

People in Conservation

Biodiversity Conservation and Livelihood Security



Volume 5 Issue 1 Nov. 2012 - March 2013



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Special Issue on Community Forest Rights (CFR) under the FRA, 2006

Editorial - CFR and challenges !

The Scheduled Tribes and Other Traditional Forest Dwellers' (Recognition of Forest Rights - FRA) Act, 2006 has a history of long struggles by various groups and individuals against the denial of the rights of forest-dwelling communities over their forests. The Act recognizes individual and community rights of legal ownership over such forest lands that they have been residing on for gathering resources for agriculture, medicine, etc. It also recognizes their right to protect, manage and conserve forest resources.

Community Forest Rights (CFRs) under Section 3(1)(i) of the Forest Rights Act, 2006, have been considered as a significant tool that can be used to ensure community participation in forest conservation, protection and governance on the ground. The CFR provision legalizes the community's dependence on forest resources to address local needs including those of livelihood of millions of people. It could be a model to ensure community empowerment to make collective decision and to balance local needs for forest resources with protection and conservation of forests. A successful implementation of CFRs is in the hands of states as they are mandated to implement these within their boundaries. Their proactive AND positive response will not only help communities but will also help states- as this will ease the state's responsibilities towards ensuring livelihood security to millions of people who depend on forests for their survival.

The CFRs provision of the Act is very crucial as it enables the community to overcome the hurdles which restrict them from making decisions on their forest resources. However, despite the potential and the importance of CFRs (or perhaps because of it!), it has not been implemented extensively across the country so far. Available official information and data on implementation of CFRs is in contrast with the data and information collected by groups working on the ground with the community. In areas where claims have been accepted and titles issued, problems have been reported regarding conditions and restrictions stated on the title deeds, and differences in areas claimed and those actually granted as per title deeds. The post-CFR situation is more significant as it will have impacts on the livelihood of forest people and on conservation and protection of forests. Unfortunately in the current regime those who need to feel empowered are already incapacitated as a result of the pre-existing social and political constructs. It is the state government's responsibility to elicit participation (as an aspect of good governance). Yet there seems to be a lack of political will as well as budget for this very important task. Secondly,

there is a need to see how synergy can be created between laws that might seem to conflict or are in fact in conflict (for instance the provision for forest diversion for non-forest purpose in the Forest Conservation Act). Thirdly, those who make laws need to look beyond the legal framework and into the social framework (for instance issues related to gender and caste equity). Here there are three largely unaddressed issues vis-a-vis the FRA and CFR - the question of empowering participation of women, the problems faced by pastoral and transhumant communities, and those faced by the communities belonging to Particularly vulnerable Tribal Groups (PVTGs).

Civil society groups have been working with communities to help them claim CFRs, and also with the state to help implement CFR provisions of the FRA. The picture that is emerging from the experiences of implementation of FRA in the country (in the context of CFR) indicates that there is a need to do much more at both, the community and the government level. Both the parties need to work in changed circumstances on the ground where ownership will be transferred to the community. The process of transfer of ownership and control is not as easy as it might appear. The community would need support to initiate efforts on the ground and the states need to work with full coordination with community to realize the objectives of CFR in spirit. There are certain areas where the post-CFR process is progressing well, and linking of such areas and communities with areas where post-CFR progress is slow, would bring positive changes on the ground.

Challenges abound. But they can arguably be reduced to the question of political will and of institutionalizing the law. The law was heralded as being revolutionary. But revolutionary laws can be implemented only by putting in place revolutionary institutions that are controlled by people; not by callous, incompetent and corrupt bureaucracies in the hands of elites. The need of the hour is to institutionalize and not bureaucratize the revolution.

Milind Wani and Vikal Samdariya

Special Report: Implementation of Community Forest Rights under the Forest Rights Act 2006 - Status and Issues¹

Prepared by:

Neema Pathak Broome with Shiba Desor, Ashish Kothari, Priyanka Bhalla and other members of CFR Learning and Advocacy Network (<http://www.fra.org.in/new/>)

Forest Rights Act was enacted in 2006, and Rules under the Act were notified in 2008, when the implementation of the Act also began. Much has been written in this newsletter and others since then about the near-complete lack of implementation of the provisions of the Act related to community rights, particularly the right to protect, conserve and manage their "community forest resource", clearly defined in the Act. This has also been a cause of concern for many civil society organizations and members of mass movements. This concern led to the coming together of some of these organizations and movement members in 2009 for a national consultation and the formation of a network called Community Forest Rights Learning and Advocacy Network (CFRLAN²). The members of the network include, those facilitating the process of implementation of CFRs in different parts of the country or those associated indirectly with such a process. Since 2009 the network has been able to create a forum for sharing of experiences from one site to the other, including various members traveling to each other's sites and extending help if need be. It has also been able to consolidate these experiences from the ground to come up with recommendations for policy and procedural changes in the law and its rules and associated circulars and government orders. Members have together advocated and lobbied for the implementation of these recommendations, leading to some changes. Among the other objectives, the network also aims to continuously monitor the process of implementation of Community Forest Rights provisions in various states, by analyzing information put up by the nodal agencies at state level, and Ministry of Tribal Affairs (MoTA) on their website, as well as data collected by various members from their respective sites and states. This has formed a significant basis for an analysis of ground situation and for recommendations for policy

1. More details on data, analysis and recommendations presented are available in the Vasundhara & Kalpavriksh (2013). Citizens Report on Community Forest Rights under Forest Rights Act: Status and Issues. Community Forest Rights Learning and Advocacy Process (CFRPA) in Collaboration with OXFAM.

2. <http://www.kalpavriksh.org/index.php/conservation-livelihoods1/16-networks/252-community-forest-rights-learning-and-advocacy-process.html>

changes. Using the experiences coming from the ground and the above-mentioned analysis the network has also facilitated state-level and regional consultations among various actors who are part of implementing the Act in the respective states. Give below is an analysis prepared by Kalpavriksh and Vasundhara based on inputs provided by the members of CFRLAN.

It is important to note here that after many interactions with mass movements and civil society organizations, including the CFRLAN, and based on their suggestions, the MoTA amended the Rules under the FRA in September 2012. MoTA had organized a series of regional and nationwide workshops during the period September –November 2012, with a view to orient the key state departments responsible for implementation of the Act about the provisions of the amended rules. These were followed by a national review-cum orientation meeting with all the States on FRA on 3rd December 2012 at new Delhi wherein, besides reviewing the progress on the implementation of the Act by the States the final Action Plans prepared by the State Government for streamlining the implementation of the Act in accordance with the amended Rules were also discussed. In most states, however these rules had not become part of implementation till the time of writing this analysis and in fact in many states the sub-divisional level committees had not received the copies of the amended rules even three months after their formulation. As is mentioned under specific sections below these rules are much improved upon the earlier rules and have the potential to address many issues which have led to lack or weak implementation of FRA. A letter dated 21st January 2013 followed by reminders dated 7th February and 14th March 2013 had also been issued to the state governments about the status of implementation of the new rules. The analysis below, therefore largely reflects the ground situation where the new rules have not been taken into account.

The status of implementation of CFRs in different states

There are few states where the implementation process is being carried out fairly fast or at medium pace, and the primary reasons for this (among others) are that mass movements and civil society organizations have facilitated and pushed for the implementation. In some places, pro-active help by revenue/forest officials has been forthcoming; and in all the above cases positive government circulars at state level (*Odisha, MP, MoTA on CFRs*) and letters/ guidelines/ rules amendments at national level have been extremely useful in facilitating the process. However, the progress has generally been weak and slow so far.

The Ministry of Tribal Affairs (MoTA) is meant to upload a monthly update on the status of implementation of the Act in general and of CFRs in particular. Tables such as the ones shown below are periodically uploaded on the MoTA website (although not updated monthly). Experience of the CFRLAN members however, shows that this reporting (which is done by the respective state governments) continues to be poor and often incorrect. In addition:

- In many states many community claims filed are not reflected in the status report;
- Analysis also shows that most of the reported CFRs are actually development facilities (under section 3(2)) rather than CFRs under section 3(1); no disaggregated information on these is available on the websites of the state governments or that of MoTA; and
- Information on the Forest Area covered by CFR claims being reported on is not available for most states.

STATUS OF CFR IN THE STATES AS ON 31st December, 2012 (from MoTA website)

State	No. of community claims	No of CFR titles issued	Extent of forest land covered (in acres)
Andhra Pradesh	6,714	2,106	
Assam	5,193	860	
Chhattisgarh	4,736	775	
Gujarat	8,723	1,608	
Karnataka	1,917	53	
Kerala	1,395	4	
Madhya Pradesh	13,125	(Not available)	
Maharashtra	5,041	1,033	3,77,776.25
Odisha	3,304	879	55,251.65
Rajasthan	346	53	419.53
Tripura	227	55	56.79
Uttar Pradesh	1,135	814	
West Bengal	7,824	108	50.29

The data above is very different from that presented by the nodal agencies of different states at a meeting called by the MoTA on 3rd December 2012. The objective of this meeting was for each state to draw a road map or action plan for implementation of FRA. The data (as on Dec 2012) given below is from two states: Maharashtra and Odisha. It is very different from what the MoTA website shows.

State	No. of community claims	No of CFR titles issued	Extent of forest land covered (in acres)
Maharashtra	4,955	1,571	7,05,869
Odisha	3,409	>500	>55,297

This data itself, however, needs to be looked at with a number of caveats. For example, although Maharashtra is among the states with the highest forest area coverage over which CFR titles have been granted, this is still largely from only two districts (Gadchiroli and Gondia) out of 33. Odisha, which is known to have over 10,000 self-initiated community forests, has only granted titles to about 500 communities from among over 3,000 that filed the claims. Moreover many titles have been issued with conditions- which is contrary to the provisions of the Act. In Andhra Pradesh thousands of communities are reported to have received titles over forest land covering more than one lakh acres of forest land, however most of these are conditional and have been granted to the earlier Joint Forest Management Committees rather than the gram sabha, as stipulated by the FRA.

Implementation is particularly weak in areas inhabited by special groups such as the "Particularly Vulnerable Tribal Groups and pre-agricultural communities". Hardly any state has taken steps towards implementing this provision. There is a lack of clarity among all in cases where non-forest land that falls within the "habitat" of such communities (can such areas be claimed or not?) leaving only the forest land falling within the habitat open for claims under the Act.

Traditional resource access of the nomadic communities has also not received any attention in the official implementation process. Communities such as the *Mankirdias, Gujjars, Maldharis, Raikas and Dhangars* have not received any CFR rights yet; Considering that their resource access spreads across a large landscape and includes multiple gram sabhas, even, at times, extending into neighboring states, no mechanism has as yet been worked out to assist with their claims. *The new FRA rules of 2012 have taken a special note of this and mandated the District Level Committee to facilitate claim-filing by pastoralists, and transhumant and nomadic communities.*

Rights on lands where shifting cultivation has traditionally been practiced are also being treated like individual land rights rather than being considered community right, as has been reported from Tripura, and hence being restricted to the upper limit of 4 acres.

Most states have focused on implementation of FRA for the Scheduled Tribes, while the process for Other Traditional Forest Dwellers has been neglected. There are exceptions to this in some parts of the country, such

as the Gadchiroli district of Maharashtra; in other areas there have been few claims filed, and none accepted. A positive step in this direction is the recent GR issued by the government of Gujarat³, which had earlier taken a decision to implement the law only in tribal areas. The current GR will now facilitate the process in non-scheduled districts of the state.

In many protected areas (national parks, sanctuaries and tiger reserves), individual rights have been settled but there are very few where CFR rights have been accepted. States like Maharashtra have not accepted any forest rights within protected areas as of now. The 2006 amendment to the Wild Life Protection Act laid down a certain process to be completed before declaration of Tiger Reserves, including the buffer areas of the earlier ones. It also laid down conditions and procedures to be followed before relocating the villagers from tiger reserves and critical wildlife habitats. Even the buffer zones which have been declared post-FRA have not followed these procedures, e.g. in Tadoba Tiger Reserve, Sariska Tiger Reserve and Sathyamangalam Wildlife Sanctuary in Tamil Nadu. Nowhere in the country have any efforts been made towards working out co-existence between local communities and the wildlife and neither have any guidelines been prepared for the same. Relocation without full implementation of FRA, although illegal, continues from many tiger reserves, e.g. Simlipal, Achanakmar, Tadoba, Sariska, and Melghat Tiger Reserves. This newsletter has reported on such examples in the past⁴. The process of declaration of critical wildlife habitats has also not begun, as the MoEF and MoTA have not been able to finalize the guidelines for their declaration.

Among the few examples where local communities have managed to get CFR titles within a protected area is Biligiri Rangaswamy Temple Sanctuary & Tiger Reserve in Karnataka. About 25 CFR titles have been granted to Soliga tribal residents, covering ~25,000 ha (more than half the area of the sanctuary). This has encouraged the local community to come up with a tiger conservation plan of their own, facilitated by civil society groups such as ATREE. This plan however is yet to be submitted to the authorities and officially recognized⁵.

3. Government of Gujarat Division of Tribal Development Resolution no 1A-2012-92-ch 1, Secretariat, Gandhinagar, Date: 07/09/2012.

4. See: Recognition of Rights and Relocation in relation to Critical Tiger Habitats (CTHs) - Status under The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act (FRA), 2006, and Wild Life (Protection) Amendment Act (WLPA) 2006: <http://www.kalpavriksh.org/images/Documentation/Advocacy/Recognition%20of%20Rights%20and%20Relocation%20in%20relation%20to%20CTHs.pdf>

5. See: People In Conservation Vol.4 issue 2 June 2012: http://www.kalpavriksh.org/images/Documentation/Newsletters/picvol4iss2_june2012.pdf

In conclusion, while estimates show that over 75 million acres of forests have some form of community use and hence can potentially be claimed under CFRs; and yet, even five years after the implementation of the Act began, titles over only about 1 million acres have been granted.

Reasons for weak implementation

Many reasons for such weak implementation have been identified by the CFRLAN members, including:

1. Inadequate awareness and training, including and particularly among the lower rung of the nodal agency itself and the divisional and sub-divisional level committee members. Although awareness about individual rights is fairly high, on community rights it is extremely poor. Even where it is at a fair level, it often gets confused with development rights being provided under section 3 (2) of the Act. Consequently, in some areas where the implementing agencies have facilitated community rights, they have only facilitated processes for development rights under section 3(2).
2. Poor facilitation by government departments, e.g. in providing relevant evidence to the concerned communities. Even the nodal agencies such as the Tribal department or the Social Welfare Departments have been poor facilitators.
3. Different states have been using different formats for filing CFR claims, some being extremely complicated and difficult to fill in, such as the *kulak* in Rajasthan, which are working as a deterrent.
4. Undue influence of, or reliance on, the Forest Department by the implementing agencies in most states.
5. Lack of clarity in verification and mapping process.
6. Artificial restrictions on extent of claims (e.g. JFM), or titles being granted to inappropriate institutions (VSS/Panchayat).
7. Titles with improper or illegal conditions.
8. An important issue is the loss of conservation traditions and current lack of local management skills. In many areas communities are not ready for filing claims under CFR as there is a lack of confidence and clarity on management of CFRs once the titles are received.

What happens after the CFR titles have been received?

While on the one hand the implementation of the FRA on CFRs is slow, on the other hand there continues to be confusion and concerns about the areas where the CFR titles have been received. The situation is clear at some sites which have a certain vision and plan for their community forestry resource, but such areas are few and far between. An example is the Mendha-Lekh village of Gadchiroli, which has worked out a detailed plan for forest management, including the use of NTFP for regulated commercial purposes and for the conservation of their Community Forest Resource. There are also examples such as Muramwadi in Gadchiroli which are trying to take advantage of various government schemes for better management of their CFRs. On the whole, however, there is a lack of clarity regarding a number of issues including:

- Which specific powers within protection/ management rights of CFR are with the gram sabha and what is the relationship of these rights with those of other official agencies who may also have jurisdiction over the area?
- What would be (or will there not be?) the role of the forest department in this new context? Will it still be an enforcement agency or facilitation agency?
- How would the management plans for CFRs be developed (or will they not be?) and what would be their relationship with the working plan/ management plans of the FD?
- What would be the mechanism for convergence of various schemes to facilitate processes in CFRs? Who would do it?
- What would be the marketing mechanism for various products that will be harvested? How would the harvest be regulated?
- Would there be any monitoring systems? Who would be part of these and how would they function?

FRA 2012 rules attempt to address some of these, e.g. by mandating the Gram Sabha to integrate its conservation plan with the working plan of FD, with modifications, as considered necessary by GS Committee. What is unclear however is how the differences between the FD and Gram Sabha are to be resolved. 'Modifications' are to be made in the GS plan, or the Working Plan? New rules also mention that convergence should be ensured, extending all relevant schemes of all government departments to rights-holders under FRA. Much however, still needs to be worked out

for the effective use, management and conservation of CFRs. In districts like Gadchiroli some discussions towards this are now taking place, facilitated by the district administration, in collaboration with the villages where CFR titles have been granted, civil society groups and forest and other government departments.

FRA violation in diversion of forest land for mining, dams, industries, etc.

MoEF circular (30.7.09) requires state governments to comply with the FRA and to seek gram sabha consent for diversion of forest land. This however has mostly been violated by both, the states and the MoEF, resulting in diversion of 200,000 ha forest land without completing the FRA process.

Conflicting signals are emerging from within the government. While letters have been sent by MoTA to MoEF asking for implementation of the above-mentioned circular, the Prime Minister's Office has issued a directive to both, the MoEF and the MoTA, to dilute the circular. In any case, linear projects (roads, railway/ transmission lines) have been exempted from the circular. Now with over-riding powers being given to the Cabinet Committee on Investments, there is a likelihood of the provisions being further diluted while diverting forest land.

The above is in addition to other violations of CFRs such as operations of plantations, coupe felling, planting jatropha by Forest Department continuing on land claimed under CFR, without consultation / consent of the community. This has been resisted by communities such as the Baiga in the Baiga Chak area of Dindori district in Madhya Pradesh.

Acts and policies in conflict with FRA

- Imposition of JFM instead of implementing CFRs (e.g. Odisha, Maharashtra JFM resolutions).
- Climate change programmes (Green India Mission / REDD / Biofuels): as there is no clear directions on centrality of CFRs .
- Land Acquisition Act / Forest Conservation Act: as it continued take-over of lands without FRA completion & gram sabha consent.
- Mines & Minerals Act: as it does not provide for a central role of gram sabhas.
- Wild Life (Protection) Act: protected areas ignore CFR rights; PA notification does not require GS consultation/consent.
- Indian Forest Act: as it continues to operate within CFRs.
- State panchayat/NTFP/PESA laws, still operating.
- NTFP trade regulations Acts.

Key recommendations⁶

A large number of recommendations have emerged from CFRLAN to resolve some of the above situations. Produced below are a few main ones in brief:

In areas where pre-claims / claims / recognition phase has not moved or is weak, the following needs to be done:

State governments need to initiate a full new campaign in mission mode in collaboration with experienced members from various villages, mass movements and civil society organizations to:

- Produce simple material in the local languages for mass distribution and training programmes at sub-divisional level for awareness as well as actual filing of claims.
- Mass circulation through panchayats and other means of the claim forms including Section 3(1)(i).
- Pro-actively facilitate claims, evidence gathering, mapping, inter-village coordination, etc.
- MoEF must issue circular to all states to respect customary boundaries and not restrict implementation to boundaries based on JFM/VP boundaries, etc.

In areas where CFR titles have been given, the following needs to be done towards post-title management:

The FRA 2012 rules mandate the District Level Committee to "ensure that the forest rights under clause (i) of sub-section 1 of Section 3 relating to protection, regeneration,, are recognized in all villages with forest dwellers and the titles are issued". This provision provides a clear space for working out models for co-existence within PAs and facilitating conservation and development programmes outside of them. However, in order to achieve that many steps will be required to be taken, proactively. Among others the following steps have been suggested so far:

- To begin with the CFR title to be given to the entire village (gram sabha) and special provisions are made for those sections which are most dependent on forest;
- Titles should be free of conditions, other than relevant to FRA;

- Title should mention all the CFR rights claimed by the communities.
- MFP/NFTP over which rights have been granted should be denationalized with appropriate changes in contradictory state laws or guidelines.
- NFTP marketing needs to be supported by providing assistance sought by the communities including by providing minimum support price.
- A Facilitation process is needed to ensure forest/wildlife conservation linking to processes at taluka, district, and national levels.
- FD management and working plans need to be linked to the planning carried out by the villages for their CFR; Such a planning process needs to be facilitated as per the desire of the gram sabha Resources (financial and human) are needed to be provided towards such planning and its implementation.

Special actions are required to ensure that the Act is implemented in Protected Areas (PAs) / Critical Wildlife Habitats (CWHs) & Critical Tiger Habitats (CTHs)

- Declaration of Critical Wildlife/Tiger Habitats should be done based on traditional and scientific knowledge, democratic and participative processes, respecting rights, stressing co-existence, and minimizing relocation, in accordance with provisions already provided for in the FRA and the WLPA. The guidelines need to be urgently finalized based on civil society inputs already given.
- All relocation from PAs should be stopped till FRA rights recognition is complete; option of staying on within the PA and possibilities for participating in co-existence planning must be conveyed clearly to people residing within.
- MoTA should set up investigation teams to look at FRA violations in past/ongoing relocations and recommend action.
- Mechanisms for monitoring and reporting on FRA implementation in PAs (incl. Tiger Reserves) needs to be worked out. This monitoring mechanism should also take into account the actual conservation outcomes of any decisions taken in this regard including co-existence and relocation.

Suggestions towards governance reforms needed in areas where CFRs have been vested, at village/cluster level are as follows:

It has been increasingly felt by many that in order to realize the full potential of CFR provisions of FRA

6. Based on recommendations from:

- National Workshops on CFRs, 2011, 2012 & 2013.
- Report of MoEF/MoTA Jt. Committee on FRA, 2010.
- Recommendations of National Advisory Committee, 2010.
- Inputs from communities / movements / NGOs.

to achieve the twin goals of local empowerment and conservation, and preventing the incorrect implementation of the Act, certain governance reforms will be needed at all relevant levels. Although what exactly these reforms will be is a matter that requires further understanding and discussion; We give below some indicative suggestions emerging from the consultations among various actors and CFRLAN members so far:

Village level

- Gram Sabha committees to be empowered, building in internal and external checks-and-balances in power.
- Village-level and village-cluster level planning to be initiated by/with Gram sabhas.
- Gram sabha consent to be made mandatory for any external use of forest land (including plantations, non-forest use).

Forest Department level

- FD to be transformed into a service agency, imparting technical guidance, capacity-building, monitoring.

Landscape/state levels

- District level agencies to be constituted including the representatives of the GS committees, FD, NGOs, and other relevant departments and experts.
- Co-existence committees for PA-buffer, landscapes/ Biosphere Reserves/other conservation landscapes.
- State level councils to be constituted including Gram sabha federations, NGOs, other departments and experts.
- All of the above with functions/powers to:
 - Facilitate planning at landscape/larger levels,
 - Monitor forest/wildlife conservation and use, act on violations,
 - Ensure convergence of schemes/programmes/ departments towards conservation and livelihood security.

National level

- Harmonization of various Acts with FRA (incl. Indian Forest Act, Wild Life (Protection) Act, Forest Conservation Act, Biodiversity Act, and others).
- Review of National Forest Policy in view of FRA and PESA, with greater focus on rights and community-based governance (along with conservation).

For governance reforms, MoTA/MoEF should set up committee to review and recommend specific changes / additions to laws and policies.

In addition a national level FRA council needs to be constituted (on the lines of NREGS Council), with an independent role of monitoring/guiding implementation, and facilitating social audits.

Similar independent processes need to be initiated at state and district level, linked to (but not under) SLMC and DLC.

MoTA has been very open in listening to the suggestions from the civil society in the recent times and has been taking active steps to ensure that the CFR provisions are effectively implemented but much still needs to be done at the level of the state governments and civil society organizations. Only then the CFR provisions will realize their full potential at achieving ecological and local livelihood security.



1. News and Events

Tribal affairs ministry against MoEF move to dilute Forest Rights Act

A move by the ministry of environment and forests (MoEF) to exempt promoters of so-called linear projects such as roads, pipelines and canals from seeking the consent of village councils in forest areas will likely be a non-starter unless the government moves to amend the forest rights Act (FRA).

MoEF issued a notification on 5 February that such projects, including lines for power transmission, wouldn't require the consent of gram sabhas, or village councils. It acted in the face of criticism over the delay of many infrastructure projects for want of environmental approvals. But the measure won't have any constitutional validity until FRA is amended, an official in the tribal affairs ministry said, indicating a possible face-off between MoEF and Ministry of Tribal Affairs.

The tribal affairs ministry has raised its concerns in a letter to MoEF asking it to revise the 5 February notification—"The concern of this ministry is that it be made amply clear that the rights of FDSTs (forest-dwelling scheduled tribes) and OTFDs (other traditional forest dwellers) on forest land proposed to be diverted must get recognized and vested under the FRA (without any exception) before forest clearance is granted to any such proposal," said the letter.

The notification, dated 5 February 2013, posted on the MoEF website, states that the decision was taken after consultations with an inter-ministerial committee. However, the tribal affairs ministry contends that it hadn't been consulted. Only the nodal ministry, in this case the tribal affairs ministry, can issue fresh guidelines or notifications amending the rules. "However the tribal affairs ministry has not yet issued any such notification that calls for changing the provisions in the Act," an official said.

Tushar Dash, a researcher with Vasundhara, an Odisha-based not-for-profit organization that is working on forest rights and conservation, said that a group of states and non-governmental organizations had raised the issue of the dilution of tribal rights with the tribal affairs ministry earlier this month. "We had told them to intervene in this matter and make sure that the forest rights Act does not get diluted," Dash said, adding that if the tribal affairs ministry had written to the environment ministry, then it was definitely "a good move on their part".

Source: <http://www.livemint.com/Politics/3OQ1ych0F3GzBuUksJb1DJ/Tribal-affairs-ministry-against-MoEF-move-to-dilute-forest-r.html>

In Odisha 41,891 ha of forest land diverted for non-forest projects

Forest land to the tune of 41,891.25 hectares (or 1,03,515.53 acres) has been diverted in Odisha till March 6, 2013 since the enactment of Forest Conservation Act-1980 by the Centre. The forest land diversion has been effected for various sectors like mining, irrigation, power, roads, railways, industries and defense.

Almost all stand-alone mine leases, and industrial players with end-use projects like National Aluminum Company (Nalco) have benefited from forest land diversion in the state.

The state government is sitting over 431 proposals of forest land diversion across sectors like irrigation, industry, mining, energy, railway, roads and bridges and human habitations.

Mining sector tops the list with 205 proposals pending for diversion of forest land. Other sectors with forest land diversion proposals in the pipeline are irrigation (27), industry (29), energy (44), railway (21), roads & bridges (37), human habitations (2) and miscellaneous (66). It may be noted that mining activity alone has resulted in

diversion of 8,194.86 hectares (or 20,249.94 acres) of forest land in Keonjhar district.

Source: http://www.business-standard.com/article/current-affairs/41-891-ha-forest-land-diverted-in-odisha-113032600253_1.html

National Green Tribunal constitutes fact finding committee in Karnataka

In a significant move, the South Zone Bench of the National Green Tribunal comprising of Justice Mr. M. Chockalingam (Judicial Member) and Prof. Dr. R. Nagendran (Expert Member) set up a two-member committee of experts to visit Challakere Taluk in Chitradurga District of Karnataka to study the ecological and environmental consequences of diversion of 10,000 acres of 'Amrit Mahal Kaval' (traditional pasture grassland ecosystems and District Forests) for a variety of Defense, Nuclear, Industrial and Infrastructure projects.

The decision to constitute the expert team was taken on 21st March 2013 based on applications filed by Leo F. Saldanha and Environment Support Group before the Tribunal during February 2013. The Applicants have consistently pointed out that the Karnataka Government comprehensively violated various forests, biodiversity and environmental protection laws while diverting about 10,000 acres of 'Amrit Mahal Kaval' for defense, industrial and infrastructure development projects. All this has also been done, without any Statutory Public Hearings and in total secrecy, thus comprehensively violating the Principle of Free, Prior and Informed Consent that forms a major basis of various environmental and human rights protection laws.

The Applications contended that all these gross illegalities have been committed despite the widely known fact that these ecologically sensitive grassland ecosystems serve as a special and critical habitat to a variety of flora and fauna.

Source: Leo F. Saldhana (email: leo@esgindia.org), Bhargavi S Rao (bhargavi@esgindia.org), Arthur Pereira. The Applications and related documents, along with a copy of the order of the Tribunal dated 21st March 2013 are accessible on the ESG website at: www.esgindia.org

Tawang hydel project gets MoEF approval

Within days of China announcing three new hydroelectric projects on the Brahmaputra River and catching India by surprise, the Centre has set the ball rolling to build the strategic Tawang hydroelectric project in Arunachal Pradesh.

The 800-MW power project proposed to be built on the Tawang Chhu river has been granted forest clearance, with the Environment Ministry waiving the cumulative impact assessment for stage-I clearance that it was earlier insisting upon.

While the project proposal had been discussed at two meetings of the Forest Advisory Committee (FAC) in April and September last year, it was felt that a comprehensive study was needed to assess the cumulative impact of the projects planned in the Tawang basin before the projects are considered for clearance. With the state and the Centre now raising the pitch in favor of the projects, the FAC cleared the project at a meeting on January 21-22.

The Tawang hydroelectric project will require diversion of 116 hectares of forest land including 19.6 hectares for underground use. While the diversion involves no violation of the Forest Conservation Act, 62 families will be affected by the project.

Source: <http://www.indianexpress.com/news/tawang-hydel-project-gets-moef-approval/1069846/0>

New markers to label forest areas 'inviolable'

A committee set up by the Ministry of Environment and Forests has suggested new parameters to declare pristine forested areas as 'inviolable' and thus out of bounds for mining or other harmful non-forest activities.

The panel, headed by former environment secretary T. Chatterjee, has recommended that national parks and wildlife sanctuaries; areas within a kilometer of protected areas; compact patches of very dense forests; last remnants of forest types located in direct draining catchment of first order perennial streams being utilized as water source or feeder streams for water supply schemes; areas in direct draining catchment of first-order perennial streams feeding hydro-power projects and boundaries of important wetlands "shall be automatically labeled inviolable".

The panel's report comes at a time when the MoEF is under attack from various infrastructure ministries which have been demanding relaxation of forest rules to expedite their projects. The MoEF has now sought comments on the recommendations from all stakeholders.

The panel has now identified six "measurable" parameters to identify 'inviolable' areas — forest type,

biological richness, wildlife value, forest cover, landscape integrity and hydrological value — data on which is available with various government agencies. To identify such areas, India will be divided into 1km x 1km grids and the value of each grid will be estimated on the basis of the total of its scores on these parameters. If the average score of a grid exceeds 70 out of 100, it shall be labeled 'inviolable' and if a majority of grids in a mining block are "inviolable", the block too will be labeled so.

Source: <http://www.indianexpress.com/news/new-markers-to-label-forest-areas--inviolable-/1065601>

Mining- MoEF to push for one-time green clearance

The Ministry of Environment and Forests is giving final touches to a plan that will insist on full forest clearance for the entire mining lease area, instead of granting clearance to a smaller section of the lease area where actual mining is proposed to take place, sources told The Indian Express.

The move aimed at streamlining forest clearance procedures will allow mining agencies to break up land for additional mining in the same lease area without having to approach the MoEF again for clearance for the new mine. Delays in renewal of mining leases and fresh forest clearance for new mining in the same area are often blamed for shortage of coal and consequent power supply disruptions.

The full clearance proposal has two purposes. One is to streamline the process for granting forest clearance for mining activity. Instead of having to seek forest clearance again and again as a mining agency ramps up production — a process that can take months — an agency will only have to apply once to the MoEF for complete forest clearance.

The second purpose is generation of funds and recovery of full cost of usage of forest land. The granting of clearance comes with clauses that require a user agency to cough up funds for compensatory afforestation. When a whole mining lease area will be considered for forest clearance, instead of a small chunk of land, the government will see a substantial jump in the funds.

Source: <http://www.indianexpress.com/news/mining-moef-to-push-for-onetime-green-clearance/1066606/0>

Junk gram sabha nod for forest clearance: PMO

A panel set up by the Prime Minister's Office to review the mechanism for forest clearances in industrial projects has suggested that instead of obtaining approval from each of the relevant gram sabhas, hence forth, project

proponents need only obtain "certificates" from the state government. Tribal Affairs Minister Kishore Chandra Deo says he has yet to see the report. This in effect amounts to disregarding the Forest Rights Act (FRA), which he has been championing.

The committee comprising the Prime Minister's principal secretary, Pulok Chatterji and the secretaries in the ministry Tribal and Environment ministry gave its report on December 12. The report is contrary to the position taken by the MOEF in its order of 2009, where it specifically asks for gram sabha approval for any acquisition of forest land, in keeping with the FRA. It also goes against repeated appeals by Deo, in letters to the PMO last month, about the need to safeguard the FRA while considering clearances for forest land.

The PMO had directed MoEF to implement these recommendations prior to December 31. So far, neither ministry has taken any action in response.

When asked how a committee which had his own ministry represented in it could recommend FRA dilution, Deo said: "The secretary may have been in it but I have not agreed to anything that would dilute the FRA in any way."

Source: http://www.business-standard.com/article/economy-policy/junk-gram-sabha-nod-for-forest-clearance-pmo-113012200048_1.html

Jayanthi: MoEF no bottleneck

In a bid to stem the growing tide of criticism against the green ministry, environment minister Jayanthi Natarajan went into overdrive to explain that her ministry was not anti-development. Marshalling facts and figures, the minister explained that the decision to divert 74 per cent of the forest land (less than 5 hectares) for all projects was taken at the state level.

Her own ministry, she explained, accounted for only nine per cent of clearances for projects above 40 hectares in size while the regional office of the ministry gave clearances for 17 per cent of projects requiring between 5-40 hectares. "How can we then be accused of being a bottleneck for economic development? There is no delay in processing. There is no bottleneck in this ministry," Nevertheless, she concedes that there has been a significant dilution of the Forest Rights Act with state governments no longer having to seek the consent of the gram sabhas before granting forest clearance to linear projects, including expansion of roads, setting up of transmission and power lines, etc.

Source: <http://archive.asianage.com/india/jayanthi-moef-no-bottleneck-693>

CCI push for projects worth Rs 74,000 crore

Giving a major push to infrastructure and energy sector, the government in the last two months has given a nod to projects worth Rs74,000 crore which were stuck for years due to lack of various clearances. The impetus came soon after the formation of the Cabinet Committee on Investment in January amid concerns in the government over the prolonged delays in projects ranging from oil exploration to building roads. The CCI decision has paved the way for investments worth Rs.1,566 crore, an official statement said. The processes of granting environment and forest clearances for mega-projects have also been streamlined and made easier in cases such as renewal of mining leases.

Source: http://www.thestatesman.net/index.php?option=com_content&view=article&id=449627&catid=40



2. Debates, Perspectives and Analysis

The Forest Rights Act 2006 - A gender scan of its provisions and implementation

The FRA legislation has the potential to reconstruct the forms and nature of economic and social relation within gatherer communities with women at the helm of these decisions and institutional structures, provided that the constraints to such participation are addressed. While customary laws among tribal communities provide a framework of communitarian living and organization, these practices and systems have been deeply eroded over the decades of mainstream authoritarianism and domination. Moreover the customary laws often reflect a patriarchal character which denies women rights to property, as well as denying them a place in decision making. The **Forest Rights Act** provides an opportunity to leverage spaces for negotiation on these critical issues through the constitutional route to address these historical gender injustices through progressive measures.

Communities have established systems that demonstrate that, if they are left to themselves, they can well address their needs of such resources, provided that their own organizations gain precedence over external parties - be it state departments, state-sponsored cooperatives or the highly exploitative private contractors in the management and control of these resources. The FRA gives communities these rights, but in order to assert and build the wherewithal to challenge entrenched economic

lobbies a concerted effort is required from all those vested in the process of enhancing the autonomy of tribal and other forest dwellers over their natural resources. Tribal rights groups and producer societies, working hand in hand, can enhance the management and ownership of the natural resources in the interest of communities, but much investment is required in capacities and building of institutional structures for this to happen. The Act is a step towards building the capacities in the right direction for the forest-dwelling communities to come into their own with respect to their autonomy over their natural resources. The Act provides for 'Community Rights' over 'Community Forest Resources', thereby ensuring rights and ownership of tribal and traditional forest-dwelling communities over 'Common Property Natural Resources'.

The FR Act has opened up the terrain for a discourse on gender inclusion and equality, which was met with resistance by tribal rights defenders hitherto. Demands for gender justice - to bring women into the decision making processes and to incorporate provisions for women's rights to ownership of property - were resisted in the lead up to the PESA legislation in the 90s. In the instance of the FRA too gender issues were raised by several groups and individuals and by women in tribal areas, and were once again considered as subversive. The provision for registration of claim in joint names of men and women was however incorporated in keeping with other recent legislation. The provision for women to be included in one-third proportion in the Forest Rights Committees has also been incorporated into the FRA.

A serious drawback in the implementation of the Act has been the focus on registration of claims under individual names, ignoring the primacy of community rights, negating the purpose of restoration of traditional rights to a great extent, and shifting the focus of the intended legislation into pathways of individual property rights regimes in communities hitherto embedded in a more communitarian way of life and sharing of resources. The legislation requires gender and equity auditing to ensure that the most marginalized, including single women and unmarried daughters, are not denied rights within households, and may in fact be considered as separate household units as is proposed in the revisions to the LAAR⁷ amendments. The amendments proposed in the enactment seek to introduce measures to take to track those hampering the process of FRA implementation and to intensify the process of community rights claims which have hitherto not received significant consideration.

Source: Excerpted with permission from a paper titled "Common tales and gendered responses: Narratives from women's organizations and Movements in India"

7. The Land Acquisition, Rehabilitation and Resettlement Bill, 2011.

presented by Soma Kishore Parthasarathy at the in-depth Workshop on "Re-visioning development in a feminist perspective" held at the A WID Conference, Istanbul Turkey, April 2012.

Challenges, problems and prospects for Particularly Vulnerable Tribal Groups (PVTGs) under the FRA

Ever since the fifth Five Year Plan during which the concept of PVTG was introduced by the Government of India, a number of "special" development interventions are being extended to this vulnerable section. Amongst the most critical areas of concern outlined by different experts the following are prominent:

1. Deforestation and loss of traditional rights on forests;
2. Land alienation;
3. Displacement;
4. Decline of culture.

A symbiotic relationship between forest-dwellers and their environment has been acknowledged and crystallized as customary rights over land and forest resources. However, these rights were neither recognized nor recorded by the State during consolidation of state forests and the revenue survey-and-settlement process by the colonial government nor by the government of independent India⁸. As a result, they are subject to deprivation and susceptible to harassment, evictions, extortion of money by different authorities. These processes of exclusion have severely affected the immediate resource base leading to livelihood insecurity and chronic poverty.

Forest Rights Act & PVTG

The FRA has special provisions for the rights of such 'primitive tribal groups and pre-agricultural groups' in Section 3(1)e and mentions "rights including community tenures of habitat and habitation" for these communities. These include Particularly Vulnerable Tribal Groups (PVTGs⁹) and Nomadic pastoral communities. The various processes of the FRA have hardly reached them and there is very little progress in the implementation. Odisha is the only state in this country that has taken some proactive steps on PVTG and issued a number of circulars focusing on their rights, and entrusted the responsibility

8. The PVTGs are considered as a special category in view of their distinctly different social, cultural and occupational practices and traits.
9. Ministry of Tribal Affairs, 'Note on the 'Scheduled Tribes (Recognition of Forest Rights) Bill, 2005'', available at <http://tribal.nic.in/bill.pdf>

for its implementation on the Micro-Project officers and Project Administrators of Integrated Tribal Development Agency (ITDA¹⁰) but no progress has been made in this regard. Given that the Forest Rights Act reiterates the habitat rights of the PVTGs, the following are a few of the challenges.

- How should the habitat of a PVTG be identified and defined on the ground, and what would be its implications for governance and management of the area?
- What processes would facilitate PVTG claims to their habitat?
- How should the contours of rights and responsibilities in relation to a PVTG habitat be defined?

Recognizing the fact that the problems and needs of the PVTGs are different from those of scheduled tribes, section 3(1) (e) of the Forest Rights Act provides for recognition of "rights, including community tenures of habitat and habitation for primitive tribal groups and pre-agricultural communities". This provision is made to protect and preserve the culture, customs and territory of the PVTGs as a distinct cultural category. The Act defines "habitat" as including the area comprising the **customary habitat** and such other habitat in reserve forests and protected forests of primitive tribal groups and pre-agricultural communities and other forest dwelling Scheduled Tribes.

Amendment rules 2012 - FRA and PVTG

The Scheduled Tribes & Other Traditional Forest Dwellers (Recognition of Forest Rights) Amendment Rules, 2012 reiterate that

"The District Level Committee to ensure that all Particularly Vulnerable Tribal Groups receive habitat rights, in consultation with the concerned traditional institutions of PVTGs and their claims for habitat rights are filed before the concerned Gram Sabhas wherever necessary by recognizing floating nature of their Gram Sabhas"

10. A detailed and comprehensive review of the tribal peoples' problem was taken up on the eve of the Fifth Five Year Plan period. The main objective of ITDA is socio-economic development of tribal communities through income generating schemes allied with Infrastructure Development programmes and protection of the tribal communities against exploitation. The ITDA project areas are generally contiguous areas of the size of a Tehsil or Block or more in which the ST population is 50% or more of the total. Due to the demographic profile of the tribal people in these regions, however, the ITDPs in Assam, Karnataka, Tamil Nadu, and West Bengal may be smaller or not contiguous. Andhra Pradesh and Odisha have opted for an Agency model under the Registration of Societies Act and the ITDPs there are known as ITD Agencies (ITDAs).

What constitutes a habitat rights and how to claim it?

Though the Act specifies that claim for these rights be submitted, there is inadequate understanding on the type of rights being referred to. There is confusion over the procedure to submit the claim over the habitat and habitation. The FR Rules provide that for determining the rights over customary habitat and habitations of the PVTGs and pre-agriculture communities, the Forest Rights Committees (FRCs) are authorized to verify their claims either through their community or traditional community institutions in the presence of the communities or their representatives. The FRC is constituted at village/ hamlet level to receive and verify the claim over individual as well as CFRs. It is unclear as to how the village-level FRC will receive and verify the claim for the entire habitat of a community (which might consist of a number of villages and FRCs). Who will mobilize the traditional community institutions and community representatives for verification, is an urgent question that needs to be answered.

Providing evidential support to the claim is an even more challenging task. The records from different sources show that PVTGs have been residing within their specific customary boundaries with distinct settlement patterns. Very few instances are to be found in literature, of any aspect of the customary laws and habitations like Juang Pirha in Odisha. They are indeed insufficient to provide us with the territorial description/ demarcation of the community habitat and the spreading of new villages of PVTGs. The villages covered under the Micro-Projects for the PVTGs are only administrative boundaries, covering certain GPs or villages but not the entire habitation or villages of a PVTG. It is challenging to identify a large number of PVTG villages lying outside the micro-project areas and support the evidence with clear physical boundaries for asserting their rights over customary tenure of habitat and habitation.

Contributor: Pratap Kishore Mohanty (email: pratapk68@gmail.com). He is a researcher for Vasundhara (Orissa) and the article is an excerpted portion of a working paper by Vasundhara on the Implementation of FRA in Juang Pirha areas of Keonjhar. The author is thankful to Mrs. Sweta Mishra, Concern Worldwide India & Mr. Tushar Dash of Vasundhara, and Bhubaneswar for their intellectual input.



3. Case Studies

The Juangs of Keonjhar

The Juang tribe, with a total population of 8,281 as per a survey in 2007, is a PVTG. Otherwise known as a vulnerable ethno-cultural group, the members of this ancient tribe inhabit Keonjhar and Dhenkanal districts of Orissa. They are not found anywhere else in India. In



feudatory State Gazetteer Bobden Ramsay states that Juangs might be the most ancient tribal race in Odisha. Gonasika in Juang Pirha in Keonjhar is considered as the original seat of the Juang and here they are known as the Thania group. It is said that in course of time some families had migrated to Dhenkanal and they were called the Bhagudia group. They speak a language which is classified under the Mundari group of the Austro-Asiatic sub-family of languages. Keonjhar and more specifically Gonasika are viewed to be the birth-place of the Juangs.

The Juang territory is divided into sub-Pirhas which are traditional administrative units set up by the Juangs for the management and control over the area.

The entire Juang Pirha consists of 5 sub-Pirhas:

Sub-Pirha	No. of villages in Sub-Pirha
Satkhand	11
Jharkhand	16
Kathua	17
Hunda	16
Charigarh	10
Total number of Juang villages	70 (According to the Juangs) 35 (As per the Juang Development Agency)

Traditional Governance of Pirha areas and Management of Forests

A Pirha has its own traditional management and conservation ethos whereby the Pradhan, Pirha Sardar (traditional Pirha leader) and Karji defined the Pirha law with regard to the management of the Pirha forest resources. Within a village, trees having timber value are not subject to any rules or regulations regarding their exploitation. Fruit bearing trees, however, are maintained and not exploited indiscriminately. No Juang would cut fruit bearing trees, be it in swidden areas, or in the forest. No plant of totemic nature is destroyed by the clan members for fear of ancestral retribution, although some transgression of this rule happened in recent times. Cutting of such trees, traditionally prohibited, would be fined by

cash or kind, generally rice. A distinction is visible between a Juang-owned swidden plot and those of the caste neighbors (Gauda and Pano) in that, there are generally no trees (dead or alive) in the swiddens of the latter.

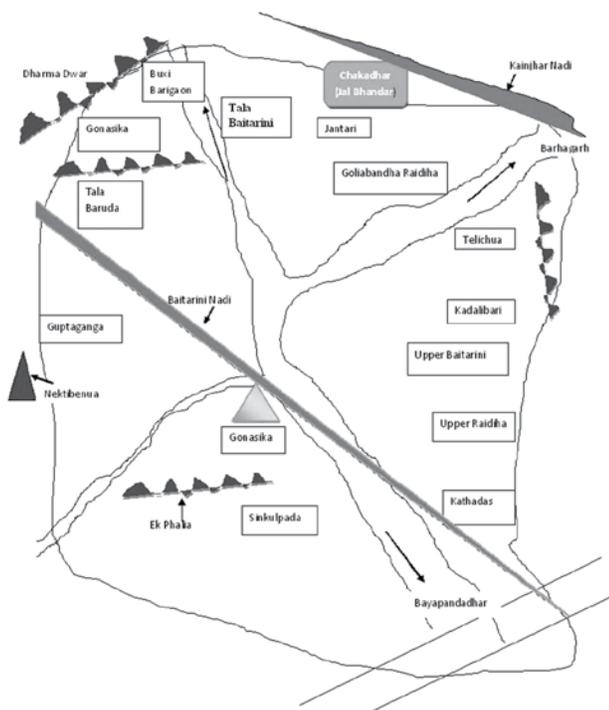
The official land classifications that have taken control of forest land away from the Juang include those notified under various revenue laws, Indian Forest Act and Wild Life Act. The customary territories of Juang Pirha also have other settlers, government and private agencies, institutions, etc. This is a contentious issue because this means different interest groups. Equally contentious is the issue of how and why a PVTG group like Juangs will start following the present content of Panchayat system which does resonate with their traditional social institutions like Kutumali, Baunsa and even Khilir (clan).

The Pirhas have uses for around 121 types of minor forest produce amongst which there are plants having rich medicinal values and properties as per their way of life. Collection of medicinal Plants and some of the parts of plants of specific species have been permitted in the Juang Pirha Patta.

Nevertheless, the resource-rich area of the Juang Pirha has undergone considerable depletion of biodiversity, with the massive onslaught on the forests and other elements of the ecosystem which has been accentuated in the wake of mining operations, rehabilitation of displaced persons, families and communities, infiltration of non-tribal settlers or users into the area, expansion of agriculture and many other commercially oriented forest uses.

Processes adopted in claiming habitat

In 2010 Adivasi Chetana Mandal, a local level people's organization in the Juang area, launched awareness programmes with support from the environmental non-profit organization Vasundhara. Its Secretary Veerabara Nayak took proactive steps to organize the Juangs and brought the traditional Pirha Sardars and Pirha level institutions to a common platform whereby continuous engagement could be ensured on governance issues. Vasundhara provided active support in the form of tracing out the history of Juangs, the survey and settlement and the traditional land and forest governance practices. The Mukhya Sardar called the Pirha Mahasabha meeting of all the Sardar, Pradhans, Dehuris and Nayaks of all the villages of the Juang Pirha. In the 1st Mahasabha meeting, the Mukhya Sardar and the village chiefs discussed the Forest Rights Act and the rights provided under it especially the community forest rights which include the right of community tenure of habitat. In this meeting they prepared a list of various community rights and their extent. This exercise was taken up for determining other community rights such as grazing, use of water bodies, protection and conservation of forest, access to biodiversity and intellectual property and traditional



knowledge relating to biodiversity and cultural diversity, and other customary rights such as podu¹² cultivation, cultural practices relating to forest and biodiversity.

Each village of the Pirha (whether revenue, hamlets, unsurveyed, or forest village) convened its separate Gram Sabha. The traditional leader of the village (Pradhan, Dehuri) called the Gram Sabha meeting. The Gram Sabha discussed the Forest Rights Act and its provisions. As per the norms of the Forest Rights Act, the Gram Sabha elected a Forest Rights Committee (consisting of 10-15 members, where not less than 1/3rd of its members were ST and 1/3rd were women).

In the subsequent meetings all the villagers (men and women, village elders, user groups, etc.) sat together, and determined the nature and extent of each of the community rights and decided on the customary boundary of their own village. The following aspects were taken into consideration during the determination.

- Customary practices,
- Traditional resource use pattern,
- Cultural linkage (Listing out in details the sacred areas, places of worship, festivals, functions etc.),
- Livelihood dependence / occupation in forest land (identification of places of collection / use / occupation along with seasonality),
- Social structure/institutions.

A Pirha map was finalized by the Sardar (chief) with the consent of the Pradhans, Dehuris and all elders/important

12. I.e. Shifting cultivation also known as Jhum.

members of the villages of the Pirha where Panchayat Secretary and FRC Secretary had taken an active part. The Sardar and the village leaders prepared the detailed management plan for the sustainable use, regeneration and conservation of the resources falling within their traditional territorial unit and which they use and depend upon in different seasons for their livelihood and other socio cultural purposes.

In spite of some of the circulars issued focusing on the rights of PVTGs and entrusting the responsibility to the Micro-Project officials, no Pirha Sardars, Pradhans, etc. have been accorded a place in the SDLC and DLC in Keonjhar. However, following the Amendment of the FRA Rules (Amendment Rules, 2012), the Department of SC & ST Development of the Government of Odisha issued instructions to concerned district collectors to give special emphasis to the PVTG issue with special reference to their habitat. Now the district administration has shown keen interest on such issues. The district administration has made a broad plan and started consulting different stake-holders for a possible streamlining of the process, hopefully with an intention to recognize the habitat rights of the Juangs.

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Organization: Vasundhara, Bhubaneswar, Odisha.

Claiming CFR – Challenges experienced by Gram Sabha of Pachgaon - a first-hand account

Before the Employment Guarantee scheme was introduced in our village, there were no opportunities for local laborers, and having no means to sustain themselves they were forced to migrate to cities.

In 2007-08 we learned that a neighboring village Parsudi was implementing this scheme, and we made inquiries. Shri Vijaybhau Detha and Shri Sachinbau Pipare of Paryaavarana Mitra (an NGO) have been helping us since then. Although the Employment Guarantee Scheme (EGS) came into force in 1978, we did not know of it until these activists came to our aid. Since 2007-08 however, we have been organizing road construction and other such work in our village.

But how long can (construction) work be carried out? How long would one's health hold out against this sort of hard labor? So we decided to file a claim over Community Forest Rights (under the section 3(1)(i) provision of the FRA), and started correspondence with the Sub-Divisional Level Committee (SDLC) in order to put together the documents required as per clause 12(4). However no response was forthcoming. Even then, without getting discouraged, we called a village meeting – Gram sabha –

and carried out the process. A total area of 1006 hectares was claimed. After a meeting of the village was held on the 15th of December, 2009, and after another on 17th December, 2009, we took our claim to the SDLC at Chandrapur. The officials there were not willing to accept our claim, but we insisted, and refused to leave until they did. Finally late in the evening they relented.

After a short interval, on 4th January 2010, a reminder was sent to the chairperson of the SDLC who is also the Sub-divisional Officer (Revenue dept.) of Chandrapur. Yet again no response was forthcoming. On 12th September, 2011, another note was sent to the District Collector of Chandrapur. More reminders followed on 19th February 2012 and on 13th March 2012, but to no avail. So the village decided in defiance of administrative apathy to assert their ownership right by launching a Satyagrah (fight for truth) wherein their ownership would be displayed by executing their right to cut bamboo even without administrations permission. This was called "One Villager Cuts One Bamboo" Satyagrah and it was launched on 14th April 2012. In fact, on 13th March (i.e. one month before) the village had sent its representatives to submit another request to the District Collector, which warned that if the village did not receive a written response on that very day, then the village would go on Satyagrah on the following day. To this the District Collector dismissively responded that they need not wait for so long and for all he cared they could launch the Satyagrah on 14th March and not on 14th April because it would not make any difference. However, we launched the Satyagrah on 14th April, as it was an auspicious day as it was the birth anniversary of Dr. Babasaheb Ambedkar who helped create the legal framework for the nation, including its constitution.

However, seeing our determination, at 6 pm on the 13th of April 2012 the District Collector faxed a letter to the Tehsildar of Gondpipri, and the latter, through the Talathi, informed the Pachgaon Gram Sabha that our claim for Forest Rights had been sent for approval to the District Level Committee (DLC), and hence he requested us to desist from going on Satyagrah. The village Gram Sabha had a discussion and decided to take the advice of the Tehsildar, and postponed the Satyagrah for time being.

Finally the DLC granted our claim for Forest Rights over 1,006 ha on the 16th of June 2012, and on 25th June 2012, the Forest Rights document was handed over to the Pachgaon Gram Sabha at the hands of Shri Sanjay Babu Devtale, the Guardian Minister for Chandrapur.

Subsequently, on 26th July 2012 and on 24th August 2012, the Pachgaon Gram Sabha gave annual working orders / Working Plan for cutting bamboo to the Deputy Conservator of Forests, Central Chanda, of Chandrapur Forest Division. A Transit Pass was issued on 12th December 2012, under the Rules (2008) of Forest Rights

Act, 2006. But the DCF told villagers that they cannot cut Bamboo as Forest working plan were not ready. The villagers therefore made their working plan & submitted the same to the FD. Finally, the villagers could cut 7000 bamboo through voluntary participation.

New difficulties arose. Initially there were problems in obtaining a PAN Card, TAN Card and registration under VAT, because the holder of rights appearing on the title deed was Shri Ramesh Bhauji Tekam and 119 others of Pachgaon, and this was a mistake. The name of the holder of rights should have been 'All Members of Gram Sabha of Pachgaon, which includes Shri Ramesh Bhauji Tekam and 119 others'. However, the deed was in the name of "Gram Sabha Pachgaon keeping subtitle Shri Ramesh Bhauji Tekam and 119 others". So on 13th December 2012 an application was sent to the District Collector (DC) to issue a rectified document. A reminder was sent to his office on 31st December 2012. The District Collector noted the mobile number of the village representative and promised to inform him when the rectified document was ready. The villagers waited for a week but there was no response. So another meeting was conducted on 6th January 2013, during which two representatives were chosen to meet the District Collector on the following day. On this visit, the representatives were literally thrown out the DCs office. Despite this insult, members of the Pachgaon Gram Sabha continued with the follow up.

After much follow-up, on 14th February 2013, another representative was sent to the office of the DC, where it was learnt that the document was ready. This correctly showed that 'All Members of the Gram Sabha of Pachgaon which includes Shri Ramesh Bahuji Tekam and 119 others' were the holders of Forest Rights. On this basis the Gram Sabha obtained a PAN Card, a TAN Card, and started the procedure for registration under VAT, and began to plan for the sale of bamboo, when on 15th February 2013, a letter from the Deputy Conservator of Forests, Central Chanda, Chandrapur Forest Division, was received by the Pachgaon Gram Sabha. It stated that the authority to cut bamboo and to dispose of it was being granted to the Forest Rights Committee of Pachgaon, in accordance with instructions issued by the Principal Secretary, Revenue and Forest of Maharashtra state. So the Pachgaon Gram Sabha had a meeting and resolved unanimously that as per clause 3(1)(c), the rights to collect and to dispose of minor forest produce from within and outside village boundaries were received by the Gram Sabha and would be retained by it.

A request for help in carrying out the subsequent procedure, i.e. to invite tenders, etc. was sent to the DC on 5th March 2013. This letter explained that the Pachgaon Gram Sabha had been granted rights to harvest minor forest produce including bamboo as per FRA 2006 and its Rules, 2008.

When the bamboo was appropriately harvested it became necessary to carry out sale of the same. In order to carry out this procedure as per rules, resolutions were passed in the Gram Sabha to share the responsibilities. Responsibilities have been allocated to some men and women members of the Gram Sabha and they have been supervised by the Gram Sabha.

Now, members of the Gram Sabha have formed 15 teams of 5 members each, for the purpose of patrolling the forest area. Anyone found stealing or indulging in suspicious activities are brought to the Gram Sabha, where they are fined. In order to frame protection and management rules, suggestions were invited from each family of the village. Resolutions were passed to bring the rules compiled out of these suggestions into effect. Every member of the Gram Sabha adheres to these rules.

Contributor: Shri Gajanan Hiranman Thamke, Member of Pachgaon Gram Sabha.

Pastoralists of Banni grassland demand CFR for Banni grassland

The Banni Grassland in the Kachchh (Kutch) District of Gujarat state in western India was once recognized as the largest and finest tropical grassland in India covers 2400 sq km and is home to numerous plant and animal species, wild and domesticated, including the variety called Banni buffalo. More than 7,000 families live here today, 95 percent of them Muslim Maldhari pastoral communities and the rest Hindu Meghwal artisan communities. They live in 48 villages under 19 Panchayats.

During princely rule, grazing rights over this grassland were allocated to the graziers for which they paid a grazing tax. Decisions on the utilization and management of the grassland as commons were taken by traditional leaders of the pastoralists. In 1955, the area was declared a protected forest. But no survey and settlement process was carried out and control of land has never been

transferred from the revenue department to the forest department. Neither of the departments has since taken full ownership of the grassland; but its governance was taken away from pastoral communities. This situation has caused much confusion among the pastoralists.

The **Banni Pashu Mela** (Animal Fair) organized at Hodka village in 2008 proved to be a turning point. Pastoralists started discussing the ecological, economic and socio-cultural potential of the Banni. They saw the need for organizing themselves and therefore, in 2009, they formed the Banni Pashu Uchhecrak Maldhari Sangathan (BPUMS; Banni Breeders' Association). More than 1200 pastoralists from all over the Banni are members of BPUMS, whose aims include:

- to revive dairy in the region (Kutch Dairy was closed in 1996),
- to register Banni buffalo as a distinct breed of the country,
- to address land tenure issue of Banni grassland through exercise of Scheduled Tribes and Other Forest Dwellers (Recognition of Forest Rights) Act 2006, and
- to develop a conservation and management plan for Banni grassland.

BPUMS began to work with Department of Animal Husbandry, Government of Gujarat (GoG), Sardarkrushinagar Dantiwada Agricultural University (SDAU) and Sahjeevan (a non-profit organization) to prepare a breed descriptor and applied for registration of the Banni Buffalo. In April 2010, NBAGR (National Bureau of Animal Genetics Resources) recognized the Banni Buffalo as 11th Buffalo breed of the country, a first example for the country when a community that conserved and developed a breed, was able to register the same as a distinct breed. The association also negotiated with Mother Dairy and Sarhad Dairy (a subsidiary of Gujarat Cooperative Milk Marketing



Federation), and eventually they both started operations, establishing village level milk collection centers and bulk milk coolers at cluster level.

In 2009, BPUMS started to build up an understanding of FRA and realized that FRA could provide a means to protect and conserve the Banni. However, in 2010, the Forest department prepared and approved a Working Plan for the Banni based on satellite imagery of 2003, without consultation with local pastoralists. This plan ignored numerous small, medium and large wetlands falling within fenced plots. The Forest department wanted to implement their working plan before the rights of local people were settled. As a result, a major conflict arose with pastoral communities over their traditional rights in the grassland. Realizing the threat the current working plan posed to the pastoral production system, 26 villages carried out a signature campaign in 2011. Called "**Banni Ko Banni Rahene Do**" meaning 'let Banni remain as commons' it called for retention of the way the grassland had been utilized traditionally, conserved and managed by local pastoralists for 500 years or so. Thereafter, BPUMS organized numerous meetings at village and Panchayat level and all decided that on the one hand, they will collectively protest the working plan and not allow the forest department to implement it, and on the other, they will urge the state government to implement the FRA in the Banni at the earliest. Representatives were sent to the Minister of Tribal Affairs, Government of Gujarat and of Environment and Forests, Government of India. The then Minister, MoEF, Shri Jairam Ramesh advised pastoralists to prepare their own management plan. However, the Ministry of Tribal Affairs informed pastoralists that implementation of FRA has been started, but not yet in Kachchh, since the nodal agency for implementation of FRA in non-scheduled areas (such as Kachchh with its low tribal population) is yet to be finalized.

In 2012, implementation of Working Plan was initiated by the forest department, designating various officials and intending to occupy 25,000 ha (over one-tenth of the total Banni area) for grassland regeneration. Pastoralists

protested by organizing a rally of thousands of participants to submit a memorandum to the Collector of Kachchh, informing him and the State Level Monitoring Committee that implementation of the Banni working plan would be in violation of their rights as per section 3(1)(i) and section 5 of FRA. Pastoralists declared that as long as their rights remain unrecognized under FRA, they would continue to protest peacefully. BPUMS organized a visit of local mass media personnel, both print and electronic, on 5th June 2012, to demonstrate the pastoral way of managing grassland and to seek their support for the struggle.

With the support of Sahjeevan, pastoralists called Gram Sabhas to form Forest Rights Committees (FRCs) and started developing a conservation plan for each of 13 Panchayats, with participatory mapping exercises, trying to understand traditional grazing practices, bio-physical conditions, dependency of livestock, and existing faunal and floral biodiversity. They sent Gram Sabha resolutions to SLMC, Joint Director, FRA and Collector of Kachchh and requested authorities to form DLC and SDLCs so that FRCs can initiate claim processes. The Joint Director, FRA, repeated in its response that the FRA process will be implemented in the Banni only after a resolution is passed by the GoG and a nodal agency for implementation in non-scheduled district is appointed by the state. After repeated representations, a GR has finally been passed by GoG and a letter has been sent to collectors of all non-scheduled districts of the state directing them to form DLCs to implement the FRA. Ramjan Isha Halepotra, President of BPUMS, said that the first round of a long battle has been won by the pastoralists of Banni. They hope that implementation of FRA and recognition of Community Forest Rights will open up a new direction for pastoralism in Kachchh, the pastoralists' paradise.

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People In Conservation - Biodiversity Conservation and Livelihood Security
Volume 5 Issue 1 Nov. 2012 - March 2013

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Published By: **Kalpavriksh**

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Funded By: MISEREOR, Aachen, Germany

For Private Circulation

Printed Matter

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