

**REPORT OF THE
NATIONAL CONSULTATION ON
HABITAT RIGHTS OF
PARTICULARLY VULNERABLE TRIBAL GROUPS (PTG)**

4th October 2010

**Organized By
NATIONAL COMMITTEE ON FOREST RIGHTS ACT, GOVERNMENT OF INDIA
And
VIDARBHA LIVELIHOOD FORUM
(SRUJAN-Pandharkawada, GSMT-Jalka, VNCS-Nagpur, SRUSTI-Shankarpur,
KHOJ-Paratwada, DILASA-Ghatanji,
YUVA-Nagpur & Oxfam}**

A one day national consultation on the Habitat Rights of Particularly Vulnerable Tribal Groups (PTG) was organized jointly by the National Committee on Forest Rights Act, Government of India and Vidarbha Livelihood Forum at Nagpur on the 4th of October, 2010. The consultations were held at Hotel Center Point Airport in Nagpur. Seventy (70) participants attended the consultation from seven states namely Orissa, Gujarat, Chhattisgarh, Madhya Pradesh, Maharashtra, Andhra Pradesh, and Delhi (see Annex for full list). These included

- representatives of PTGs namely Baiga, Pahari Korba, Chenchu, Kolam, Kamar and Madia several mass-based groups such as Adivasi Jan Adhikar Sangh, Adivasi Samata Manch, Bharat Jan Andolan, Baiga Mahapanchayat
- about 20 other civil society organizations working on conservation, human rights, and other issues
- 3 members of the MoEF/MoTA Committee on Forest Rights Act
- representatives of the Maharashtra State
- politicians including one sitting and one former MLA
- donors and students

Welcome – Mr. Ajay Dolke

Mr. Ajay Dolke of SRUJAN warmly welcomed the gathering and briefly introduced the purpose of the consultation. This was followed by a brief introduction of all the participants.

Overview of FRA Implementation and Introduction to the Consultation: Mr. Ashish Kothari

Mr. Ashish Kothari, National Committee member began the introductory session with the overview of the implementation of Forest Right Act. He explained the various provisions in the Forest Rights Act, especially the provision of Habitat Rights for PTGs. He shared that there was lack of initiatives to understand and stake claims on the Habitat rights for PTGs as well as Nomads all over India. He also shared a few obstacles in the process of staking

claims over habitat rights for PTGs, such as the lack of clarity on the definitions/ interpretation of Habitat – whether habitat would be defined as per the traditional rules of the community – if yes then what happens to the rights of the other resident or user groups involved like other non-PTG communities sharing the same habitat, various forest users, government departments, companies etc. He also questioned the overall perception of development; how communities as well as organizations working on social development issues perceive development. This perception of individual communities might also affect the interpretation and definition of Habitat. As of today, the law is not clear about this definition.

Another issue Mr. Kothari brought up was about the role of various rightsholders and stakeholders – like the communities involved, the forest department, revenue department, other Government agencies, developmental agencies and industries - in the entire process of claiming habitat rights. He also shared the experiences of public hearing on Habitat Rights held in Bhamragad, Gadchiroli district, Maharashtra on 27 September 2010.

Mr. Kothari concluded with hopes that the group today would enrich themselves by sharing and learning from each-other's experiences; the group would come-up with some clarity on mechanisms for claiming Habitat Rights and that the process which hasn't yet started moving would take some clues from today's proceedings.

The Role of National Committee: Dr. A.K. Zha

Dr. A.K. Zha was the next speaker. He is the member of the National Committee on Forest Rights Act, Government of India and Commissioner of the nodal implementing agency of FRA in Maharashtra namely TRTI, Pune. He explained the role of the National committee—it is for them to listen to the problems faced by various rightsholders and stakeholders in staking individual, community and habitat claims on the forest Land as per the provisions of the FRA. He explained that the committee members were supposed to listen to the grievances of the people and submit it to the concerned ministry with recommendations.

Dr Jha discussed about the role of Forest protection committees in the management of Habitats of PTG, multiple interpretations of Habitat—the one related with the wildlife habitat or the traditional habitat boundaries of the PTG. He also expressed his concern about the maintenance, protection, conservation of the forestland once the communities got rights over Forest land. Another issue he brought up was about the different stages of development of various PTG's spread over the country and these would alter the dynamics of Habitat claims and latter on benefit sharing too. Few communities were close to the mainstream, already in the cash economy, which is probably responsible for far more individual claims than for Habitat rights claim in the entire country.

Keynote Address: Dr. R.L.Meena

Dr. R. L. Meena is also the National Committee member. He focused on the situations of PTG across the country, their stagnant or declining population, the lack of economic development, low literacy rates amongst PTG which were obvious signs of neglect by the national policy makers. The situation of PTG areas has not changed a bit on a larger scale due to the apathy of the policy makers as well as bureaucrats. "The forest was theirs, we snatched it from them", he said.

He pointed out that though such an Act as the Forest Rights Act was a bold step on part of the Government but the pace with which the PTG's are expected to understand the Act and raise their claims whether individual claims or community claims or habitat claim-it amounts to injustice to the communities. The PTG are not aware of the procedures—how where and when; if they were expected to fall in line with the speed of the mainstream population then it would lead to a disastrous situation.

He pointed out that there were no translations of the FRA in local languages of the PTG. He urged the participants to assist the PTG as much as possible in every possible ways but at the same time follow their pace of development instead of encroaching upon their rights.

Summing-up of Inaugural Session: Mr. Dilip Gode

The introductory session was concluded by Mr. Dilip Gode of Vidarbha Livelihood Forum. He stressed on the need to be realistic as far as the PTG are concerned; he expressed his concern about FRA ending up like PESA. Thus, it is important that we assist the PTG in putting up their community claims as well as the habitat claims. The latter did not necessarily match political and administrative boundaries. He mentioned that the number of individuals working with the PTG was the strength of the group but at the same time, it was important to start dialogue with our politicians, bureaucrats, local networks as well as regional networks, policy makers and community organizers.

SESSION – I

Experience Sharing -Sharing of experiences on the habitat rights of PTGs from different states

This session was chaired by Mr. Ashish Kothari. The session was for sharing of experiences from different States of the country regarding the Habitat claims, including successes achieved and problems faced. Participants from Maharashtra, Madhya Pradesh, Chhattisgarh, Orissa, Gujarat, Tamil Nadu, Andhra Pradesh, Delhi made presentations. Experience of widespread dialogue, mapping, and mobilization amongst some PTGs (e.g. Madia/Kolam in Maharashtra, Chenchu in AP, and Juang/Dongria Kondh/Chuktia Bhunjia in Orissa) was shared. The following issues emerged from the sharing:

- Very few PTG communities have begun the process for claiming Habitat rights.
- Except for the Madia in Bhamragad, Maharashtra and the Chuktia Bhunjia, Mankadia, Dongria Kondh, Juang, and Khadia PTGs in Orissa there have been no substantial efforts to claim Habitat rights. These communities too are facing many hurdles in making their claims, and none have as yet got titles to Habitat rights, though some have got individual forest right titles.
- Most community members as well as the NGOs were unaware of provisions regarding rights over habitat and habitation and the procedures to claim it.
- There were traditional systems of demarcation of habitats amongst the communities; traditional rules and regulations regarding use and management of natural resources; eg- the Barsa – territory of twelve villages in the Kolam community, Patti- territory of 108 villages in the Madias, Piddha- cluster of villages—distributed clan wise in Orissa, the Baiga Maha Panchayat—cluster of 40 villages in Madhya Pradesh, Korva Maha

panchayat in Chhattisgarh etc. However these traditional institutions are not recognized officially for the FRA or other processes, even though the FRA has some space for them in making claims.

- At some places where these traditional boundaries now clashed with the district and state boundaries, how would the State solve these issues?
- In forests and other lands contained within Tiger Reserves, what would be the status of claims for Habitat rights, how would they be claimed given the restrictions on PTGs in such areas?
- PTGs who have been displaced due to some or the other developmental projects – what if they were to claim for their traditional Habitat rights?
- Lack of systematic information dissemination by the government in the PTG areas; stress on individual claims by the government in most of the States; issue of rejection of individual claims and outright rejection to accept community claims.
- Procedures to demarcate the PTG and non- PTG habitat areas?
- Lack of understanding of the traditional systems by the Bureaucrats – denial by the authorities to accept habitat claims where traditional Shifting cultivation or long-distance forest use practice was part of the Habitat claims – eg. In Mayurbhanj district of Orissa and Bhamragad of Maharashtra
- Lack of clarity on how to handle PTG claims spread over more than one district or state, and claims to areas they have been forcibly displaced from in recent times
- Lack of representation of PTGs in SDLCs/DLCs, though required by the FRA
- The need to help PTGs to document or provide evidence for their traditional use of resources, mapping various space utilized for community purposes, community interpretation of utilization of resources.
- Special attention to be given to communities that do not have ‘property’ but have crucial functions in the area, e.g. Bhoom Kotwals that serve as messengers or information spreaders
- The need to help PTGs with various government schemes, after getting rights, to optimize the use of lands/resources they get rights to
- The challenge of implementing FRA in areas under Naxalite influence or control, with PTGs themselves unclear on whether they should make claims, fearing backlash
- Problems of making claims in cases where PTGs are a minority in the gram sabha, e.g. in A.P.

On behalf of the Maharashtra State government the collector of Gadchiroli made a presentation highlighting the issues faced by the government people in accepting the claims. He spoke of how the administration is helping to make over 1000 community forest rights claims (with all JFM villages slated to be given rights over “sizeable areas”), pro-actively providing documents to claimants, and trying to converge various government schemes and departments to help rights-holders. He urged the National Committee members to simplify the procedures for claiming community rights as well as Habitat rights for the PTG. He also suggested the FRA should extend to urban municipality areas, that adivasis should have the right to sell NTFP in the open market (removing the monopoly of the Tribal Development Corporation and converting it into a support price institution). He gave several ideas for amending the Act to simplify procedures and enhance the area available for local development projects.

(Presentations by Mr. Tushar Das, Orissa, Mr. Shivaramakrishna, AP and Mr. Atul Patne, Collector Gadchiroli are attached as Annexures.)

SESSION – II

Group work for framing of issues

This session was chaired by Dr. R.L. Meena. In this post lunch session, the participants were divided into three groups for discussion on the following topics:

- Defining habitat and habitation with respect to PTGs
- Laying down process for claiming the habitat right of PTGs
- Mechanisms to operationalise and manage habitat rights after recognition

Presentation was done by one of the group members on the important points that came up during group discussion.

SESSION – III

Presentation of group work

This session was chaired by Dr. A.K.Jha

Presentation of Group 1 - Defining habitat and habitation with respect to PTGs:

The concept of habitat was discussed with examples from some of the PTG communities and ideas were shared regarding the notion of habitat. The parameters identified in the examples for determining/identifying the customary habitats are as follows.

- Distinct geographic location
- Socio-Cultural or Political landscapes (e.g. Niyamgiri of Dongria Kondhs, or Juang pirhas).
- Traditional rights of the communities over the habitats include the right to decide on ownership and resource interaction of the communities living in the habitat areas.
- Habitat is also ecological landscapes in the sense that there are examples of communities organizing around the natural resources and means of livelihood, and defining their habitat according to major natural/physical features such as river basins, mountain ranges, etc.
- Community organizations and institutional system for exercising the traditional rights over habitat and socio-economic interactions (marriage, land ownership etc)
- Sharing and co-existence in the habitat areas

Example was also shared how Verrier Elwin identified Baiga chak as habitat or territory of the Baiga tribe. It was stressed that habitat or community territory should not be bound by political state and administrative boundaries

The group discussed the provisions under FRA regarding habitat rights and identified some of the grey areas. As defined in section 2 (h) of the Act, habitat includes area comprising customary habitat and such other habitats in reserved forests and protected forests of primitive tribal groups and other traditional forest dwellers. Exclusion of protected areas from being explicitly mentioned in the definition has caused confusion at the official level.

In the existing procedure there is no space for the community institutions of the PTGs to determine and claim rights and the procedure is limited to Gram Sabha. In order to enable the

community institutions of PTGs to claim rights necessary changes are required to be made in the definition of gram sabha (to expand the meaning of gram sabha to include community institutions) and in section 6 in the authority and procedure for vesting rights (to include community institutions of the PTGs to initiate the procedure for determination of rights for the community).

Presentation Group 2 - Laying down process for claiming the habitat right of PTGs

Discussion of key issues in operationalising this provision of the FRA act, special provisions for the PTGS, in addition to the provisions that are available to OTFD

Section 3(1) e provides for “*rights including community tenures of habitat and habitation for PTGs and pre-agricultural communities, where “habitat” is defined as “the area comprising the customary habitat and such other habitats in reserved forests and protected forests of PTGs and pre-agricultural communities”*”

What processes would facilitate the claims to their habitat?

- Defining and mapping boundaries
- Finding evidence of customary/traditional occupation and use
- Mobilizing the entire tribe or a substantial section of it to understand the claims, agree to make them, and discuss the follow up planning or actions.

Most PTGs continue to have traditional institutions of governance intact, operational in some form or the other; these will need to be activated for the claims process. Clearly also in many or possibly all areas, PTGs will require help civil society and /or government agencies to access documents, carry out mapping, mobilize opinion and capacity and make the claims. Proactive or *suo-moto* action by Government agencies that have access to records that would aid the claims must be made mandatory by all State Governments and the Ministry of Tribal Affairs.

It may also be necessary for the Government to proactively declare PTG areas as ‘Habitat’ under the FRA in situations where the tribe is not in a position to make the claims. This would be the case for instance in 3-4 of the A&N tribes where any discussion with the tribes on laws is either impossible or meaningless, but where the coverage provided by the FRA would enhance the protection being given to them against external disruption.

The group formed out of various participants from various backgrounds including bureaucrats, community leaders, NGOs and other village and claimants’ representative.

The group felt that the FRA Act and the Rules therein has not adequately dealt with the procedural requirement of the PTGs. (Particularly Vulnerable)In the Act the procedure provided in the Chapter4 wherein, Section 6 deals with this issue. This section provides three authorities to deal with all the issues. The authorities are,

1. Gram Sabha, and the Forest right Committee appointed by the Gram sabha.
2. The Sub divisional level committee and ,
3. The District level committee.

It is envisaged that Gram Sabha will initiate the process to determine the nature and extent of individual or community Forest rights. They have to submit the claims to the SDLC and SDLC has to take decision. The aggrieved party can appeal to the District level committee

- Take a very sympathetic view and visit all their habitations, consult them through their traditional institution and complete the required procedure under the Act on their behalf bringing on record all the rights presently availed by them.
- They should be extensively consulted and State should take responsibility to complete all the procedures required and coordinate all the agencies involved and deal with the issues as a single window.
- The apex body should have effective coordination for the issues on existing Revenue, Panchayat, Forest and other departments, while keeping the Tribal Dept as the Nodal agency. Action Plan should be prepared to bring all the traditional rights on record and a helpline should be opened to settle their individual queries and do extensive consultation.
- The procedure to deal with them should be extremely simple and be dealt with utmost care and sympathy to ensure that they freely enjoy historical and traditional rights.
- They should be consulted for every external requirements such as mining etc and, where they consent to such activities, should have share of 20-25% as per the guideline in the 'Samta judgment' and they have regular profit sharing from such companies, if at all any of their rights is affected.
- The whole procedure should be explained in their local language through a consultative process through the local leaders. If necessary the Government should prescribe in the rules by adding this procedure as rule number 9 (a) by casting a special responsibility for the State level monitoring Committee.

Presentation of Group 3 - Mechanisms to operationalise and manage habitat rights

The group discussed various options for evolving mechanisms for management of habitat rights, following are the important points the group zeroed on:

- To leave habitat up to the communities for management planning as per their traditional ways.
- Documentation and resource mapping
- To make all the concerned laws user friendly for setting up mechanisms.
- To bring the synergies in coming up with new schemes.
- A mechanism to respect the PTG's non-destructive approach to life.
- To clearly define the roles and responsibilities of other non-PTG communities, private companies, government agencies.

SESSION – IV

Conclusion

This session was chaired by Mr. Shirish Kulkarni, Oxfam India.

Dr. A.K. Zha concluded the daylong National Consultation. He expressed the importance to keep the identity of the PTG's alive and respect their way of living. It was the need of the hour to upgrade their capacities for management and maintenance of natural resources and assist them in whichever way necessary. It is also essential to imbibe pride in these

communities and bring them out of the mental block of bowing down to the Government machinery. PTG's should be spared of the target oriented approach of the government; it is up to the States to set up user-friendly mechanisms to achieve department's targets. He concluded with a hope that all the participants would together assist the National Committee in putting things in right perspective for the PTG and their rights over Habitat and Habitation.

Formation of core group for follow-up

It was suggested by the organizers to form a core group that would undertake pilot study and action work on the issues of claims of PTG over Habitat and Habitation under section 3(1) e of the FRA.

Those participants who volunteered their names for the core group for follow up are: Tushar Das, Gautam Bandopadhyay, Amit Kulkarni, Induji Naitam, Kishore Moghe, Keshav Gurnule, Ashok Choudhary, Mohantiji, Lalsu Nagoti. Mr. Tushar Das was unanimously selected as the convener of the core group. Dr. R.L. Meena agreed to provide advisory support to the core group.

It was suggested that pilot work should be taken up amongst Madia in Bhamragad, Maharashtra and amongst one PTG in Orissa.

Vote of thanks

Mr. Shirish Kulkarni of Oxfam - proposed the vote of thanks on behalf of Vidarbha Livelihood forum. He appreciated the efforts of the National Committee Members and Vidarbha Livelihood Forum in organizing such an important event. He stated that Oxfam as a support organization has a long history of supporting grass-root organizations working for the livelihood rights of indigenous communities especially those of forest dependant groups. He assured that Oxfam would continue its support and assistance in taking this issue ahead at all appropriate forums. Mr. Kulkarni shared that Oxfam plans to organize a national consultation with the National Committee members, MOEF and MOTA, where representatives from this consultation would be invited to share their learnings. The day ended with a strong resolve to pursue the habitat and habitation rights of PTG with rigor.

Report compiled by

Ms Yogini Dolke, SRUJAN with inputs from Ashish Kothari, Kalpavriksh / FRA Committee.