

Summary report of
National Consultation on Forest Rights Act and Protected Areas
11-12th November 2013,
Indian Social Institute, New Delhi
organised by the Future of Conservation Network¹

Future of Conservation Network organized a consultation on status of implementation of Forest Rights Act (FRA), particularly the provision of Community Forestry Resource (CFR) in Protected Areas (PAs) in India on the 11th and 12th of November 2013 in New Delhi. The consultation brought together civil society organisations, researchers, and others involved directly and indirectly in forest conservation and livelihoods issues in Protected Areas. The second day of the consultation also saw participation from Dr. S.K. Khanduri, IG Wildlife and Mr. Subhash Chandra, DIG Forest Policy for a discussion on role of MoEF in facilitating implementation of FRA in PAs.

Context

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Rights) Act (more commonly referred to as the Forest Rights Act or FRA) was enacted in 2006 and came to force in 2008. By providing legal options for community based governance and management, community forest rights under FRA provide an opportunity to reconcile issues of conservation and livelihoods if interpreted in its true spirit and implemented accordingly. The amendments to the Wildlife Protection Act (WLPA) of 2006 also provide for a more collaborative process of declaration of Critical Tiger Habitats (CTH) with necessary informed consent of affected gram sabhas for relocation. These legal provisions are especially relevant in the present context where international policies also focus on a more decentralised and democratic model of conservation and governance. India is party to the Convention on Biological Diversity, whose Programme of Work on Protected Areas (PoWPA) explicitly requires countries to move towards participatory conservation with recognition of indigenous/local community rights.

The on-ground implementation of the Act reveals a mixed situation. In some Protected Areas community forest rights have been recognised and communities are attempting to move towards management of their community forest resource. In most others, rights have not yet

¹Future of Conservation Network (FoC) is a network of ecological and social organizations and individuals committed to effective and equitable conservation of biodiversity. FoC's objective is to foster dialogue and engagement in complex conservation issues, and help tackle the increasing threats that both biodiversity and people's livelihoods face. This includes joint action on areas of agreement, and attempts at evolving common understanding on issues where there are differences. For more information on this report contact Shiba Desor, Kalpavriksh at desor.shiba@gmail.com.

been recognised with some continued misinterpretations regarding applicability of FRA in Protected Areas. At the same time, relocation is taking place without prior recognition of rights from many Protected Areas. There are issues of concern regarding the finalised CTH relocation protocol while the guidelines on Critical Wildlife Habitat (CWH) have not yet been finalised. Meanwhile, there is a new WLPA amendment being presently discussed in the Rajya Sabha which requires consultation with gram sabhas before notification of National Parks and Sanctuaries but contains no explicit mention of FRA. There are also several other ambiguities at the interface of different laws related to forest governance.

In such a scenario, the objective of the consultation was to enhance overall understanding of PAs and their governance in the light of Forest Rights Act.

Issues discussed:

CFR implementation in PAs

There is no clear official data on implementation of FRA in PAs. Implementation of FRA continues to be tardy and non-existent in PAs in most states, as was clear from various updates. Some participants mentioned that the 2000 ruling of the Supreme Court continues to be used as an excuse for not implementing FRA in PAs. It was clarified however that in a series of regional consultations MoTA has clarified that the 2000 ruling of the Supreme Court can not hinder recognition of rights through FRA. CFR titles have been granted only in a few Protected Areas since last year. Claims that have been filed (in many cases since 2009) remain stuck at various levels of the committees. The implementation is particularly low in CTHs with the administration often giving the explanation that no rights can continue in such areas³.

There have been a few developments in recognition of rights since last year. In Gujarat, CFR rights have been recognized only in Shoolpaneshwar Sanctuary. 70 villages had filed claims and 33 have received titles over 17000ha of land; In Kachch, implementation of FRA has finally begun in February 2013 and SDLCs have been formed after much public pressure⁴. In Maharashtra, 12-15 CFRs have been recognized in the Buffer Zone of Melghat Tiger Reserve and 6-7 claims have been filed within Critical Tiger Habitat (CTH). In Kanha Tiger Reserve in Madhya Pradesh, 16 CFR claims have been recognized in the core while 131 CFRs have been recognized in the buffer area. For Kanha Tiger Reserve, there is a lack of clarity on the process followed to file the claims and the exact nature of the rights received. In Odisha, 3 and 42 CFRs claims have been approved in Badrama and Kotgarh Wildlife Sanctuary respectively but not yet distributed. For Vazhachal Forest division in Kerala, a part of which has been declared as a Tiger

³ CFR claim from Madizdap village in Melghat CTH was rejected on the grounds that such claims cannot be granted in CTH

⁴ However, people have been informed that the lists have been sent to Gandhi Nagar to be verified, only then would they be considered officially constituted

Reserve, nine settlements have asked for a CFR claims over one common demarcated area of 380 sq kms. The claims have been approved by DLC but the titles are yet to be given.

Some progress has also been made in post recognition processes, although such efforts were found to be sporadic and localized. There are village and cluster level plans to move towards community based governance in Biligiri Rangaswami Temple sanctuary in Karnataka and a few villages in Shoolpaneshwar wildlife sanctuary. Initial discussions on formulating plans for managing the area has also been initiated in the 9 villages of Vazhachal Forest division of Kerala. CFR management processes also seem to have also begun in one or two PAs where CFR claims have been filed but rights have not been granted yet. Such efforts of planning by the local villagers towards forest conservation, watershed development and village development, and implementing the plans with the help of convergence of various government schemes was reported from 17 villages in and around Yawal wildlife sanctuary in Maharashtra and a cluster of 5 villages on the boundary of buffer zone of Melghat Tiger Reserve.

Critical Tiger Habitats and Critical Wildlife Habitats

Related to Critical Tiger Habitats, it was observed last year that the focus of the management plans of PAs continues to be on relocation rather than exploring co-existence. It was also pointed out that the notification of many CTHs and buffers had been done without legally mandated procedures under FRA and WLPA 2006. The groups had demanded a protocol on co-existence keeping in mind that CFRs will be claimed in all PAs. This however has not been done even now. It has also not been officially clarified by MoEF yet, as has been repeatedly requested by FoC, that “inviolable” as mentioned in the Act cannot be seen as “human free” but rather as “minimal impact”.

Where relocation from Tiger Reserves is taking place, the required procedure of rights recognition (where claims are filed by FRC and titles received through DLC) as prescribed under FRA is not taking place. There is instead a certificate issued to the village by the collector stating that rights under FRA have been ‘settled’. The meaning of this settlement is unclear since settlement is defined only in Indian Forest Act and not FRA. Guidelines for Critical Wildlife Habitat have still not been finalized while in protected areas such as Yawal and Shoolpaneshwar a few processes towards notifying these have begun at the official level, without involvement of the Gram Sabhas in the planning processes.

Conservation, governance and management in PAs:

It was pointed out by the participants that data emerging from new empirical research is clearly showing trends which argue for a landscape approach to conservation rather than island

approach as many areas of ecological value fall outside the PA network⁵. Landscape approach cannot be achieved by exclusionary policies of relocation but inclusive policies of recognition and establishment of rights and co-existence. This would require a completely different and democratic conservation governance regime.

A cluster of villages immediately adjoining the buffer of Melghat Tiger Reserve in Amravati District of Maharashtra claimed CFR rights facilitated by KHOJ in 2010 and received titles in 2012. Subsequently, these villages have used a Maharashtra Government Resolution regarding convergence of all line agency schemes to support forest conservation and livelihoods. As a result various livelihood options have been created by the local youth through plantations, harvest of forest produce, patrolling among others.

6 village inside and 9 villages in the immediate vicinity of Yawal wildlife sanctuary have also filed CFR claims along with individual claims to land. The villages have initiated a microplanning exercise facilitated by Lok Samanvay Pratishthan in collaboration with all the line agencies in the area. As per a recent meeting with the Principle Secretary Forest of Maharashtra, the management plan of the sanctuary will be drafted based on these village micro-plans.

Conflicts and complementarities at the interface of the laws

The discussion brought out various areas of ambiguity at the interface of laws such as Wild Life Protection Act (including the amendment being currently discussed in Rajya Sabha), Forest Rights Act, Panchayat Extension to Scheduled Areas and Indian Forest Act, with specific reference to possibilities of community governance through FRA. This is especially true about sharing of power and responsibilities between the forest department and gram sabhas in conservation and management in areas of PAs where CFRs are recognized. The consultation brought out that there are several issues with regard to the Amendments to WLP Act currently for consideration with the Rajya Sabha. There was no clarification regarding the relation of settlement of rights, with recognition of rights and the requirement of gram sabha consultation was only provided for scheduled areas.

It was realised that there was a great lack of clarity on whether or not the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013 requires the consent of holders of CFRs as landowners. There is also lack of clarity on how the consent requirements under FRA and the Act will play out, since under FRA Gram Sabha resolution is required for any diversion of land, but the land acquisition act only seeks the consent of individual land owners (except in Scheduled Areas, where Gram Sabha consent is required). In case of acquisition of CFR, only individual compensation based on share in CFR is

⁵ The Hindu 2013, 'Human intervention hindering tiger movement in country', November 18,

<http://www.thehindu.com/sci-tech/energy-and-environment/human-intervention-hindering-tiger-movement-in-country/article5361856.ece?homepage=true>.

provided for. It was felt that the current **land acquisition** act contradicts the principle of justice for forest dependent communities and government needs to be pressurized to bring it in line with the FRA.

Discussion with MoEF:

For this session, Dr. S.K. Khanduri Inspector General (Wildlife) and Mr. Subhash Chandra, DIG (Forest Policy) were present.

Suggestions for supporting better implementation of FRA in PAs were made to the present officials. These included suggestions on: clarifications regarding 'inviolable' areas and applicability of FRA in PAs irrespective of the Supreme court order or prior settlement of rights. It was also requested that guidelines for co-existence should be developed by MoEF in consultation with MoTA and community representatives. The need for acknowledging FRA in formulation of management plans and working plans was also expressed.

Points mentioned by the MoEF officials in response were:

1. FRA is the Law of the **Land** and no officer can deny its implementation. This is very clear and MoEF need not issue any further clarification on this.
2. Where CFRs have been recognised as per the law, NTFP governance should be handed over to the local communities.
3. CFRs or individual **land** claims, however, should not become an excuse for new encroachments
4. The actual **land** demarcation in areas where CFRs have been recognised must be taken up at the earliest.

Way forward

PAs need to be seen as part of a larger landscapes; envisioning a need for reconciling conservation livelihoods across entire landscapes. Hence there is a need to adopt democratic and rights based conservation governance strategies. The group came up with the following suggestions:

For MoEF:

Guidelines on co-existence: Guidelines need to be developed for conservation, management and co-existence in Core and Buffer of Tiger Reserves through a series of joint MoEF-MoTA consultations with local communities. A national consultation also needs to be organized to finalise CWH guidelines. Till such guidelines are finalized, ongoing processes in states (creating a lot of misunderstanding and apprehension on the ground) should be stayed.

Clarification on applicability of FRA: Clarification needs to be issued about the interface between settlement of rights under WLPA and rights recognition under FRA. It also needs to be

clarified that previous settlement carried out in PAs should not be used to deny recognition of rights under FRA. Clarification needs to be issued on what is meant by “inviolate”.

Sensitivity of officials towards CFRs in PAs: Training of FD officials on FRA (including Amended Rules) at national level and state level, should become part of mandatory training programmes. Codes/guidelines regarding Working Plans, Management Plans, Tiger Reserve Plans to be revised to incorporate/respect FRA and Co-existence processes, through widespread consultations

For MoTA:

- Status of implementation of CFRs in PAs should be regularly monitored and uploaded on the FRA website. MoTA should specifically ask for disaggregated information from each state on CFR implementation in each PA .
- Independent investigations and public hearings need to be organized on the issue of ongoing relocation in PAs by MoTA. Illegality of CTH and buffer zone declarations (where rights have been modified without prior recognition) needs to be reviewed and dealt with.
- MoTA should issue a clarification that the Supreme Court order of 2000 banning forest use in PAs is superseded by FRA.

For CSOs:

- Data gathering on state of basic facilities in PAs, invalid rejections of CFR claims because of the area falling under CTH or a PA,
- Follow up with ministries for taking suggested actions for better recognition in PAs, Support to post recognition management and governance of CFRs by communities.

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Organised by Future of Conservation Network**

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