

***Executive Summary and Conclusions  
of the  
Report of the Joint Committee on the Forest  
Rights Act, December 2010***

<b>Alternative Version</b>
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[*Note: The committee had consensus regarding the substance of the first 7 chapters, pertaining to the implementation of the FRA. There were, however, some points of substantive disagreement in the chapters pertaining to future of forest governance, minor forest produce, and convergence (Ch. 8-10), which have been presented in a consolidated manner in Chapter 12. These differences have not been reflected in the Summary and Conclusions that are in the final report. Hence we are circulating an alternative version of the Summary and Conclusions.*

*These differences are highlighted in this summary, in blue. In a few other places, text has been inserted or corrected to better summarise the consensus report; these appear in yellow.]*

## **Executive Summary**

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, popularly known as the Forests Rights Act (FRA), was enacted in 2007 through the Ministry of Tribal Affairs to correct the 'historic injustice done to forest-dwelling communities'. These communities were cultivating /occupying forest land and using forest produce since ages but had no tenurial security. Broadly speaking, this Act recognizes and vests individual forest-dwellers with forest rights to live in and cultivate forest land that was occupied before 13 Dec 2005 and grants community forest rights to manage, protect, regenerate the forest under section 3(1)(i) and to own and dispose minor forest products from forests where they had traditional access. Many states and Union Territories (UTs) which have such forest dwelling communities started implementing FRA immediately after the notification of the FRA Rules on 1<sup>st</sup> January 2008, generally through their Departments of Tribal /Social Welfare. The Union Ministry of Tribal Affairs has been regularly monitoring the

progress of implementation, issuing clarifications and updating the latest figures on its website every month.

The implementation of this Act has thrown up a number of issues, ranging from concerns about how committees have been constituted and about high rates of claim rejections to how exactly forest governance would take place after community forest rights are recognized. In April 2010, the Ministry of Environment and Forests and the Ministry of Tribal Affairs jointly constituted a 20 member committee to look at the various issues relating to the implementation of the FRA and sustainable forest management. The key ToR of the Committee include:

- \* study in detail the implementation of the Forest Rights Act 2006 including factors that are aiding and impeding its implementation,
- \* recommend necessary policy changes in the future management of the forestry sector in India which may be necessary as a consequence of implementation of the Act,
- \* identify the role of various agencies (official and others) in facilitating forest-dwellers carrying out their roles regarding conservation and management of forests,
- \* define a new role for the Forest Department vis a vis the Gram Sabha for forest conservation and regeneration, and
- \* identify opportunities for and recommend measures to ensure convergence of various beneficiary oriented programmes for the forest rights holders taken up by various line departments in the states.

The committee deliberated on the issues of the ToR in 6 sittings and through continuous internal discussions over e-mail. Sub-groups of the committee conducted intensive field visits and public consultations covering 17 states of the country and gathered first hand information by interacting with tribal communities, other traditional forest dwellers, civil society organizations, NGOs, State government officials, academics, and local leaders. Further, in order to maintain transparency of the committee activities, a publicly accessible website (<http://fracommittee.icfre.org>) was created where minutes of meetings, field trip reports, and other documents were posted.

The overall finding of the Committee is that, with notable exceptions, the implementation of the FRA has been poor, and therefore its potential to achieve livelihood security and changes in forest governance along with strengthening of forest conservation, has hardly been achieved. Specific findings and recommendations are summarised below under the following themes:

- Implementation of FRA: Process and institutions
- Implementation of FRA: Individual Forest Rights
- Implementation of FRA: Community Forest Rights
- Implementation of FRA: Implementation of Development Projects
- Implementation for Special Groups
- Protected Areas and Critical Wildlife Habitats
- Future Structure of Forest Governance
- Enhancing Livelihoods through NTFPs
- Convergence of Development Programmes for STs and OTFDs

## A. Implementation of FRA: Process and Institutions (Chapters 2)

1. Some of the states (e.g. Andhra Pradesh, Madhya Pradesh) considered the implementation of the FRA 2006 as an opportunity to 'distribute' forest land and secure the individual rights of forest-dwellers, particularly tribals. These state governments set a deadline so that distribution is completed well before the *scheduled assembly elections of the State*. Even at the national level, the PMO set a target-oriented review mechanism which caused unnecessary rush, distortions in implementation, pushing states to worry only about showing increase in number of claims processed, rather than on the quality of the process. *In a large number of cases the vesting of forest land has taken place even without measuring the same on the ground*. It is to be noted that no deadline for implementation has been provided in the Act.

2. On the other hand, in eleven States the implementation process has not yet started. In most of the northeastern states (Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland and Sikkim) the state governments felt that the FRA was not relevant to their situation or were not clear on how it applies in Schedule 6 areas; most of them are currently re-examining their position. Whereas in states of Bihar, Uttarakhand, Jharkhand, Himachal Pradesh and Goa, the Act is clearly relevant but the states have been very slow in implementation. In Tamil Nadu because of restrictive orders by the High Court on a petition filed, the progress has been slow.

3. State governments constituted State level monitoring committee (SLMC), District Level Committees (DLC) and Sub-Divisional Level Committees (SDLC) generally as provided in the Rules of FRA for monitoring and implementation of the Act. But there been serious flaws in many states about the constitution of the Forest Rights Committee (FRC) at the grassroots level which has the crucial role in assisting the Gram Sabha (GS) in determining the claims from individuals by receiving, consolidating and verifying them on the ground. In most states, GSs have been recognized at the panchayat level, instead of the revenue village or as defined under PESA. Panchayats usually consist of more than one revenue village and several habitations/ hamlets. With this size, convening GS to reach a quorum in its meetings, and forming FRCs to function effectively has been extremely difficult. In addition, FRCs in some of the States have not been formed in a fair manner; e.g., women and STs/OTFDs have not been adequately represented whereas government officials have been included, which is in violation of the Act/Rules. SDLCs and DLCs, even if constituted, have only partially discharged their responsibilities, with little attempt to pro-actively help people with claims and evidences, and on the contrary often issuing rejection letters without adequate grounds. *This has been one of the biggest reasons for the seriously inadequate implementation of the FRA in most parts of India*. There have been inadequacies at the SLMC also. Monitoring in some States has been very poor, due to infrequent monitoring meetings of the SLMC and absence of necessary clarification and guidelines to the implementing agencies down the line, and the non-involvement of members of the civil society. Several SLMCs or state nodal agencies have issued illegitimate deadlines, or guidelines and directives that have caused distortions such as not measuring the land before issuing titles, or giving predominant weightage to satellite imagery when assessing claims.

4. There has been inadequate preparedness and lack of trained staff for implementation of FRA at the grassroots. Land survey, demarcation of boundary and settlement of land rights either for revenue or forest land is a laborious, complex and time consuming activity. In the instant case the State governments focused only on achieving the target in a time bound manner and the creation of adequate human resources, equipment and building capacity for this gigantic task was not done. In most of the States/UTs the task has been assigned to Revenue Dept and partly to Forest Dept as an additional responsibility because the nodal Tribal Dept was weak

in infrastructure and lacked experience in dealing with such settlements. Some tasks (such as measurement or claim preparation) have been either outsourced or completed by engaging staff on contract basis. This has adversely affected the quality and accuracy of the output in many states resulting in wrongful rejections and also in a few cases wrong acceptance of a number of claims.

At the national level, MoTA has the most crucial role in FRA implementation. While it has pushed states for implementation, its role is very inadequate in a number of respects, including a general lack of pro-activeness, with only occasional clarificatory circulars, design of faulty claim forms, poor information gathering and no monitoring through independent evaluations, and no action against those violating the FRA. MoEF too has not checked the violation of the FRA in various respects, including non-compliance to its circular of 2009 requiring completion of the FRA process and Gram Sabha consent for forest diversion, extension or use of plantations to deny claims, and so on.

5. Application of spatial technologies (including remote sensing (RS), global positioning systems (GPS) and geographic information systems (GIS)) have the potential to help in rapid delineation of boundaries, immutable positional information, and objective determination of the physical status of claimed lands, provided skills are built, transparency is ensured and safeguards are followed. Several states have utilized GPS technology for plot delineation.

Only one state (Maharashtra) has used the full suite of technologies (RS+GIS+GPS) for all three purposes in a relatively transparent manner. But the SLMC stopped this process half way because of the 'slow progress' and *now title deeds are granted without land measurement*, which is a very serious concern. Gujarat state has recently attempted to use this approach also, but its approach is poorly designed, lacks proper ground verification and transparency. Mandating satellite image-based evidence violates the Act and denies due process to claimants.

6. Against the tide of poor implementation, there are a number of cases of innovative, pro-active moves by civil society organizations, communities, and officials, that have helped in making claims and getting rights vested. These include awareness programmes and distribution of simple material in local languages, *suo moto* provision of documents by some block and district-level officials to gram sabhas, help in filing claims and finding evidences, advocacy to get the government machinery moving, and so on.

7. The FRA stipulates that forest-dwelling STs and OTFDs are not to be evicted or removed from forest land under their occupation till the process of recognition and verification of their rights is complete. During field trips, the committee members found that this provision of the Act has been violated, and Forest Officials have summarily evicted such occupants in some places. At the same time there have been several cases of forest clearance and fresh encroachments after the cutoff date of the Act in a bid to make claims under FRA. Both such cases, obviously, have to be dealt with sternly as per the law. Further, there have been some cases of relocation from protected areas including Tiger Reserves without having completed the procedures under the FRA. Relocation in such circumstances is a gross violation of the FRA.

## 8. Recommendations

(a) Given the adverse impacts of artificial deadlines and targets, the Ministry of Tribal Affairs (MoTA) should issue a circular/ direction to all the States and UTs that

no such deadline exists as on today, and should give this circular widest publicity. Though the Act does not and should not provide any deadline for completion of the process, states should expedite recognition of **rights without diluting the quality of the process.**

(b) All state governments should recognize the Gram Sabha at the individual settlement (hamlet or revenue village) level, or PESA Gram Sabha where applicable, to enable much more effective processing of the FRA.

(c) MoTA should issue directions that, wherever FRC have been incorrectly formed, i.e., at Panchayat level or without adequate representation of different sections of the community or without following a democratic process, *these FRCs are to be reconstituted through open elections at level of PESA or revenue village-level Gram Sabhas*, with clear instructions so that officials do not usurp powers and functions of the FRCs. However, where there has been satisfactory processing of claims and vesting of rights despite faulty FRC formation, this should not be undone. The reconstituted FRCs should only review where there has been improper rejection or acceptance, or denial of the possibility of making claims and properly process new claims.

(d) MoTA should issue a clarification that OTFDs as defined under the FRA are all those who can prove 75 years of residence in the area (not necessarily on the plot being claimed), and dependence on the forest land as of December 2005. MoTA should also clarify what kinds of evidences may be used as proof of 75 years of residence and how these are to be made available to the villagers. Finally, MoTA should clarify that no disqualifications on the basis of possession of additional revenue land or jobs, or location of residence on revenue land, are permissible under the FRA.

e) A special set of guidelines need to be worked out for the proper use of spatial technology in the delineation, location, and status verification of claims filed, so as to ensure reliability, objectivity and transparency. Best practices identified and techniques developed in Maharashtra should be incorporated; financial support, equipment and training should be provided at all levels, especially the FRCs, and field verification done with involvement of claimants. This activity should be part of the work of the proposed National Forest Rights Council (see below).

(f) State governments should review their SLMCs, DLCs, and SDLCs, including the problems identified in this report regarding their composition, functioning, public interface, and transparency, and issue directions for necessary correctives in each of these institutions.

(g) There is an urgent need for involvement of civil society organizations with concerns for human rights as well as conservation, networks and forums at all levels of implementation, as advisors and watchdogs. The state-level Monitoring Committee also needs to include key persons from such groups.

(h) MoTA should clarify the procedure to be followed for ensuring that rights certificates issued under the FRA (both individual and community rights) are entered in the record of rights, land settlement and forest settlement records of each state. Specifically, it should (in consultation with the Ministry of Finance) issue instructions to ensure that the lands with settlement and cultivation rights (u/s 3(1)(a)) may be treated on par with fully private lands for the purpose of receiving financial support, including bank loans. It should also clarify whether these (3(1)(a)) lands are to be converted into revenue lands or not.

(i) MoTA and MoEF need to work out a set of instructions for ensuring that evictions do not take place in violation of the FRA (section 4(5)), and at the same time ensuring that fresh encroachments do not take place.

(j) MoTA needs to considerably enhance its role as the nodal agency, by more closely monitoring progress, gathering more robust and disaggregated data on implementation, commissioning independent studies, issuing clarificatory circulars including those suggested in this report, directing states to take action on officials who are obstructing or violating the FRA, taking action on violations such as relocation/displacement of people without the FRA process having been completed or without Gram Sabha consent, and other aspects of poor or improper implementation.

(k) MoEF needs to move urgently towards the governance reforms suggested in this report, ensure that its circular regarding development projects on forest land gets legal backing in FRA/FCA, halt all relocations from protected areas that are illegal, take action or direct action to be taken on officials obstructing or violating the FRA, ensure that the FRA process is respected in all afforestation/plantation programmes, encourage the CWH declaration with due process, and move towards reforming the MFP/NTFP collection and trade regimes as suggested in this report.

(l) GoI should establish a National Forest Rights Council which can regularly and systematically monitor the FRA implementation, guide states to take necessary action, and hold or authorize the holding of public consultations and independent assessments.

(m) Civil society organizations, networks and forums need to be involved much more at all levels of implementation, especially to facilitate the mandated bodies under FRA, and to act as a monitor and watchdog that can raise alerts and do advocacy on the misuse of or obstruction to the FRA. Civil society itself has the responsibility, however, of upgrading its own knowledge and understanding of the FRA, so that its activities regarding awareness, facilitation, and advocacy are on a sound footing.

There is also an urgent need to review all FRCs, SDLCs, and DLCs and ensure that women's representation is achieved as per the FRA. MoTA should send a circular reminding states of this statutory requirement, and specifying aspects to pay special attention to, such as joint (husband-wife) titles, claims to CFRt, and post-claims involvement of women in GS committees or other forums.

## **B. Implementation of FRA: Individual Rights (Chapter 3)**

9. Most states have concentrated almost entirely on implementing the provisions for individual forest rights (IFRs). As per the statistics available on the MoTA website, against a total of 30.05 lakh claims filed by 31 October 2010 in the country, about 29 lakh (~98 %) are IFR claims. About 83% of these claims have been disposed of, and 35% (~10 lakh) claims have been approved, with titles issued for most of them. The overall progress is clearly significant. But some states (such as Jharkhand) have lagged behind in terms of both getting a plausible number of claims and in processing the received claims. The percentage of claims processed is very low in Gujarat, Jharkhand and Tamil Nadu.

10. By and large, the IFR claims that have been accepted are legitimate ones. There are, however, some cases of fraudulent claims or post-2005 encroachments reported from Maharashtra and a couple of other states.

11. There are, however, major errors of omission. Even in states where implementation began more than two years ago, many pockets have not yet been covered, and many potential claimants have not managed to submit their claims. Some states have left non-scheduled areas out of implementation, or focused only on STs, or only on a pre-existing list of encroachers prepared by the FD.

12. The biggest problem is with the many cases of faulty rejections. Rejections are being done without assigning reasons, or based on wrong interpretation of the

'OTFD' definition and the 'dependence' clause, or simply for lack of evidence or 'absence of GPS survey' (lacunae which only require the claim to be referred back to the lower-level body), or because the land is wrongly considered as 'not forest land', or because only forest offence receipts are considered as adequate evidence.

13. In an overwhelming number of cases, the rejections are not being communicated to the claimants and their right to appeal is not being explained to them and its exercise facilitated.

14. Similarly, in a few states in areas earmarked for mining or plantations the claims of the tribal communities cultivating land in these areas (individual/community) are not being accepted without assigning any reason. The rights of the communities can't be denied in the name of the development or afforestation work.

15. Section 3(1)(m) of the FRA, regarding the rights of persons illegally displaced or evicted by development projects without proper compensation, has not been implemented at all.

## **16. Recommendations**

(a) All states need to address afresh the problem of omissions: areas where FRA implementation is not happening, settlements, groups or individuals that are being left out, and so on.

(b) Title deeds of land for individual possession should be given only after the physical measurement has been accurately done on the ground and demarcated with permanent boundary marks in the presence of all stakeholders (claimant and the bordering claimants as well as field forest and revenue officials in charge of the area and selected responsible members of FRC) to avoid future land disputes.

(c) Survey and mapping of the forest land where IFR are to be exercised is crucial to the whole process of IFR. It is essential that a short orientation/ training is given to all stakeholders involved with FRA implementation with knowledge about different methods used in preparing the map such as GPS/PDA and satellite imageries. These technologies should only be used after some members of the FRC or others in the village are made familiar with it; the claimants must also mandatorily be involved at the stage of field verification.

(d) The problem of wrongful rejections needs to be thoroughly addressed. States should hold public hearings for grievance redressal at all taluka levels, so as to proactively identify problems and areas of poor implementation.

Any claims rejected on the basis of missing documents or other procedural shortcomings should be not be treated as rejected and should be remanded to the Gram Sabha for reconsideration and re-submission, as done in Orissa. Claims that have been wrongly rejected at the SDLC or DLC level on other grounds mentioned above should be re-opened and re-examined at the SDLC or DLC level. Special attention must be given to the claims of members of minority or marginalized sections of communities. The circular issued by MoTA on 4 March 2010 needs to be modified to facilitate this re-examination.

(e) The Ministry of Environment and Forests should issue necessary clarification that the claims filed by individuals under FRA in the protected areas are eligible for consideration notwithstanding the declaration of the Critical Wildlife Habitat. These newly recognized rights holders will have similar status to the existing settlements in CWH.

(f) MoTA should clarify how the special case of both STs and OTFDs displaced without compensation by development projects is to be handled, in terms of proving residence and illegal displacement.

### **C. Implementation of FRA: Community Rights under section 3(1) (Chapter 4)**

17. The progress of implementation of the Community Forest Rights (CFRt) under FRA is abysmally low. There seems to be a great confusion between CFRt under Section 3(1) which includes right to collect and dispose NTFP, fuelwood, grazing, fishing, right to manage and protect forests, and development rights under Section 3(2) and almost no information is available on the extent of area over which CFRt have been claimed or vested. As per the MoTA website on 31 October 2010, in the 14 states that have provided disaggregated data for community claims, a total of 50,981 CFRt claims have been received, 6,971 have been accepted over a total area of 20,254 ha. However, majority of these claims are development rights under section 3(2), not under the community rights granted under section 3(1). Thus, the community claims actually submitted u/s sec 3(1) are likely to be far less than 50,000 across the entire country, which shows that this part of FRA implementation has been largely neglected.

18. There is a lack of baseline information on the existence of rights (recorded or unrecorded), and existence of customary practices relating to management, use, and protection, in most places. This makes difficult for any robust comparative assessment of the situation. Whether the FRA has led, or will lead, to an improved livelihood security for communities, or to more sustainable management and conservation of forests, is therefore likely to be assessed largely based on oral history or accounts of those who have long-term ground experience.

19. Among the forest-dwelling communities there are certain groups that have very special characteristics who are particularly vulnerable, and for whom the process of claiming rights is difficult. The FRA has made special provision for the rights of such 'primitive tribal groups and pre-agricultural groups' in Section 3(1)e and mentions about "*rights including community tenures of habitat and habitation*" for these communities. These include Particularly Vulnerable Tribal Groups (PTGs) and Nomadic pastoral communities. There are no national level data on the status of FRA implementation specifically with regard to these groups. The various processes of the FRA have hardly reached them and there is very little progress with implementation. Lack of understanding and lack of awareness at almost all levels seems to be the key reason. Orissa is the only state that has taken some pro-active steps on PTG and issued a number of circulars focusing their rights, and entrusted the responsibility on the micro-project officers & project administrators of ITDAs but neither 'habitat right' nor CFRt in any case has been finalized.

20. In the majority of states in India, the CFRt process has not even got off the ground, due to lack of awareness, amongst communities, civil society organizations, or relevant officials. The main reason is that state governments have not adequately publicized the CFRt provisions or even internalized their importance themselves. Officials are invariably treating development rights (sec.3(2)) as CFRt, and communicating the same to villagers. Most communities are not even aware of the ground-breaking CFRt provisions in the FRA. In addition, the forms are flawed, as they do not mention some of the sub-sections. Where claims have been encouraged, they are for tiny areas, such as graveyards or threshing grounds.

(21) There is also a widespread assumption amongst officials (especially forest department) CFRt need not be applied for, since people are already benefiting from existing arrangements such as nistar rights, JFM arrangements, etc. In some cases, CFRt claims are either not accepted because 'land is under JFM' or only land under JFM is being permitted for CFRt claims.

(22) Given these preconceptions about or lack of interest in the CFRt provisions, communities (even where aware and active) are having a hard time submitting claims. Forest records, maps and working plans are almost invariably not available to

the FRC; lands that are being used by communities are routinely taken up for afforestation programmes under various projects (such as JBIC project in Orissa); communities are being denied CFRt claims on lands because they are 'demarcated for mining'. In some places CFRt claims have been rejected for procedural reasons or just kept pending.

(23) Nevertheless, there is confusion about how pre-existing legally recognized rights such as those under Van Panchayats in Uttarakhand or the Chhota Nagpur Tenancy Act in Jharkhand will be treated under the FRA. While section 3(1)(j) recognizes all such rights, communities are not sure whether in practice, after applying for recognition under FRA, they will have the autonomy they already had or are campaigning to have restored.

(24) Where claims have been accepted, there are two major lacunae in the titles given: often titles are being issued in the name of a group of individuals rather than just the Gram Sabha, and lack of clarity as to how these titles are to be entered in the record or rights and other government land records.

(25) Finally, several riders or conditions not provided for in the FRA are being attached to CFRt titles that limit the ability of communities to use the forests. This is part of the larger question as to what the relationship between the Gram Sabha and the FD will be in the post-claim scenario (addressed separately below).

26. However, in the areas where civil society groups and officials are pro-active the claims have started coming up, in some districts in dozens of villages covering several tens of thousands of hectares (especially Gujarat, Maharashtra, and Orissa).

## **27. Recommendations**

(a) Given the serious inadequacies in implementation of CFRt at all levels, there is a need for a 2<sup>nd</sup> phase implementation of FRA in all states with primary focus on CFRt. Such a course of action is already indicated in a letter of 20 July 2010 of MoTA. It is important for MoTA and all state nodal agencies to go beyond this by issuing clarifications and instructions on various issues. Both MoTA and MoEF need to take the lack of implementation of CFRt with the seriousness it deserves.

(b) The Committee is of the view that CFRt given under Section 3(1)(i) to "protect, regenerate or conserve or manage" should extend to entire area falling within the community forest resource (CFRe) as defined in Section 2(a) that are in the day-to-day regular use or management or protection of the community. If necessary, this should be clarified by MoTA to states, or an amendment to Section 3(1)(i) should be carried out to make it clear. Additionally CFR boundaries need to be as per the definition of community forest resource, and not constrained by JFM or other externally introduced boundaries.

(c) A massive exercise in creating awareness about CFRt, amongst communities, officials and civil society groups, is needed. This must be in local languages and should involve various media including radio, television/cable, and print media. Particular attention is needed to CFRe and habitat rights, and to the needs of special disprivileged groups such as PTGs, nomads, shifting cultivators, and women.

(d) A simple, 'how-to' guide on CFRt needs to be produced by MoTA, which can be adapted by state nodal agencies as appropriate, and issued in large numbers to communities and relevant officials. This guidebook has to include all relevant clarifications on CFRt for processing and facilitation of claims.

(e) State governments should constitute technical support groups for clusters of villages (e.g. those set up in Orissa for FRA, or in many states for watershed development programmes) consisting of Civil Society Organizations and officials,

which have a history of working with communities, to enable communities to carry out boundary demarcation and mapping of CFRt. These groups can also help to resolve any inter-village or other boundary disputes that may arise. GPS could be used for demarcating the boundary if necessary.

(f) CFRt titles should be issued in the name of the Gram Sabha, while respecting specific rights to specific families or user groups of forest-dwellers as claimed and vested in the CFR area.

(g) GS committees or institutions set up under the FRA need to have clear powers and authority, combined with defined responsibilities and duties, to carry out their role as specified in the Preamble, Section 3(1)i (where CFRe is claimed) and Section 5. This would require appropriate Rules under FRA, or an amendment if the Rules cannot provide such empowerment.

(h) For PTGs and other pre-agriculture groups it is essential that FRA / MoTA should elaborate the definition of 'habitat' and 'habitation' especially on the kind and extent of the area it should extend and what precisely the right means. The FRA also needs to be amended to explicitly mandate the traditional governance institutions of PTGs to carry out all the procedures of FRA that are given to Gram Sabhas, *even in* states where panchayat raj institutions exist.

(i) Given the lack of capacity to deal with the formal procedures of the external world by PTGs, MoTA and state governments should to *suo moto* identify all of them, collect all relevant records pertaining to their customary rights and boundaries, contact their traditional institutions, and actively facilitate the process of obtaining rights, by involving them and helping them build capacity to handle this as also the post-rights phase, using PTG languages. This would also require special training and orientation programmes for government officials working in PTG areas on the special needs of these groups and the provisions of the FRA.

(j) Once the PTG obtains the right to 'habitat', 'habitation', and other CFRt and IFR, it will have a particularly challenging task ahead. This is especially so where the PTG habitat is now inhabited by or used by several other communities, government agencies, and private actors, and where the PTG itself has entered into wider market, political, and social relations. Learning and building capacity, at a pace suited to tribal way of life, and leading to clear articulation of what it means to be a PTG in the current context will be essential.

## **E) FRA and Development Projects (Chapter 5)**

(28) A considerable part of India's forests and forest land are being diverted for 'development projects' such as mines, power plants, irrigation, dams and roads. Such forest diversion often leads to displacement of people and adversely affects the livelihoods of forest-dependent communities. Until recently, all such forest diversions were undertaken without any consultation with local communities. In July 2009, however, the MoEF issued an order as a sequel to FRA 2006, specifying that all proposals for forest diversion under the Forest Conservation Act (FCA) 1980 needed to ensure that the implementation of the FRA had been completed in the affected area, and that the proposals had been placed before the concerned Gram Sabhas and their consent to diversion and compensation if any had been obtained. But this order has not been properly integrated and implemented in the FCA process, and not been written specifically into the either the FRA or FCA.

Recommendation: FCA rules should be amended immediately to incorporate all the requirements laid down in the July 2009 order of MoEF.

## **F) Implementation for special groups and situations (Chapter 6)**

**(29) Forest Villages:** In most parts of India, rights as per FRA have not been recognized in forest villages, and conversion of forest villages to revenue village status has not taken place at all.

Recommendations:

- a) The process of conversion of these forest villages into revenue villages should be processed at the earliest under sec 3(1)(h).
- b) MoTA needs to issue a categorical instruction that conversion of villages to revenue villages is different from and must precede the recognition of individual land claims.

### **30. Nomads and pastoralists**

#### **Findings**

1. There are no national level data on the status of FRA implementation specifically with regard to Nomads and pastoralists.
2. The field reports available from states are highly discouraging on the issue of Nomads' and Pastoralists' claims under FRA.

#### **Recommendations**

1. The first and foremost task in context of implementation of FRA is to identify and list, state-wise, the various tribes and communities of nomadic pastoralists.
2. The rights of nomads need to be recognized as community rights.
3. States should enable the constitution of FRCs from amongst the nomadic communities themselves, and/or their representation in resident village FRCs where the nomads have customary grazing access, to enable them to make claims.

### **31. Shifting Cultivators**

**Findings:** As of now, in all states where shifting cultivation is being practiced customarily no rights are being conferred specially to continue shifting cultivation. There is confusion as to how the community ownership and the cyclically fallow lands will be treated.

**Recommendations:** The committee recommends that practitioners of shifting cultivation be enabled to claim CFR rights (as explained in Chapter 4) and practice this customary agricultural practice. MoTA needs to issue a clarification that currently fallow lands which are part of the shifting cultivation cycle will be included in the community cultivation rights under 3(1)(a) and permitted to be brought under cultivation in the future as part of the shifting cultivation cycle.

#### **Implementation of FRA in PAs (Chapter 7)**

32. As per the provisions of FRA, forest dwelling communities are eligible to forest rights even in the protected areas (PAs). But no consolidated picture of the status of FRA implementation in PAs is available at the national level. No state is maintaining such data or analyses separately, nor are MoEF or MoTA asking for them. There is, however, a clear trend of initially denying the rights under FRA within PAs at the ground level in some states. The MoTA, MoEF, and the relevant state government have however clarified that such a denial is wrong. In many states it has been wrongly believed, or conveyed, that tiger reserves are exempted from the FRA. It has also been wrongly conveyed that FRA does not apply if rights of people have been previously settled under the WLPA, even if people might still be residing within or depending on the resources of the PA, and also that the FRA does not apply to

villages where resettlement is part of an ongoing process that began before the FRA was promulgated. There are also several examples where official agencies have not accepted, or have rejected, claims, stating that villagers have in any case to be relocated, so why claim or recognize rights?

33. The FRA has specific provision under section 4(2) for creation of Critical Wildlife Habitats (CWHs) within National Parks and Sanctuaries on the basis of scientific and objective criteria to keep such areas as *inviolate* for the purposes of wildlife conservation. Such areas are to be finally notified by the Union Ministry of Environment and Forests after open process of consultation by an Expert Committee. But FRA does not provide any rules related to the declaration of CWHs. The MoEF has issued guidelines which outline the procedures that need to be followed for establishing CWHs and also for declaring a Critical Tiger Habitat (CTH). Although some states have processed the proposals wrongly without involving the community but so far no CWH has been established under the FRA. There is also confusion in the states between CTH and CWH, especially since CTHs have already been established in most Tiger Reserves under the WLPA.

#### **34. Recommendations**

(a) Though MoEF/MoTA have issued directive to states during September 2010 that forest rights need to be recognized first in national parks and sanctuaries before undertaking any process for resettlement and that there is no provision in the FRA to defer the process of vesting of forest rights till critical wildlife habitats are determined and notified, these directives need to be followed up by states issuing directions to their district and sub-divisional committees and other relevant departmental officers and staff.

(b) All notifications or steps relating to Tiger Reserves, Critical Tiger Habitats, and Critical Wildlife Habitats that have been undertaken in violation of the FRA (and in some cases even in violation of the WLPA) subsequent to 1.1.2008 need to be reviewed, and fresh process started that follows the due procedures under FRA, WLPA, and MoEF's guidelines relating to CWH.

(c) MoTA and MoEF/NTCA should also issue clarifications that Tiger Reserves are not exempted from the processes of the FRA. It should also be clarified that and even if relocation programmes in a particular PA have been going on prior to the promulgation of FRA such PA is not exempted from FRA process for families and villages that remain inside it.

(d) A consortium of Civil Society Organizations and research institutions have proposed some guidelines to MoEF related to CWH which addresses key issues like the definition of some important terms, criteria and processes related to the declaration of CWHs and CTHs; prescribed time frames for the processes and consultation and involvement of local communities; processes for co-existence, co-management, and relocation/resettlement. It is recommended that these be urgently considered for adoption by MoEF and the states.

(e) Care is needed to avoid or minimize fragmentation or other serious ecological damage in the case of development facilities (under Section 3(2) that will be extended to resident populations within protected areas.

#### **E: Future Structure of Forest Governance and livelihood enhancement (Chapters 8 and 9, and 12)**

35. As per the provisions of the FRA sizeable area of the country's forests is likely to fall under the category of the Community Forest Resource where forest dwelling communities will exercise their community forest rights under the Act. Such forests if managed, protected and regenerated by the communities would impact the

governance of forests in these areas so far done by the State Forest Departments. There are already many examples in the country where local communities have been formally recognized and empowered to govern and manage the forests of their villages, or where they have self-initiated community-based governance systems. These include some areas of Chhota Nagpur region of Jharkhand, several thousand Van Panchayats in Uttarakhand, a large area in the north east, and several thousand community forest protection initiatives in Orissa, Maharashtra, and other states. Potential CFR areas are also likely to overlap with Joint Forest Management (JFM) areas and areas managed by eco-development committees. There is therefore an urgent need to think about the trajectory of forest governance as a whole and the location of community-managed systems within this and their relationship with the FDs and other agencies.

35b. The history of colonial forest policy is well known and constitutes a major watershed in forest governance in the country, as it led to the takeover of forests largely used by communities and their management with colonial objectives. The post-independence period saw a continuation of this policy, till the major shift in objectives towards ecological balance and local needs, and a participatory approach was initiated by the National Forest Policy 1988.

36. Joint Forest Management (JFM) programme has been another initiative by the Government of India for involving the forest dwelling communities in the management of forests since 1990 and has been implemented by most of the states in the country. Until March 2006 JFM committees have formed involving more than 100,000 villages and covering more than 22 million ha of forests across the country. The JFM programmes have generated many positive outcomes in different locations. It has improved protection, and increased the availability of firewood and NTFPs in many places. Besides sharing of usufruct it has given a share in the timber proceeds to local communities in some cases significantly adding to their incomes. But there are major limitations: decisions are controlled by the FD, focus is on tree planting and not meeting multiple needs, only a part of the community resource use area is brought under protection, promised rights in there are also cases where even promised rights of forest products have often are not been given, and JFM functioning tends to be funding-driven. Further, JFM is not supported by law and being run as a programme under executive orders, giving limited tenurial security to communities and no corresponding accountability of the FDs. Finally, the creation of Forest Development Agencies has further reduced the democratic nature of JFM, as they are notionally JFMC federations but entirely controlled by forest officers. Recently, the Ministry of Environment and Forests has begun discussions with the Ministry of Panchayati Raj and the state governments on the future of JFM. Some of the JFM areas overlap with areas where community rights are being claimed under the FRA, while others may never overlap. Additionally there are ecodevelopment committees in many protected areas, which too may or may not overlap. The experience with eco-development committees for PAs has also been similar, in terms of their limited focus and scope. In effect, neither JFM nor eco-development managed to change the overall picture of forest governance towards more decentralized and democratic decision-making.

37. Though FRA provides a statutory procedure for recognizing community forest resources and community forest rights and the FRA Rules provide a statutory basis for protection of CFRs by a Gram Sabha-based committee where rights are recognized, there are insufficient details available on the aspects of community-based forest governance. There is some confusion as to whether the community has rights to manage the entire community forest resource (CFRe) as defined in section 2(a) of the FRA or only those areas within the CFR that had been traditionally protected as provided under section 3(1)(i) of the Act. Further, rights, powers, and

responsibilities given to local communities are not accompanied by clarity as to how those responsibilities will be discharged, and what happens when they are not discharged.

(37b) Minor Forest Products (MFPs) are an important source of subsistence and also income benefits for forest-dwellers, especially STs. Historically, the government has claimed ownership of all MFPs and regulated the trade in the more valuable ones, thereby generating profits/royalties for the state treasury but limited livelihood gains for the MFP collectors. Sustainable and productive management of forests oriented towards MFPs has generally been neglected. If the ownership over MFPs that has been granted to forest-dwellers under the FRA is to translate into significant and sustainable livelihood gains for the MFP collectors, then several changes in state policy towards MFPs will be required.

38. The committee deliberated on the various areas of confusion and conflict with the previous laws and procedures at village, middle and national levels when the governance and management of CFRe is vested with the community. These included as to what will be the balance of power between Forest Department and communities, what powers will be delegated to the communities, what will happen to existing JFM committees, eco-development committees, what will be the institutional set up and funding mechanism for management/ protection of the CFRe. The committee then made broad recommendations of community based forest governance mentioned in the following paragraphs which will require further clarification as well state-specific adaptation.

### **39. Recommendations**

(a) Four major situations arise when the provisions of CFR are implemented. In situation A where community forest resource (CFRe) claims have been accepted, and where section 5 of the FRA is deemed to be applicable as a result of other rights claimed under section 3, including section 3(1)(i), in situation B where neither CFRe claims have been accepted nor section 5 is applicable but JFM committees are in existence, in situation C where system of community forest management already exists and CFR claims are not made/accepted and in situation D where neither FRA rights, nor JFM nor pre-existing community management systems are in place, but there is still substantial use of forests by local communities.

(b) **For situation A:** Where management claims are accepted under FRA, the management committee formed under Rule 4(e), to be named as Community Forest Resource Management Committees (CFRMC) should carry out functions on behalf of the Gram Sabha. If JFMCs exist in these villages their functions and resources (forest area, funds) should be transferred to the corresponding CFRMCs. **These CFRMCs must be democratically elected, with a fixed term, and adequate representation for women and marginal communities. Funding should be preferentially or equally available to areas under CFRMCs and other community institutions, as compared to state-managed or JFM areas.**

(c) GS will be primarily responsible for ensuring sustainable use, conservation and protection, for which it will be suitably empowered. GS shall have powers to make rules regarding use, harvesting, protection and regeneration and shall generate revenue and receive and spend grants for forest related activities but will not be permitted to make profit. CFRMC office-bearers will be vested with powers to prevent forest offences and penalize offenders/ violators as given to Van Panchayat office bearers in Uttarakhand. **Transit passes issued by CFRMCs will be valid for transport within the boundaries of a state boundary. CFRMCs may prepare their own micro-plans. No other working plans will be prepared by FD for CFRs.**

(d) Timber rights will be limited only to domestic needs, unless specifically recognized under sections 3(1)(j) or (l) of the FRA. Over and above this, any timber-sharing arrangements that were prevailing under the JFM programme will continue with the permission of Gram Sabha.

(e) For situation B: The government should take suo moto action to place JFMCs under the Gram Sabhas and have them democratically elected. We expect government to learn from the past experience, as discussed in section 8.3, and make JFM more democratic and participatory, giving highest priority to the livelihood needs of the poorest.

*Alternative view for situation B:* Government should take suo moto action to replace JFMCs to Community Forest Management & Governance Committees, modelled on the CFRMCs but supported under a new statute, such as a fully amended version of the Indian Forest Act.

(f) For situation C: States must support and recognize pre-existing community forestry institutions, and give them at least as much autonomy as CFRMCs, while making modifications only where there are clear deviations from principles of sustainable, equitable and democratic forest governance.

(g) FD will be responsible for providing Protection and Technical support to the Gram Sabhas and shall be empowered to carry out Forest Monitoring, i.e., the extent of compliance with sustainable use and conservation regulations in the community-managed areas. It will also be responsible for taking action on any violations and will continue to exercise additional powers to implement regulatory provisions of the Wild Life Protection Act and other state-level and Central Acts.

*Alternative view:* FD will be responsible for providing protection and technical support. It will also be empowered to carry out monitoring of compliance with sustainable use and conservation regulations, and take action in violations where GSs are not empowered to act, under the oversight of the proposed District Forest Governance Committees (see below). It will create a Community Forestry wing for this purpose. This wing will be answerable to the District Forest Governance Committee (see below).

(h) State and national level Forest Governance Councils should be constituted to be chaired by the respective ministers and will include FD officials, representatives of forest committees, and representatives from PRIs, civil society and academia. These councils will provide direction to overall forest governance in the state, including by overseeing monitoring, state/national planning, and regulation. The Council should also suggest the setting up of appropriate district level committees with public representation for monitoring and guiding forestry activities at the district, sub-district, and village levels.

*Alternative view:* Landscape- or taluka-level federations of GS-level bodies will be strengthened or created, and empowered under relevant legislation, to enable coordination of landscape-level issues such as wildlife movement or fire management or other resource sharing. Forest Development Agencies will be replaced by statutorily constituted District Forest Governance Committees (DFGCs) in all districts. They will contain representation from GS-level bodies (of all types above), PRIs, civil society and line departments. They will channel funds, approve sustainable use criteria, take action on sustainable use and conservation violations by GSs, resolve inter-village conflicts, oversee Community Forestry wing of FD, and ensure proper GS approval is taken for any forest diversion.

(i) In respect of PAs where community forest rights have been claimed and vested, communities will become a rightful part of protection and management system. This would entail a joint or co-management institution of equitable decision-

making involving the forest department and GS committees. For every district where such community based or co-managed PAs exist, an additional Honorary Wildlife Warden will be appointed from one of the GS committees falling within or adjacent to a PA.

(j) Amendments may be needed to the Wild Life Protection Act 1972 to provide for the community-based, and joint management institutions mentioned above, to provide for the current 'settlement of rights' process by the process of recognition of rights mandated under the FRA wherever applicable, and to otherwise harmonize it with the provisions of the FRA while retaining its focus on conservation.

(k) There is an urgent need for change in the mind set of forest officials so that they have greater interaction with forest dwellers ensuring their all-round economic and social development, involving them at all stages of planning and implementation of forestry programmes run by the Department, and supporting their own planning and implementation of community-based forestry programmes. Forest Officials should be more adaptive, participatory and transparent in planning processes, based on robust research that is open to independent expertise and knowledge including from local communities.

(l) NTFP will play the most important role in the economic wellbeing of the forest dwelling communities. In order to ensure that the communities are able to derive full benefits on a sustained basis, the state governments should de-nationalise NTFPs but provide price support, facilitate private trade beneficial to communities, and act as a watchdog to ensure community benefits and ecological sustainability, rather than eliminate the trade. It should encourage local bulking, storage and processing, and bring large buyers in touch with the gatherers, so as to reduce the number of layers of intermediaries. The proposed policy change towards liberalisation and de-regulation of NTFP trade from time to time needs to be strengthened.

(m) Investments to improve the productivity of forest lands under forest rights should be increased by using Tribal Department funds so that sustainable exercise of forest rights can be ensured through sustainability of forest resources.

## **F. Convergence of Development Programmes (Chapter 10)**

40. Forest dwelling communities have remained vulnerable not only because they are poor, assetless and illiterate compared to the general population but also because of their inability to negotiate being inside the forest areas and suffering from geographical disadvantage. In addition, the general apathy of the local administration, including the Tribal Development Department who had the chief mandate to develop the tribal and tribal areas, towards such interior villages in general with any developmental schemes and programmes further increased their suffering. They occasionally respond with anger and assertion because of persistent problems of land alienation, indebtedness, government monopoly over NTFPs, involuntary displacement due to development projects and lack of proper rehabilitation etc. Migration is common to almost all tribes, but it is the highest in Maharashtra, Gujarat and Jharkhand.

41. A strategy for the development of ST was introduced in the Fifth Plan more than three decades ago by earmarking funds under Tribal Sub-Plan (TSP) to channelise the flow of outlays and benefits from all the sectors but it has not been implemented uniformly or effectively in all States/UTs and Central Ministries/Departments. In addition, Special Central Assistance is provided by the Ministry of Tribal Affairs to the 22 TSP States in the form of 100 per cent grant to fill the critical gaps especially in family-based income activities for BPL tribals. Further, under Article 275(1) of the Constitution, grants from the Consolidated Fund of India are also extended annually to various state governments having Scheduled Areas for

the purpose of promoting their welfare. But these assistance have not made much headway, firstly because the state perception for planning has been deficient both in micro and macro level and secondly the implementation of TSP has been mostly with untrained, inefficient, insensitive and often untrustworthy hands. Apart from poor utilisation of funds tribals have also suffered because of the poor quality of governance.

42. Some states or districts have initiated processes by which relevant government schemes are oriented to benefiting those who have got rights under FRA. However, in general, this aspect needs considerable work and initiative.

### **43. Recommendations**

(a) For over all development of the forest dwelling communities convergence of various developmental schemes operating in areas of education, training, health, employment etc. to achieve higher "happiness index" is essential. The forest lands granted under FRA should be developed so that such lands are utilised to the optimum level of production on sustained basis along with creation of basic infrastructure (road, electricity, public and veterinary related hospitals, schools, water harvesting structures etc) for a decent way of life. The monitoring system should be put in place such that both at the district as well as State level all proposed services to the right holders are delivered speedily and smoothly. Officers with right aptitude should be posted on a long term basis with proper training and members of civil society should be inducted in the monitoring committees at all levels and also at the implementation level.

(b) The vocational training should be provided on priority basis to the rights holders and their family members. The emphasis should be given to such trades which may create employment opportunities in and around their habitation. However, if any rights holders or his family members want to get training in such trade which can get them better employment outside their habitation, facilities should also be created for such training. Such trades can include computer training, food and vegetable preservation, jewellery, tailoring, electrical repair, motor winding, mushroom cultivation, cooking, carpet making, vehicle repair, sericulture, handicrafts, fish rearing, fabrication, welding, driving, building works and masonry. The fund for training should be provided by the Ministry of Tribal Affairs, Government of India to various State Governments on a priority basis.

(c) Every attempt should be made to avoid delay in transfer of benefits to the rights holders or their family members under various schemes of development. For meeting this end, the attempt by Maharashtra TRTI of integrating the data base of all forest rights holders on GIS platform by giving a thirteen digit code to all claimants could be studied and used with local level modifications, as required.

(d) All development, educational, health and other inputs must be ecologically and culturally sensitive, and must be such that they create self-sufficiency and self-governance rather than continued dependence on outsiders. This is also likely to involve a review and modifications of existing schemes and programmes for such areas and communities. Focus should be on options like renewable decentralised energy, organic farming, small-scale industry, integrated (traditional and modern) health and educational facilities, and so on.

(e) The FRA implementation process should be used along with PESA and other relevant laws/policies as an opportunity to facilitate political, economic, and administrative decentralization both in tribal and in non-tribal forest-dwelling communities. This would ensure much greater community say in not only forest use and conservation, but also in education, health, water supply and irrigation, agriculture and animal husbandry, livelihoods, industry, and so on. The state's role to

facilitate this, provide guidance and capacity building opportunities, ensure justice and fairness to those who may be marginalized, and facilitate sustainability and conservation across the landscape, remains vital.

## **Chapter 11. Main Findings and Conclusions**

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (hereinafter 'FRA') is a watershed legislation to undo historic injustice especially to forest dwelling tribal communities as well as bonafide "other traditional forest dwellers", by recognizing and vesting those individual and community rights (IFR & CFR) which had not been recorded during the consolidation of State forests during the colonial period as well as in independent India.

### **11.1 Status of implementation**

However, the current state of implementation is characterised by a series of serious problems, including in particular:

1. Constitution of Gram Sabhas at the panchayat level, rather than at the village/hamlet level. As is evidently clear from section 2(g) and 2(p) of the Act, the gram sabhas are to be convened at the hamlet level in schedule V areas, and the revenue village level or traditional village or habitations and settlements in other areas. However, in a number of states, such as AP, WB, and UP, these are being called at the panchayat level, which is illegal.
2. Extensive and wrong rejections/recognitions, primarily due to hasty enquiries and lack of a thorough examination of the rejected /recognized cases by senior officials or the higher level committees. Claimants whose cases are rejected are not given any "reasonable opportunity", as provided in Rule 4(c). Decisions to reject the applications have not been communicated to the claimants in writing anywhere, with the result that the people have not been able to exercise their right to appeal. The Tribal Development Departments of the state governments have neither cross-checked the work being done at the village level by the revenue and forest officials, nor did they engage any outside agency to conduct independent assessments.
3. Powers of the FRC and GS are exercised by the village level officials, and the non-officials of the FRC and GS are just putting their signatures to the reports written by the officials. The village level enquiry reports have not been verified (not even one percent) by block or district level officials. Neatly devised systems of processing of claims at various levels have not been operationalized, except in few areas of some states.
4. As per rule 10, the State Level Monitoring Committee has to devise criteria and indicators for monitoring the process of recognition and vesting of forest rights; and monitor the process of recognition, verification and vesting of forest rights in the State. It was for the Tribal Department in the States to develop qualitative indicators, call meetings with peoples' representatives, hold public consultations, put pressure on the Revenue and Forest Departments at the district level to do justice to the forest dwellers, and improve communication between officials and the people. In most states, on the other hand, it appears that monitoring has been only statistical with a focus on quick disposal, rather than on ensuring that all occupations are regularised as per law, fair play is observed in the field, and adequate field verifications lead to enhanced satisfaction and improved livelihood

opportunities.

5. In almost no instance has the SDLC pro-actively provided maps, documents, and evidence to FRCs and GSSs, though this is required by the FRA.
6. Though the FRA provides for multi-stakeholder verification and decision-making at various levels, in many places the opinions of forest staff/officers appear to have over-ridden all else. This is due to lack of interest and capacity in Tribal Department officers and lack of confidence and concern in the Revenue Department officers to handle matters of forest rights. The Tribal departments are used to giving scholarships and grants to beneficiaries, but have no experience of dealing with programmes that require inter-departmental coordination. Most nodal officers, without much of capacity building inputs given to them, were thus quite happy collecting statistical information (often from FD) on FRA, but took no initiative in verifying the figures, arranging for a supervision architecture, or assessing the quality of performance of districts. The Tribal Department officers are seen as very low in the hierarchy as compared to the Chairman and hence had hardly any say in the matter and hardly took any initiative. The process was largely perceived and projected primarily as Chairman's or that of the FD.
7. Evictions are reportedly taking place in violation of Section 4(5) of the FRA, which states: "Save as otherwise provided, no member of FDST or OTFD shall be evicted or removed from forest land under his occupation till the recognition and verification procedure is complete". There have been widespread reports of evictions in violation of this provision, before and during the tenure of the Committee. There is little evidence that such illegal actions have been dealt with seriously by either state governments or by MoEF and MoTA.
8. OTFDs: The committee has observed that, in all the states where FRA is being implemented, OTFDs have been generally excluded from the claims process on the grounds that they have not been cultivating the claimed plot for 75 years. MoTA needs to clarify that the requirement "for at least three generations prior to December 2005" applies to the residency clause only, and relates to the recognition of a non-Scheduled Tribe person as an OTFD under the Act; this requirement does not relate to the parcel of land for which a claim is being made, or to the forest on which other rights are being claimed. The claimant need not have occupied the land, or been using the forest, for 75 years. If s/he was primarily residing for 3 generations in forest or forest land and is dependent on the forest as of 13 December 2005 for her/his bona fide livelihoods needs as defined in Rule 2(b) of the FRA Rules, s/he would be eligible under the Act.
9. Only a few states have been able to use application of the spatial and remote sensing technology mainly GPS or PDA for demarcating the boundary and measuring area of plots for individual forest rights because of lack of capacity building in the application of this technology.
10. There are no national level data on the status of FRA implementation specifically with regard to PTGs. The various processes of the FRA have hardly reached them and the progress of implementation is very poor.
11. As per the provisions of FRA forest dwelling communities are eligible to forest rights even in the protected areas (PAs). But no consolidated picture of the status of its implementation is available at the national level. No state is maintaining such data or analyses separately, nor are MoEF or MoTA asking for them. There is however, a clear trend of initially denying the rights under

FRA within PAs at the ground level in some states. In many states it has been wrongly believed, or conveyed, that tiger reserves are exempted from the FRA. It has also been wrongly conveyed that FRA does not apply if rights of people have been previously settled under the WLPA, even if people might still be residing within or depending on the resources of the PA, and also the FRA does not apply to villages where resettlement is part of an ongoing process that began before the FRA was promulgated.

12. PESA and FRA provisions, especially on MFP, need to be rationalized so that people come forward to claim and there is no conflict later on.
13. Non-recognition of community forest resource rights and other non-land rights (discussed in detail below)

### **11.2 Progress on community rights**

The foundation of FRA is the assertion that only security of tenure and formalised recorded rights in favour of forest users would lead to its responsible management and sustainability. The Act and the Rules made under FRA therefore give details of institutional arrangements for the protection, management and regeneration of community forest resources (CFRe), defined in section 2(a) of FRA as customary common forest land where the communities had traditional access, or which could be construed to be customary boundaries of a village, in other words, those areas where communities can demonstrate their traditional access.

Despite the fact that the main intention of FRA was to promote community participation and management, our field work shows that recognition of individual rights has taken precedence over community or group rights, and the focus seems to be confined only to land rights for agriculture and habitation - one amongst the thirteen sets of rights recognised under the Act. Out of the remaining 12, at least the following seven rights constitute community forest rights (CFRt), the formalization of which has unfortunately been ignored by the implementing authorities:

1. Community rights such as nistar, by whatever name called, including those used in erstwhile Princely States, Zamindari or such intermediary regimes; (Section 3(1) (b))
2. Other community rights of uses or entitlements such as fish and other products of water bodies, grazing (both settled or transhumant) and traditional seasonal resource access of nomadic or pastoralist communities; (Section 3(1) (d))
3. Rights including community tenures of habitat and habitation for primitive tribal groups and pre-agricultural communities; (Section 3(1) (e))
4. Right to protect, regenerate or conserve or manage any community forest resource which they have been traditionally protecting and conserving for sustainable use. (Section 3(1) (i))
5. Rights which are recognized under any State law or laws of any Autonomous District Council or Autonomous Regional Council or which are accepted as rights of tribals under any traditional or customary law of the concerned tribes of any State; (Section 3(1) (j))
6. Right of access to biodiversity and community right to intellectual property and traditional knowledge related to biodiversity and cultural diversity; (Section 3(1) (k))
7. Any other traditional right customarily enjoyed by the forest dwelling Scheduled Tribes or other traditional forest dwellers, as the case may be, which are not mentioned in clauses (a) to (k) but excluding the traditional right of hunting or trapping or extracting a part of the body of any species of wild animal (Section 3(1) (l))

In addition to these seven rights, section 3(1)(c) recognizes right of 'ownership, access to collect, use, and dispose of minor forest produce which has been traditionally collected within or outside village boundaries', and this right is both for individuals and communities of the village. Further, community can also have rights of cultivation under 3(1)(a).

The reasons for neglect of the community perspective in the implementation of the Act are summarized below:

- FRA has largely been portrayed as a legislation to provide individual land rights, especially during its promulgation and in its first phase of implementation. At several sites the Committee was told that the SDLCs or DLCs were first dealing with IFRs and would only then get into processing CFRt. Many officials stated lack of staff as one reason for this, though it is not clear why they cannot deal with CFRs which are always going to be much less in number than IFRs.
- MoTA has not collected information on cases and area for which community rights under section 3(1)(b) to (m) have been granted by the states, and thus has not been able to build any pressure on the states for ignoring to recognize these rights. It is simply not known how many claims have been made/accepted/rejected at various levels, of each subsection of section 3 that provides for community rights.
- The data are further complicated by the confusion prevailing in the field between Section 3(1) and Section 3(2); several states appear to be reporting the latter for the former; many of the claims currently being classified as CFRt claims in the State or MoTA databases, are actually claims for development facilities under Section 3(2). Even MoTA is unable to provide figures separately for the two sub-sections.
- There is a lack of baseline information on the existence of rights (recorded or unrecorded), and existence of customary practices relating to management, use, and protection, in most places. This makes difficult any robust comparative assessment of the situation prior to and after the FRA's promulgation.
- The number of applications received for CFRt is very low, and acceptance abysmally lower, compared to the potential if judged by the number of villages that are living within or adjacent to forests.
- Where CFRt claims have been claimed or accepted, the extent is often much less than actually used or managed by the community.
- There is little thinking on the status, management, and conservation of areas with CFRt, and specifically CFRe, including issues of relationship of the Gram Sabha with existing agencies managing these areas, and of the complementarities and contradictions with other laws operating in such areas.
- Even where there is knowledge about the fact that CFRt can be claimed, at many sites communities or relevant officials are not clear on how to determine and verify such rights, and so have not started the process. There is also confusion on how to determine the boundaries of CFRt (especially in the case of the claim to CFRe); or on whether CFRt can be claimed over more than 4 hectares, even though the FRA is clear that this limit is only for rights claimed under Section 3(1)(a). The process has also got stuck in places where more than one village has a claim on the same forest area, and no process has been put in place to reconcile such overlapping claims (though the FRA has provided for such a procedure).

- Amongst the various kinds of CFRt, the right to manage/protect CFRe given in Section 3(1)(i) is one of those with the least awareness. One reason for this is that this sub-section is not specifically mentioned in Claim Form B that is attached with the Rules; this inexplicable and unexplained omission has caused many communities to not claim this right even when they have claimed other CFRt.
- At many sites, misleading information on CFRt has been provided by officials or civil society organizations, to communities (not necessarily deliberately, since in many cases such officials or NGOs have themselves misunderstood the FRA's provisions). Amongst the most common of these is that CFRt relate only to development facilities listed under Section 3(2). Also widespread in some states is the belief that CFRt need not be applied for, since people are already benefiting from existing arrangements such as nistar rights, JFM/CFM agreements, Van Panchayat agreements, etc.
- At many places where communities have attempted to make CFRt claims, they have encountered various kinds of obstructions, such as refusal to give relevant records, such as maps, refusal to accept claims because the land being claimed is located in "Joint Forest Management" areas, etc.
- Approaches in all areas related to land and property in general have promoted individual ownerships.
- Community responsibility and benefits from common resources, in general, are relegated in the society due to specific approaches of individualization of properties, resources and benefits promoted even by Government schemes. In some areas people would like to have benefits but leave the headache of management to the Government.
- The currently prevalent mostly open access situation in the forest areas for the people actually deters them from moving towards a responsibility based self-control oriented regime.
- Community resources are considered nobody's but Government's responsibility.

In some cases communities, however, have already had problems in operationalising CFRts. For instance, villagers of Mendha-Lekha were stopped while attempting to take bamboo out of their village for sale, with forest officials saying they would not give a transit permit. This raises questions of the interface between the FRA and the Indian Forest Act, and issue dealt with in more detail in Chapter 8. But other than this relationship, the crucial issue is, how can a right to collect, transport and sell minor forest produce (which includes bamboo) be operationalised if another agency has the power to stop transit of this produce? Once again, there may be genuine conservation concerns involved in such an action, but such concerns need to be dealt with through negotiations and discussions rather than unilateral imposition of powers.

There are a number of issues where there is lack of clarity, on the relationship between the GS and the Forest Department, and the relationship between the FRA, IFA and WLPA, in relation to CFRt. These are yet to manifest themselves across most of India, simply because CFRe have hardly become operational as yet.

Overall, given the serious inadequacies in implementation of CFRt at all levels, there is a need for a 2<sup>nd</sup> phase of FRA implementation in all states, in which primary focus is on CFRt. Such a course of action is indicated also by the 20 July 2010 letter of MoTA to all states. While this belated letter is appreciated, it is important for MoTA

and all state nodal agencies to go beyond this by issuing clarifications and instructions along the lines laid out below.

Progress with CFRt implementation needs to be monitored as a special exercise, as part of the overall monitoring process by the National Forest Rights Council suggested in Chapter 2. A simple, 'how-to' guide on CFRt needs to be produced by MoTA which can be adapted by state nodal agencies as appropriate, and issued in large numbers to communities and relevant officials.

### **11.3 Move Towards Community-based Forest Governance, Convert JFM into CFM**

It may be recalled that the National Forest Policy way back in 1988 had recognized the meeting of local needs as an important goal of forest policy, and explicitly de-prioritized revenue generation as an objective. It gave a clear push for participatory forestry, and recommended creating a massive people's movement with the involvement of women for achieving objectives of the policy which included conservation of biological diversity, increasing "forest/tree cover, increasing productivity of forests etc. One of the immediate impacts of this policy was the 1990 circular from MOEF asking states to initiate Joint Forest Management for regenerating degraded forests.

The JFM experiment has generated many positive outcomes in different locations, but there are limitations too. The 'jointness' in JFM is seriously limited in the field, with day-to-day decisions being controlled by the forest official who is usually ex-officio secretary of the committee. The silvicultural decisions rest with the FDs, and their focus remains on tree planting (often fast-growing exotic species) thereby adversely affecting graziers and not necessarily meeting even firewood or NTFP augmentation goals. Being implemented as part of bilateral/multi-lateral projects, JFM has tended to be funding-driven and therefore funding-dependent, with activities dropping dramatically after the project is over.

A serious problem is that of elite capture. This problem be-devils all 'participatory' government programmes (such as watershed development), not just JFM. But it is particularly problematic in forest management because there is often divergence of interests over how to manage commonly held resources, between women, graziers, firewood headloaders, NTFP collectors, and those looking for profits from commercial timber/softwood production. Consequently, elite capture actively hurts marginalised groups. FDs often find it convenient to allow elite capture, and in fact to actively use the elite to achieve these objectives while bypassing true participation, which is a difficult and messy process.

**FRA provides an opportunity, as all JFM areas as well as forests under exclusive village management should be claimed by the community under section 3(1)(i) of the Act and managed as a community resource.** To facilitate the process, FD should provide protection and technical support, and be responsible for ensuring compliance with sustainable use and conservation regulations. The FD will also have to provide support since the landscape management/ watershed aspects may go beyond such areas under 3(1)(i). Otherwise, it seems that we are talking of garden management in small areas whose impact on neighbouring areas could be limited!

In case the gram sabha or the community is not keen to take over management of JFM forests under FRA, or management claims are not accepted under FRA, the government should take suo moto action to place JFMCs under the Gram Sabhas. This will ensure that the members of the JFMCs are democratically elected by the Gram Sabha. We expect government to learn from the past experience, as discussed

in section 8.3, and make JFM more democratic and participatory, giving highest priority to the livelihood needs of the poorest.

Despite several limitations JFM has one plus point over wholesale one-time and premature transfer of control to the village institutions<sup>1</sup>; it allows for a flexible arrangement of sharing of authority between the village and government. This flexibility is desirable as an interim measure because the precise distribution of control and management between the state and the community/gram sabha should depend on a number of situation-specific factors, such as the ease with which control groups can be formed and can retain cohesiveness. The process of sharing decision making and management of forest lands will then proceed at different paces in different conditions. In the initial stages the community institutions are often at a low level of formation, and therefore the forest officials may be justified in not diluting their basic responsibility of protection. Often one-to-one correspondence between protecting community and the forest patch is not there, leading to inter-village conflict, and requiring government intervention. The gram sabha may also look forward to getting support from the Forest Department in booking offenders, negotiating with other villages/departments etc. However, FD should gradually withdraw as the capability of the community improves, and transfer management to the community under FRA.

Increasing the organisational capacity of the village so that their management is both equitable and effective is not an easy task. It takes time to mobilise a village community into a coherent and empowered group and local officials must allocate sufficient time and facilitate this as early as possible. Greater transparency within village groups—between the local leadership and the wider group membership—is essential to ensure marginalised groups benefiting from participatory forest management.

#### Alternative view for above 3 paragraphs:

Democratization of forest governance is a basic goal, as much as the need to ensure sustainability or livelihood enhancement. The shift to community-based forest governance must happen wherever communities are directly dependent on the forests. Where FRA is applicable, communities must be strongly encouraged to apply for community forest rights and take on the management. Where FRA is not applicable or for some reason communities are not coming forward, the government must take *suo moto* action to replace JFMCs with Gram Sabha-based committees similar in structure, rights and powers to those set up under FRA, with support of alternative legislation if necessary. If legally recognised community forestry institutions already exist, they should be supported and given adequate autonomy. The role of the FD in all these areas must shift to one of technical support, additional protection support, and monitoring. In all cases, Gram Sabha-based committees must be complemented by landscape level federations; and also by a District Level committee which is authorized to oversee forest use and conservation, ensure that the FD fulfils its role vis-à-vis the GSs, and take action where GSs do not fulfil their responsibilities.

In all Protected Areas where community forest rights are claimed and vested, communities should become a rightful part of protection and management. This will include Critical Wildlife Habitats (under FRA) and Critical Tiger Habitats (under WLPA) keeping in mind limitations imposed by Section 4(2) of FRA. This would entail

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<sup>1</sup> This is presuming that there is a genuine desire on the part of FD to transfer authority to willing and capable communities, an assumption that is often challenged by civil society groups.

a joint or co-management institution of equitable decision-making involving the forest department and GS committees. Central and state governments should pro-actively take forward the process of identifying and declaring CWH, ensuring full consultation and consent of communities, and the use of both modern and traditional knowledge, and other elements of a robust knowledge-based and democratic process. The CWH process should also be available to secure important habitats outside protected areas, including by communities in their CFR areas.

#### **11.4 Livelihood support through MFPs**

Even the best of efforts to promote CFM and participatory JFM may still leave out vast tracts of forests where there is substantial use of forests by local communities but neither community management under FRA, nor JFM are in place. In such areas as well as in CFM/JFM areas, as per the 1988 Forest Policy, government should promote such silvicultural practices that maximise the production of NTFPs and gatherable biomass. This will take care of the populations who are not the direct beneficiaries (as per definition of claimant) of FRA but who have been depending on the forest resources. This will reduce the conflicts. Legal safeguards of providing ownership over MFPs to communities under PESA and FRA may not be able to prevent deterioration in the quantity and quality of the gathered NTFPs, or incomes therefrom. Some of the processes that may cause this are; deforestation, preference for man-made plantations in place of mixed forests, regulatory framework, diversion of NTFPs and forests to industries, nationalization of NTFPs, and exploitation by government agencies and contractors in the marketing of NTFPs.

Therefore in addition to guaranteeing that FRA is implemented in letter and spirit, one would have to address three inter-related issues for ensuring that forest dwellers' livelihoods are supported and enriched by NTFPs:

1. how to increase NTFP production, while sustaining the resource
2. how to improve access of the poor to NTFPs, and
3. how to maximize their incomes through marketing.

Multiple objectives to maximise outputs from many products will require innovative and experimental silviculture, which must focus more on the management of shrub and herb layers, and on forest floor management to enrich the soil and encourage natural regeneration. For instance, FD's present management of sal in AP and MP seems to be for timber, and hence only one shoot is allowed to grow. Since sal is an excellent coppicer, degraded forests and hills close to a village should be managed under a coppice or a coppice with standard system for fuelwood and sal leaves.

In the states of MP, Andhra and Maharashtra bamboo is an important ground crop. Yet, the productivity and quality of the bamboo has been far below its potential due to the dense build up of dead leaves and other organic material. The abundance of litter within the clump has suppressed the growth of new shoots and poses additional fire hazards during the dry season. If the stands were routinely cleaned and thinned, the danger of fire would be reduced, productivity would increase several fold, and a regular flow of bamboo stands will be ensured to the bamboo artisans. Artisans living close to forests should be involved in the management of bamboo forests, so that they extract bamboo themselves without damaging the clump.

As the commercial importance of NTFPs increased in the past, the state governments nationalised during the 1960's and 70's, many important NTFPs, that is, these can be sold only to government agencies or to agencies so nominated by the government. In theory, this right was acquired ostensibly to protect the interest of the poor against exploitation by private traders and middlemen. In practice, such rights in

some states were sublet to private traders and industry. Thus, a hierarchy of objectives developed: industry and other large end-users had the first charge on the product at low and subsidised rates; revenue was maximised subject to the first objective which implied that there was no consistent policy to encourage value addition at lower levels; tribal and the interest of the poor was relegated to the last level, or completely ignored. While collectors of NTFPs are often some of the lowest income groups in India, they often receive only 5 to 20 per cent of the retail value of their goods. Various governments run marketing and cooperative schemes and have established parastatals for this purpose, but these have frequently failed to result in major improvements in prices. In Orissa, Govt gets 150 crores as royalty from Kendu leaves (KL) - for every Rs to plucker royalty is 3 Rs.

Supply of subsidised forest produce to industry must stop forthwith. Despite it being against the Forest Policy of 1988, Orissa has continued such supplies and in fact has transferred the management of bamboo forests to JK Paper Mills, which contravenes the Forest Conservation Act too.

For marketing NTFPs, government should not have a monopoly, nor create such a monopoly for traders and mills. The solution is to denationalise NTFPs gradually so as to encourage healthy competition and increase the number of buyers. Government should set up promotional Marketing Boards, as distinct from commercial corporations (which are inefficient, and hence demand nationalisation), with responsibility for dissemination of information about markets and prices to the gatherers. The Boards should provide a guaranteed price for MFPs like tendu, as in the case of wheat and rice, but allow free purchase by all and sundry.

Low returns to forest gatherers are not only due to policy distortions arising out of public and private monopolies, and to traders' hold over the poor and ignorant forest dwellers. They are the result of the very nature of dispersed and uncertain production combined with fluctuating demand and undeveloped markets. These issues may help to explain why removing government controls in March 2000 in Orissa, or why free trade in a large number of non-nationalised NTFPs in Jharkhand, MP and Chattisgarh did not lead to a rapid increase in gatherers' incomes. Therefore there should be price-based aggressive buying of NTFPs by state agencies, as has been done for wheat and rice, with GOI subsidising the storage and marketing of such produce. Aggressive buying of NTFPs by state agencies alone can break the dominance of the wholesale traders and their linkages with the village level market. The nature of produce and actors involved makes it obvious that without government support there can be no justice to forest gatherers. However, government organisations should compete with private trade, and not ask for monopoly.

### ***11.5 Sensitising the forest service***

Since both FRA and JFM mandate close collaboration between foresters and the local forest dwellers, the need for sensitive and responsive Forest Service cannot be over-emphasized. Unfortunately the internal culture of the Forest Service has continued to be hierarchical and authoritarian, and not participative. A paradigm shift in their outlook can be achieved by good training modules at the IGNFA and refresher/in-service courses at various institutions. This and other policy measures within the department should aim at the following outcomes:

- As a clearly declared policy by the Government, greater interaction with forest dwellers and ensuring their all-round economic and social development, involving them at all stages of planning and implementation of forestry programmes run by the Department, and supporting their own planning and implementation of community-based forestry programmes,

- Mainstreaming the FD into implementation of developmental programmes which has, post forest villages era, been removed from it and given to specialized wings. The trend continues today also and the latest example is the implementation of FRA itself, where there is a limited role indicated for the FD.
- increasing emphasis on environmental conservation and for strengthening the base for sustained silvicultural as well as agricultural production and water security,
- increasing role of watershed and landscape approach to forestry requiring integrated land management,
- increasing interaction between agriculture, animal husbandry and forestry and tribal department,
- greater public awareness about forestry and the demand for peoples participation in forestry programmes,
- greater appreciation of the role of environmental aspects in forest management,
- more adaptive, participatory and transparent planning processes, based on robust research that is open to independent expertise and knowledge including from local communities, and
- increasing focus on understanding and managing complex ecosystems, helping sustain their resilience and adaptability in the face of multiple challenges including climate change, conserving a range of native biodiversity rather than only individual megafauna species, and helping revive/sustain threatened species of both plants and animals.

### **11.5 Role of the Ministry of Tribal Affairs (MoTA)**

As the nodal agency at the Centre, MoTA has the most crucial role in FRA's implementation. However it suffers from the following problems:

- a general lack of pro-activeness, with only occasional clarificatory or directive circulars being issued and occasional workshops and state visits being organised. Several critical issues that have emerged and been pointed out by civil society organizations or states (including those pointed out by this Committee) have been ignored, and there is no regular, systematic attempt to meet with and visit states to promote implementation. MoTA representative hardly attended the meetings of the Committee, nor sent his representative.
- designing of faulty claim forms, e.g. Form B does not mention a number of rights including 3(1)(i)
- issuing confusing, regressive or illegal circulars, e.g. the one on rejections, dt. 4 March 2010, which stated that once rejected, claims cannot be re-opened except in cases of "unduly large" rejection levels, and the one on development rights under Section 3(2), dt. 18 May 2009, asking the user agency to submit plans for compensatory afforestation ("twice the number of trees to be felled"), even though the FRA (under Section 4(7)) specifically exempts development rights from such provisions that are otherwise mandatory under the Forest Conservation Act.
- has not involved professional organizations in evaluation or assessment of the programme, so that corrective action can be taken in time.
- as already pointed out, MoTA has not collected information on cases and

area for which community rights under section 3 (1) (b) to (m) have been granted by the states, and thus has not been able to build any pressure on the states to recognize these rights.

MoTA needs to give clear instructions and guidance to states to strengthen nodal agencies and departments, and issue circulars on a range of issues brought up by this report, including process/institutional recommendations made in this chapter, the formation/constitution of gram sabhas, withdrawal of illegal deadlines, issuing of titles without conditions that violate the FRA, special procedures and steps for groups like nomadic and pastoral communities, PTGs, shifting cultivators, etc. It should direct re-opening of mass rejections, pointing to the various wrongful ways of rejecting claims that have come to light, formulate robust data collection and monitoring formats, actively seek such information from states, commission independent studies to find out status of implementation, and provide regular analytical reports on implementation. It should direct states to take action against officials who are obstructing or violating the FRA process, collate and disseminate 'best practice' cases, and do monthly videoconferencing with SLMCs to monitor progress.

Not only has the Ministry failed to get FRA implemented faithfully, its record on other tribal issues is equally dismal. MoTA has still not been able to finalise the National Tribal Policy, the draft of which was announced some six years back with a great deal of fanfare. Law pertaining to involuntary displacement has been discussed since 1998, but it has still not seen light of the day, though it is well established that tribals suffer most when new projects lead to involuntary displacement. MoTA takes no interest in pushing the states to change their state laws in conformity with PESA. There is no white paper from the Ministry relating to pathetic condition of governance in forest dependent villages, including huge vacancies and absenteeism of staff. The Ministry has no meaningful partnerships with advocacy organisations that could produce credible and evidence based reports with a view to put pressure on other Ministries that ignore tribal interests. It is strongly recommended that the Ministry of Tribal Affairs (MoTA) must change its style of functioning.

It is unfortunate that MoTA does not give sufficient attention to the important problems of the tribals on the plea that many of these subjects, such as land alienation, displacement, and PESA, have not been allotted to it. Even then the Ministry should play a more activist role in addressing these issues by pursuing with the concerned Ministries, where these subjects get a low importance, as the Ministries' excuse is that they are concerned with 'bigger' and more 'general' issues. At least, MoTA can set up a monitoring mechanism to bring out the dismal picture of tribal areas that would put pressure on the sectoral Ministries and the states to improve their policies and implementation. MoTA would be taken seriously by other Ministries only if MoTA does evidence based advocacy by analysing why delivery in the forest regions is not improving. Government could also set up a Group of Ministers to review the implementation of suggestions given in this report.

When a new Ministry is set up to help the marginalized people, it is expected that it would take a holistic view of their problems, and coordinate the activities of all other Ministries that deal with the subjects impinging on the work of the newly created Ministry. It would develop systems that inform Gol how and why tribals are denied justice. On the other hand, it has been observed that the new Ministry takes a minimalist view of its responsibility, and reduces itself to dealing with only such schemes (such as distribution of scholarships and grants to NGOs) that are totally outside the purview of the existing Ministries. Such ostrich like attitude defeats the purpose for which the Ministry was created.

It is rather sad that the Ministry of Tribal Affairs is more concerned with spending its budget (through NGOs that create opportunities for clientelism and patronage), and

less with the impact of overall policies of other Ministries on tribals. It is reported to be surrounded by manipulative NGOs who hog the entire attention and time of the senior officers, leaving little time with them for the real pressing problems of the adivasis. This attitude results in continuing neglect of tribal issues. It also under-plays the role of non-monetary policies (such as displacement) and the impact they have on the lives of the people. As is well known, certain government policies harm the tribals much more than any benefit that accrues to them through money-oriented schemes of the Ministry of Tribal Affairs.

For instance, NTFP policies in the states are often dictated by the desire to maximise state revenues, and not maximise welfare of gatherers, who are often women. The revenue interest of Orissa can be judged by the fact that during the period 1989–2001, the State Government earned revenues of Rs 7.52 billion from kendu leaves (KL). The total wages earned by KL pluckers during the same period was only Rs 3.87 billion. The high incidence of royalties on KL needs to be contrasted with the royalties collected on a major mineral, where labour is organised, e.g. royalties are Rs 30 per tonne on bauxite, but a whopping Rs 12,000/tonne on KL!

Even the Planning Commission does not monitor regularly the impact of existing policies on the tribal population and pull up the concerned sectoral Ministries. There seems to be an obsession in Government of India with financial budget and not with the impact that policies (or the lack of it) have on the marginalised peoples. Policies and budgetary provisions, despite the rhetoric, have not been integrated so far. Changes in policy or laws, are not seen as an integral part of the development process because these have no direct financial implications. One lesser known reason for this isolation is that development and planning in India are associated with spending of money. That Planning *means* Expenditure, *and this will lead to* Development is the mindset behind such beliefs. The Indian planner unfortunately has still to understand the difference between planning and budgeting.

### **11.6 Role of the Ministry of Environment & Forests**

With the exception of certain actions such as the July 2009 circular requiring FRA implementation and GS consent for forest diversion, MoEF's treatment of the FRA has many problems, including:

- promoting or funding afforestation and plantations on common (including forest) lands without consultation with the people, denying them the chance of making claims or of being vested with rights to lands they have customarily used; indeed the FRA is not even mentioned in many new schemes or plans, e.g. related to CAMPA
- clearances to projects on forest lands with claims (or potential claims), violating even its own July 2009 circular (see examples in Chapter 5)
- funding and promoting relocation of communities from tiger reserves, without ensuring due process under both FRA and WLPA (a problem that started with rushing through the notifications of several Critical Tiger Habitats a day before the coming into force of the FRA, ignoring several steps that were required before such notification)
- issuing circulars to state governments regarding JFM without specifying the new governance and management requirements under the FRA
- not taking any action to dissuade unilateral actions by forest officials who undertake evictions in violation of Section 4(5).

MoEF needs to urgently guide the move towards a new governance regime of forests, as suggested in this report. It must review all activities and projects relating

to forest commons, including plantation and afforestation projects, to ensure that FRA processes are respected and ensured, and GS consent has been obtained. Its circular of July 2009 should be strictly enforced. It must also halt illegal relocation from PAs. All notifications or steps relating to Tiger Reserves, Critical Tiger Habitats, and Critical Wildlife Habitats that have been undertaken in violation of the FRA (and in some cases even in violation of the WLPA) subsequent to 1.1.2008 need to be reviewed, and fresh process started that follows the due procedures under FRA, WLPA, and MoEF's guidelines relating to CWH (modified as per recommendation given in this report). Such a process must be followed for all proposed CWHs.

It must act or direct action on officials who are violating the FRA process, on evictions in violation of Section 4(5), and on fresh encroachments. In addition, it should

- Take action or direct states to take action against those responsible for cases of fresh post-2005 encroachments
- Urgently update national level information on villages inside and adjacent to forests, through FSI, and providing this to states to pro-actively facilitate CFRt claims
- Review the present state-wise policies relating to production, access, and marketing of MFPs/NTFPs, and initiate new policies as suggested in this report.

Both MoTA and MoEF have done little thinking and issued no guidance to states on the processes needed after giving titles, e.g. for management of community forest resources, for interface with relevant govt agencies, for overlap with other laws and institutions, for convergence of schemes, and so on. Suggestions made in this report need to be urgently and jointly taken forward by these two ministries.

Finally, Government of India should establish a National Forest Rights Council (similar to NREGA Council):

- which is comprised of a balance of officials and non-officials (especially those experienced with forest rights issues), headed by the Minister of Tribal Affairs, and containing the Commissioners of ST and SC;
- whose key functions include independently and regularly assessing and monitoring implementation status, advising GOI and states on implementation, carrying out or authorizing periodic public consultations and hearings, etc.; and
- which is vested with relevant powers to access state and central government records, and carry out independent investigations.

This Council should be provided adequate funds to carry out its functions. Over time, this council will merge into the National Forest Governance Council suggested in chapter 8.

It is hoped that the two Ministries would consider our suggestions that are aimed at strengthening the rights-based approach to development for forest dwellers.