRA) came into force in January 2008. The FRA attempts to **recognize and vest** forest rights and occupation of forest land, in

conservation and management of their common resources. Equally though, the provisions are crucial for changing the thus-far top-down centralized governance of forests towards more decentralization and site-specificity, while providing for a possibility of collective livelihood security to communities. This study therefore was commenced to investigate the status of implementation of CFR provisions in a few select states.

Important features of the CFR provisions

Section 3 (1) i of the FRA provides:

- A unique opportunity for forest-dependent communities to claim and manage forest resources in order to achieve the twin objectives of biodiversity conservation and sustainable livelihoods.
- The “right to protect, regenerate or conserve or manage any community forest resource which they have been traditionally protecting and conserving for sustainable use”.
- These forests the status of forests protected by communities, thus signifying that any future activities in these forests can be undertaken only with the concerned community's consent.

Section 5 of the FRA addresses the powers and duties of holders of forest rights. It provides for:

- A legal **option/RIGHT/RESPONSIBILITY** to protect wildlife, forests and biodiversity while empowering the Gram Sabha to regulate access to community forest resources and to stop any activity that may adversely affect the same.
- Rule 4e (framed under the Act) states that communities which claim rights under the Act have a right to “constitute committees for the protection of wildlife, forests and biodiversity, from amongst its members, in order to carry out the provisions of section 5 of the Act”.



FRC representative in Sankali village (Gujarat)



Children from Tentulipadar village (Orissa)

Objectives

The objectives of this study were:

- To investigate status of implementation of provisions on Community Forest Resource (in particular section 3 (1) i and section 5 along with Rule 4e) in government Protected Areas (PAs) and Community Conserved Areas (CCAs) in different states.
- To facilitate exchange of information thus generated among various actors, particularly communities and NGOs working at the grassroot level.
- To understand the potential impacts of CFR rights claimed by the communities on forests and future strategies, if any, for their management and sustainable use.

Limitations

Only one or two day field visits to each of the villages were carried out; thus it was not possible to gauge the communities' understanding of natural resource management in any depth. Direct communication with the communities in Orissa and to some extent with those in Gujarat could not take place because of a language barrier. All communication was mediated through the members of partner NGOs and as in all indirect communication, there is a likelihood of some loss of nuance and detail. Language was an issue with the documents (made available for perusal) and CFR claims as well since the papers were all in the regional languages and hence the study team had to depend on translations.

Sites visited

Areas for field visits were identified on the basis of the information provided by partner NGOs which are helping communities to file claims under the FRA. Field visits were carried out in Kalahandi and Nayagarh districts of Orissa, in Vadodara and Narmada districts in Southern Gujarat and in the Gadchiroli district of Maharashtra.

Sites in Orissa and Gujarat were selected on the advice of Vasundhara and ARCH Vahini, two groups working in these states respectively. The process of claiming CFRs was completed in these sites.

In Gadchiroli (Maharashtra), a village called Mendha-Lekha was selected as it is one of the first villages in the country to have secured titles under CFR provisions of the Act.

In each village we visited a meeting was held with the villagers who are familiar with and have been a part of CFR process, together with Forest Rights Committee (FRC) members and/or elderly persons in the village and a member/activist associated with the local NGO. The current status of implementation of the FRA was also checked with the local Forest Department offices.

Pre-claims process

The process of claiming rights over CFR was initiated in Orissa and Gujarat by local NGOs and civil society groups. In the study areas that were visited in both these states, the CFR claims application forms had not been issued by the government agencies despite repeated requests from the communities. The NGOs therefore had to distribute copies of application forms, which they had prepared based on the available government format.

In most of the villages, where the CFR claims process was started, the initial stages of forming the Forest Rights Committees (FRC) and discussions over CFRs took place in March 2008, soon after the FRA became operational in January 2008.

Filing application under Section 3(1) i

Though Section 3(1) i is considered to be an important provision from the governance and conservation point of view, the application form for claiming rights, provided by the Government of India, does not include it.

In Orissa, the two villages studied have either filed this claim under Section 3(1) I ("any other traditional right") as "right to protect and manage their community resources" or have not filed any claims at all as the format lacked the particular column.

However, it is unclear whether the right to conserve, protect and manage community forest claimed under Section 3 (1) l would be considered the same as Section 3 (1) i and would have the same status.

In Gujarat, the NGO ARCH Vahini suggested that the state government treat Section 3(1) l as Section 3(1) i. Villages that are associated with ARCH Vahini have claimed this right under Section 3(1) l. However, the same ambiguity and confusion seen in Orissa prevails in Gujarat as well.



Mendha-Lekha: community forest

In Maharashtra, Mendha-Lekha village had claimed the right to conserve and protect their forests under Section 3(1) l, as “other traditional right”. Their claim has been accepted by the government and the village has been granted the title to their forests.

Providing evidence

All application forms must be accompanied by evidence to support the claim. In Orissa and Gujarat communities have provided the following kinds of evidence:

- Written statements of village elders and community members.
- Documents received under RTI: One of the study villages, Tentulipadar, an un-surveyed village, procured information supporting its century-long existence through the RTI Act (mainly from Revenue and Forest Departments), which it then submitted as evidence.
- voters' lists,
- handmade maps of resources used traditionally,
- relevant parts of state forest manuals-particularly those indicating presence of the village and the use of resources,
- other reports of the forest department,
- District Gazetteers,
- Google maps.

In Gadchiroli (Maharashtra), Mendha-Lekha, the village that has already secured the CFR titles, had attached the following evidence:

- handmade map of resources,
- statement of village elders,
- common resolution prepared by FRC,
- Sarpanch's statement.

Interestingly, Mendha-Lekha has also referred to Government/Forest Department documents and maps and **the Biodiversity Act, 2002 (BDA) and Biodiversity rules, 2004, as evidence; as Section 3(1) k gives right of biodiversity related issues, the mention of the BDA as evidence is supportive and directional to implement Section 5.** However, they did not attach any copies of these documents (as these, being government documents, are already available with the government).

Major hurdles before filing claims

During the process of filing claims, the two most time-consuming issues at the community level were, settlement of boundary disputes between the villages and collection of evidence. Boundary disputes were handled in different ways at the various sites. All the villages visited during this study had already settled their boundary disputes. It took many meetings with concerned villages and also with other stake holders for them to reach the final demarcation of their respective boundaries.

- **Though Rule no.12 (3) of the FRA states that ‘if the Gram Sabhas are not able to resolve the conflicting claims, it shall be referred by the Gram Sabha to the Sub-Divisional Level Committee (SDLC) for its resolution’, no village approached the SDLC for the same in any of the areas visited during this study.**

In all these villages boundary disputes had been resolved at the Gram Sabha level.

- **There were also villages which were entirely unaware of the existence of the FRA. Interestingly this situation is observed not only in areas where NGOs are not active but also in areas where NGOs are active but have not extended their activities to the FRA yet.** For instance, Vasava tribe villages inside Shoolpaneshwar wildlife sanctuary in Narmada district of Gujarat have filed claims under FRA. But, in the neighboring district of Vadodara, a few villages did not even know about the FRA. Mundamor is one such village. Mundamor villagers have been conserving their common resources since 1991, however, they did not know about the FRA and CFR provisions until recently.

CONTD... Major hurdles before filing claims

- Residents of Tentulipadar village within the Karlapat WLS (Orissa) complained that acquiring a caste certificate from the collector's office and arranging other relevant evidence took more than six months.

The rest of the process of verification by Gram Sabhas and submission of claims to the SDLC went smoothly.

Post-claims

CFR claims filed by all the studied villages, except for Mendha-Lekha, are pending with the SDLCs. The latter have informed communities, through facilitators who have been following up with the officials in Orissa and Gujarat, that CFR claims would be considered only after the individual claims are settled.

- The villages studied in the non-protected areas in Orissa and Gujarat were selected such that most of them have some form of conservation practices that are either based on traditional Knowledge or have evolved recently through the experience of the last few decades. **Akhupadar, Lakhapada, Basantpur and Bada Toulubi villages of Nayagarh district of Orissa plan to continue with their existing conservation practices, which they may slot in the legal framework suggested under Section 5 of the Act.**
- Villages inside PAs, however, did not have any existing conservation practices, as according to them, the forests belonged to the Forest Department and not to them. However, **villages like Tentulipadar, Sankali and Dabka which are located within the protected areas are willing to practice controlled grazing, fire control and patrolling after the rights are granted.** They have "on paper" formed the Community Forests Management Committees (CFMC) in the Shoolpaneshwar WLS and Forest/Wildlife Protection Committees in the Karlapat WLS.
- Rajawant village in Vadodara district had filed individual as well as CFR claims. But, the SDLC refused to recommend individual claims and did not give any reasons in writing for the rejection. The facilitator NGO ARCH Vahini claimed that this refusal has turned the villagers absolutely indifferent towards following up on the status of CFR claims. They have not maintained any records nor retained any copies of CFR claims that they had filed.

- Some villages have been issued community titles with a number of restrictive conditions. For instance, in the case of the Ghati village in Gadchiroli district; there are seven conditions. One of these conditions is that any **State government/sanctioned works under the working plans cannot be stopped by the community.** This condition is said to have been imposed in response to protest by this village against the forest department's attempt to harvest timber and forest produce from community forest. Similar issues have been reported from Kalahandi district of Orissa. However, it is not within the mandate of the FRA to impose such conditions.



Akhupadar village(Orissa):community forest

Status of conservation at the villages visited

Experience from the sites visited shows that the villages from non-protected areas have been protecting/conserving their forests (which fall in the legal category of Reserved Forests) while those within protected areas, having been severely alienated in many cases, were often less interested in ensuring sustainable use of their common resources. Now, with the onset of the FRA, the villages inside PAs, encouraged by the groups working with them, are planning to take up a conservation drive, provided that CFR titles are granted. However,

CONTD... Status of conservation at the villages visited

- In the case of Southern Gujarat it was observed that all the villages from the Shoolpaneshwar WLS have followed the same format for claiming CFRs. The format was provided by ARCH Vahini and includes a Gram Sabha resolution. The resolution declares that the villagers will together prepare a long term working plan once the rights are granted. They will take up measures to stop soil erosion, and will work towards biodiversity protection, wildlife conservation and ecotourism. However, when asked, villagers could not answer what exactly they meant by the above mentioned terms and what exactly they planned to do.
- It was observed in both protected and non-protected areas that the discussion was limited to the commercially valuable Non-Timber Forest Produce (NTFPs); the things that have demand in market like Mahua, Kendu leaves, Bamboo, etc. However, the household utility or traditional uses/practices associated with the NTFPs could not be brought into discussions even after repeated attempts.
- Akhupadar villagers planned to plant teak and mango in the forests after they get the titles.
- Sankali villagers showed extreme antagonism to the idea of creating Critical Wildlife Habitat (CWH), a provision in the FRA by which sites within protected areas could be given stronger legal protection and where modification of rights or relocation of people can take place (with their consent, after the rights establishment process has been finished) This could be because for them CWHs has the same connotation as PAs which have created severe restrictions and alienation of local people.

Interestingly, Mendha-Lekha villagers have mentioned that they are considering completely closing around 10% area of their forests. It is important to note here that this village has rights over 1800 hectares of forest, while the number of households in the village is around 90.

Conclusions and recommendations

Need for widespread awareness

After more than a year of the Act being implemented there is still not much awareness about the Act itself and about the aforementioned sections on CFR in particular. This is especially so in areas where social groups are not active.

There is an urgent need for widespread awareness about the existence and details of the FRA, particularly its provisions on CFR. The issues that are required to be addressed by Ministry of Tribal Affairs (MoTA) include:

- Why is Section 3 (1)i missing from the government format for claiming rights?
- Whether the communities would be given another chance to claim under this section, if they have not been able to claim these while claiming the individual rights.
- Whether this is an open ended process and those who have not been able to file the claims would get an opportunity to do so in future.

MoTA needs to distribute clear guidance as handbooks or other material on how to carry out the CFR claims related processes. Case study documentation of successful CFR processes, and CFR processes that have run aground due to obstacles would also help.

Communities and wildlife

In all the study villages, communities said that they have been and will continue to co-exist with the wildlife; however, issues related to wildlife could not be brought into discussion as communities were keener on getting titles first, rather than planning for its management and conservation. Hence, it was difficult to assess the intentions and strategies for future management of wildlife. This still needs to be



Tribal woman from Akhupadar village

understood. It may also be noted that **no studies existed for the ecological status of the CCAs and the PAs. These would be needed if section 3 (1) i and section 5 are to be implemented in these areas.**

Empowering communities

The study suggests that the CFR provisions can be best implemented if the granting of rights go hand in hand with building or rebuilding capacities of the communities to manage and conserve such resources.

CONTD... Conclusions and recommendations



Tentulipadar villagers checking species regeneration rate at Karlapat

This would include help in reviving traditional/experiential knowledge of natural resource management and providing technical, financial and other support, if need be. Dr. Nitin Rai, a scientist at ATREE informally carried out a small experiment with the Tentulipadar villagers inside the Karlapat WLS.

A group of 4-5 villagers was asked to check the regeneration rate of certain plant species. Dr. Rai helped them demarcate the sample space, count the saplings and evaluate the rate of regeneration. **Such activities towards, inventorying, planning and monitoring by the communities could be taken up through National Rural Employment Guarantee Scheme and other relevant schemes offered by the Zilla Parishad, Tribal Development Department, Watershed Development Department, etc.**

Training

Section 3 (1) i and section 5 are very important provisions in the FRA from the point of view of governance and conservation, and efforts need to be made to realize their potential. This is particularly true of PAs and CCAs.

- It is important that training sessions and workshops on implementation of Section 3 (1) i and Section 5 are arranged for government officials and NGOs for facilitating communities. These training sessions need to use both traditional knowledge and external knowledge.
- Many communities may require facilitation and support in implementing Section 5. This however should be done keeping in mind and building upon existing conservation practices.

- Where such practices do not exist anymore due to declaration of the PA or imposition of some schemes or for any other reasons, the scope for their revival needs to be explored.

Management strategies can be developed based on traditional wisdom and ecological understanding of today. This is being tried in some areas, details of which could be used for other sites.

Clarification on post-title process

As of now it is not clear what would the post 'recognition of claims' scenario be. There is a need to clarify a number of issues. In some areas the claims have been recognized and rights have been granted, **albeit** with conditions. However, the Act does not speak of conditional recognition. The NGO Vasundhara has pointed out a case (the Gond community in Mendha-Lekha), in which **though** the community has been granted **rights** and they have harvested the forest produce, the Forest Department has refused to give transit permits. **How would these issues be resolved? What would the legal status of the forests that have been claimed by the communities be? Would there be a dual jurisdiction? Who would have the power to punish offenders, the gram sabha or the Forest Department? What would the coordination or interface between these two be?** All these issues still need to be resolved to be able to make conservation happen under the FRA. **Finally, a holistic approach is required in the implementation of the FRA and a vision for the post claim period.** Possibilities of applying landscape based approach and joint-management of PAs, community forests etc. need to be explored, such that the outside agencies play a facilitative role while the communities retain overall authority and power in decision-making. It is also important to facilitate the process of claiming an ecosystem/ecological area, such as, a grassland, rivers and their catchments, etc., and to work towards landscape level community management and conservation.

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Compiled by Reshma Jathar with help and comments from Neema Pathak, Ashish Kothari, Sreetama Gupta Bhaya and Tushar Das. Photographs: Reshma Jathar.
For a copy of the full report, contact reshma.jathar@gmail.com.

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Legislation brief

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Kalpavriksh, Apt. 5, Shree Dutta Krupa,
Deccan Gymkhana, Pune 411 004,
Maharashtra, India.
Tel.: +91 -20-25675450
Fax: +91-20-25654239
Email: kvoutreach@gmail.com
Website: www.kalpavriksh.org

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Editorial Assistance: Anuradha Arjunwadkar, Ashish Kothari
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