

National Workshop on Management of Community Forest Resources under Forest Rights Act

Bhubaneswar, 26-27 March, 2011

Organised by
Vasundhara and Kalpavriksh
in collaboration with Oxfam

Key Issues and Recommendations

Vasundhara and Kalpavriksh in partnership with Oxfam (with additional funding from Misereor) organized a national workshop on Management of Community Forest Rights (CFRs) under Forest Rights Act (FRA) on 26th and 27th March, 2011, in Bhubaneswar. The workshop was an attempt to bring together forest-dwelling communities and representatives of civil society organizations, to share experiences relating to claims of CFRs under the FRA, and ideas on the management of CFRs including institutions required for the purpose.

A wide range of tribal and other forest-dwelling communities, civil society organizations, academic and scientific organizations, and government agencies were invited. About 100 members of communities, civil society groups, and scientific organizations participated (see appended list). Both the Ministry of Tribal Affairs and the Ministry of Environment and Forests, as also Odisha state government agencies were invited but did not attend. A number of forest and district administration officials invited were keen to come, but could not due to official pre-occupations.

The key issues and the recommendations from the discussions have been compiled here.

It was felt by the participants that the following recommendations should be seen in addition to the recommendations of National Advisory Council on Scheduled Tribes & Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (http://nac.nic.in/pdf/fra_recommendations.pdf) and the report of the National (MoEF-MoTA) Forest Right Act Committee (http://fracommittee.icfre.org/FinalReport/FRA_COMMITTEE_REPORT_FINAL_Dec2010.pdf), since both these reports have also gone in considerable detail to flesh out some of the issues mentioned below. The group sought a speedy implementation of the recommendations of the above two committees; in the case of

the latter, on some aspects of governance, the alternative recommendations given in Chapter 12.1 should be implemented.

1. CFR claims, verification and recognition

1.1 Key issues

- 1.1.1. *Approach to Community Forest Rights (CFR)*: It was felt that the approach till now, that of Individual Forest Rights (IFR) first then CFR or more focus on IFR, has hindered the CFR claims. There was unanimous opinion that CFRs needed to be given at least as much focus, right from the start, as IFRs.
- 1.1.2. *Gram sabha and constitution of Forest Right Committee (FRC)s*: In most states, the formation of FRCs have taken place at the Panchayat level (covering several villages) and not at the village/community level and the FRCs have been formed in a hurried manner without ensuring representation of tribals, women and forest dependents. In Odisha, by the order of government FRCs have been formed at revenue village level all over the state including Schedule V area whereas in Schedule V area it should be formed as per PESA. This process has affected claims on CFR.
- 1.1.3. *Use of different formats for CFR claims*: CFR claim formats developed and circulated in many states like Rajasthan, AP, Odisha do not conform to the provisions and procedures of the FRA, and are restrictive in nature. The claim formats are complicated (e.g. a *kulak* of several pages in Rajasthan), miss out important CFRs (Odisha), put conditionalities that do not exist in the FRA (Maharashtra), or mention that the village needs to follow Joint Forest Management (JFM) (AP), among others.
- 1.1.4. *Overlapping claims*: In some cases there have been claims on common forests by multiple villages, without coordination, which could lead to conflicts. It appeared that in many areas resources are shared by a number of villages. This can not be resolved at the level of the Act and rules, and needs to be resolved at the local level. In some cases, the claiming gram sabha has also allowed right holders of other villages to claim rights for such resources, while in other areas an informal agreement for resource sharing has been reached without a formal recognition of rights of the other users.
- 1.1.5. *Verification and mapping*: There is lack of clarity in the process of verification and mapping of CFRs in many areas. There is a considerable delay in verification and recognition of CFR and in some cases claims are pending even after two years of being filed.
- 1.1.6. *Evidence*: Documentary evidence is insisted in most cases and oral evidence like statement from elders is not considered by the Sub-Divisional Level Committee

(SDLC) and District level Committee (DLC) while processing of claims. The problem is more in case of Other Traditional Forest Dwellers (OTFD) for whom it is insisted that they produce documentary evidence supporting 75 years of residence, occupation and dependence. This is not the proper interpretation of the law (which only requires evidence of 75 years residence), and also documentary evidence is not available in most of the cases.

1.1.7. *Institutional barriers to determination and recognition of CFR:* In many states CFR claims are limited by presence and interference of existing institutions mainly the JFMCs and Eco-Development Committees (EDCs). In some states the governments have been insistent that these institutions be used as CFR management institutions, and the area allocated to them be identified as the CFR. As a result instead of customary boundaries and traditional access, the JFM and official boundaries are imposed as CFR, in the process limiting the CFR rights. CFR claims are not decided by the Gram Sabhas and communities but by the forest department or NGOs through the JFM/EDCs.

1.1.8. *Undue influence of or reliance on Forest Department:* In many states appointment of Forest Department officials in the Tribal Department as nodal officers for implementation of FRA, and excessive reliance by the SDLC/DLC on the FD for decision making with the Tribal/Social Welfare Department taking a back seat, has had a limiting effect on the CFR rights.

1.1.9. *Recording of CFR, titles, conditional titles/restrictions:* So far the DLCs do not have any proper mechanism to incorporate the CFR rights in relevant government records. Titles issued on CFR differ from place to place and do not maintain a standard; many of CFR rights claimed by the communities and actual areas of access are found missing or wrongly recorded in the titles issued. Also often it is not clear to whom the rights have been granted.

1.1.10. *Structural support to CFR claims, training and awareness:* The knowledge and technical support for CFR claims is lacking, as is training and awareness building. Both formal and informal structural support is found wanting in facilitation of CFR claims.

1.2 Recommendations

1.2.1. CFR processes need to start at the same time as individual claims or even prior to that. The gram sabha should first delineate the community forest resources and should then identify the community forest rights and individual forest rights for claim making. It was also suggested that the process of claiming CFRs where they have not been filed properly or where they have been rejected by DLCs without adequate reasons, should undertake a fresh process of resubmitting their community claims, or

where they have been rejected by SDLCs (itself a violation of the FRA), should file appeals to the DLCs.

- 1.2.2. It was also suggested that if in an area the claims have not been filed by the concerned Gram Sabha but it is clear that the communities are dependent on the forest resources then the administration should make sure that the gram sabhas are helped to file CFRs claims. It is not enough to say that no claims were received from a particular area. It is also the responsibility of the administration to try and understand why claims have not been filed.
- 1.2.3. The format for community claims does not have a space for claiming the right to protect, conserve, and manage community forest resources under Section 3 (1)(i), which should be included in the claim format.
- 1.2.4. The CFR title should clearly mention all the rights claimed, and should be in the name of the concerned gram sabha (defined as corresponding to the individual settlement). The total area of the CFR should be clearly mentioned, and a map with clear boundaries attached. No conditions external to the FRA should be given in the title.
- 1.2.5. Clarity of procedure need to be developed at the community and official level to deal with overlapping or conflicting claims on community forest resources, including facilitation of joint meetings of relevant FRCs / gram sabhas by the SDLC. Such conflicts are best resolved at the local level taking into account the local context.
- 1.2.6. JFM and CFR are two completely different processes and there should be no compulsion to declare JFM areas as CFR areas. The decision should be of the gram sabha and the CFR boundaries should be the traditional or customary boundaries of the concerned village or hamlet.
- 1.2.7. Nomadic and seasonal pastoralists, who have traditional access in areas which are being claimed as CFR by a gram sabha, need to be identified and facilitated to get their rights; the model used in some areas where the gram sabha has coordinated with such communities should be emulated elsewhere.
- 1.2.8. It is the responsibility of the DLCs and SDLCs to help the communities in collecting necessary evidence on community rights. They should collect all possible available official evidence and provide it to the gram sabhas for supporting the CFR claim.
- 1.2.9. State governments should appoint or facilitate support teams in all areas to provide information and technical inputs to gram sabhas for the CFR process, where the sabhas request it.
- 1.2.10. It is important to make a compilation of all circulars, guidelines, and clarifications regarding laws like PESA, Wild Life (Protection) Act (WLPA) and FRA (which have a relevance to the local communities) and circulate it in local languages.

2. *Post-recognition exercise of rights and management of community forest resources*

2.2 Key issues

- 2.1.1. *Institution building, powers and linkages*: In the post recognition phase, emerging institutional challenges are in strengthening gram sabha as a political unit of governance at community level. Section 5 and Rule 4e provides for formation of committees for protection of forest and biodiversity ensuring participation and representation of resource dependent people, women and other disprevidelged sections. Powers vested in the committees are not defined, which is leading to confusion on how precisely the gram sabhas are ‘empowered’ to deal with the issues of management and threats on CFR. How the committees under FRA would link and coordinate with other institutions of governance such as Panchayati Raj Institutions, Biodiversity Management Committees (BMCs) etc, to further the process of CFR management at different levels, needs to be worked out.
- 2.1.2. *Exercise of rights*: In many areas gram sabhas and communities are facing problems and legal hurdles in exercise of rights particularly sale of minor or non-timber forest produce like bamboo (e.g. Mendha-Lekha village in Maharashtra got CFR rights a year back, but is still being refused transit permits), Kendu (*Diosphyros*) leaf (CFM villages in Ranpur, Odisha have been demanding to set up centers, *phaddi*, for collection and storage of kendu), leasing out of bamboo to paper mills by the state government in CFR-claimed areas (e.g. in Gujarat).
- 2.1.3. *CFR rights at larger landscapes and management across scales*: There are issues of management of larger landscapes claimed and accessed as CFRs in many areas such as larger forest areas claimed by multiple villages in CFM areas of Ranpur in Odisha, habitat areas of Particularly Vulnerable Tribal Groups across ecological and political/administrative boundaries, protected areas claimed as CFR as in Badrama Sanctuary (Odisha), etc. What kind of supporting structures can be thought of for governance and management of such larger landscapes; can be thought of at the level of existing administrative divisions such as districts/sub-districts, forest division/range level, and/or considered as cutting across these (such as a bio-cultural zone)? can such management emerge out of the community process of federating at levels based on ecological or customary cultural boundaries? What would be the role of the federations in facilitating management of CFRs at landscape level?
- 2.1.4. *Forest Department’s role and that of other departments*: The role of FD needs to change in accordance with the changing context of shift in forest governance and management under FRA. Till now the MOEF and FD has not initiated any official process to work towards the required changes in the role of FD, though specific changes have been recommended by the MoEF-MoTA Committee on the FRA.

- 2.1.5. *Convergence:* In order to ensure that CFR rights are converted into livelihoods for the community it is required to develop convergence of existing programs and schemes, but this is as yet absent or in very nascent stages.
- 2.1.6. *Allocation of funds to gram sabhas/committees formed under FRA:* As gram sabhas begin to take over governance and management of CFRs, they may require funds; will the funds going to the FD thus far, for such forests, now go to the gram sabha? How does one avoid the problems that come up when large sums of money pour into villages?

2.2 Recommendations

- 2.2.1. The gram sabha (or equivalent village assembly institution in north-eastern states and other sites) should be considered and defined as an institution at the hamlet level provided it has all the adult villagers as members. Such gram sabhas should be the authority for determination of rights under FRA and should also be the decision making body for any development plan or as the local institution for any other Act (e.g. Biological Diversity Act).
- 2.2.2. Gram sabha needs to seek capacity building inputs from available sources, and need to be supported through provision of information, training, funds, and other inputs where required and requested.
- 2.2.3. Formulation of local rules and plans related to use and management of the CFR resources, needs to be discussed at the gram sabha in great detail and length, where necessary seeking help from relevant agencies and individuals. However, formal management plans should not be insisted upon everywhere, often villages are effectively managing resources through informal, oral customs and rules.
- 2.2.4. The process of decision making could be influenced by a number of actors but the final decision should rest with the gram sabha.
- 2.2.5. Processes of conservation, sustainable extraction, economic uses, research, development and monitoring should all be carried out or decided at the level of the gram sabha.
- 2.2.6. Gram sabhas should become the authority to give the TPs. Existing TP books with the Forest Department should be given to the gram sabha without cost as stop gap arrangement till a procedure is set for TP to be issued by gram sabha itself.
- 2.2.7. All gram sabhas could and may need to federate for effective management of resources at the landscape level and also to seek support from each other. Such federations could be established at locally identified landscape level.
- 2.2.8. The gram sabha should be the authority to decide if outside agencies have any role to play and they should identify what support they need from other agencies. Once such role has been specified, it should be mandatory for the government agencies to provide the desired help.

- 2.2.9. All the existing line agencies should converge their resources and disburse them to the gram sabha as and when demands for specific activities arrive. This should reduce the need for any other external funds.
- 2.2.10. Funds should come to the gram sabha and effective systems of accounting need to be established at that level of the gram sabha (ensuring that both internal and external auditing takes place).
- 2.2.11. In the post-rights scenario forest related offences should be dealt with in public hearing at the gram sabha level. The gram sabha should form rules on nature of punishments depending on the seriousness of the crime. Where necessary, especially in the case of serious offences, the support of Government representatives should be solicited by the gram sabha. The relative roles and powers of the gram sabha and the forest department relating to offences need to be delineated.

3. Governance challenges

3.1 Key issues

- 3.1.1. *Conflicting laws, policies and plans:* the management of CFRs is severely restricted by existing laws and policies, or programmes, such as JFM/EDC, Minor Forest Produce (MFP) laws, working/management plans etc. There is no effort from the government to discuss and identify the legal and administrative barriers to the realization of rights under FRA and to remove such barriers or to assimilate CFR and other rights into their systems and plans; recommendations made to MoTA and MoEF so far on this, including by the NAC and the MoEF-MoTA Committee, have not been acted upon.
- 3.1.2. *Landscape level (community-district-state) institutional structures:* Supportive structures from ground to higher decision-making levels to support CFR management) do not exist in most cases. Supporting rights under FRA and CFR in particular would require a change in formal institutional structures, plans and attitudes, from panchayat or local level to state and central government level. No attempts have been made to bring about such changes to accommodate, support and monitor forest management by gram sabha committees with their own rules and regulations.
- 3.1.3. *CFR rights and threats from development projects:* Forest land diversions, which are taking place for development projects under the Forest Conservation Act (FCA), are mostly not complying to the FRA and Ministry of Environment and Forests (MoEF) guidelines of July 2009 stating that FRA provisions need to be met with before project proponents can apply for forest clearance. The Forest Advisory Committee does not seem to be insisting on such compliance, and there is no other specific mechanism at the MoEF or state government level to ensure it.

3.2 Recommendations

- 3.2.1. The July 2009 circular of MoEF, on making FRA implementation and gram sabha consent compulsory before granting clearance for diversion of forest land, should be made legally binding by incorporating these requirements into either the FCA or the FRA.
- 3.2.2. Resolution from the gram sabha providing *prior informed consent*, before which local public hearings should be carried out, is a must before granting permission to any development project. This requirement should be incorporated in all laws related to clearance of development projects, including in the Forest Conservation Act and Environment Protection Act notifications.
- 3.2.3. A protocol is needed to ensure that the FRA processes are fully followed in any proposal for relocation of claimants and rights-holders. Wherever people have consented to relocation, they should be moved to a landscape similar to their original habitation. They should also have the option of claiming CFR rights at their resettlement site.
- 3.2.4. JFM, Ecodevelopment and other such schemes that give predominant decision-making power to the FD, should be rolled back, and replaced by programmes based on the centrality of the gram sabha in decision-making.
- 3.2.5. CFR should be given a separate legal status as a category of forest.
- 3.2.6. Planning for natural resource management should be at the landscape level .All gram sabhas in that landscape should be part of such planning. The implementation should either be through existing institutions or by creating new ones by the gram sabhas themselves. District and state level forest councils, with membership of community representatives, civil society organizations, and relevant government departments, need to be established to provide technical guidance when needed and to monitor the compliance of responsibilities of conservation and equity by both gram sabhas and the FD.
- 3.2.7. NTFP/MFP laws in all states need to be reviewed and modified or repealed in light of FRA; NTFPs/MFPs should be possible to sell in the open market, but the state should also provide a support price; MoEF should issue a letter similar to its letter on bamboo issued on 21st March 2011, asking all states to facilitate transit of NTFPs/MFPs by the gram sabhas.
- 3.2.8. A review needs to be carried out for all relevant laws (including the Indian Forest Act, Forest Conservation Act, Wild Life Act, Biological Diversity Act and Panchayat Acts) in light of FRA. Amendments should be done as part of a comprehensive process and not piecemeal. It is also important to review climate change programmes, Green India mission and other related programmes of the Government of India to analyze how are these affecting forest rights, and ensure they are complying to FRA.
- 3.2.9. It should be clear to gram sabhas that recognition of CFRs brings in higher responsibility for conservation and sustainable use, for which gram sabhas will need to build capacity and make plans. Principles that are adopted by the gram sabha for

natural resource management should include space for both local people and local wildlife.

4. CFRs of vulnerable communities

4.1 Key issues

- 4.1.1. Rights of Particularly Vulnerable Tribal Groups (PTGs), especially habitat rights, nomadic and resident pastoralist communities, shifting cultivators, and forest villages remain grey areas as the implementation process continues to ignore rights of these communities. There are also cases where traditional rights and access of nomadic and pastoralist communities are not addressed or are excluded in the process of CFR claims and recognition.
- 4.1.2. The FRA is still not implemented in most of the forest and unsurveyed villages in the states and the process for conversion of these villages into revenue villages as required under the law has not started (except a couple of villages in Uttar Pradesh).

4.2 Recommendations

- 4.2.1. Clarity is needed on what 'habitat' rights for PTGs and others mean; recommendations of the National Workshop on PTGs on this issue, contained in the report of the MoEF-MoTA Committee on FRA, should be implemented.
- 4.2.2. Once such clarity has been established, the onus is on the government to carry out a process of identification of such habitats based on anthropological records, any other research papers, fresh research and community consultations. Then, filing of habitat claims requires a certain preparation on ground and readiness of the community, which should be facilitated by government agencies and civil society organization.
- 4.2.3. Once the habitats are identified, they should be given protection under FRA and no destructive development projects or processes inimical to the survival and culture of the PTGs, should be allowed in such areas.
- 4.2.4. Along with providing protection, a process of re-establishing community institutions and capacities needs to be facilitated.
- 4.2.5. There should training and capacity building programmes for government officials and others involved in the process, to understand the special needs of these groups as well as the concept of habitat.
- 4.2.6. Establishing and identification of habitats will need to go beyond administrative and political boundaries.
- 4.2.7. Conversion of Forest Villages to Revenue Villages should be a priority to enable residents to get all benefits that any citizen of India is entitled to.

- 4.2.8. Special measures are needed to facilitate the claims of pastoralists (e.g. helping to map the full migratory range and obtain CFR or habitat rights to it, recording it in each relevant gram sabha), and of shifting cultivators (treating their full customary area under cultivation cycles as a CFR or habitat right).

5. CFRs in the context of Protected Areas (PA) s, Critical Wildlife Habitats (CWH) and Critical Tiger Habitats (CTH)

5.1 Key issues

- 5.1.1.** Violation of FRA continues in many protected areas particularly in tiger reserves where the FRA process is being stalled, or relocations have either taken place or are in process. Most relocation is in violation of the provisions of the FRA and Wild Life Protection Act (WLPA), e.g. taking place without rights first having been established, or without establishing irreversible damage and lack of co-existence options. Cases of violations are reported from Achanakmar in Chhattisgarh, Simlipal in Odisha, Sariska in Rajasthan, Melghat in Maharashtra, and so on.
- 5.1.2.** Critical Wildlife Habitats process has not gone very far (with not a single CWH having been notified), and in many places is taking place without the other provisions of the FRA having been implemented.

5.2 Recommendations

- 5.2.1. There is a need to redefine what inviolate areas are, in the context of CWHs; they should not be considered necessarily human-free, but rather free of activities that are in violation of conservation objectives of the area. Inviolate areas should be identified with gram sabha and independent wildlife scientists and be decided through public consultation processes.
- 5.2.2. New guidelines for CWH should be formulated through a completely participatory process, and taking on board the inputs given by civil society organizations such as the proposed guidelines by the Future of Conservation network.
- 5.2.3. Studies which need to be carried out before the declaration of CWH should have expertise of all involved including villagers, with a combination of modern and traditional knowledge.
- 5.2.4. Wherever communities have engaged with a landscape for long, sacred sites, oral history, traditional knowledge and practices etc, can serve as evidence of co-existence which the gram sabha can provide to the expert committee while declaring a CWH/ CTH.
- 5.2.5. Co-existence must always be considered as an option in CWHs, rather than assume that relocation is always necessary. Along with the options for relocation, communities must be given the option (as per the FRA) of being able to stay on

within the protected area with relevant rights and responsibilities, and mutually agreed modification of rights where necessary.

- 5.2.6. Governance and management of protected area, including formulation of management plans, implementation of activities, monitoring, and so on, should be done jointly by the FD and gram sabhas that have obtained CFR or other rights. For this, appropriate changes needs to be brought in the WLPA.

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**NATIONAL WORKSHOP ON MANAGEMENT OF COMMUNITY FOREST RESOURCES UNDER
FOREST RIGHTS ACT**

Organised by Vasundhara and Kalpavriksh, in collaboration with Oxfam

List of participants

Date: 26th to 27th March, 2011

Venue: Hotel Presidency, Nayapalli, Bhubaneswar

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