

COMMUNITY FOREST RIGHTS AT A GLANCE

: A NEWSLETTER

APRIL
MAY '15

Issue. 01 | Vol. 01

SPECIAL
FEATURE **17**



Open cast mine in Angul Dist., Odisha | Photo: Meenal Tatpati

STATUS OF FRA IN FOREST DIVERSION

In this issue we introduce the progress of the FRA in the Forest Diversion procedure under the Forest (Conservation) Act, 1980, while introducing a regular feature of tracking minutes of the Forest Advisory Committee)

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ABOUT US

The Community Forest Rights-Learning and Advocacy Process was initiated in 2011 to facilitate the exchange of information and experiences and to reinforce national level efforts for evidence-based advocacy on Community Forest Rights (CFRs), as provided by the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (FRA).

TO JOIN CFR-LA, VISIT:

<https://groups.google.com/forum/#!forum/cfr-la>

WEBSITE:

<http://fra.org.in/>

APPEAL TO CONTRIBUTE UPDATES

We urge readers to send in updates on national level policy changes, stories of implementation in the field, reports of any meetings/consultations/workshops, thoughts and creative comments in the form of photos, videos, write-ups, poems etc; on relevant topics pertaining to CFRs.

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ACKNOWLEDGEMENTS: Special thanks to Prakash Kashwan & Shiba Desor for comments on this issue.

PRODUCED BY: Kalpavriksh with Vasundhara as part of the Community Forest Rights- Learning & Advocacy Process (CFR-LA)

SUPPORT: Oxfam India

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act (also the Forest Rights Act or FRA) was passed by the Indian Parliament in 2006 and notified in the year 2008. The passing of the Act was a result of decades of coordinated struggle and movements of forest dwelling people in India, to undo the 'historical injustice' that has been carried out against these communities and peoples. Continuation of state policies and administration having their roots in colonial times¹, has ensured a vicious poverty trap for these communities arising from lack of access to natural resources, lack of tenurial security, threat of displacement and eviction and the criminalization of their customary livelihoods.

Today, nearly 300 million such people reside in about 21% land of the country². The FRA recognizes and vests 'forest rights' securing individual and community tenure over forest land. Of particular importance to forest dwelling communities are the Community Forest Rights (CFR)³ provisions of the Act, since they seek to recognise the intricate socio-economic, cultural and spiritual relationships between these communities and the forests. By providing for the right to 'protect, regenerate, conserve or manage any community forest resource' (defined in Sec 3(1)(i) as customarily used forest land within the traditional boundaries of a village or seasonal landscape used by pastoral communities), it seeks to legitimize the rules, regulations and institutions through which these communities have been able to sustainably manage forests. The Act also includes provisions to prevent eviction without completion of the process of recognition of rights.

The Act has entered the 8th year of its implementation in the year 2015. There are several examples of communities claiming and asserting CFR rights, of Gram Sabhas governing and effectively managing forests, and of rights getting converted into gainful livelihoods. Some communities have used the legal rights and authority under FRA to check diversion of forests for development projects,

while others have demonstrated their discontent with forest departments' management strategies as practiced in their CFRs. In some cases, Gram Sabhas have taken complete control over collection and sale of non timber forest produce such as bamboo, tendu, mahua, and fish.

The overall implementation of the CFR provisions, however, continues to be slow. A number of reasons contribute to this, including lack of political will and administrative initiative, fear of communities not consenting to existing forest management systems and forest diversion processes and most of all, lack of awareness about the provisions among the concerned communities, sub divisional and divisional level committee members and local groups and organisations.

In the initial years of the Act's implementation the focus was primarily on securing individual land rights. Subsequently, many concerned community leaders, people's movements and civil society groups began to see the importance of and need to push for the implementation of CFR provisions, given their significance in being able to address socio-cultural, economic and political needs of the forest dwellers. The Community Forest Rights-Learning and Advocacy (CFR-LA) process was a result of this effort to collectively gain, share and strengthen the understanding about CFRs. It was initiated in 2011 by a group of civil society organisations, researchers, grass-roots movements and members of forest dependent communities. As a part of this process, a [website](#) and a [list serve](#) were started to facilitate discussions and sharing of information, extension of mutual on ground help and collective development of advocacy strategies regarding CFRs.

Coordinated by Vasundhara and Kalpavriksh, and supported by OXFAM, many national, regional and state level consultations and workshops have been organized as part of CFR-LA process. These have helped in gathering mutual

¹ Read, Gadgil, M., & Guha, R. (1992). *This fissured Land: An ecological history of India*: Delhi: Oxford University Press, Springate-Baginski, Oliver *et al.* 2009. Redressing "Historical Injustice" through the Indian Forest Rights Act 2006: A Historical Institutional Analysis of Contemporary Forest Rights Reform. *IPPG , Discussion Paper Series 27*. Available at: <http://www.ippg.org.uk/papers/dp27.pdf> (accessed on 05.01.2015), Bose, Indranil. 2010.

'How did the India Forest Rights Act, 2006 emerge?'. *IPPG Discussion Paper Series*, 39. Research Programme Consortium for Improving Institutions for Pro-Poor Growth, Manchester, UK.

²The Forest Survey of India in the year 2013 has estimated that 21% of land in the country is under the legal category of 'forest land'.

³Sec 3(1)(b-l) of the Act enumerates these provisions. The Act is accessible on: <http://tribal.nic.in/WriteReadData/CMS/Documents/201306070147440275455NotificationMargewith1Link.pdf>

support in initiating processes on the ground as well as dealing with implementation challenges at all levels. Those associated with the process have come together for collective advocacy, statements and submissions on many issues of concern over the years.

As a part of the CFR-LA process, Kalpavriksh and Vasundhara have been preparing annual Citizens' Reports on the status of implementation of CFRs, since 2012 (See the reports here: [2012](#), [2013](#) and [2015](#)). This newsletter has been initiated with the aim of sharing news, views, policy updates and analysis relating to the CFR provisions at regular intervals throughout the year. The newsletter will be produced bi-monthly. In this issue we have covered news and policy developments related to CFRs between February-May 2015.

During this period, the Ministry of Tribal Affairs (MoTA), the nodal agency for the Act has issued several letters, guidelines and memorandums regarding the CFR provisions of the Act. The Forest Department (FD) meanwhile has continued their "encroachment" eviction drive, unmindful of the provisions of FRA in states like the newly formed Telangana and Himachal Pradesh; and continued to push for programmes such as the Joint Forest Management (JFM) in states like Madhya Pradesh instead of strengthening committees to be established under the FRA. On the other hand in Jammu and Kashmir (which has not yet notified the Act), the nomadic tribal groups are demanding that the Act is implemented in the state.

In Odisha a community has used the CFR provisions of the Act to prevent the FD from selling timber logged without permission of the gram sabha. In Maharashtra, communities have continued to exercise their rights over the collection and sale of Bamboo and tendu leaves.

In protected areas, on the one hand restrictions for collection and use of

Minor Forest Produce are continuing in Badrama Wildlife Sanctuary in Odisha, while in the same state the district administration has proactively facilitated the filing and recognition of CFR claims in Similipal Tiger Reserve.

On the other hand, contradicting its own stand that there can be no exemption to FRA, MoTA has issued a letter, exempting consent to be obtained from gram sabhas in the north eastern states, for diversion of forest land in case of 'strategic defense projects; thereby diluting the 2009 circular in the north east. All these letters, events and processes are described in the newsletter and we hope this will be of use to the readers. We look forward to your feed-back on making the newsletter more useful.

-Meenal Tatpati, Neema Pathak Broome and Tushar Dash

IMPLEMENTATION UPDATE

The Ministry of Tribal Affairs (MoTA), (nodal agency responsible for the implementation of the FRA), has been publishing [status reports](#) on the claims filed and distributed under the Act since May 2008. These reports are based on reporting by state governments. It has been observed that the data presented in these reports does not present any analysis of trends, progress and challenges in claiming and distribution of titles over CFRs. In most states, figures for claims and titles for public utilities under Section 3(2) of the Act are confused with CFRs under Sec 3 (1) and reported as 'community rights' alongside CFRs. The reports do not give disaggregated figures for rights over *nistar*, rights over MFP collection, and the right to conserve and manage the Community Forest Resource (CFR), etc. This is despite the fact that on 3rd December 2012, in a [National Consultation](#) organised by MoTA, with relevant officials from all state governments, the reporting format for states was revised to provide detailed and disaggregated information with respect to CFRs. Barring a few states like Odisha other states continue to provide information as before. As indicated in the adjoining table, many states still do not report on the status of CFR implementation, indicating clearly that this is still not a priority.

LETTERS, CIRCULARS, GUIDELINES AND MEMORANDUMS

MoTA has been issuing clarifications and circulars pertaining to the operationalisation of the FRA since its notification in 2008. The ministry has played a pro-active role in pushing for better implementation of FRA since 2012. This has been done through amending the FRA Rules and through issuing of guidelines, circulars and letters to various Government departments, Chief Ministers and Governors of states raising issues of concern and clarifying areas of ambiguity with regards to CFRs.

STATE	NO OF COMMUNITY RIGHTS CLAIMS FILED (at the Gram Sabha level)	NO OF COMMUNITY RIGHTS TITLES DISTRIBUTED	EXTENT OF LAND OVER WHICH COMMUNITY RIGHTS RECOGNISED (acres)
Andhra Pradesh	10,959	2107	Not Available
Assam	5193	860	Not Available
Gujarat	7182	3856	999407
Karnataka	4575	96	26242.67
Kerala	1395	Not Available	Not Available
Madhya Pradesh	40,501	18610	Not Available
Maharashtra	6,074	Not Available	Not Available
Odisha	12500	3474	117163.46
Rajasthan	652	65	Not Available
Tamil Nadu	3361	Not Available	Not Available
Tripura	277	55	56.79
Uttar Pradesh	1123	834	Not Available
West Bengal	3241	Not Available	Not Available

Source: The Ministry of Tribal Affairs:

(<http://www.tribal.nic.in/WriteReadData/CMS/Documents/201504100257142394311MPRfortheMonthofFebruary,2015.pdf>)

In April, 2015 MoTA issued two letters, a set of clarifications and one set of guidelines.

1. In the [letter](#) dated 10th April 2015, addressed to Chief Secretaries of all states MoTA has brought up issues like the non-recognition of CFR rights, large number of rejection of claims, failure of State Level Monitoring Committees (SLMCs) to meet regularly and submit Quarterly Progress Reports, violation of Sec 4(5) of the Act in many cases including in relocations from

National Parks and Sanctuaries, the continued state monopoly over Minor Forest Produce and the failure of rights to be recorded. The letter requests the states to take appropriate action on these issues.

2. In a set of [guidelines](#) issued under Sec 12 of the FRA, on 23rd April 2015, MoTA has reiterated that for the recognition, vesting and management of the Community Forest Resource (CFR),

- The Gram Sabha, along with the committee to be formed under Rule 4(1) (e), is the authority to regenerate, protect, conserve and manage the CFR and is thus free to develop its own management and conservation plan, which can be in a simple form, and easy for all members of the community to understand.
- The committee formed under Rule 4(1)(e) will be the authority to modify the working plan, micro plan or management plan of the Forest Department to integrate it with the conservation and management plan of the Gram Sabha⁴.
- The funds from various departments as well as Tribal Sub Plan, MGNREGA, Forestry, CAMPA funds are to be made available to the Rule 4(1)(e) committee at the Gram Sabha, by the state government.
- The CFR area is to be treated as a new category of forest area, and recorded in the Record of Rights.
- In villages where no CFRs have been recognized, the reasons for the same are to be recorded in writing by the Secretary of the District Level Committee.
- Disaggregated information on the CFR claims, CFR rights and extent of forest land recognized as CFR are to be provided by state governments in

their monthly and quarterly progress reports to MoTA.

3. In a [clarification](#) on 23rd April 2015 on habitat rights recognition and vesting, MoTA has urged all state governments to make an 'all out effort' towards the recognition of habitat rights of PVTGs and appraise MoTA on the steps taken through periodic reports of the same. Some of the clarifications issued are:

- The word 'habitat', although translated as 'aawas' in the hindi version of the Act does not mean house or housing facilities under the Indira Aawas Yojna, and that it has been well defined in Sec 2(h) and further in Sec 3(1)(e) of the FRA and has to be understood as per those.
- Rule 12 (1) (d) requires the FRC to ensure that the verification of claims received from such communities is carried out when their representatives are present for verification.
- The rights to community tenure over habitat and habitation may be recognized over customary territories used by PVTGs for habitation, livelihoods, social, economic, spiritual, sacred, religious and other purposes.
- It is the duty of the District Level Committee to ascertain that all claims from PVTGs have been addressed according to Rule 8, and to ensure that all PVTGs receive their habitat rights in consultation with their traditional institutions and by recognizing the floating nature of their Gram Sabhas, according to Rule 12(B)(1).
- Where claims have been filed, it is the DLC's duty to ensure that they are recognized and their areas are mapped.

⁴ A Working Plan is made by the Forest Department (FD) based on the colonial concept of 'managing' natural forests for supporting growth of timber growing monocultural species according to scientific forestry. However, many forest dependent communities have opposed these working plans, especially in areas where forests were worked extensively in the past, and where communities have begun conservation efforts to protect the natural old growth forests, since they fulfill various livelihood and socio-cultural needs. While the FD continues to view this as a 'conservation' tool, the communities securing CFR rights are viewing the plan as top-driven agenda to control forests. Thus, in keeping with the principles outlined in Sec 5 of the FRA, this guideline can be used by communities to structurally change the way forests have been managed since colonial times.

4. In a [letter](#) dated 28th April 2015 to the Chief Secretaries of all states and union territories,

- MoTA has emphasized the need for extensive training of all officials, from ward members to DLCs, on a priority basis for implementation of the FRA.
- The letter asks for geo-referenced data bases to be created in corroboration with other sources of information, under Rule 13 of the FRA for vesting of rights over potential forest areas where FRA can be implemented, so that wrong claims or rejection of claims is ruled out.
- The letter also asks for all forest villages, habitations, unsurveyed villages to be delineated.
- MoTA has asked for all these activities to be completed within the current year.

5. MoTA vide an [office memorandum](#) dated 24th February 2015 has allowed for forest clearance to be given for diversion of forest land for 'strategic' defense projects pertaining to the North East under the Forest (Conservation) Act of 1980, if the collector submits a certificate stating that no procedure with regard to FRA is required on the forest land required to be diverted.

MoEF has justified this by stating that, although there is no procedure from exemption of recognition and vesting of rights under the FRA for any project requiring forest clearance, in the North East, most forest land is already under the control and ownership of communities, and in areas declared as Reserved Forests, rights have already been settled.

The memorandum also states that 'forest rights holders' should be compensated adequately, according to provisions of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013(RFCT-LARR), in case of take-over of forest land for these projects.

This memorandum is a departure from the stand taken by MoTA earlier on issues pertaining to the implementation of FRA in forest diversion processes (See Special Feature page 17).

6. On the 13th of February 2015, the MoTA has issued a [clarification](#) to the Governor of Maharashtra regarding the interrelationship between the FRA and the PESA relating to collection and sale of Minor Forest Produce. It has clarified that:

- There is no conflict between the FRA and PESA since the latter enables the extension of Panchayats to scheduled areas, thereby empowering people in those areas and the former provides for the recognition of forest rights of forest dwelling communities, thus both the Acts seek to empower tribals and forest dwellers by undoing the historical injustice against them. However state legislations and executive instructions relating to land, forests, water, money-lending and minor forest produce violate the provisions of both these Acts and need to be amended to bring them in-line with the objectives of the FRA and PESA.
- Individual rights are nested within the right of the gram sabha in the FRA. Therefore, while MFP rights can also be vested in individuals, group of individuals or families under Rule 2(1) (d) of the FRA amendment Rules, 2012, the disposal of MFP would be subject to the powers of the Gram Sabha under Sec 5, since the underlying principle of the FRA is that no produce should go out of the village unless all the needs of the community are met and rights of artisans using certain MFPs for raw material are protected. However, while individuals, groups of individuals or families are not restricted to sell the produce only to the gram sabha or the agent appointed by it, since some produce is low value and needs to be sold quickly, they need to adhere to the decision of the gram sabha taken with regards to sustainability according to Sec 5 of the Act.
- The power to sell the produce and to use the income obtained through the sale of produce rested with the Gram Sabha and not with the committee of the Gram Sabha under Rule 4(1)(e). The committee is merely appointed by the Gram Sabha to ensure that all the decisions of the Gram Sabha are complied with.

1. The Ministry of Tribal Affairs, on 13th of May 2015, in a written reply given in the Rajya Sabha, gave information about the status of the 'Mechanism for Marketing of Minor Forest Produce (MFP) through Minimum Support Price (MSP) and Development of Value Chain for MFP' scheme that was launched in the year 2013-14. The Ministry has informed that, 12 MFPs including Tendu, Bamboo, Mahua Seed, Sal Leaf, Sal Seed, Lac, Chironjee, Wild Honey, Myrobalan, Tamarind, Gums (Gum Karaya) and Karanj are included in the scheme. According to the ministry, the scheme has been introduced in states having areas under the Fifth Schedule of the Indian constitution i.e. Andhra Pradesh, Chhattisgarh, Gujarat, Jharkhand, Madhya Pradesh, Maharashtra, Odisha, Rajasthan and Telangana. However, since Andhra Pradesh and Telangana have not deregulated trade of MFP in line with section 3(1)(c) of the FRA, the scheme has not been implemented there. MoTA has requested both the States to do away with the monopoly procurement system in order to bring the identified MFP under coverage of the MSP scheme.

(See: <http://pib.nic.in/newsite/PrintRelease.aspx?relid=121630>).

2. The Madhya Pradesh Forest Department has notified Madhya Pradesh Village Forest Rules, 2015⁵. Under these rules, degraded forests will be notified as 'Village Forests'. Thus, in all villages where the Joint Forest Management Committee (JFMC) has been constituted, the gram van samities (village JFMCs) will be accorded legal rights over minor forest produce⁶.

(See: <http://timesofindia.indiatimes.com/madhyapradesh/Gramsabhastogetlegalrightsforforestproducefromprotectedforests/articleshow/47217352.cms>)

⁵ Under Sec 28 of the Indian Forest Act, 1927.

⁶ In a similar move, the Maharashtra government in May 2014 passed the Maharashtra Village Forest Rules with similar provisions. These were opposed by civil society groups and community members on the grounds that they violated the fundamental provisions of the FRA as well as the Panchayats (Extension to Scheduled Areas) Act, 1996 or PESA; by making the JFMCs and not the gram sabhas as the primary forest management bodies and giving control to the Forest Department (FD). These rules were put in abeyance by MoTA in August 2014, however, the state government has already allocated funds for the implementation of the same.

ANDHRA PRADESH

A little more than 2000 titles over community rights have been distributed in Andhra Pradesh, most of which are issued to JFMCs rather than Gram Sabhas. In August 2013, MoTA asked the state to correct the titles. However, most titles have not been corrected yet.

(See: <http://www.newindianexpress.com/states/andhra/IllegalandArbitraryEvictionofAdivasisfromForestsInAPTelangana/2015/03/25/article2729233.ece>).

On the 29th of March 2015, the Manager of the Girijan Cooperative Corporation (GCC), Maredumilli seized a vehicle of particularly vulnerable tribal group, Kondareddis of Pamulamamidi and Gumpenagandi hamlets of Pullangi Gram Panchayat, Maredumilli Mandal, East Godavari District which was transporting hill brooms. 7500 bundles were taken into the custody of the GCC. The bundles were released after a show cause notice was issued to GCC Manager, by a lawyer working with the community. To protest against such harassment of the tribal community by GCC officials and to oppose the role of GCC and demand rights over community forests, a meeting and procession were organised in Maredumilli, East Godavari, District under the leadership of MFP Gatherers Committee on the 31st of March.

(For more information contact: Dr Palla Trinadha Rao, Advocate and Researcher (pallatrinadh5@gmail.com)).

CHHATTISGARH

A padyatra was organised by the Baloda Bazaar based Dalit Adivasi Manch (DAM) from the 5th -14th April, 2015 through 41 villages in Baloda Bazaar and Mahasamund districts of Chhattisgarh for raising the demand to implement the FRA in these districts. DAM had facilitated the filing of CFR claims in 20 Gram Sabhas in 2013, which are still waiting to receive titles over these claims. At the end of the padyatra, the District Collector assured the villagers that the Sub-Divisional offices will be reaching out to the villages regarding their claims. (Shared by Vijendra Aznabi on CFR-LA e-list from information received from Devendra Baghel and Rajim Khetwas (sajag.org@gmail.com)).

HIMACHAL PRADESH

More than 67% of forest land in Himachal Pradesh is under the jurisdiction of the forest department. However, movements and civil society organizations of the state report that minimal efforts are being made by the state government to implement FRA in its true spirit due to large-scale diversion of forest land needed for several hydro-electric projects in the region and due to the interpretation of the state government that forest rights of local communities have been settled prior to Independence. Himachal Pradesh has not distributed a single title under FRA as yet.

(See: <http://www.himdhara.org/2014/03/29/discussion-on-forest-rights-act-at-patlikuhl-in-district-kullu-himachal-pradesh/>)

- 1 While hearing an appeal against encroachment on forest land in Himachal Pradesh, the High Court (HC) on the 6th of April 2015, ruled that all 'encroachments' of government forest land should be removed within the next six months. However, grass-root organizations like the Himalaya Niti Abhiyan, Him Lok Jagriti Manch, Renuka Dam Sangharsh Samiti among others, have appealed to the Chief Minister against this order, since the court has not taken into consideration, the legalities under the Forest Rights Act (Sec 4 (5) of the Act which states that no member of the Scheduled Tribes and other traditional forest dwellers can be evicted from forest land under their occupation, till the process of recognition and vesting of forest rights is complete under the FRA).
- 2 Meanwhile, the Himalaya Niti Abhiyan has helped facilitate the filing of CFR claims of 110 Gram Sabhas (comprising more than 900 hamlets and villages) in villages of Mandi, Kullu, Chamba, Kangra and Bilaspur districts of the state in order to secure community rights of communities in these areas. The claims have been submitted by the FRCs to the respective SDLCs on the 30th of May 2015.

The HNA has been involved with awareness creation and training of these communities, the District Level Committees (DLCs), Sub-Divisional Level Committees (SDLCs), and the district administrative mechanism involved in the

implementation of the FRA like the Panchayat secretaries, Revenue field staff etc. in nine districts.

(Information shared by Guman Singh of Himalaya Niti Abhiyan, gumanhna@gmail.com)

JAMMU KASHMIR

Owing to the special Constitutional status under Article 370 (providing for central laws to be applicable to the state only through their ratification in the state's assembly) in the state of Jammu Kashmir (J&K), the FRA has not yet been implemented in the state.

On the 1st of April 2015, the Jammu and Kashmir General Administration Department vide government order no. 469-GAD of 2015 constituted a committee under the chairmanship of the Chief Conservator of Forests, Jammu to delineate forest land from other lands and to demarcate forest land in Sunjwan, Bathindi, Raika and Sidra areas of Jammu District in consonance with the J&K Forest (Conservation) Act, 1997, within two months; following a communication by the Forest Department. Subsequently, several settlements belonging to Gujjar and Bakarwal nomadic tribal community have been destroyed and the families evicted from these areas.

(See: <http://www.greaterkashmir.com/news/kashmir/eviction-drive-row-meet-at-forest-ministers-house-bjp-ministers-extend-support/189292.html>)

Previously on the 8th of February 2015 the community of Gujjar and Bakarwals in a program organised by the Tribal Research and Cultural Foundation, Jammu had demanded that the Forest Rights Act be extended to the state of Jammu and Kashmir, so that their cultural, traditional and forest rights could be recognized under the Act and rights pertaining to forest use be made secure.

(See: <http://www.scoopnews.in/det.aspx?q=44392>)

While the J&K Forest Policy of 2010 does provide some concessions over forest land for grazing, the community does not have legal rights on these forest landscapes through which they move, and reside and use. Their livelihoods and economy is closely linked to these forest landscapes yet they now face curtailment of their 'concessions' and imminent evictions by the forest department.

(See: <http://www.scoopnews.in/det.aspx?q=44392>)

JHARKHAND

The implementation of the FRA in Jharkhand has been very slow due to political instability and left-wing extremism in the state. In May 2014, the Jharkhand State Tribal Co-operative Development Corporation has signed a tripartite agreement with civil society organizations, Jharkhand Van Adhikar Manch (JVAM) and Poorest Areas Civil Society Programme (PACS) for awareness creation regarding the Act, improving the implementation of the Act, and to provide support and guidance to Gram Sabhas in filing and processing different types of claims under the FRA with a special focus on CFR rights.

(http://www.telegraphindia.com/1140530/jsp/frontpage/story_18425991.jsp#.U-x3q00Sx1h)

Subsequent to this, the state has formed a 'State Forest Rights Core Committee' comprising of members from the Welfare Department, Forest Department, Revenue Department, PACS, Jharkhand Van Adhikar Manch and Tribal Welfare Department for the implementation of the Act, according to letter No. 1252 dated 1st May 2015.

(Stated in Letter No. 1173 of the Welfare Department addressed to the Forest Department and Revenue Department, dated 5th May 2015. Copy available with editors).

The State Welfare Department, the nodal agency for the implementation of the Act in Jharkhand has written to the Deputy Commissioners and District Welfare Officers clarifying certain provisions of the Act:

- 1 In a letter dated 1st of May, 2015, the Welfare Department has expressed that the recognition of rights of OTFDs in Jharkhand is 'far from satisfactory'. While urging the officers to facilitate claims for the OTFDs, it has asked the DLCs and SLDCs to process such claims faster. (Letter No. 12/2014-1271 dated 1st May 2015. Copy available with editors).
- 2 In another letter dated 1st May 2015, the Welfare Department has clarified that for the purpose of implementation of the FRA in scheduled areas of the state, a 'village' will be defined as, 'a habitation or a group of habitations, or a hamlet or group of hamlets, comprising a community and managing its affairs in accordance with traditions and customs' as provided in Sec 4(b) of the Panchayats Extension to Scheduled Areas Act, 1996; while any community which resides in a tola or group of tolas shall be considered to be a Gram Sabha under Sec 2(p) of the FRA. (Letter No. 1243, dated 1st May 2015. Copy available with editors).

KERALA

A bio-diversity rich state in the Western Ghats, Kerala has about 37,000 tribal families living in scattered hamlets across the state. The forest department has a strong control over the forests through the JFM policy. (See:http://www.researchgate.net/publication/46445538_Implementation_of_the_Forest_Rights_Act_in_the_Western_Ghats_Region_of_Kerala)

In 2014, 9 CFR titles were distributed in Thrissur district, under the Vazhachal Forests covering an area of 40000 ha. Apart from these claims, 33 CFR claims have been cleared by DLC Thrissur district. Since January 2015, the Kerala Forest Development Agency is seeking consultants to evaluate the Participatory Forest Management (PFM) institutions under its Joint Forest Management programme. Under this, the consultants will be required to review micro plans prepared by institutions like Van Saurakha Samitis for collecting, processing and marketing products under the 'Vanasree' programme and to revamp the existing arrangement in light of the FRA which strengthens the role of the Gram Sabha; it aims to align the FRA with Vanasree to market value added NTFP products.

(Shared by Dr. K H Amitha Bachan of the Western Ghats Hornbill Foundation on the CFR-LA e-list: amithab@poetic.com)

MAHARASHTRA

Maharashtra has a number of mass movements, civil society groups and individuals as well as some government agencies providing financial and technical support working towards an effective implementation of CFRs, due to which it has emerged as a leading state in governance and management of forests by the communities after having received titles over their Community Forest Resource. The number of CFR titles being handed over to the communities and processes towards governance and management, however, remains restricted to some small pockets in the state, in areas of Gadchiroli, Chandrapur, Amravati, and Gondia districts.

(See:<http://www.kalpavriksh.org/images/LawsNPolicies/Community%20Forest%20Rights%20under%20FRA%20Citizens%20Report%202013.pdf>)

In an effort to exercise greater community control over collection and sale of tendu, 18 villages in Gadchiroli, Gondia, Nagpur and Amravati districts under the facilitation of civil society organizations KHOJ and Vidharbha Nature Conservation Society (VNCS) and the Maharashtra Tribal Development Corporation, decided to collect and sell tendu through their Gram Sabhas in the year 2013.

(See:<http://timesofindia.indiatimes.com/city/nagpur/18-villages-get-rights-to-sell-tendu-under-FRA/articleshow/20084979.cms>)

1 The Vidharbha Nature Conservation Society facilitated the collection and sale of tendu leaves in 11 villages (4 from Sadakarjuni and 7 from Deori taluka of Gondia district) in May 2015. There are more than 900 families in these villages. The TDC and the group of Gram Sabhas of these villages had conducted an e-auction for sale of tendu, they could not get any buyers and hence decided to sell the leaves in the open market.

(Shared by Dilip Gode (Vidharbha Nature Conservation Society): vnscs.ngp5@gmail.com).



2 In another development, the Tribal Development Department of Maharashtra vide a resolution (शासन ननर्णय क्रमांक : राज्यपा २०१५ /प्र . क्र . ३६ /का -१ ६) has declared its decision to hire individuals as consultants, to help communities file claims under the FRA and to prepare conservation and management plans for the Gram Sabhas. This initiative is being launched in 20 talukas of Yavatmal, Chandrapur, Palghar, Nashik and Raigarh districts of Maharashtra.

(Shared by Purnima Upadhaya, KHOJ Melghat, by email: khojmelghat@gmail.com).

ODISHA

Odisha has been one of the leading states in titles over CFRs since it has a rich history of community forest management. However, problems like diversion of forest land for large scale developmental projects, strong control of the forest department over some areas in the state and the non-recognition of rights of many communities are still impeding the implementation of the Act in the state.

(See:<http://www.kalpavriksh.org/images/LawsNPolicies/Community%20Forest%20Rights%20under%20FRA%20Citizens%20Report%202013.pdf>)

1 42 villages in the Jasipur Tehsil of Mayubhanj district, part of the Similipal Tiger Reserve, have received CFR titles on the 9th of April 2015 over 24786.22 ha of land. The process of claiming rights was initiated through the district administration in 2013. The District Collector appointed the Revenue Department as the nodal agency for FRA implementation in the district to expedite the claim making process. The district administration also enlisted Civil Society Organizations i.e Centre for Rural Education, Forest and Tourism Development Agency working on FRA in the Jashipur area and Vasundhara for mapping the CFR area with the help of GPS/GIS

technology. In a function organised by the district administration for handing over these titles to the community, it was also announced that several activities like land development, micro watershed programs and other livelihood generation activities would be initiated by the district administration to explore convergence and livelihood along with CFR management and governance process under FRA.

(Shared by Bibhor Deo (Vasundhara): bibhor@vasundharaorissa.org; also see: <http://www.orissadiary.com/CurrentNews.asp?id=58607#sthash.xF0fo8q1.dpuf>).

2 In the Sarda Gram Panchayat of the Jamankira block of Badram Wildlife Sanctuary, Sambhalpur district in Odisha, the 2002 order of the SC, banning collection of NTFP from protected areas is still being wielded by the Forest Department to prevent local villagers to exercise their livelihood. The communities are facing serious impediments while collecting Mahua flowers and fruit, Chironjee (Char), Kendu leaf and Sal seed, Amla, Bahada and Harida, Sargi and Siali leaves; due to which most have turned to wage-labour.

(See: <http://www.newindianexpress.com/states/odisha/SAGY-Succour-Elusive-for-Villagers-Hit-by-NTFP-Ban/2015/04/26/article2783699.ece>)

3 In Goilo village, Tileibani, Deogarh district of Odisha, villagers prevented the Odisha Forest Development Corporation from transporting trees that had been harvested from the CFR area claimed by the gram sabha. The village had claimed 389.22 ha as under CFR in March 2015, and has dissolved its defunct Joint Forest Management Committee which was formed in 2000. The village has a strong protection committee led by women members. They opposed the move of the forest department since the department had not asked permission from the Gram Sabha for the same. The village has submitted their written petition to the State Level Monitoring Committee on this issue.

(Shared by Chitta Ranjan Pani (Vasundhara): chitta@vasundharaorissa.org).



Golio villagers with the truck seized from the FDCM (Photo: Chitta Ranjan Pani)

TAMIL NADU

A February 2008 order of the Madras High Court staying the issuing of pattas or felling of trees (under section 3 (1) and 3 (2) of the FRA), has prevented the distribution of titles under the FRA in the state.

(See: <http://www.tribal.nic.in/WriteReadData/CMS/Documents/201504100257142394311MPRfortheMonthofFebruary,2015.pdf>)

1 On the 15th of April 2015, hundreds of people belonging to different tribal groups in Mudigere Taluk of the Chikkamagaluru district of Tamil Nadu, urged the visiting state Minister for Social Welfare, H. Anjaneya, to recognize their community forest rights under the Forest Rights Act.

(See: <http://www.thehindu.com/news/national/karnataka/tribals-pour-out-their-woes-to-anjaneya/article7107664.ece>)

TELANGANA

Telangana state was carved out of Andhra Pradesh in June 2014 and the implementation of the FRA is yet to begin in the state. Recent news reports suggest that the Chief Minister of Telangana has ordered that no fresh claims under the FRA are to be received in Telangana. At the same time, the state government through the forest department will be launching the 'Haritha Haram' program in July 2015 with the aim to improve the forest cover of the state from the present 25% to 33%. To achieve this goal, joint surveys are being planned by the Forest Department and the Revenue Department to demarcate boundaries of forest land in the state.

(See: <http://www.newindianexpress.com/states/teLANGANA/IllegalandArbitraryEvictionofAdivasisfromForestsInAPTelangana/2015/03/25/article2729233.ece>, and <http://www.thehindu.com/news/national/teLANGANA/tskeenonresolvingforestlandownershipdispute/article6890685.ece>)

1. In March 2015, tribals from Chandrugonda Mandal and Gubbagurthi forest area under Tummalapalli beat in Konijerla mandal of Khammam District clashed with forest officials who had entered the forest for demarcating forest land and digging trenched for tree plantation under the Haritha Haraam⁷ program, a massive afforestation effort launched by the state. The tribals have been using forest land for podu or shifting cultivation for the last twenty years. *(See: <http://innlive.blogspot.com/2015/03/teLANGANASflagshipprogrammeharita.html>)*

⁷ See: <http://www.tkh.org/>

- 1 On 25th and 26th of February, a state level Workshop on Community Forest Rights Recognition and Mapping was conducted in Bhubaneswar by Vasundhara, Odisha. The workshop aimed at sharing of experiences on CFR claim-making and mapping initiatives by organizations working in different districts as well as key issues and challenges in the implementation of the Act. Civil Society Organizations, community members and activists from 18 districts of Odisha participated in the workshop. Community members brought up several issues of non-implementation of the Act including,
 - lack of awareness regarding CFR provisions,
 - non-recognition of rights due to claims remaining pending with the SDLCs and DLCs,
 - non-implementation of FRA in places where forest diversion was taking place,
 - non-cooperation from forest department and revenue department for verification and mapping of claims and titles etc.

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2. A State Level Consultation on the 'Issues and Challenges in Recognizing Rights of Displaced Communities under FRA' was organized at Lohia Academy, Bhubaneswar on 28th March 2015 by Vasundhara, Odisha. Members of communities displaced due to mining, industries and irrigation projects from Baleswar, Deogarh, Sambalpur, Jharsuguda, Angul, Koraput, and Mayurbhanj districts participated in the consultation. The main objective of the consultation was to assess the status of implementation of the FRA in case of displaced communities in Odisha, to identify key issues and gaps in implementation, and to recommend measures to correct these issues to the implementing agencies. The members of these communities articulated that,
 - there was a lack of information among these communities regarding the provisions of the FRA for preventing and addressing displacement.
 - displaced families in communities are not represented within Gram Sabhas and the FRCs, and there is a lack of support by the government and civil society organizations to help them in filing their claims.

(See:<http://www.orissadiary.com/CurrentNews.asp?id=58301#sthash.S4F8gGU0.dpuf>)

3. The Adivasi Janjati Adhikar Manch organised a National Level Roundtable Discussion on 'Forest and Rights over Natural Resources' on the 19th of March, 2015 in Delhi. Various issues were brought out by participants from about 12 states including Chhattisgarh, Odisha, Gujarat, Himachal Pradesh, Jharkhand, Karnataka, Madhya Pradesh, Maharashtra, Rajasthan, Uttar Pradesh, Uttarakhand and West Bengal. In a memorandum submitted to MoTA the following issues were highlighted:

- In many states, CFR claims filed by communities remain pending with the various committees for long periods. Many states have not recognized a single CFR title. In many states where CFR titles are issued, the titles are faulty.
- Letters, memorandums etc. issued by MoTA to DLCs are not being followed. E.g., in Rayagada district of Odisha, the District Level Committee has instructed the Welfare Extension Officers to prepare the CFR claims of Van Susraksha Samitis in the district. This is despite clarifications from MoTA that CFR rights cannot be vested to JFM committees.

- The forest department is pushing for the implementation of the JFM schemes in CFR areas.
- In Kandhmal, Keonjhar, Gajapati and Rayagada scheduled five districts of Odisha, plantations have been carried out on community lands of PVTGs without taking the communities' consent.
- Rights of nomadic communities of PVTGs and habitat rights have been ignored. They face evictions and restrictions on seasonal access to forest land in many states. They face operational and practical difficulties in filing claims under the FRA.
- There is a need to secure the rights of gram sabhas over CFR.
- In sanctuaries and national parks, PVTGs continue facing harassment and evictions. Huts of the Sahariya tribal community of Shivpur district, Madhya Pradesh have been set on fire by the forest department.
- In most states, the conversion of forest villages to revenue villages has not started.

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SPECIAL FEATURE

STATUS OF FRA IN THE PROCESS OF FOREST DIVERSION

India's rapid strides in growth of infrastructural, industrial and developmental projects have been achieved by incurring large-scale ecological and social costs and destroying a substantial part of India's vast, bio-diverse forests⁸. This in turn has affected a significant population of forest dependent people, whose rejection or consent to such projects has not been taken into consideration.

The Forest (Conservation) Act, 1980 (FCA), which regulates diversion of forests for non forestry purposes, till recently, had little space for local participation in decisions related to forest diversion. The enactment of the FRA, led to the recognition of the historical injustice committed on forest dwelling communities due to their 'forced relocation' for state developmental activities. To remedy this, Section 4(5) of the Act attempts to prevent further displacement of forest dwellers by providing that, no forest dweller can be removed from the land under his/her occupation unless the processes of recognition and verification of rights under the FRA are complete. Additionally, Sec 5 empowers the village gram sabhas to ensure that the habitat of forest communities is preserved from any form of destructive practices affecting their cultural and natural heritage, and to stop any activity that adversely affects wild animals, forests and biodiversity. These provisions were not paid much attention to till much after the notification of Rules in 2008. After much demand and push for its implementation from grass roots movements and civil society organizations the Ministry of Environment Forests and Climate Change (MoEFCC-then, Ministry of Environment and Forests) issued a [circular](#) (dated 3rd August 2009) which linked the provisions of the FRA with the FCA to protect the rights of forest dwellers. It asked for the prior, informed consent of all affected gram sabhas in writing along with other documentary evidence

showing the recognition and vesting of forest rights in the area to be diverted, for awarding forest clearance to any project. In March 2014, the Forest Conservation Amendment Rules were notified. These rules hold the District Collectors responsible for obtaining consent of affected Gram Sabhas and to provide a report of the settlement of rights under FRA in a time-bound manner in forest areas to be diverted⁹. Over the years, there have been repeated attempts by the MoEFCC to dilute the provisions of the August 2009 circular. These have been thwarted time to time by MoTA through circulars emphasizing that exemptions cannot be made to the provisions of the FRA (See table on page 18). However, a recent circular issued by MoTA too, has contradicted the MoTA's own long term position on this by exempting Gram Sabha consent for 'defense' projects in the North Eastern states (See page 7, point 5). The Ministry of Law has recently stated that MoTA is the only authority to make changes in the law. However, the Minister of Tribal Affairs has recently hinted at changing the law to usher in changes in the process¹⁰. This untrammled opposition to communities' welfare and rights on the behest of growth, development and 'reducing bureaucratic procedures' in processes of obtaining clearances is seriously hurting the democratic fabric of the country. Any change in the Act to further this process will amount to denying concerned communities their rights over forest land, the space to effectively negotiate and demand better, fair and suitable compensation; and their right to reject any development project they deem harmful to their forest resource; thereby perpetuating the very historical injustice that the FRA seeks to redress.

Given below is a timeline of circulars issued by MoEFCC and MoTA on FRA compliance:

⁸ Ministry of Environment and Forests, GOI., 2009. State of Environment Report: India. MoEF, New Delhi, p.59. <http://www.moef.nic.in/downloads/home/home-SoE-Report-2009.pdf>

⁹ Although these rules acknowledge the need of compliance with the FRA, there is a danger of the rules being misinterpreted and misconstrued in violation of both the letter and spirit of the FRA. For example, the term 'settlement of rights' has been used instead of 'recognition of rights'. **Settlement under the Indian Forest Act, 1927, denotes curtailment of rights** whereas the FRA provides for **recognition and establishment of the pre-existing rights**. Moreover, the District Collector has to 'obtain consent wherever required'. This can be misinterpreted to mean that, there is no option of 'rejection' for the Gram Sabhas and that the affected Gram Sabhas could be selected at the discretion of the District Collector

¹⁰ See: http://articles.economicstimes.indiatimes.com/2015-07-02/news/64039097_1_law-ministry-green-ministry-environment-ministry

Circulars issued by MoEFCC

Directions/Office memorandums by MoTA

5th Feb 2013; 5th July 2013; reiterated on 15th Jan 2014:
Exempting linear projects from FRA compliance where 'consent' of gram sabha is not required.

7th March 2014: FRA compliance mandatory for all kinds of projects and all the letters issued by MoTA on linear diversions are illegal and should be withdrawn immediately

4th July 2014: Exempting 'prospecting' of minerals from FRA compliance.

27th Aug 2014: FRA does not provide for exemption of its provisions in any type of project on forest land; Gram sabha meeting under FRA for diversion is a statutory requirement, and should be met for every gram sabha affected by forest diversion

March 2014: Forest Conservation Amendment Rules, 2014, notified; the District Collector is responsible for completing the process under FRA, obtain consent of gram sabhas *wherever required* and send a report to the CF in a time-bound manner.

28th Oct 2014: Allowing a certificate from the District Collector, certifying the land to be a diverted as a plantation and having no population of scheduled tribes or OTFDs; as documentary evidence for FRA compliance, in case of diversion of forest land in plantations notified as forests for even a day less than 75 years prior to 13th Dec 2005

Several circulars passed in 2014 awarding 'general approval' under FCA; eg. Roads in border areas and 'critical' infrastructure projects in LWE states

24th February 2015: For forest clearance in cases involving diversion of forest land for strategic defense project in the north eastern states, allowed for a certificate from the District Collector, certifying that, 'no further procedure with regard to the FRA is required', as documentary evidence for FRA compliance; 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 settled¹¹.

*Copies of all circulars available with editors

¹¹The 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 circular seeking 'gram sabha consent' and completion of all processes under the FRA for forest diversion was passed in [August 2009](#). However, it was only in April 2012 that the Forest Advisory Committee (FAC)¹ took cognizance that it was not being complied with and urged for its compliance. After this also, several projects have been granted forest clearances by the FAC, without the complete processes under the FRA and the August 2009 circular being followed². Policy documents issued by MoEFCC, which are in contradiction with the FRA, create confusion in the forest diversion related decisions. As is clear from the minutes of the FAC, the MoEFCC documents have been used while taking such decisions. The FAC now looks at FRA 'compliance' in forest diversion in the form of documents submitted by the States which include resolutions of all affected gram sabhas on the proposal, a letter from the District Collector implying that processes of recognition and vesting of rights under the FRA are complete in the area to be diverted and that no pre-agricultural communities or primitive tribal groups are being affected in the process.

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 have been distributed in the area to be proposed for diversion. Additionally, there have been several cases where gram sabhas have not been conducted in fair and inclusive manner, and even cases of forging of gram sabhas resolutions are common³. 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- is it only as far as to ensure that the checklist of documents needed for clearance is complete or is the rejection of the project by the gram sabha reflected in the decision taking regarding grant of forest clearance?

In this newsletter we will be carrying a section on "tracking the meetings of the FAC" to provide a brief overview and analysis of compliance with the provisions of FRA in decision making regarding the grant of forest clearance to projects. This section also aims at providing information on projects which are under consideration for forest diversion with the FAC and the status of FRA compliance so that grass roots organisations and civil society groups can take appropriate actions. Given below is a brief analysis of the minutes of the FAC held on the 30th of April.

In this meeting, 14 proposals for forest diversion were discussed from the states of Kerala, Karnataka, West Bengal, Arunachal Pradesh, Odisha and Rajasthan. Out of these, six proposals dealt with mining of various minerals like coal, iron ore and manganese, six were about hydropower projects, one was about a road project and one about rehabilitation of tribal families due to human-wildlife conflict.

The FAC recommended approval for diversion of 78ha of land in Burdwan District of West Bengal for increasing the capacity of the Jhanjhara Coal Mine. In its previous meeting, the FAC had asked for FRA compliance report to be submitted according to the August 2009 circular. However, in its subsequent meeting on 30th April, the project was recommended for clearance without any mention in the minutes about whether or not the report on FRA was submitted and taken into consideration for the decision. In the case of rehabilitation of a two tribal colonies in Ernakulam district of Kerala, the FAC has sought the opinion of MoTA, on whether the Forest Rights (individual rights) settled under the FRA at the original location are transferable to the forest department, as the proposal seeks to rehabilitate the colonies in another forest area. In case of diversion of 149.0242 ha for establishing a new iron ore mine in Sikar District of Rajasthan and 10.144 ha for a manganese mine in Odisha, the FAC accepted the documents provided for FRA compliance, which it had sought in its previous meeting. The decision on these is pending. For proposals like the diversion of more than 2000ha of forest land for six hydro electric projects on the Siang River in the West Siang district of Arunachal Pradesh, 61.24 ha for iron-ore and manganese mining in Sundergarh District, Odisha; 90.564 ha for open caste coal mining in Sundergarh District of Odisha, 2.025 ha for a road in the Chitradurga district of Karnataka, 41.819 ha for iron and manganese mining in Keonjhar District of Odisha the FAC has sought documents needed for FRA compliance as they were not part of the proposals. The minutes of the FAC are available [here](#).

¹The Forest Advisory Committee (FAC) has been set up under Sec 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.

²See: Letter dated 19th November 2012, sent to Jayanti Natarajan (Former Minister of Environment and Forests) by K.C Deo (Former Minister of Tribal Affairs). Available at: http://fra.org.in/document/MoTA_letter_to_MoEF_on_diversion_of_forest_land.pdf

³See: <http://fra.org.in/document/NATIONAL%20CONSULTATION%20ON%20RELEVANCE%20OF%20FOREST%20RIGHTS%20ACT%20IN%20FOREST%20DIVERSION.pdf>; Ministry of Tribal Affairs. (May, 2014). Report of the High Level Committee on Socio-Economic, Health and Educational Status of Tribal Communities of India pp. 338-341. Government of India: <http://www.ruralindiaonline.org/resources/report-of-the-high-level-committee-on-socio-economic-health-and-educational-status-of-the-tribals-of-india/>