

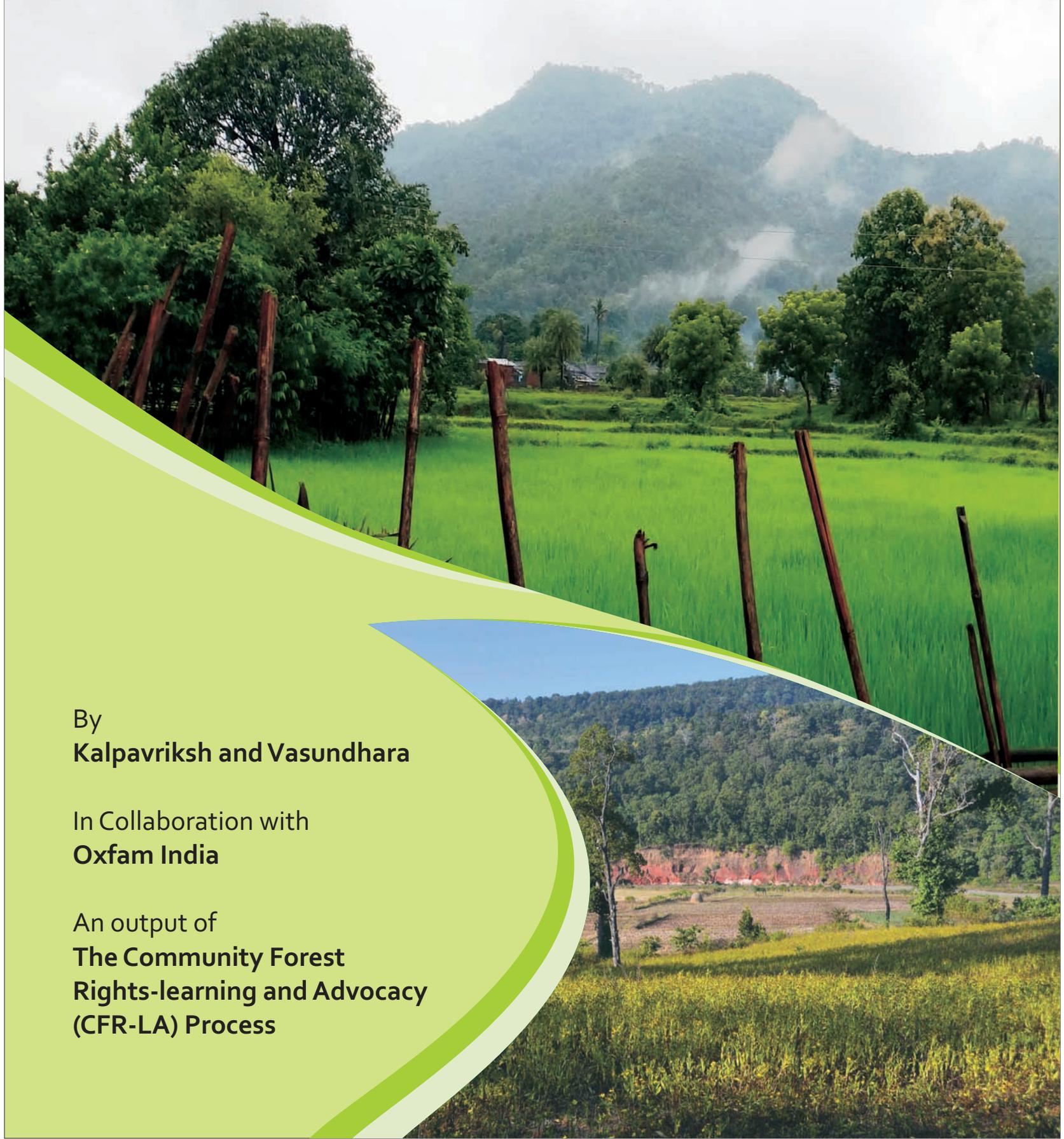
CITIZENS' | 2  
REPORT | 015

# COMMUNITY FOREST RIGHTS UNDER THE FOREST RIGHTS ACT

By  
Kalpavriksh and Vasundhara

In Collaboration with  
Oxfam India

An output of  
The Community Forest  
Rights-learning and Advocacy  
(CFR-LA) Process



This report is an outcome of the Community Forest Rights-Learning and Advocacy (CFR-LA) process, initiated in 2011. It facilitates the exchange of information and experiences related to the Community Forest Rights (CFR) provisions of the Forest Rights Act. It reinforces national level efforts for evidence-based advocacy on CFRs. The process includes organizations and individuals working at the local, regional, national and international level on understanding and facilitating CFRs.

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To join CFR-LA,

visit: <https://groups.google.com/forum/#!forum/CFR-la>

Website: <http://fra.org.in/new/>

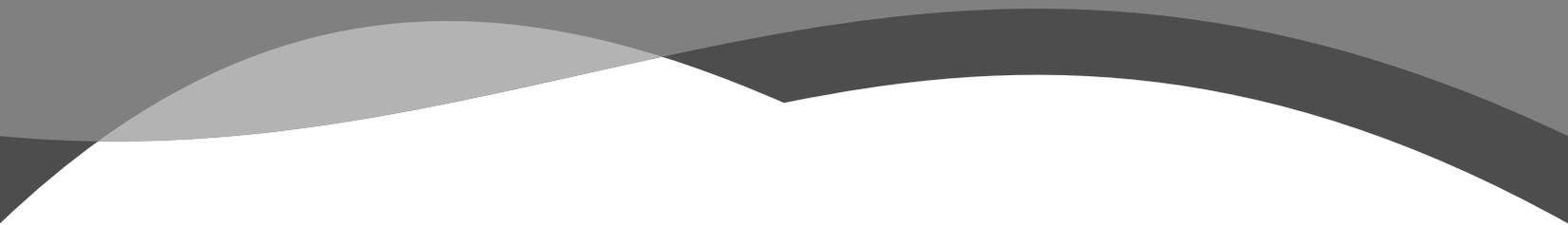
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Cover photo: A Part of Kutia Kondha habitat in Tumudibandha region of Kandhamal District, Odisha (Photo: Subrat Kumar Nayak)

Forest and Agricultural fields of Dhaba village in Baigachak region of Dindori district, Madhya Pradesh (Photo: Ashish Kothari)



# CITIZENS' | 2 REPORT | 0 | 1 | 5

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## ABBREVIATIONS

CAMPA	Compensatory Afforestation Fund Management and Planning Authority
CFR	Community Forest Rights
CFRe	Community Forest Resource
CFRLA	Community Forest Rights Learning and Advocacy Network
CNTA	Chhotta Nagpur Tenancy Act
CSO	Civil Society Organisation
CTH	Critical Tiger Habitat
CWH	Critical Wildlife Habitat
DLC	District Level Committee
EDC	Eco Development Committee
FAC	Forest Advisory Committee
FCA	Forest (Conservation) Act, 1980
FDA	Forest Development Agency
FDCA	Forest Development Corporation Agency
FRA	Forest Rights Act (refers to Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Rights) Act 2006)
FRC	Forest Rights Committee
GP	Gram Panchayat
GS	Gram Sabha
JFM	Joint Forest Management
LAMPS	Large-Scale Adivasi Multi-Purpose Societies
LWE	Left Wing Extremism
MFP	Minor Forest Produce used interchangeably with NTFP in this report
MGNREGS	Mahatma Gandhi National Rural Employment Guarantee Scheme
MK	Mundari Khuntkatti

MoEF Environment,	Ministry of Environment and Forests, was renamed Ministry of Forests and Climate Change in 2014
MoEFCC	Ministry of Environment Forests and Climate Change
MoPR	Ministry of Panchayati Raj
MoTA	Ministry of Tribal Affairs
NDA	National Democratic Alliance
NTFP	Non-Timber Forest-Produce used interchangeably with MFP in this report
OTFD	Other Traditional Forest Dweller
PA ITDA	Project Administration of Integrated Tribal Development Agency
PAs	Protected Areas (National Parks, Wild Life Sanctuaries, Tiger Reserves, Conservation Reserves and Community Reserves)
PCCF	Principle Chief Conservator of Forests
PESA Secretary	Panchayati Raj Extension to the Schedule Area Act, 1996PS Principle
PS	Principle Secretary
PVTG	Particularly vulnerable Tribal Group (earlier called Primitive Tribal Group)
RFCTLARR	Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement
REDD	Reducing Emissions from Deforestation and Forest Degradation
SC	Supreme Court
SC and ST DD	Scheduled Castes and Scheduled Tribes Development Department
SDLC	Sub-Divisional Level Committee
SLMC	State Level Monitoring Committee
UPA	United Progressive Alliance
UNDP	United Nations Development Programme
VFR	Village Forest Rules
VSS	Van Suraksha Samiti

## SUMMARY

In 2015, the Scheduled Castes and Scheduled Tribes (Recognition of Forest Rights) Act, 2006, is in its eighth year of implementation. In the last two years, there have been some positive signs in the effective implementation of the Act. Some of these are:

- Guidelines issued by MoTA for the conversion of forest villages to revenue villages;
- Letters and memorandums issued by the MoTA demanding complete compliance with FRA on proposed forest land diversion for developmental projects;
- Notification of legislations like the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013; the Forest (Conservation) Rules, 2014; and the Pancahyati Rules of Maharashtra, 2014, which acknowledge the provisions of the FRA;
- Attempts at decentralization of Minor Forest Produce (MFP) governance and deregulation of the MFP trade with reference to FRA and PESA (to a limited extent, and with some associated problems) in Odisha.
- On-ground assertion of rights against continuation of activities such as felling or mining in forest areas without prior Gram Sabha consent.

However, some issues continue to persist in its implementation:

- Continued neglect and violation of forest rights for PVTGs, shifting cultivators and nomadic pastoralists, and other traditional forest dwellers;
- Violation of FRA and the lack of its effective implementation in Protected Areas, forest villages, diversion of forests for developmental projects; and lack of claims facilitation in municipal areas;
- Dilution of laws like the RFCTLARR and attempts to dilute the consent clause;
- Lack of knowledge and training of implementing agencies;
- Schemes and policies to encourage JFM, REDD plus mechanisms instead of concentrating upon capacity-building of committees formed under Rule 4(1) (e) of the Act.

Therefore, along with building a deeper understanding about the significance, objectives and provisions of the Act at different levels of administration, CSOs and forest dependent communities, it has become important at this stage in the implementation of the Act to also align broader national level policies and systems with the objectives of the Act. A synergistic effort is required to strengthen effective implementation by making procedures simpler and locally relevant and by creating mechanisms for recognition of the more neglected of rights such as access to seasonal grazing grounds, habitat rights for PVTGs and rights in forested municipal areas. To enable community rights (CFR) to become an important tool for forest dwelling communities to move towards decentralized community-based governance and conservation of forests, it is essential to encourage the recognition and vesting of community forest resource (CFRe) rights in communities as well as to build up the capacity of Gram Sabhas to access relevant government schemes and policies, as envisioned in the FRA .

## A. INTRODUCTION

This section, the objectives of the Community Forest Rights Learning and Advocacy (CFR-LA) Process and this report including the methodology followed, and the limitations.

Further, it puts into context policies related to forest governance and settlement of rights of forest dwellers in India and the significance of Community Forest Rights within the Forest Rights Act for strengthening community tenure over forest land and decentralized systems of forest governance.



Part of the community forests of Dannel village, Nardurbar district, Maharashtra (Photo: Meenal Tatpati)

## I. COMMUNITY FOREST RIGHTS

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights Act), 2006 (hereafter Forest Rights Act or FRA), came into force in 2008. It aspires to undo the "historic injustice" meted out to forest dependent communities by recognizing and vesting in them the rights to use, manage and conserve forest resources and to legally hold forest lands that they have been residing on and cultivating. The preamble of the Act recognizes forest dwellers as "integral" to the survival and sustainability of forest and their role in conservation of biodiversity. It also recognizes that insecure tenure and lack of established rights over forests have resulted in the marginalization and displacement of forest dependent communities.

The FRA recognises a number of rights of forest dependent communities. Particularly empowering are provisions under Sec 3(1) of the Act which recognize the community forest rights (CFR) of the Gram Sabhas (GS) of forest dwelling communities.

These rights include:

- (b) community rights such as *nistar*, by whatever name called, including those used in erstwhile Princely States, *zamindari* or such intermediary regimes;
- (c) right of ownership, access to collect, use, and dispose of minor forest produce which has been traditionally collected within or outside village boundaries;
- (d) other community rights of uses or entitlements such as fish and other products of water bodies, grazing (both settled or transhumant) and traditional seasonal resource access of nomadic or pastoralist communities;

- (e) rights including community tenures of habitat and habitation for primitive tribal groups and pre-agricultural communities;
- (h) rights of settlement and conversion of all forest villages, old habitation, unsurveyed villages and other villages in forests, whether recorded, notified or not into revenue villages;
- (i) right to protect, regenerate or conserve or manage any community forest resource which they have been traditionally protecting and conserving for sustainable use;
- (j) rights which are recognised under any State law or laws of any Autonomous District Council or Autonomous Regional Council or which are accepted as rights of tribals under any traditional or customary law of the concerned tribes of any State;
- (k) right of access to biodiversity and community right to intellectual property and traditional knowledge related to biodiversity and cultural diversity; and
- (l) any other traditional right customarily enjoyed by the forest dwelling Scheduled Tribes or other traditional forest dwellers, excluding the traditional right of hunting or trapping.

The right to protect, regenerate, conserve or manage any community forest resource (CFRe<sup>2</sup>) which they have been traditionally protecting and conserving for sustainable use, under Sec 3(1)(i) along with the above mentioned rights of the Act has the potential to change the top-down centralized style of governance of forests to enable greater site-specific management by communities, and provide collective livelihood security to communities, particularly when read with other provisions of the Act.

<sup>1</sup>Under Sec 2(g) of the FRA, the Gram Sabha is defined as 'a village assembly which shall consist of all adult members of a village and in case of states having no panchayats, padas, tolas, other traditional village institutions and elected village committees, having the full and unrestricted participation of women.'

<sup>2</sup>CFRe is defined as "the customary common forest land within the traditional or customary boundaries of the village or seasonal use of landscape in the case of pastoral communities, to which the community had traditional access". The rights over CFRe as well as other CRs can be recognized over any forest land including reserved forests, protected forests and protected areas such as Sanctuaries and National Parks.

## Box I: Significance of Community Forest Rights

### Forest conservation, management, and governance

Sec 5 of the Act empowers communities to "protect forests, wildlife and biodiversity, and to ensure protection of catchments, water sources and other ecologically sensitive areas". When read with Section 3(1)(i) of the Act and Rule 4(1)(e) and (f) of the Amendment rules of 2012, (which elaborate on the constitution of a committee which can perform these functions as well as prepare conservation and management plans for its CFRs), Sec 5 creates a space for forest dwelling communities to practice forest management and governance by using their own knowledge systems and institutions and integrating them with modern scientific knowledge.

### Ensuring livelihood security

Sec 3 (1)(c) of FRA, vests the rights over collection and sale of Non-Timber Forest Produce (NTFP) i.e. Minor Forest Produce (MFP) as the Act refers to it, in the hands of communities. Vesting rights over commercially important MFP, which has been under the monopoly of state and contractors thus far, in the communities, has great significance. The Act clearly defines MFP in Section 2(i)) and provides elaborate guidelines under the Amendment Rules, 2012, for their sale, for a change in the transit permit regime, etc. Rule 16 of the Amendment Rules, 2012, provides for government schemes related to land improvement, land productivity, basic amenities and livelihood measures of various government departments to be provided to communities whose rights over CFR have been recognised, paving a way for convergence of governmental schemes towards village development, according to their own needs.

### Influencing decision-making on developmental projects

While acknowledging the forced relocation of forest dwelling communities due to State developmental interventions, Section 4(5) of the Act attempts to prevent further relocation and displacement of forest dwellers by providing that "no member of a forest dwelling scheduled tribe or other traditional forest dweller shall be evicted or removed from the land under his occupation till the recognition and verification process is complete". Thus, according to this Act, in areas where the process of recording of rights under FRA has not started, forest dwellers cannot be evicted. Additionally, Sec 5 empowers the village GSs to ensure that the habitat of forest communities is preserved from any form of destructive practices affecting their cultural and natural heritage, and to take decisions to regulate access to community forest resources and stop any activity that adversely affects wild animals, forest and biodiversity and to ensure that these decisions are complied with. These provisions have the potential to significantly democratise the decision-making process for various developmental projects in the country.

### **1. About the CFR-LA process**

Despite the potential of the CFR provisions of the Act, few communities have been able to utilize them, since there is a widespread lack of awareness regarding these provisions, and the implementation of the Act is still focused on recognition of individual forest rights. Where communities have claimed CFR rights, they face several challenges on ground, in implementing and bring into operation, the provisions of the Act.

In 2011, a national meeting was organized by a group of Civil Society Organisations (CSOs), networks, movements and alliances involved in issues relating to forest rights, which led to the emergence of

<sup>3</sup> The meeting was organized by Kalpavriksh and Vasundhara in collaboration with Oxfam India in New Delhi. Report available at: [http://www.fra.org.in/new/CFR\\_brainstorming\\_report\\_%20delhi.pdf](http://www.fra.org.in/new/CFR_brainstorming_report_%20delhi.pdf)

Community Forest Rights Learning and Advocacy Process (CFR-LA)<sup>3</sup>. This process was envisaged to provide support for collective learning and advocacy towards better and effective implementation of CFR under FRA. As a part of the process, a website (<http://fra.org.in/new/>) and a list serve (to join visit: <https://groups.google.com/forum/#!forum/CFR-la>) have been initiated to provide regular updates and facilitate advocacy on various issues related to CFR. The process today involves grassroots level organizations, people's movements, supporting civil society groups, legal advisors and researchers.

The process has led to sharing and consolidation of experiences from the ground, with those involved providing need-based inputs to each other's sites and has organised theme based national, state and regional consultations. This, to a certain extent has led to continuous monitoring of implementation of CFR by these movements and civil society organizations, their respective sites, regions or states. Together, those involved in the process have at times come up with recommendations for policy and procedural changes in the law and its rules, resulting in associated circulars and government orders.

## 2. Citizens' Report, 2015

Since 2012, a yearly attempt is made by CFR-LA to evaluate the progress of CFR and to discuss, consolidate and analyze the policy changes directly affecting the implementation of the Act for helping on ground research, advocacy and effective implementation of the Act, in the form of a citizens' report. The CFR-LA citizens' reports<sup>4</sup> on

status of implementation on CFR were released in 2012 and 2013.

The current report is the third in the series, attempting to build on the previous reports by consolidating information on CFR claims and processes aiding and abetting the CFR process in different states of India that took place between April 2013 to March 2015.

The report includes

- An overview of the recent policy changes affecting CFR implementation,
- A national overview of status of CFR claims,
- Consolidated status of implementation of CFR provisions from the states of Chhattisgarh and Jharkhand, and an update to previous case-studies from Maharashtra and Odisha based on information received from members of CFR-LA,
- Issues and recommendations discussed during various meetings and consultations held between May 2013 and January 2015.

### 2.1 Methodology

The report has been consolidated through a combination of varied research approaches and sources such as:

- Review of information received through groups, researchers and civil society organizations on the CFR-LA list serve and of secondary literature like articles and reports in magazines, newsletters, newspapers, websites, etc.;

<sup>4</sup>Reports Available at: <http://fra.org.in/document/A%20National%20Report%20on%20Community%20Forest%20Rights%20under%20FRA%20-%20Status%20&%20Issues%20-%202012.pdf> and <http://fra.org.in/document/Community%20Forest%20Rights%20under%20FRA%20Citizens%20Report%202013.pdf>

- Collection of regional information by members of the CFR-LA process through field visits, telephonic conversations and oral discussions through a pre-designed format for procuring information on CFR,
- Consolidated information received during updates given by community members or CSOs in various consultations, meetings and public hearings.

## **2.2 Limitations**

Although attempts have been made to represent accurate and reliable information, there may be

gaps and weaknesses in the report, since there is a diverse range of situations pertaining to CFR rights across India, and because information from all states could not be collected. We shall be happy to receive suggestions and criticism from readers and will try our best to keep the same in mind for future reports. We also urge readers to join the CFR-LA process and share their experiences and studies, thereby strengthening the process. The format used for the state level studies can be shared with interested individuals, local communities and organizations on request<sup>5</sup>.



<sup>5</sup> Write to Meenal Tatpati ([meenaltatpati@gmail.com](mailto:meenaltatpati@gmail.com)) and Neema Pathak Broome ([neema.pb@gmail.com](mailto:neema.pb@gmail.com)) of Kalpavriksh or Tushar Dash ([tushardash01@gmail.com](mailto:tushardash01@gmail.com)) of Vasundhara.

## B. NATIONAL OVERVIEW

This section provides a basic overview of developments at the policy and implementation level pertaining to CFR provisions that took place between April 2013 and March 2015.



A shrine in the Dongria Kondh village of Serkapadi, Rayagada district, Niyamgiri hills (Photo: Meenal Tatpati).

## I. POLICY UPDATE

In the year 2013-14 the central government made several policy decisions like amending the Forest (Conservation) Rules through the Ministry of Environment and Forests (MoEF). In addition, Ministry of Panchayati Raj (MoPR), and state tribal and forest departments made certain policy decisions which could have a bearing on the implementation of the FRA including the CFR provisions. Significant changes have been made since the after the change in the political government at the Centre in 2014. In May 2014, the new National Democratic Alliance (NDA) government came to power and Shri Jual Oram took charge of the Ministry of Tribal Affairs (MoTA), the nodal agency in charge of implementation of the Act. The Ministry of Environment and Forests was also renamed as the Ministry of Environment, Forests and Climate Change (MoEFCC). This chapter briefly describes all the developments, including policy changes and implementation status of the FRA, during the year 2013- 2014, and their significance for the implementation of the CFR provision.

1. Letters, circulars, guidelines, orders and memorandums issued by MoTA

In 2012, MoTA had issued letters to Chief Ministers of all states for better implementation of the Act. In 2013-14, a number of guidelines, circulars and

memorandums were issued to certain states on specific matters like forest land diversion, Joint Forest Management and recording of rights under the FRA. Given below is a summary of these guidelines, circulars, orders and memorandums.

### 1.1 Guidelines issued by MoTA on the conversion of forest villages, old habitations, unsurveyed villages etc. into revenue villages

On 8<sup>th</sup> November 2013, MoTA issued clarifications and guidelines<sup>6</sup> pertaining to the operationalisation of Sec 3(1) (h) of the Act which provides for settlement and conversion of all forest villages, old habitation, unsurveyed villages and other villages in forests (whether recorded, notified or not) into revenue villages. It was clarified that, the provisions of the FRA supersede and guide the provisions of all Act and SC orders relating to forests, and therefore conversion of all villages on forests should be carried out. It places the onus of identification of all such villages on District Collectors and the Sub Divisional Level Committees and State Level Monitoring Committees. Once the identification of such villages is carried out, the GSs are to make claims to convert the village to Revenue village and the process to be followed should be according to the provisions of the FRA. Once the process is complete, the revenue records are to be updated to secure their legal status.

### 1.2 MoTA circulars and memorandums on FRA implementation

Table 1: List of circulars and memorandums on FRA issued by MoTA (Aug 2013-March 2015)

Date	Subject	Addressed to	Contents
6th Aug 2013	Direction on withdrawing CFR titles given to Joint Forest Management Committees in Andhra Pradesh	Principal Chief Conservator of Forests (PCCF) and Principal Secretary (PS) of Tribal Development Department, Andhra Pradesh	JFM committees are not covered under the definition of either Scheduled Tribes (ST) or Other Traditional Forest Dwellers under the FRA, hence they cannot be considered as "claimant" under the

<sup>6</sup> See: <http://www.tribal.nic.in/WriteReadData/CMS/Documents/201311130217562366178LettertoCSofallState.pdf>

			Act and thus, titles given to Van Suraksha Samitis (VSS) may be withdrawn.
3 <sup>rd</sup> March 2014	Direction on the Record of rights issued under the FRA	PS and Secretaries of tribal welfare Departments of all states	On completion of process of recognition of rights according to the law, Forest Department should prepare final map of forest land vested and concerned authorities are to incorporate the forest rights vested in the revenue and forest records within three months or period specified under state laws, whichever is earlier.
13 <sup>th</sup> August 2014	Direction on abeyance of Maharashtra Village Forest Rules	Chief Secretary of Maharashtra and Principle Secretary, Tribal Development Department	The Indian Forests (Maharashtra) (Regulation of assignment, management and cancellation of village forests) Rules, 2014 are in violation of the FRA and should be kept in abeyance till examined by the ministry.
16 <sup>th</sup> August 2014	Office Memorandum with reference to the relocation of <i>Gujjar</i> community from Corbett Tiger Reserve and Sunderkhal and all tiger reserves.	National Tiger Conservation Authority	In cases where relocation from Tiger Reserves is envisaged, the displacement and rehabilitation issues will require <i>FRA clearance</i> from concerned GSs.  According to the provisions of the FRA, relocation requires the free prior informed consent of the GS and the recognition and vesting of rights as provided under the FRA, in communities being displaced, before relocation takes place. However, the circular is unclear about what it means by 'FRA clearance' and if any or both these provisions are to be followed.
12 <sup>th</sup> Sept 2014	Direction on reviewing the high rate of rejection of FRA claims in Left Wing Extremism (LWE) affected states	PS and Secretaries of all LWE states	Stressed that states and district collectors in LWE affected areas have to take proactive steps to mobilize claims and to review rejected claims.

5 <sup>th</sup> March 2015	Direction on applicability of FRA in municipal areas	PS and Secretaries of all states	<p>In municipal areas, 'Gram Sabha' shall be understood to mean,</p> <ul style="list-style-type: none"> <li>• the ward committee (if constituted under Article 243s of the constitution),</li> <li>• or the assembly of all adult citizens of the settlement claiming rights</li> <li>• or where such a settlement is not clearly identifiable, the mohalla sabha or pada or tola (whichever is smaller).</li> <li>• In Nagar Panchayats and transitional areas, it shall mean the assembly of all adult residents of the pada /tola / h a m l e t /habitation/traditional village.</li> </ul> <p>This assembly shall initiate the processes of determination of nature and extent of individual and community forest rights by constituting a FRC, and perform all functions of the Gram Sabha as prescribed under Sec 5, Sec 6, and Rule 4(1) of the FRA, FRA rules, guidelines, etc.</p> <ul style="list-style-type: none"> <li>• In the SDLC, the 3 representatives of the Panchayati Raj institutions shall be replaced by representatives nominated by the municipality(s) in the sub-division.</li> <li>• In the DLC, 3 members of the district panchayat shall be replaced by 3 members from town panchayats/municipal councils / municipal corporations nominated by municipalities.</li> </ul> <p>In PESA areas the members of the SDLC and DLC shall be from village councils/committees.</p>
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### 1.3 Letters, circulars and memorandums on forest diversion issued by MoTA and MoEFCC

During 2014-15, several attempts were made by the MoEFCC (erstwhile MoEF) to dilute the power of the FRA, particularly related to diversion of forest land under the Forest Conservation Act, 1980. As reported in the previous Citizens' Report, on the 5<sup>th</sup> of February 2013, MoEFCC had issued a circular (hereafter referred to as the Linear Diversion Circular) stating that the requirement of public hearing and GS resolution may be lifted in cases of linear diversion such as laying of pipelines, construction of roads and canals, etc. except where

recognized rights of Particularly Vulnerable Tribal Groups or Pre-agricultural Communities are affected.

Since then, the MoEFCC has reiterated this stand through several circulars. MoTA, meanwhile, has issued three memorandums on 7<sup>th</sup> March, 27<sup>th</sup> August and 21<sup>st</sup> October, 2014 to overturn the linear diversion circular on the insistence and representations of several communities, civil society organizations and people's movements against this circular. Given below is a list of circulars and orders issued by the MoTA as well as the MoEFCC regarding forest diversion. All the circulars issued have been summarized below:



Women of Gundalaba village, Puri District, Odisha, showing the awards received for community forest conservation. The livelihoods and forests that this community has conserved will be destroyed by the Navyug port which may come up in Astarang block. (photo: Meenal Tatpati)

Table 2: List of letters and circulars on Forest Diversion (June 2013-March 2015)

Date	Issued by and Subject	Addressed to	Contents
7 <sup>th</sup> June 2013	Direction from MoTA, on holding GSs in Rayagada and Kalahandi districts in accordance with the Niyamgiri judgement by the SC (Writ Petition (Civil) No. 180 of 2011, in Orissa Mining Corporation vs Ministry of Environment and Forests and others).	Chief Secretary of Odisha	Urging the state government that the decision to hold GSs in 12 villages only, rather than all villages likely to be affected by the proposed bauxite mining, is a violation of the SC Niyamgiri judgment as well as the directions issued by the ministry under Sec 12 of the FRA <sup>7</sup> .
5 <sup>th</sup> July 2013	Letter from MoEF, providing <i>formats</i> for submitting FRA compliance reports (as per August 2009 circular and 5 <sup>th</sup> February 2013 circular) for diversion of forest land, under the Forest Conservation Act, 2009	Secretary, MoTA and PCCFs of all states	Form I is for cases of forest diversion for linear projects and Form II is for cases of forest diversion for projects other than linear projects. For both linear projects and non-linear projects, a copy of all records and meetings of FRC, GS, SDLC and DLC pertaining to <i>identification and settlement</i> of rights under the FRA is to be attached. However, for linear projects a circular from the district collector certifying that the proposal does not involve recognition of rights of Particularly Vulnerable Tribal Groups and Pre-agricultural communities is to be attached and copies of consent certificates /resolutions from GSs are not required.
9 <sup>th</sup> Oct 2013	Letter from MoEFCC, reiterating the 5 <sup>th</sup> July letter	Principle Secretaries of all state and union territories	Clarifying that for proposals involving diversion of forest land where certificates for compliance of FRA (provided they meet the specifications under the August 2009 and 5 <sup>th</sup> Feb 2013 circular) have been obtained prior to the issuance of formats on 5 <sup>th</sup> July 2013, submission of fresh certificates will not be insisted upon.

<sup>7</sup>See Desor, S. (2013). Letters after the Niyamgiri Judgement In Citizens' Report, 2013: Community Forest Rights under the Forest Rights Act. (p. 21). Pune, Bhubaneswar, New Delhi: Kalpavriksh and Vasundhara in association with Oxfam India.

15 <sup>th</sup> Jan 2014	Letter from MoEFCC, clarifying that consent from GS is not required for linear projects	Secretary, MoTA and PCCFs of all states and union territories	Reiterating that linear projects are exempt from the requirement of obtaining consent of the GS.
7 <sup>th</sup> March 2014	Direction from MoTA, stating that FRA compliance is mandatory for forest land diversion in all types of projects	Chief Secretaries of all states and union territories and Assistant Inspector General of forests, Ministry of Environment and Forests	Letter to MoEF stating that FRA compliance is mandatory for forest land diversion and that circulars dated 5 <sup>th</sup> February 2013, 5 <sup>th</sup> July 2013 and 15 <sup>th</sup> January 2014 on relaxation of FRA compliance in forest diversion are illegal and should be withdrawn.
6 <sup>th</sup> May 2014	Memorandum from MoTA, on violation of FRA in six villages of Joda block in Keonjhar district, Odisha, for diversion of 342. 602 ha of forest land for Essel Mining and Industries Ltd.	Chief Secretary, Odisha, Collector of Keonjhar and Assistant Inspector General of Forests, MoEF.	Urging the state government and MoEF to desist from diverting forest land before ascertaining that the process of recognition of individual and community claims in all the affected villages under the FRA has been completed.
4 <sup>th</sup> July 2014	Letter from MoEFCC, certifying that FRA compliance is not required for prospecting	Prime Minister's office, Secretaries of Ministry of Mines, Coal, Petroleum and Natural Gas, and Principal Secretary of Forest Department (or FD?) of all states and union territories	Certifying, on the representations received from the Ministries of Mines, Coal and Petroleum and Natural Gas, that proposals seeking prior approval for diversion of forest land for prospecting, under the Forest Conservation Act, 1980, are exempt from submitting documentary evidence in support of <i>settlement of rights</i> under the FRA.
27 <sup>th</sup> Aug 2014	Office memorandum from MoTA on issues regarding compliance with FRA provisions and August 2009 circular on diversion of forest land under the Forest Conservation Act	Director, Ministry of Environment, Forests and Climate Change	Stating that: <ul style="list-style-type: none"> <li>the FRA does not provide any exemption to its provisions for any category of forests, projects and persons;</li> <li>the MoEF should provide, in every circular, a disclaimer saying that there will be no relaxation of any norms provided under the FRA as well as the special provisions under Schedule V and,</li> <li>the GS meeting under the FRA for forest diversion is a statutory</li> </ul>

			requirement and is consistent with PESA provisions, while Public Hearing is an executive decision; and the GS quorum (as provided under the August 2009 circular) has to be met for every GS which will be affected due to proposed diversion of forest land.
21 <sup>st</sup> Oct 2014	Office memorandum from MoTA, On guidelines for diversion of forest land for non-forest purposes	Director, Ministry of Environment, Forests and Climate Change	Reiterating that the FRA recognizes and vests pre-existing rights of Scheduled Tribes and Other Traditional Forest Dwellers, that the Act provides for detailed mechanisms for recognition and vesting of these rights and that no agency of the government can exempt part or full application of the Act, and the MoTA has the right to review any action taken against the provisions of the Act.
28 <sup>th</sup> Oct 2014	Letter from MoEFCC on forest diversion in plantations.	Prime Minister's Office, Secretaries of Ministry of Tribal Affairs, Mines and Coal, Cabinet Secretary and Principal Secretaries of Forest Departments of all states and union territories.	Stating that no forest rights are <i>likely to be</i> recognized under the provisions of the FRA, in case of plantations notified as forests for any period less than 75 years prior to 13 <sup>th</sup> Dec 2005 and in villages in such areas which have no recorded populations, according to the 2001 and 2011 census, since a person <i>residing</i> in such forest will not be eligible as OTFD or ST according to the Sec 2 (o) the FRA. Thus, in cases of diversion of forestland under the Forest Conservation Act, 1980, in such plantations, a certificate of the district collector certifying the land to be a plantation and having no population of scheduled tribes or OTFDs is sufficient.

## 2. Developments impacting the implementation of the Act

### 2.1 Letters, orders on FRA

#### 2.1 (i) Orders linking Joint Forest Management (JFM)<sup>8</sup> and FRA

Sec 3(1) (i) and Section 5 of the FRA provides for a statutory framework for GS based governance and management of community forest resources which empower the communities to take control of the decision-making over their forests. However, since the coming into force of the FRA, the forest department has been promoting and pushing for JFM through several circulars, orders and directives in areas where CFR rights have been recognized under the FRA, which if implemented would have the potential to severely limit the democratic assertion of communities over their forests and to wrest control away from these communities. The most visible example of this kind was in Andhra Pradesh where all CFR titles had been distributed in the name of VSSs as per a decision taken by the then Chief Minister in July 2009. However, after several representations by national and state level groups and people's movements against this decision, MoTA issued a circular on 6<sup>th</sup> August 2013 to the PCCF of Andhra Pradesh asking him to cancel all the CFR titles issued in the name of VSSs, since the provisions<sup>9</sup> under the FRA do not recognize VSSs as claimants.

However, attempts to push for control by JFMCs over CFR forests are still continuing with the

subsequent issue of the following circulars by various ministries:

- The Tribal Development Department of Madhya Pradesh, through a letter dated 26<sup>th</sup> of March 2014, informed all collectors of the decision taken by the Madhya Pradesh State Level Monitoring Committee<sup>10</sup> (SLMC), to allow JFMCs functioning in villages to be constituted as the wildlife, forests and biodiversity management committee of the GS under Rule 4(1) (e) of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Rules, 2008 through discussion with GSs. Accordingly, the collectors have been asked to hold special GSs in villages to constitute these committees and to appoint nodal officers from revenue and other departments in each GS to oversee the process for constituting these committees<sup>11</sup>.
- On 31<sup>st</sup> July 2014, the Ministry of Panchayati Raj (MoPR) issued a directive to PSs of all states stating that convergence of the role of JFMCs and the GSs in PESA areas at the village level, will ensure that the rights of local communities to own, access, collect, use and dispose of MFPs are secured. Thus, state governments must ensure that JFMCs are involved in the management of MFPs for the GSs. This directive gives the power over ownership,

<sup>8</sup>The Joint Forest Management (JFM) program has been implemented by the forest department since the 1990s in most states, with the objective of allowing participation of forest dwelling communities in forest management. It is not a legislation but is operated through various circulars and executive orders issued by the MoEFCC from time to time.

<sup>9</sup>Letter No: No. 23011/11/2013-FRA(pt.), dated 6<sup>th</sup> August 2013 by the Ministry of Tribal Affairs to the PCCF. Copy available with author.

<sup>10</sup>Under Sec 6 (7) of the FRA, the state government is responsible for constituting the SLMC which will monitor the progress of recognition and vesting of forest rights under the Act and submit reports of the same to the nodal agency.

<sup>11</sup>Letter no: No/FRA/230/2014/6349, dated 26<sup>th</sup> March 2014, by the Tribal Development Department of Madhya Pradesh to all district collectors. Copy available with author.

<sup>12</sup>Letter No: D.O.No.N-11012/3/2014-PESA, dated 31<sup>st</sup> July 2014 from the Ministry of Panchayati Raj to Principal Secretaries of Scheduled V states and Forest Departments Copy available with author.

use and disposal of Minor Forest Produce to Joint Forest Management committees instead of the Rule 4(1)(e) committees as envisaged under the FRA<sup>12</sup>.

- 2.1 (ii) In the North Bengal Dooars, the community has asserted their rights over their customary forests, prompting the forest department to issue an letter seeking permission of the gram sabha for coupe-felling operations.

- On the 6<sup>th</sup> of March 2014, the Range Forest Officer (RFO) of the Moraghat Logging range of the West Bengal Forest Development Corporation, wrote a letter<sup>13</sup> to the GS of North Khairbari forest village in Alipurduar district of West Bengal, asking the GS to grant permission to carry out Clear Coupe Felling (CFC) operation in the area claimed by the village as CFRe. This comes after a long struggle of the forest villages in northern West Bengal protesting against coupe felling operations in the Dooars forests.

- *2.2 Notification of various legislations*

- 2.2 (i) The Forest Conservation Amendment Rules, 2014, notified in March last year, attempt to institutionalize the August 2009 circular for seeking approval for forest diversion from the Central government under Sec 2 of the Forest (Conservation) Act, 1980.

- Rule 6(3) (e) states that the district collector must complete the process of settlement of rights as provided under the FRA, obtain consent from the GS, wherever required, and forward his findings in a format specified for the purpose, to the conservator of forests (CF).
- Rule 6(3) (f) states that the district collector

will forward the proposal for diversion of forest land along with his findings on settlement of rights under FRA and the consent of GSs, wherever required, to the conservator of forests. For proposals involving diversion of forest land up to 40 ha, this report is to be sent to the CF within 30 days, while the report for forest land of extent between 40 ha and 100 ha is to be sent within 45 days, and for areas over 100 ha, within 60 days of completing the process of settlement of rights.

- The CF will examine the proposal, carry out site-visits (for diversion of more than 40 ha of land) and forward his report along with recommendations, as well as the report on the settlement of rights under FRA and consent of concerned GS, wherever required, to the Nodal Officer, within 10 days (of receiving proposal?), for diversion up to 40 ha and within 30 days for diversion of forest land areas over 40 ha.

- The rules were notified by the outgoing government. Although these rules acknowledge the need for compliance with the FRA, there is danger of the rules being misinterpreted and misconstrued in violation of both the letter and spirit of the FRA. For example, the term '*settlement*' has been changed to "*recognition*" of rights in the FRA since settlement under the Indian Forest Act, 1927, denotes curtailment of rights whereas the FRA provides for recognition and establishment of the pre-existing rights. Moreover, merely the word "consent" could be misinterpreted to mean that there is no option of 'rejection' for the GSs. Further GS consent "wherever required" could be misinterpreted to

<sup>13</sup>Letter No. 26/MGT-5, dated 6<sup>th</sup> March 2014 from the West Bengal Forest Development Corporation, Moraghat range to the Secretary of Gram Sabha of North Khairbari forest village. Copy available with author.

mean that the GSs could be selected at the discretion of the district collector.

- 2.2 (ii) Panchayats (Extension to Scheduled Areas) Bill, 2013 introduced amendments to the Panchayats (Extension to Scheduled Areas) Act, 1994. However, the bill has not been introduced in parliament yet.

- The bill states that

- Sec 4 (i) of the Act shall be changed to read, "prior informed consent of the GS or Panchayats at the appropriate level should be taken before acquiring land in Scheduled Areas for development projects and before re-settling or rehabilitating persons affected by such projects in the Scheduled Areas; the actual planning and implementation of the projects in the Scheduled Areas shall be coordinated at the State level".

- A new section 4(l) (ii) is inserted which says that "prior informed consent of the GSs and the concerned Panchayats at the appropriate level, regarding the rehabilitation and sustainable livelihood plan for persons affected by projects in Scheduled Areas, shall be made mandatory".

- Sec 4(k) of the Act, has been changed to read "prior informed consent" (recommendations) of the GS or the Panchayats at the appropriate level shall be made mandatory prior to grant of prospecting license or mining lease for 'major and' minor minerals in the Scheduled Areas".

- These provisions could help to bring in autonomy for GSs and panchayats in scheduled areas in decision-making on land acquisition for developmental projects, on securing adequate rehabilitation and on grant of leases for mining

projects. However, the bill envisages the "prior informed consent" clause, given either by the GSs or panchayats at "appropriate level" without specifying who makes the decision. This clause should be specific to all affected GSs only, as according to both FRA and PESA, GSs are the most basic unit of village decision-making. The clause should also be applicable, not just for land acquisition, but also before granting clearances to any project on forest land or any other land.

- 2.2 (iii) The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Ordinance, 2014 was notified on the 4<sup>th</sup> of March 2014. However, the ordinance has since lapsed as it was not introduced in parliament within 6 months.

- It specified that

- wrongful dispossession, of a member of scheduled caste or scheduled tribe, of his land or premises, or interfering with his enjoyment of rights including forest rights (under Sec 3(1) of the FRA) over land, or premises or water or irrigation facilities and destruction of crops or produce thereof" shall be punishable with jail term from 6 months up to 5 years along with a fine.

- 2.2 (iv) Rules under the Maharashtra Village Panchayats Act (III of 1959) were notified by the Rural Development and Water Conservation Department of Maharashtra on the 3<sup>rd</sup> of March 2014. The rules state that they are to be applied in accordance with the FRA, along with several other state acts (Sec 2(2)). However, there is lack of clarity on the synthesis of certain provisions of the rules like the declaration of settlements as panchayat villages, resource management and protection committees constituted through GSs, land acquisition and management of minor forest produce, etc. with the provisions that address these issues in the FRA. Subsequently, several

notifications have been issued to implement the rules (details in Maharashtra case study).

- 2.2 (v) Maharashtra Village Forest Rules under the Indian Forest Act, 1927, vide notification No. ABB. 2010/CR-189/F-9, dated 13<sup>th</sup> May 2014, were notified and the provisions are:

- In the preamble to the rules, it is mentioned that they have been drafted with 'particular reference to communities and areas not covered under PESA or for communities not eligible for rights under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006'. However, the next clause states that "Provided that any GS may, *suo moto*, take a decision, by resolution, to adopt these rules". According to Sec 2 (d) of the FRA, the act is applicable to all forest areas. Thus, this provision appears to be aimed at bringing all forest areas back under the jurisdiction of Indian Forest Act, thereby undermining all rights and powers vested in the GSs by FRA and PESA.
- Under Rule 5, the Chief Conservator of Forests has been given the power to cancel the rights assigned under the VFR if there is a violation of the micro plan or working plan by the GS. However, in both the FRA and the PESA, rights once vested cannot be withdrawn. This also means that rights would remain under the control of an external agency rather than the GS.
- Rule 10(b) provides for the constitution of the *Van Vyavasthapan Samiti* or the Forest Management Committee which has been given the power to harvest and dispose of

minor forest produce, bamboo, *tendu* (also *kendu*), and *apta*. This is in conflict with the Rule 4(1)(e) committee under the FRA and GS under PESA, which are committees responsible for the management and protection of community forests.

- Under Rule 15, the power to resolve disputes is vested with the Range Forest Committees. This is contrary to FRA and PESA Rules which seek resolution of conflicts through the mechanism of joint Gss.
- It was reported by some people's groups in Gadchiroli that following the notification of these Rules, draft resolutions were distributed by the forest department in some villages for adoption in the GS scheduled for the 15<sup>th</sup> of August 2014, stating that the GS agrees to hand over its rights and powers for forest management to the forest department under the VFR. This move by the forest department invited criticism and concern from many civil society groups. Considering the resistance, the resolution was not introduced in the said August GSs. In the meanwhile a letter was issued by MOTA in August 2014 to the Chief Secretary of Maharashtra to hold the implementation of the Rules in abeyance till MoTA consults its legal experts to review them and ascertains whether they contradict the FRA.<sup>14</sup> In December 2014, after obtaining legal opinion, MoTA, in a letter to the state government, reiterated that the notified Rules encroached upon FRA and PESA provisions, and asked for their withdrawal. However, the state

<sup>14</sup>Letter No. 23011/17/2014-FRA, Government of India. Ministry of Tribal Affairs. Dt. 13<sup>th</sup> August 2014.

<sup>15</sup>Deshpande, V. (2015, March 8). Legal Opinion in: Gram van on track. Nagpur: The Indian Express. Available at: <http://indianexpress.com/article/cities/mumbai/legal-opinion-in-gramvan-on-track/>

government on February 23<sup>rd</sup> 2015, has stated that the Rules will not be withdrawn and has already allocated funds for the operation of the rules<sup>15</sup>.

- 2.2 (vi) The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (RFCT-LARR) came into force in January 2014, replacing the Land Acquisition Act of 1894. Some of its features are:

- The provisions of the Act apply to land acquisition for '*public purpose*' undertakings of the government including defence and national security; roads, railways, highways, and ports built by government and public sector enterprises; land for rehabilitation of the project affected people; planned development; and improvement of village or urban sites and residential purposes for the poor and landless, government administered schemes or institutions; for '*public-private partnerships*' where ownership of land continues to rest with government, and for '*private companies*' (Sec 2 (1, 2)).
- The Act broadened the definition of 'affected persons' to include those STs and SCs whose rights have been recognized under FRA, as well as families whose primary source of livelihood is obtained from forest and water bodies, including forest produce gatherers, hunters, fisher folk, boatmen, etc., who have been dependent on the / forest land to be acquired 3 years prior to acquisition of land. (Sec 3(c) (iii) and (iv)).
- In case of land acquisition for private

companies, consent of 80 per cent of project 'affected people', and in case of public-private partnerships, consent of 70 per cent of them is required to be obtained (Clauses 3 (za) (vi) and (vii)).

- As far as possible, no acquisition of land is to take place in scheduled areas. However, if at all acquisition is necessary in scheduled areas, prior informed consent of the concerned GS/panchayat/or autonomous district councils is to be taken. If land rights of these families are not *settled*, a detailed procedure for the same is to be laid out; and their rights are to be settled at the same time as acquisition proceedings are carried out (Sec 41).
- In cases where community rights over land to be acquired would be settled under Sec 3(1) of the FRA, the same are to be quantified in monetary values to compensate each individual who stands to be displaced (Sec 42 (3)).
- The government will conduct a Social Impact Assessment (SIA) study in consultation with the GS in rural areas (and with equivalent bodies in case of urban areas), for every case of acquisition of land to assess whether (i) the project was serving the stated public purpose; (ii) it was in the larger public interest; and (iii) the potential benefits outweighed the costs and adverse impact.
- Under the Bill, the government can temporarily acquire waste and arable land for a maximum period of three years.
- However, through an Ordinance passed in

<sup>15</sup>While this report went to print, the Bill was passed in Lok Sabha and awaits passing in the Rajya Sabha.

December 2014, and subsequently an Amendment Bill passed in Lok Sabha on 9<sup>th</sup> March 2015 the following changes have been made to the Act<sup>16</sup>:

- The Bill has listed five categories of land use: defence, rural infrastructure, affordable housing, industrial corridors, and infrastructure and social infrastructure under 'public purpose'.
- Thus, these will be exempted from the clause requiring consent and from Social Impact Assessment.
- The proposed amendments to the RFCT-LARR can, thus, severely affect the rights of self-determination of communities.
- *2.3 Court Orders*
- *2.3 (i) Vedanta Judgement*
- The SC judgement of April 2013 in the Orissa Mining Corporation vs Ministry of Environment and Forests and others (Writ Petition (Civil) No. 180 of 2011) case hailed the provisions of the FRA and directed the government of Odisha to hold GSs in the Niyamgiri hills to decide if religious rights were held over forest areas being diverted for the mining project. Subsequent to this judgement, the Ministry of Tribal Affairs issued a directive (under Sec 12 of the FRA) to the state government on the 2<sup>nd</sup> of May 2013 to operationalise the GSs for deciding on the mining project<sup>17</sup>. While the directive asked the state to identify all STs and SCs dependent on forest land to be diverted, the state government identified only 12 villages from more than 200 villages in Rayagada and Kalahandi districts without

following any steps outlined in the directive, despite strong opposition from MoTA and protests by the Dongria Kondhs community. Despite this, all the 12 GSs rejected the proposal for mining in the region in meetings held in July and August 2013. On 9<sup>th</sup> January 2014, the MoEF rejected the final forest clearance for the mining project<sup>18</sup>.

- *2.3 (ii) An interlocutory application in the ongoing SC case against the FRA has been filed on January 2014 by Wildlife First, Nature Conservation Society (NCS) and Tiger Research and Conservation Trust (TRACT)<sup>19</sup>. The application seeks to have an 'expert committee' of the Comptroller and Auditor General (CAG) to re-examine all rights under the FRA, to make it possible to resettle people from protected areas without following the process of recognition of rights specified in the FRA, since WLPA already provides for "settlement" of rights, and to bar any sale of NTFP from protected areas. The final court order in this case is awaited.*
- *2.3 (iii) In Chamba District of Himachal Pradesh, the local villages under five gram panchayats which will be affected by the construction of the Bajoli-Holi dam, had filed a writ petition in the High Court on several grounds, including non-recognition of rights of the villages under the FRA. Forest Clearance to the project was accorded by the Ministry of Environment and Forests on the basis of a purportedly false certificate issued by the Deputy Commissioner of the district, stating that forest rights have already been settled in the area to be diverted for the project and that there were no forest rights required to be settled on the forest land to be diverted. The High Court upheld the stand of the MoEF on allowing forest clearance*

<sup>17</sup>See: <http://tribal.nic.in/WriteReadData/CMS/Documents/201308230353017587167LETTERDirectiontoOdishaGovt.pdf>

<sup>18</sup>See: Shrivastava, K. (2014, January 10). MoEF says final 'no' to Vednata. Down to Earth: Available at: <http://www.downtoearth.org.in/content/moef-says-final-no-vedanta>

<sup>19</sup>For details on the petitions filed against the FRA see: <http://www.forestrightsact.com/supreme-court-cases>

<sup>20</sup>Official memorandum F.No 23011/22/2010-FRA dated April 1st, 2013 from MoTA to MoEF. Available with authors.

<sup>21</sup>See: <http://pib.nic.in/newsite/erelease.aspx?relid=0>

to be given for diversion of forest land on the basis of this certificate. Notably, the High Court interpreted MoTA's memorandum<sup>20</sup> to MoEF, asking for the submission of GS resolutions for forest diversion as an "internal communication" between two ministries which bore no significance in this case.

- 2.4 Announcements of schemes
- 2.4 (i) In August 2013, the Central Government announced a scheme for launching minimum support price, developing value chains and marketing mechanisms for certain MFP. The scheme included 12 MFPs, including *Karanj*, *Mahua* Seed, *Sal* Leaf, *Sal* Seed, *Lac*, *Chironjee*, *Wild Honey*, *Myrobalan*, *Tamarind*, and *Gums* (*Gum Karaya*) and was to be made operational in the states of Andhra Pradesh, Chhattisgarh, Gujarat, Madhya Pradesh, Maharashtra, Odisha, Rajasthan and Jharkhand, which have Scheduled Areas and Scheduled Tribes in accordance with Fifth Schedule of the Constitution<sup>21</sup>.
- The scheme envisages state tribal departments to set up procurement agencies at village *haats*, creating storage networks and to eliminate the intermediaries who have been known to have cheated tribal communities. The Minimum Support Price would be determined by the Ministry with technical help of TRIFED, and MoTA will be its nodal agency.
- However, a year after the scheme was announced, the procedure to lay out Minimum Support Prices has not started in most states. Odisha, Rajasthan, Gujarat and Chhattisgarh are the only states which have claimed to have procured some of these MFPs. Besides, since the scheme has not been monitored, the number and

nature of beneficiaries is not known<sup>22</sup>.

- 2.4 (ii) The state government of Odisha launched the *Ama Jangal Yojna* (AJY) (*My Forest Scheme*), in 2015, as a continuation of the Odisha Forestry Sector Development Project which was funded through the Japan International Cooperation Agency (JICA).
- AJY aims to increase the forest cover in the state through promotion of sustainable forest management by strengthening participatory forest management and providing improved livelihoods to forest dependent communities. The scheme will cover forest restoration through activities such as ground survey, demarcation and mapping, micro-plan preparation, capacity building, construction of community buildings, livelihood support, etc. It will be funded through central funds from Compensatory Afforestation Fund Management and Planning Authority (CAMPA) and state funds.
- It envisages funding to nearly 5,000 Forest Protection Committees (FPC) formed under the Joint Forest Management programme. The scheme will be executed in project mode through Odisha Forestry Sector Development Society.
- 2.5 Policies and reports
- 2.5 (i) India's third forest policy<sup>23</sup> will be drafted by the Indian Institute of Forest Management. The Forest Policy will seek to address the revision of the National Forest Policy of 1988. The policy is to be drafted after extensive process of consultation with state governments, key infrastructure ministries, civil society groups, non-governmental organizations, scientists and forest-dwellers.
- 2.5 (ii) In August 2013, a Committee was constituted to look into the Socio-Economic,

<sup>22</sup>See: Sharma, N. (2015, February 24). MFP welfare plan for tribals floundering in its first year of implementation. The Economic Times. Available at: [http://articles.economictimes.indiatimes.com/2015-02-24/news/59460773\\_1\\_minor-forest-mfp-tribals](http://articles.economictimes.indiatimes.com/2015-02-24/news/59460773_1_minor-forest-mfp-tribals)

<sup>23</sup>Forest Policy revision for 3rd time on cards. (2014, December 14). Sunday Pioneer. Available at: <http://www.dailypioneer.com/sunday-edition/sunday-pioneer/landmark/forest-policy-revision-for-3rd-time-on-cards.html>

Educational and health status of tribal communities and recommend appropriate interventional measures to improve their status. The committee reviewed the status of legal and constitutional safeguards to tribals including the implementation of laws like the FRA and PESA. In its report, the committee identifies three basic provisions of the Act as:

- Recognition and vesting of rights for securing the tenure and livelihood of scheduled tribes and other traditional forest dwellers
  - Protection of their rights till the recognition and vesting process is complete, and
  - Control over forests of the local community and the GS
- The committee has observed that the implementation of both the PESA and FRA towards fulfilling these was 'sputtering and reluctant'. It has recommended that for the proper implementation of the Act, the functioning of the SDLCs, DLCs and SLMCs needs to be strengthened immediately. It has urged for the recognition of CFRs, especially of PVTGs and other vulnerable communities. While observing that the protection of the rights of the forest dwelling scheduled tribes and other communities is being 'largely obstructed' due to several processes including diversion of forest land, displacement of communities from Protected Areas and the

forceful displacement due to forest department policies like plantations; it has recommended that the GS consent for all these processes need to be ensured, while violations need to be penalized. Projects where violations have been known to have occurred should not be allowed to proceed. For communities to gain control over their resources, the committee had recommended that the current forest regime and forestry institutions and programs of the Forest Department, like the JFM policy need to be remodeled to complement and enable the control and management of forests by GS. It has also recommended that the participation of women and PVTGs needs to be taken into account.

- 2.5 (iii) In August 2014, the Ministry of Environment, Forests and Climate Change constituted a Committee to assess the status of implementation of six Act administered by the Ministry including the Forest (Conservation) Act, 1980 to recommend amendments to these Acts. In its report, the Committee has specified that these amendments are in to address the urgent need for integration of environment, economic and social issues in the development paradigm. It has recommended that to streamline processes for according clearance for diversion of forest land and to reduce the time taken for granting clearance, in cases of diversion for linear projects (roads, transmission lines, expansion of railways etc); the FRA needs to be amended to remove the condition of GS approval for diversion of projects.



## II. IMPLEMENTATION UPDATE

Information for this section has been compiled from status reports published by MoTA on the implementation of the Forest Rights Act (September 2013 to January 2015), several regional and national consultations held by MoTA as well as civil society organizations, and information received through civil society groups and researchers and activists involved in the implementation of the Act. An attempt has been made to present an overview of the implementation of the Act in different states in the country, but not all states and regions have been covered due to unavailability of information from those states.

### 1. Review of official data

MoTA has a system of monthly reporting on the implementation of the FRA<sup>24</sup>. However, civil society groups and movements working in different states have observed several anomalies in such reporting. The figures given in MoTA status reports cannot be completely or solely relied upon for assessing of FRA implementation, as these are often based on poor, inaccurate reporting as well as incomplete information provided by states. Additionally, the reports do not provide segregated data on CFR as described in Sec 3(1), on CFR<sub>e</sub> as given in Sec 3(1)(i) and developmental rights as given in Sec 3(2) (See Table 3).

Table 3: Comparative figures of claims and titles from Sep. 2013 to Jan. 2015

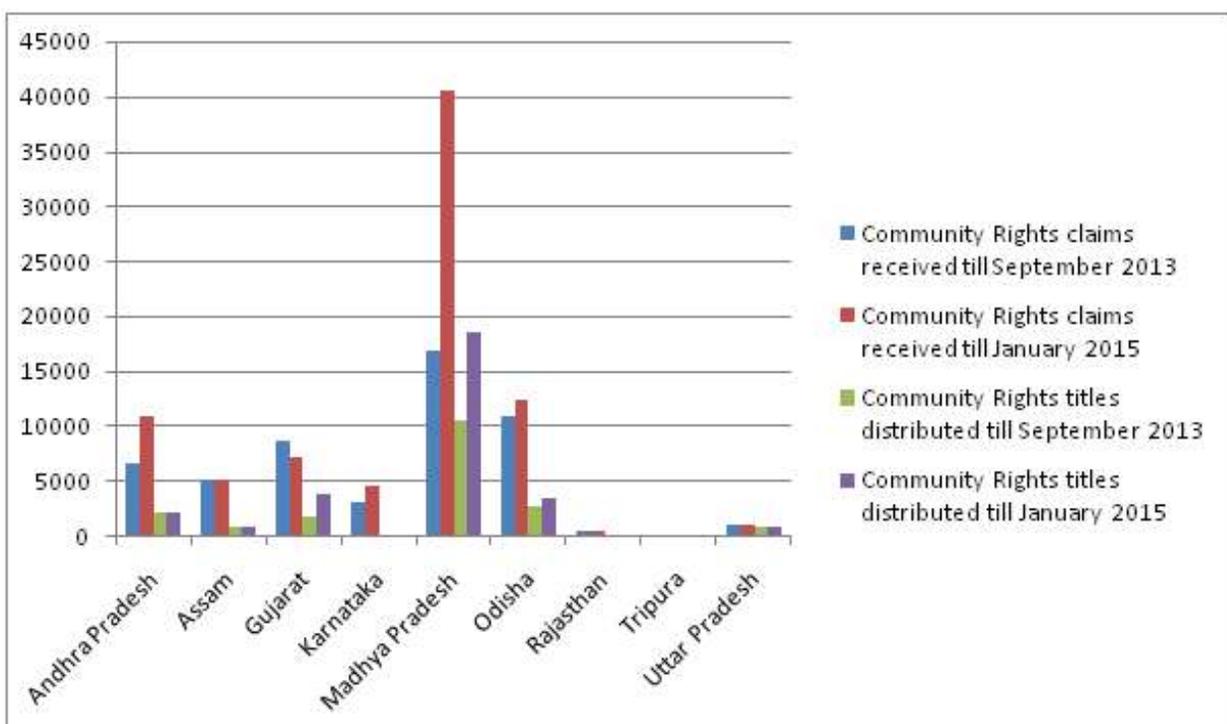
State	Community claims received till September 2013	Community Rights Claims received till January 2015	Community titles distributed till September 2013	Community Rights titles distributed till January 2015	Extent of Forest Land distributed as community titles till December 2014 (in acres)
Andhra Pradesh	6,714	10,959	2,106	2,107	Not available
Assam	5,193	5,193	860	860	Not available
Bihar	Not given separately	Not given separately	Not given separately	Not given separately	Not available
Chhattisgarh	Not given separately	Not given separately	Not given separately	Not given separately	Not available
Gujarat	8,723	7,182	1,758	3,856	Not available
Himachal Pradesh	Not given separately	Not given separately	Not given separately	Not given separately	Not available
Jharkhand	Not given separately	Not given separately	Not given separately	Not given separately	Not available
Karnataka	3,080	4,575	90	96	26,242.67

<sup>24</sup> Access all MoTA status reports at: <http://fra.org.in/>

Kerala	1,395	1,395	4	Not given separately	Not available
Madhya Pradesh	16,916	40,501	10,500	18,551	Not available
Maharashtra	5,048	6074	1,869	Not given separately	Not available
Odisha	10,951	12,500	2,631	3,474	Not available
Rajasthan	537	652	60	65	479.73
Tripura	277	277	55	55	56.79
Uttar Pradesh	1,135	1,123	814	834	Not available
West Bengal	7,824	3,241	108	Not given separately	Not available

The table shows that only 9 states are providing information on the number of community rights filed and titles distributed. Updates on the status of CFR titles distributed in Kerala, Maharashtra and West Bengal have recently been stopped. Bihar, Jharkhand, Himachal Pradesh, Assam, Gujarat, Tripura and Uttar Pradesh have not reported any change in the numbers of claims received and titles distributed since September 2013. There is a marked increase in community claims received in Andhra Pradesh, Karnataka, Madhya Pradesh and Odisha since September (See Box 2). Only Karnataka, Odisha, Rajasthan and Tripura have provided updated records showing the extent of forest land claimed under CFRs. However, even these states are not providing differentiated data on CFRs and CFR rights.

Box 2: Comparative graph showing total claims filed and titles distributed for community forest lands in September 2013 and January 2015



Source: Based on in MoTA status reports of September 2013 and January 2015

## 2. Update on implementation in some states based on voices from the field

### 2.1 Review of North East

As observed in Table 3, except for Assam and Tripura, no north-eastern state has started the implementation of the Act. This is due to several factors including a lack of clarity on various issues amongst the officials, amongst the communities as well as between civil society organizations, related to the FRA in this region. Although the FRA provides for any pre-existing rights to be recognized (under Sec 3(1) (j)), there is a perception that existing rights (including rights provided under Schedule VI, and customary ownership over traditional common forest lands in which clans or communities or individuals already own large tracts of forests) could be curtailed under certain provisions of the FRA. Additionally, there are also concerns that the law will provide legitimacy to the claims of those tribal and non-tribal communities which have moved into the region from neighbouring states and countries, due to the socio-political circumstances of the last few decades. The table below gives news reports and updates received from state governments and tribal departments in a consultation with the north-eastern states on implementation of FRA held on the 28<sup>th</sup> and 29<sup>th</sup> of October 2013 organised by the Ministry of Tribal Affairs and UNDP<sup>25</sup>, and information contained in the MoTA status report of December 2014<sup>26</sup>.

Table 4: Update on FRA implementation from the north-eastern states

Assam	Claims from false (unqualified) claimants under the category of other traditional forest dwellers are being received, adversely affecting the pace of implementation.
Arunachal Pradesh	SDLCs, DLCs and the SLMC have been constituted. However, Arunachal Pradesh is wholly domiciled by various ethnic tribal groups whose land and forests are specifically identified with natural boundaries of hillocks, ranges, rivers and tributaries. Barring a few pockets of land under wildlife sanctuaries and reserved forests, most of the land in the entire State is community land. Territorial boundaries of land and forest belonging to different communities or tribes are also identified along the same lines, leaving no scope for dispute over the possession of land, forest and water bodies among the tribes. Therefore, Forest Rights Act does not have much relevance in Arunachal Pradesh.
Manipur	There are certain difficulties in the implementation since local laws, traditions and customs already provide full and absolute rights over the land and there is a perception that bringing the existing rights under the revenue and forest legal regimes could alienate existing traditional rights.
Meghalaya	SDLCs, DLCs and the SLMC have been constituted, but since 96% of forest land is owned by clans / communities / individuals, implementation of the Act has limited scope. There has been no displacement of forest dwellers since the state government has not expanded any Sanctuaries or National Parks recently. No claims have been filed yet. This may be due to the fact that there has been no attempt to create awareness about the Act.

<sup>25</sup>See: <http://tribal.nic.in/WriteReadData/CMS/Documents/201404210455416145840sikkim.pdf>

<sup>26</sup>See: <http://tribal.nic.in/WriteReadData/CMS/Documents/201501280527356069292MPRforthemonthofDecember2014-Copy.pdf>

Mizoram	The Act was to be approved by the State Legislative Assembly as per Article 371 (G) of the Constitution and notified in 2010. The SLMC has, in October 2013, identified villages within reserved forests of Mamit and Kolasib districts for implementation of FRA. In July 2013, some tribal persons had been stopped from selling bamboo shoots at a weekly market by the forest department in Serchip district <sup>27</sup> . The DLC met in August 2013, to resolve this dispute.
Nagaland	Government of Nagaland has informed MoTA that the land holding system and the village system of the Naga people is peculiar in that the people are the landowners. There are <i>no tribes or groups of people or forest dwellers</i> in the State of Nagaland. A committee has been constituted to examine the applicability of the Act in Nagaland as per provision of Art. 371(A) of the Constitution of India.
Sikkim	SDLCs, DLCs and the SLMC have been constituted under the Act, but the state has not sent any report regarding the progress of implementation of the Act so far.
Tripura	At the consultation, Tripura's Tribal Welfare Department submitted that out of 1, 87,791 claims filed till September 2013, nearly 61,767 claims were rejected.

### 2.2 Himachal Pradesh<sup>28</sup>

Over 67% of forest land in Himachal Pradesh is under the jurisdiction of the forest department. However, consistent efforts by the forest department to gain control over common resources through existing conservation regimes, as well as the diversion of forest land for hydropower and transmission rights, without recognition of rights over forest land continues across the state. Minimal efforts are being made by the state government to implement FRA in its true spirit. The process of implementation of the Act, was initiated only in the tribal areas of Lahaul-Spiti, Kinnaur, and Pangi-Bharmore in Chamba District in 2008.

It was only in March 2012 that the state government passed orders for implementation of FRA in non-tribal regions, due to sustained pressure from people and repeated clarifications from MoTA. In April 2013, the state government asked gram sabha meetings to be held for the formation of FRCs. While the process of forming committees was started on orders of the Deputy Commissioners, the gram sabhas and FRCs were formed without informing them about the purpose of the committees or their responsibilities. On the other hand, where communities have filed claim, the process of verification and settlement has not begun.

### 2.3 Uttarakhand

The implementation of the Act in Uttarakhand has been very slow due to several reasons:

- the imposition of the illegal requirements as 'evidence' for claimants, such as the need for claims to be endorsed by various officials;
- misinformation amongst officials that Van Panchayats in the state already enjoy full access and rights over forests including management rights;

<sup>27</sup>Chhakchhuak, L. (2013, July 29th). Mizo forest dept. raises a controversy. The Assam Tribune. Available at: <http://www.assamtribune.com/scripts/detailsnew.asp?id=jul3013/oth05>

<sup>28</sup>(2014, March 29th). Discussion on Forest Rights Act at Patlikuhl in District Kullu, Himachal Pradesh. Himdhara. Available at: <http://www.himdhara.org/2014/03/29/discussion-on-forest-rights-act-at-patlikuhl-in-district-kullu-himachal-pradesh/>

- non-recognition of the claims of Other Traditional Forest Dwellers;
- non-inclusion of *Taungya* villages in the state language version of the Act
- the non-recognition of rights of the nomadic *Van Gujjar* community.

For many years, the state government was slow in creating required committees under the Act. The responsibility for its implementation was given to the Social Welfare Department, which had little understanding of the Act. However, in the last couple of years, communities have begun filing claims, although they are yet to be recognized. Since 2011, 15 CFR claims filed by villages (all forest villages) in Uddham Singh Nagar and Nainital districts, facilitated by Van Panchyat Sangharsh Samiti, have yet to be considered by the SDLC<sup>29</sup>.

In April 2014, the Chief Minister in a meeting with members of the Uttarakhand All India Union of Forest Working People (AIUFWP)<sup>30</sup>, agreed to start the implementation of FRA to incorporate the following:

- grant of revenue status to 164 forest villages including the *Taungya* villages in the state,
- to grant rights to *Van Gujjar* nomadic families,
- to grant NTFP rights to all the villages surrounding the Rajaji National Park, and
- to help in protection and conservation of forests from the mafias, poachers and illegal trade.

## 2.4 Gujarat

As per the MoTA status report of January 2015, a total of 3,856 community titles have been distributed in 12 districts of Gujarat, over an area of 999,407 acres. However, there is a lack of clarity if these claims are over CFRs or CFRe (Sec 3(1)(i)). Community rights titles in the Dangs area (facilitated by the Dangi Lok Adhikar Manch) show missing or changed compartment numbers, and recognize rights over areas much smaller than those claimed. Moreover community rights are being granted on JFM areas rather than customary use forest areas of the villages.<sup>32</sup>

## 2.5 Kerala

9 CFR titles have been distributed covering an area of 40,000 ha in Thrissur district, under the Vazhachal Forests of Western Ghats. Apart from these claims, 33 CFR claims have been cleared by DLC Thrissur district<sup>33</sup>.

## 2.6 Telangana

Telangana state was carved out of Andhra Pradesh in June 2014. However, as of January 2015, it has yet to start implementation of the Forest Rights Act. According to an RTI filed for the minutes of the SLMC meeting of both states, SLMC minutes for Andhra Pradesh were shared but not those for Telangana. Communities whose CFRe claims were submitted in 2013 in both states have yet to receive titles<sup>34</sup>. Recent news reports suggest that the Chief Minister of Telangana has ordered that

<sup>29</sup>Information shared by Tarun Joshi (Van Panchayat Sangharsh Samiti) in the National Consultation on Community Forest Rights on the 16th of December 2014.

<sup>30</sup>Press release via email from Roma Malik, Deputy General Secretary of the All India Union of Forest Working People. Copy available with author.

<sup>31</sup>A reported by Trupti Parekh and Ambrish Mehta of ARCH-Vahini, Gujarat in the Learning Workshop on Recognition and Mapping of Community Forest Rights, 24th and 25th January, 2015. Report available with author.

<sup>32</sup>Tatpati, M. (2013). Report of the National level Public Hearing on Community Forest Rights. Community Forest Rights Learning and Advocacy Process.

<sup>33</sup>Shaji, K.A. (2014, May 16th). Kadars get forest rights. The Hindu. Available at: <http://www.thehindu.com/todays-paper/tp-national/tp-kerala/kadars-get-forest-rights/article6014713.ece> and

2014, November 7th). Workshop on FRA conducted. The Indian Express. Available at: <http://www.newindianexpress.com/cities/thiruvananthapuram/Workshop-on-FRA-Conducted/2014/11/07/article2511584.ece>

no fresh claims under the FRA are to be received in Telangana, subsequent to which the forest department has started evicting members of the Koya tribal community and other forest dwellers from 1,200 acres of forest land in Enkur, Julurpadu and Dummugudem mandals, and has threatened to evict communities from 1,300 acres of forest in Pinapaka and Chandrugonda mandals of Khammam District, without any recognition of their rights under the FRA<sup>35</sup>.

### 2.7 West Bengal

West Bengal still fares poorly in the implementation of the FRA. The nodal agency for implementation in the state is the Backward Class Welfare Department. It has identified only 11 out of 18 districts of West Bengal for implementation

of FRA. The North and South 24 Parganas districts covering the Sunderbans Tiger Reserve have been left out of implementation. Thus, traditional fishing and gathering communities living around the Reserve and those who depend on fishing and collection of honey and firewood are being left out from claiming rights in the reserve<sup>36</sup>. 94 Forest villages in the Duars region of North Bengal, including parts of the newly carved Alipurduar district and Coochbehar district, have finally been identified for conversion to revenue villages in notifications issued in September and October 2014<sup>37</sup>. This comes after a long battle to get CFR rights recognised in this region. However, more than 200 such villages exist in the region, with more than 150 of them being located in Darjeeling district. There is very little information available on the implementation of the FRA in other parts of West Bengal.



<sup>34</sup>Information provided by Ms. Sukumari of Centre for People's Forestry on the CFR-LA list serve.

<sup>35</sup>Rao, P.T. (2015, March 25). Illegal and arbitrary eviction of tribals from forests of AP and Telangana. The New Indian Express. Available at: <http://www.newindianexpress.com/states/telangana/Illegal-and-Arbitrary-Eviction-of-Adivasis-from-Forests-in-AP-Telangana/2015/03/25/article2729233.ece>

<sup>36</sup>According to information shared by Mr. Sasanka Dev of Sundarban Matsyajibi Joutha Sangra

<sup>37</sup>The Kolkata Gazette Notification No.WB(Part-I)/2014/Sar-979, issued by the Land and Land Reforms Department on the 29<sup>th</sup> of September 2014 for Jalpaiguri District and The Kolkata Gazette Notification No.WB(Part-I)/2014/Sar-983, issued by the Land and Land Reforms Department on the 17<sup>th</sup> of October 2014 for Alipurduar District. Available with the author. m Committee, Sunderbans, West Bengal, at the Public Hearing on Community Forest Rights, December 2013.

## C. DETAILED CASE STUDIES

For a better understanding of the on-ground situation of CFRs, specific states were studied in detail by different members of the group, based on a format prepared for documentation. A new study on CFR implementation in Chhattisgarh has been presented here, while updates on the CFR situation of Jharkhand, Maharashtra and Odisha are also provided.



Villagers from Buru-Sarbil village in Goelkera block, West Singhbhum, Jharkhand; showing the traditional ancestral grave locally called *patthalgadi*. (Photo: Rana Roy)

## I. CHHATTISGARH

Devjit Nandi

The state of Chhattisgarh (earlier part of Madhya Pradesh) came into existence on 1<sup>st</sup> November, 2000. The geographical area of Chhattisgarh is 135,191 sq. km and its total population according to the 2011 census is 255 lakh. Out of this, ST and SC populations constitute 31% and 12% respectively. It is one of the largest tribal dominated states in the country having one tenth of all ST members in the country. The recorded forest area in Chhattisgarh is around 59,772 sq. km.

In undivided Madhya Pradesh, the record of the Revenue Department (*missal*) and a record of rights (*missal haqaiyat*) and the usufruct rights records (*nistar patrak*) of each village, mentioning the kinds of activities and future land use was prepared in 1910. However, after the abolition of *zamindari* in 1950, *nistar* lands were taken over by the revenue department, and subsequently the ownership was passed to forest department through a notification, without any changes made to the revenue records. This has led to a situation of dual and conflicting ownership of forest land by FD and revenue department in Chhattisgarh which can be resolved if these rights are recognised under the Forest Rights Act<sup>38</sup>.

### 1. Status of FRA implementation

The Department of Tribal Development is the nodal agency for the implementation of the Act in Chhattisgarh. Implementation of FRA in the State has been conducted in several phases starting immediately after the notification of Rules.

In 2012, the government identified around 5,299 villages of 18 districts for implementation of the law. However there has been little progress since. An overview of MoTA status reports on implementation of the Act shows that the number of community claims filed have only been recorded for the years 2010-2012, and there is no differentiation between the type of community claims filed (CFR or CFRe or developmental rights under Sec 3(2)), and titles received.

Table 5: Status of CFR Claims in Chhattisgarh (2008-2014)

Particulars	2008	2009	2010	2011	2012	2013	2014 (July)
Claims received at GS	NA	NA	4,042	4,736	4,736	NA	NA
Claims forwarded to SDLC	NA	NA	NA	NA	NA	NA	NA
Claims forwarded to DLC	NA	NA	NA	NA	NA	NA	NA
Claims approved by DLC	NA	NA	NA	NA	NA	NA	NA
Titles distributed	NA	NA	250	775	775	NA	NA
Rejected	NA	NA	NA	NA	NA	NA	NA

Source: [www.fra.org.in](http://www.fra.org.in)

<sup>38</sup> For a detailed report over conflicting forest land records, see: Garg, A. (2005). Orange Areas: Examining the Origin and Status. National Centre for Advocacy Studies: Pune. Available at: [http://www.doccentre.org/docsweb/advavisis\\_&\\_forests/orange\\_areas.htm](http://www.doccentre.org/docsweb/advavisis_&_forests/orange_areas.htm)

Till date, no clear information on the status of community rights claims is available in Chhattisgarh despite repeated requests by civil society organisations

Table 6: Status of Community Rights in Feb 2014, as presented in the Chhattisgarh Vidhan Sabha

S. No	District	Total Claims Received	Titles distributed	Area of forest land covered (in ha)	Average area of forest land covered (in acres)
1	Jagdalpur	2,421	1,890	491.159	0.66
2	Kondagoan	658	658	7,721.45	29.81
3	Sukma	292	0	0	0.00
4	Dantewada	647	208	0	0.00
5	Bijapur	102	102	67.787	1.69
6	Kanker	761	262	418.94	4.06
7	Narayanpur	63	50	43.37	2.20
8	Dhamtari	471	224	359.06	4.07
9	Gariyaband	99	5	11.5	5.84
10	Balod	0	0	0	0
11	Rajnandgaon	671	671	22,908.215	86.72
12	Raigarh	90	79	183.8	5.91
13	Jashpur	206	69	30.765	1.13
14	Bilaspur	550	311	187.037	1.53
15	Korba	1,526	0	0	0
16	Koriya	644	605	5,072.88	21.30
17	Mahasamund	0	0	0	0
18	Sarguja	1,080	248	367.682	3.77
19	Balrampur	19	14	20.41	3.70
20	Surajpur	566	0	0	0.00
21	Balodabazar	129	55	38.02	1.76
22	Mungeli	51	50	40.793	2.07
23	Janjgir	0	0	0	0
24	Kawardha	89	89	6,998.993	199.75
	Total	11,135	5,590	44,961.861	375.97

Source: Department of Tribal Development, Government of Chhattisgarh, 2014

According to the information provided in the Chhattisgarh Vidhan Sabha (See Table 6 above) in February 2014, 7,047 CFR titles have been distributed in the state, whereas in a meeting held on the 23<sup>rd</sup> of July 2014 in Raipur, the officials of Chhattisgarh Government informed the Tribal Advisory Council (TAC) that only 6,012 CFR titles had been distributed in the state by June 2014. The data presented in the Vidhan Sabha is only available for 24 districts out of the 27 districts of Chhattisgarh. Thus, no titles have been distributed in 6 districts. Moreover, the state provides information on community rights claims and titles issued to STs and OTFDs, separately.

If average area of forest land recognised for each claim is calculated based on the data given in Table 6, it can be clearly observed that barring only a few districts, the community rights recognised are over a little more 3-5 acres. Thus, it seems like the titles have been distributed over developmental rights under Section 3(2) rather than CFR (See *Issues with titles* below for details). Information from the field also suggests that in most cases, JFM areas have been recognised as CFR without following the due process of rights determination and recognition. It is only in Kawardha that CFR titles appear to have been distributed.

In Chhattisgarh, several factors are affecting the filing of claims and recognition of rights:

- In many villages, Panchayat Secretaries are involved in filing claim forms without the village GS being involved, thus making the entire process of filing claims illegal.
- The Forest Department has been given a key role by the State Level Monitoring Committee (SLMC) to control the process of FRA implementation on the ground. The SLMC has constituted a sub-committee headed by the Principle Chief Conservator of Forests (PCCF) of the State Forest Department to help review the FRA implementation process and expedite its implementation<sup>39</sup>. This sub-committee has taken a decision to involve the VSS in the formation and reconstitution of the FRC.
- The Forest Department has been entrusted with compilation of status reports on the implementation process in Sanctuaries.
- Most claims are still pending with the SDLCs with no decision on the claims being communicated to the claimant villages.

### 1.1 Facilitation in filing claims

Some civil society organisations have been trying to facilitate the filing of CFR claims in a few districts. Adivasi Samata Manch has facilitated claim filing in Luddutola, Bhangitola and Bhelwanakan villages in Pandariya tehsil of Kabirdham district. The claims, filed in 2010, cover 489 ha, 356 ha and 200 ha respectively. However, they are still pending at the SDLC level. The organisation has also facilitated the filing of CFR claim of Sahkatta village in Bhanupratappur tehsil of Kanker district in the year 2013. This claim too is pending at the SDLC level.

Jan Sahayogi Manch has helped facilitate the process of filing claims in the GSs of Barvi village of Bhanupratappur tehsil, and Rampuri and Kahadgondi villages of Charama tehsil in Kanker District. The claims cover 271.85 ha, 45 ha and 75.20 ha respectively and are currently with the GSs. Church's Auxiliary for Social Action (CASA) had facilitated CFR claim of Tamoda village in Durgukondal tehsil of Kanker, covering 804.277 ha.

Lok Aastha Seva Sansthan has facilitated claims in 20 villages in Chura block of Gariyabandh district on about 969.20 ha of community forests. Some of these are being filed at the GS level and some are pending with the SDLC.

Chaupal has facilitated the filing and recognition of 34 CFR claims in Sarguja district in 2013, over nearly 17,000 ha of forest. However, information given by the tribal department of Chhattisgarh for Sarguja has not taken these figures into account (see Table 6 above).

Gram Mitra has facilitated CFR claim making in Ludurkher, Chachia, Chorbhatti, Kalgama, Chuidohra and Tileidabrain in Korba, in 2013-14. These claims are pending with the SDLC.

<sup>39</sup>Minutes of the meeting of the SLMC held on the 4<sup>th</sup> of January 2013. Copy available with the author.

Navrachna has facilitated the process of CFR claims in Raha, Sapalwa, Hiruadoli (Sapalwa GP); Jemra, Bagdhara (Jemra GP), Patpara, Dahidubu (Patpara GP), Nawadih, Satpalwa, Bariiumrao villages in Korba district, Dawanpur in Kota block of Bilaspur district, and in Saleghori, Chirhitti, Pandripani and Khamlikala villages of Gaurella Block of Bilaspur District.

Khoj Evam Jan Jagriti Samiti has facilitated CFR claims in Boraigaon, Pathari, Bardula, Beheradihi, Dumarghat (Boraigaon GP); Farsa (Chhindola GP); Tuhameta, Konari (Tuhameta GP), Chote Gobra, Bade Gobra (Gobra GP); Kulharighat, Kathwa, Bhatadihi, Besrajhar (Kulharighat GP); Gouregaon of the same GP; and Amad, Jugaad, Dewarjhar, Aamli (Tourenga GP) in Gariabandh district. These claims are pending with the SDLC since March, 2013.

### 1.2 Issues in filing and verification of claims

One of the main problems affecting the recognition of rights in most of the villages is that the FRCs have been constituted at the panchayat level, even in many scheduled districts, involving several GSs.

In the three villages of Pandariya tehsil of Kabirdham district, where Adivasi Samata Manch helped facilitate the filing of claims, the FRCs refused to accept the CFR claims and thus, the GSs of these villages have themselves filed the claims with the SDLC.

Most claims facilitated by civil society organisations are pending with the SDLC without any intimation to the GSs about their progress.

### 1.3 Issues with titles

The first 28 community rights titles distributed in Chhattisgarh were over forests in Sarguja district. However, the titles are over rights relating to grazing, firewood and NTFPs, with separate areas allocated for the same. While names of important landmarks have been mentioned, no map is attached to the title making it difficult to understand if the title represents the traditional boundary of the village. In addition, the title comes

with an imposition of several conditions, including the participation and support of the community in various plans and programs of the forest department. The communities have filed an appeal against imposition of conditions citing violation of the spirit of the law.

Also, several titles issued cover smaller areas than those claimed by the communities. In Ghatberra village of Sarguja district on the fringes of the upcoming Hasdeo coal mine, although the CFR claim had been made over 8 forest compartments, rights over only 3 compartments were recognised in the titles, leaving nearly 385 ha out of the title. Also, some of their CFR area was forcefully taken over by the coal mine in 2012. The village has filed an appeal with the SLMC against five compartments being excluded from their CFR.

It has also been observed that most of the titles distributed are for developmental rights, while only a few pertain to rights that might constitute CFR rights (See *Status of Implementation* above). In Gajkanhar forest village of Dhamtari district, a CFR title over has been issued over a *nistari* lake of 3.707 ha; a primary school, a health centre and a community hall over an area of 0.559 ha and cremation ground covering 1.962 ha. Interestingly, the village had not claimed a contiguous area over which the community had CFR, but had filed separate claims forms for all the developmental rights mentioned in their CFR title. The village had also reserved an area for future settlements which was taken over by the forest department for plantation activity. The Forest Department had not allowed the village to file a claim over this area.

In Gariabandh district, many CFR titles have been distributed, some over rights over NTFP and right to collect fire wood, but most over developmental rights.

## 2. Protected areas

Chhattisgarh has eleven wildlife sanctuaries and three national parks. The implementation of FRA remains poor in all these areas. According to updates placed before the Chhattisgarh State

Assembly for the period between 18<sup>th</sup> February and 22<sup>nd</sup> March 2013, relocation of several villages has been planned from many protected areas from across the state. In Bar-Navapara Wild life Sanctuary in Mahasamund district, forest villages including Latadadar, Nawapara, Bafra, Gudagarh, Mudhpar, Bhimbauri, Dheba and Akaltaraare are to be displaced from the sanctuary while 135 families from Rampur village have already been relocated<sup>40</sup>. Six villages from Achanakmar Tiger Reserve have also been displaced<sup>41</sup>. However, there is no information provided by the state on whether the rights recognition process under FRA was followed before these villages were relocated. Meanwhile, there are reports of forced evictions from villages of Rajanacha and Baijadhap around Bhoramdeo Reserve Forests of Kawardha district<sup>42</sup>. There are reports of the huts of the villagers being razed to the ground by the forest department to ensure safety for wildlife. The process of recognition of rights under the FRA has not been followed and neither has a resettlement and relocation package been announced for the same.

However, in the 1,580 sq. km area proposed under the Udanti and Sita-Nadi Wildlife Sanctuaries in Gariabandh district, community leaders of six panchayats, comprising 24 villages, have refused to be relocated from their villages and forests, and have pledged to take charge of forest management from the forest department in order to increase forest cover as well as wildlife numbers<sup>43</sup>.

### 3. Recognition of rights in areas facing forest diversion<sup>44</sup>

Chhattisgarh is rich in mineral resources and has many existing and proposed mines and industries

overlapping with its forests. Exploring these requires large tracts of land, which entails forest diversion. In light of this fact, recognition of rights under the FRA, the consent clause over forest diversion as stipulated in the August 2009 circular issued by the MoEFCC play an important role.

However, considering the weak implementation of the Act in the state, many violations have been reported. In Tamoda village of Kanker district, part of the community forest over which the GS has filed a claim has been proposed to be leased to the Bhilai Steel Plant's Kalver-Nangur iron-ore mines in 2012. Although the village rejected the mining proposal at a public hearing organised for sharing the environmental impact assessment for the mine, on the grounds that community rights existed over the land and they had yet to be recognised under the FRA, their claim remains pending with the SDLC.

The Bhilai Steel Plant has received final forest clearance for diversion of forest land in the Raoghat hills in Bhanupratappur district in 2009. The project includes a 91 km railway line from Dalli Rajahara to Raoghat, an open cast mine in the Rowghat hills under the Matla Reserve Forests and setting up of 21 paramilitary barracks as long as mining continues in the area, since the location where the railway line and mines are proposed are affected by left-wing extremism. According to local claims, nearly 40 villages (including forest and revenue) in the area will be affected. Around 35 villages along the boundary of the mining lease area will lose access to their forests. The affected populations include *Maria* (PVTG) and *Gond* communities. While no forest rights under the FRA have been recognised to date, it has been revealed

<sup>40</sup>Information provided as part of reply by Minister of Forest to starred query no 1309/4 of 28th Feb and 2622/3 of 21st March 2013 raised by Dr Shiv Kumar Daharia and Dr Haridas Bhardwaj respectively.

<sup>41</sup>Information provided as part of reply by Minister of Forest to starred query no 1663/28 of 07th March raised by Dr Haridas Bhardwaj.

<sup>42</sup>See: <http://www.fra.org.in/new/document/In%20Chhattisgarh,%20a%20primitive%20tribe%20in%20trouble.pdf>

<sup>43</sup>Choubey, J. (2014, February 13). 24 Chhattisgarh villages pledge to develop wildlife sanctuary on their own. Down to Earth: <http://www.downtoearth.org.in/content/24-chhattisgarh-villages-pledge-develop-wildlife-sanctuary-their-own>.

<sup>44</sup>Compiled by Meenal Tatpati

that fake GS certificates denying people's religious and cultural rights in the area have been submitted by the state government to the MoEFCC in order to get forest clearance<sup>45</sup>.

In Dharamjaigarh tehsil of Raipur district, BALCO and Dainik Bhaskar (DB) Power have been allotted adjoining coal blocks for power plants, over forest land falling under the jurisdiction of three panchayats of Dharamjaigarh block —Sahpur (which includes Taraimarh), Bayasi and Rupunga. While no FRA claims have been filed or recognised over the area, serial GSs were hosted in the three panchayats to obtain consent from the villagers for the BALCO coal mine. All these GSs were boycotted by the local villagers. In the case of DB Power, an application under RTI filed by one village, in 2013, revealed that the District Collector had issued a false certificate of FRA compliance for forest diversion for DB Power coal block which stated that that GSs were held under Aug 2009 guidelines in the villages of Taraimar, Bayasi and Medhmar; and that there were no claims raised and, thus no rights exist over forest land. However, the Gram Panchayat office has no records of a GS held on the dates specified in the collector's certificate<sup>46</sup>.

16 villages to be affected by mining in the Parsa East and Kante-Basen (PEKB) coal blocks in the Hasdeo Arand forests of Sarguja district held gram

sabhas in December 2014, opposing their displacement due to the proposed mines and urged the government to implement the FRA and PESA, to recognize their rights over their community forests<sup>47</sup>.

#### 4. Conversion of forest villages into revenue villages<sup>48</sup>

In Chhattisgarh, the process of conversion of forest villages into revenue villages began early in 2013. The first order for conversion was issued on 17<sup>th</sup> July 2013 by Chief Conservator of Forests to the District Collectors of 20 districts, Block level Officers and the Directors of 4 Tiger Reserves<sup>49</sup>, identifying 420 forest villages to be converted into revenue villages. Thereafter, nodal officers for each group of the villages to be converted were identified to conduct GSs to initiate the process of conversion. However, this order was severely criticized for violating the process specified in the FRA and for not considering the unsurveyed villages/settlements on forest land which also need to be converted. The Chhattisgarh government restarted the conversion process in December 2013<sup>50</sup>, and news reports suggest that 83 forest villages were in fact converted to revenue villages by January 2014<sup>51</sup>. The process of conversion of forest villages to revenue villages in Chhattisgarh started as per the guidelines issued by the forest department of the State, before MoTA issued detailed guidelines in Nov 2013. The

<sup>45</sup>Guilty Until Proven Innocent? A fact finding report on unlawful police activities in the two panchayats of North Bastar, Chhattisgarh. (May 2013) People's Union for Civil Liberties: Chhattisgarh. And,

Note on Objection to the proposed Raoghat Iron Ore Mines in of the Bhilai Steel Plant/SAIL in Kanker and Narayanpur Districts of Bastar Region of Chhattisgarh, dated 18th February 2014, by Chhattisgarh Bachao Andolan. Copies available with CFR-LA.

<sup>46</sup>Shared by Mr. Sajal Madhu of Bayasi village. This was shared during the National Consultation on the relevance of Forest Rights Act in Forest Diversion organized by CFR-LA on the 5th and 6th of March, 2014 in Raipur, Chhattisgarh. (report available at: <http://fra.org.in/document/NATIONAL%20CONSULTATION%20ON%20RELEVANCE%20OF%20FOREST%20RIGHTS%20ACT%20IN%20FOREST%20DIVERSION.pdf>)

<sup>47</sup>Choudhry, C. (2015, January 5). Not Just a Coal Block. Rural India Online. Available at: <http://www.ruralindiaonline.org/articles/not-just-a-coal-block-hasdeo-arand/>

<sup>48</sup>Compiled from notes prepared by Janisar Akhtar

<sup>49</sup>Copy available with author.

<sup>50</sup>(2013, December 31st). Chhattisgarh's 400 settlements to be revenue villages. The Business Standard. Available at: [http://www.business-standard.com/article/economy-policy/chhattisgarh-s-400-settlements-to-be-revenue-villages-113123101078\\_1.html](http://www.business-standard.com/article/economy-policy/chhattisgarh-s-400-settlements-to-be-revenue-villages-113123101078_1.html)

<sup>51</sup><http://www.dailypioneer.com/state-editions/raipur/state-govt-declares-83-forest-villages-as-revenue-villages.html>

process did not involve detailed discussions with GSs and was extremely top-down (See Box 3 below). The entire process of conversion was started as a result of a political intervention of converting 400 forest villages to revenue villages.

### Conclusion

Chhattisgarh has fared poorly with the recognition of CFR rights. There appears to be lack of definite political will to facilitate recognition of CFR rights due to continued dominance of the forest department on the one hand and the continued expansion of industries and other developmental activities over forest rich areas of

#### Box 3: Case of Gajkanhar village

Gajkanhar (Nagri taluka, Dhamtari district) was one of the villages selected for conversion in Dhamtari district according to a letter issued on the 11<sup>th</sup> of September 2013 by the Chief Executive Officer (CEO) of Nagri, to the Chief Conservator of Forests. The letter identified the officials to start the process of conversion by holding gram sabhas in the villages.

An RTI filed in order to understand the process followed for the conversion in Gajkanhar revealed that a GS was organized on 16<sup>th</sup> September what year, in which the village had rejected the proposal of conversion. However, at a subsequent GS conducted on 28<sup>th</sup> December 2013 which was attended by 17 women and 63 men of the village (total adult population of the village is 310) accepted the proposal of the village conversion and the decision was executed. Discussions with members of FRC revealed that in the subsequent Gram Sabha, the officials present portrayed that the decision was already taken at the State level by the concerned authorities and it could not be altered by the Gram Sabha.

Subsequently, as per a notification issued by the State Revenue Department on 1<sup>st</sup> January 2014, Gajkanhar has been declared as a revenue village. However, the changed administrative profile of the village revealed that the total area of the village is now lesser than the original area. Immediately after the order was issued, the forest department started fencing the CFR area which was proposed to be managed under the forest department's working plan.

As an immediate implication, the grazing right of the community was severely curtailed, and problems of access to various sections of the traditional forest area arose. Therefore, this nature of authoritative and hierarchical communication prevented the collective response of Gajkanhar to the situation and they chose to go ahead with the decision of the authorities regarding village conversion.

the state on the other. There is also a lack of understanding of the role and objective of SDLC, and participation of non-government representatives in decision making is abysmal. There is a need for the urgent facilitation of processing claims pending at the SDLC level and a review of all the gross violations of forest rights which have taken place in the diversion of forest land in the state. All titles as community rights/CFR need to be revisited and a revised list may be prepared to ascertain the actual status of CFR rights recognition in the State. All faulty CFR titles issued should be corrected and proper procedures need to be followed in cases where there have been lapses. The nodal agency must constitute a team including representatives of CSOs working on FRA in the respective areas, to review the process of CFR recognition.

## II. JHARKHAND

Rana Roy

Jharkhand was carved out of Bihar 15 years ago as a result of a movement demanding better governance over water, forests and land<sup>52</sup>. However, the implementation of the Forest Rights Act which seeks to redress the same issues, remains poor. Jharkhand has a rich history of movements led by tribal people against the historical denial of access and use of forests which has led to legislations like the Chotanagpur Tenancy Act (CNTA), 1908, and the Santhal Pargana Tenancy Act (SPTA), 1912. These laws prohibit transfer of land under tribal control to non-tribal people, and legalise community ownership of *Mundari Khuntkatti* (MK)<sup>53</sup> areas. However, the Bihar Forest Act, 1948, converted several tracts of forest under the previous acts to private protected forests, thus vesting its ownership with the forest department. Though subsequent resistance forced the government to return the land to the communities, the forest department has continued to wield actual control over the forests in the name of management.

### 1. Status of FRA Implementation

In the years immediately following the notification of the FRA, the state delayed the implementation of the law stating various reasons<sup>54</sup>. The actual implementation of the act began only in the last three years. According to the Welfare Department of Jharkhand, which is the nodal agency for implementation of the Act, in 18 out of the 24 districts in Jharkhand, the progress of CFR remains slow due to Left-Wing Extremism (LWE) and the inability of the State to organise GSs in these regions<sup>55</sup>.

As per the status report of the Ministry of Tribal Affairs (MoTA) for the period ending in January 2014, of the total 42,003 claims received at GS level, only 15,296 titles, covering an area of 37,678.93 acres<sup>56</sup>, have been distributed. However, data obtained from the Welfare Department (Nodal Agency for FRA implementation in Jharkhand) for status of claims as of 20th January 2014 shows that 49, 216 claims were received at GS level out of which 18, 203 claims have been recognised and titles distributed (See Table 7a and 7b). Thus, there is a discrepancy between the data collected by the state and data that it reports to MoTA.



<sup>52</sup> Available at: <http://www.indiaenvironmentportal.org.in/content/395/poor-little-rich-states/>

<sup>53</sup> Tenure held jointly by descendants (all male members) of original founders of a Mundari village (single clan) who had cleared forest land for agriculture and homestead. (Definition adopted from Glossary of the book titled 'Legal Grounds: Natural Resources, Identity and the Law in Jharkhand' edited by Nandini Sundar)

<sup>54</sup> See <http://www.forestrightsact.com/current-situation>

<sup>55</sup> Presentation by Shri Rajiv Arun Ekka, Secretary, Welfare Department, Government of Jharkhand. (2013). Regional Consultation on FRA Implementation in LWE Affected Areas. Ranchi: Ministry of Tribal Affairs and United Nations Development Programme. See: <http://tribal.nic.in/WriteReadData/CMS/Documents/201404210440165111297Ranchiproceedings.pdf>

<sup>56</sup> The report does not differentiate between the type of rights recognised [individual forest rights, Community claims under Sec 3(1) or developmental rights under Sec 3(2)]

Table 7a: Status of FRA implementation in Jharkhand as on 20th January, 2014

SR. NO.	DISTRICT	Number of Claims						
		RECEIVED AT GS	RECOMMENDED BY GS	REJECTED BY GS	RECOMMENDED BY SDLC	REJECTED BY SDLC	APPROVED BY DLC	REJECTED BY DLC
1	Bokaro	2,830	2,809	0	593	2187	593	0
2	Chatra	638	242	0	229	0	229	0
3	Garhwa	3,162	491	955	491	0	435	0
4	Gumla	1,034	946	63	534	377	473	7
5	Hazaribag	2,980	1,253	1,727	1,253	0	1253	0
6	Latehar	3,025	1,256	0	973	21	973	0
7	Lohardaga	375	375	0	131	0	131	0
8	W.Singhbhum	7,158	3,407	0	3,144	263	3,133	11
9	Palamau	1,122	661	0	661	0	661	0
10	E.Singhbhum	2,768	1,299	1,469	927	372	884	26
11	Ramgarh	1,087	1,087	0	315	772	315	0
12	Simdega	5,890	1,105	626	1,105	0	921	0
13	Saraikela	1,641	1,641	0	743	898	571	96
14	Koderma	727	642	85	203	439	203	0
15	Ranchi	970	970	0	882	0	881	1
16	Khunti	448	405	41	401	4	401	0
17	Giridih	4,126	4,126	0	3,383	743	3,303	80
18	Dhanbad	1,396	386	1,010	226	160	211	15
19	Dumka	5,102	1,413	3,689	1,413	0	1,412	1
20	Jamtara	100	77	23	63	8	63	0
21	Sahebganj	779	779	0	779	0	624	155
22	Pakur	156	156	0	156	0	122	34
23	Godda	1,030	358	672	358	0	358	0
24	Deoghar	672	461	211	246	215	224	22
TOTAL		49,216	26,345	10,571	19,209	6,459	18,374	448

Source: Office of the Secretary, Welfare Department; Government of Jharkhand

Table 7b: Status of FRA implementation in Jharkhand as on 20th January, 2014

SR. NO.	DISTRICT	TITLES ISSUED		EXTENT of FOREST LAND COVERED (IN ACRES)
		INDIVIDUAL	COMMUNITY	
1	Bokaro	581	3	344.14
2	Chatra	210	19	182.80
3	Garhwa	434	1	603.38
4	Gumla	473	0	380.59
5	Hazaribag	1,250	3	1,059.80
6	Latehar	973	0	1,226.09
7	Lohardaga	131	0	288.30
8	W.Singhbhum	2,743	229	12,019.76
9	Palamau	661	0	749.67
10	E.Singhbhum	884	0	502.19
11	Ramgarh	315	0	143.44
12	Simdega	919	2	993.00
13	Saraikela	570	1	352.17
14	Koderma	200	0	91.80
15	Ranchi	881	0	418.58
16	Khunti	347	54	243.93
17	Giridih	3,303	2	3,438.63
18	Dhanbad	204	7	33.92
19	Dumka	1,405	7	431.72
20	Jamtara	62	1	52.45
21	Sahebganj	616	8	315.76
22	Pakur	122	0	55.69
23	Godda	128	230	18,432.50
24	Deoghar	204	20	178.17
TOTAL		17,616	587	42,538.48

Source: Office of the Secretary, Welfare Department; Government of Jharkhand

It can be observed that out of all the claims received by GSs, only 18,374 (37.33%) claims have been approved by the DLC and a total of 18,201 titles have been distributed (See Table 7a above). It further shows that of all the claims received at the level of GS (49,216), only 26,345 claims were taken for consideration at GS level. Thus, it can be adduced that maximum rejections have happened at the level of Gram Sabha, followed by those rejected at the SDLC level. This information needs verification from the respective GSs. An attempt to analyse the increase in community forest rights from the year 2013 for the period ending on 20<sup>th</sup> Jan 2014 reveals that there has been only marginal progress in Chatra and Deogarh district. As seen in Table 8, if the extent of forest land distributed as titles is averaged, most titles appear to be given over developmental facilities.

Table 8: Average extent of land recognised under titles in Jharkhand

Titles distributed (Individual)	12,881
Titles distributed (Community)	524
Extent of forest land recognised (in acres)	42,538.48
Average of extent of Land recognised (in acres)	3.17

In May 2014, the Jharkhand State Tribal Co-operative Development Corporation signed a tripartite agreement with civil society organizations, Jharkhand Van Adhikar Manch (JVAM) and Poorest Areas Civil Society Programme (PACS) for awareness creation regarding the Act. Aimed at improving the implementation of the Act, it plans to train and recruit a large number of *Van Mitras* (Friends of Forests) from the local villages to provide handholding support and guidance to the GSs in filing and processing different types of claims under the FRA with a special focus on CFR rights<sup>57</sup>.

### 1.1 Facilitation in filing claims

Communities in Jharkhand are facing several problems in filing claims since the administration is not actively facilitating the process. It has been reported that FRCs have been formed by block level officers, and in many areas members are unaware about their inclusion in the committee and are thus unable to fulfill their roles and responsibilities.

In many areas FRCs have been formed at the Panchayat level, and dominant groups and elite within the Panchayat are reluctant to assist individual villages in claiming their CFR rights. In other cases, villagers are threatened by the forest guards while identifying and mapping CFR areas. The forest rangers also misguide communities seeking to file CFR claims.

In early, 2013, the government declared that CFR rights of 18 villages of Ranchi district would be recognized, and nine villages were chosen by the district administration<sup>58</sup> for immediate distribution of titles. However no title has been granted as yet to any of these villages.

Several CSOs have facilitated the filing of claims in different districts. Campaign for Survival and Dignity (CSD) has facilitated filing of claims in the Palamau-Latehar region, Ekta Parishad has had one CFR claim filed in Topchanchi in Dhanbad, Jharkhand Jungle Bachao Andolan (JJBA) has facilitated filing of 7 claims in Saraikela-Kharsawan in East Singhbhum region, claims in Tikratoli, Melani, Handpidhi, Kullu and Parsatani villages in Chanho block of Ranchi district, and one claim each in Mandar block, and in Madma village under Chandwa block of Latehar district. In many villages, due to non-recognition of their rights, villagers have put up signboards and markers delineating their CFR areas and formed their own committees for forest protection in the spirit of Sec 5 of the Act.

### 1.2 Issues in filing and verification of claims

It has been observed that the implementation of the Act is being controlled and dominated by the local forest department instead of the Welfare Department<sup>59</sup>. In addition, it seems like the engagement of additional tiers of bureaucracy like agriculture extension officers, workers, and block level officers being involved in the implementation

<sup>57</sup> Gupta, A. (2014, May 28). Triple power ink for forest rights. The Telegraph: [http://www.telegraphindia.com/1140530/jsp/frontpage/story\\_18425991.jsp#.U-x3q00Sx1h](http://www.telegraphindia.com/1140530/jsp/frontpage/story_18425991.jsp#.U-x3q00Sx1h)

<sup>58</sup> Gupta, A. (2012, February 29<sup>th</sup>). Forest Act to empower Ranchi villages. The Telegraph. Available at: [http://www.telegraphindia.com/1120229/jsp/frontpage/story\\_15192781.jsp](http://www.telegraphindia.com/1120229/jsp/frontpage/story_15192781.jsp)

<sup>59</sup> In a meeting with the author, the District Welfare Officer in Chaibasa articulated the helplessness of the nodal agency because of lack of human resources, especially field staff, to implement the law in letter and spirit. Several administrative officials revealed that they have to rely on the forest department for information on claims, since the local administration hardly has forest related information and is grossly unaware of field level implementation issues related to FRA.

has resulted in corruption. In Titartoli village of Ranchi district, villagers complained of a block level official demanding that a particular quality of tracing paper be submitted with the village claim. Further, the forest department asked for a sum of money to issue a copy of the *Khatian part II* (record of community rights) to be attached as evidence to their claim. While the villagers informed forest and revenue officials to be present for verification of their claims several times, the officials did not turn up for verification and finally the claim was rejected due to the missing joint verification report in their claim document. Villagers suggest that the local Forest department had previously wanted to carry out plantations in the CFR area of the village and had also tried to take over the area by fencing it, which the villagers had opposed, due to which the forest department is seen to be creating hurdles in the process of filing claims.

### 1.3 Issues with titles

In Saranda forests of West Singhbhum district, several discrepancies have been observed in the titles received over CFRs. The titles do not give the extent and description of the boundary over which CFR have been recognised or the total extent of land over which the title has been given<sup>60</sup>.

As stated above, the forest department continues with its undue interference in the recognition and vesting of forest rights on communities. As pointed out in the previous Citizens Report<sup>61</sup>, CFR titles were issued in the names of individual or a few groups of people within villages, without any initiation of the processes of filing for and claiming these rights by the gram sabhas. This continues, as similar CFR titles have been distributed in several

villages under Manoharpur block of West Singhbhum district, like Girdung village under Lailor gram panchayat; and Salari and Dadari village under Gangda gram panchayat. In Girdung, such titles have been issued to 54 households. The titles provide rights over NTFP, *gochar* land, water bodies but without any description to name of the village, boundaries, and important landmarks and maps. During interaction with villagers in some of these villages, it was pointed out that the local forest department has not allowed them to file claims over individual land under their occupation, since they cleared such land as a community due to the forest movement<sup>62</sup> in the region.

### 2. Forest Villages and Unsurveyed Villages

In Jharkhand, 28 villages have been officially notified as forest villages. However, in a 2010 survey conducted by JJBA, at least 175 unsurveyed villages were identified in 7 blocks of West Singhbhum district, and around 40 settlements identified in Chauparan block under Hazaribag district.<sup>63</sup> These settlements do not exist on government records and the process of identification and recognition of these villages to facilitate the conversion to revenue villages as provided by the law and the guidelines by MoTA issued in November 2013 has not been carried out by the district administration. Further, the forest department has been objecting to the building of schools and roads for such villages since they are not officially recognised.

In West Singhbhum (Porhat and Kolhan regions), part of the problem of non-recognition of these settlements lies in the fact that they were established during the tree-felling movement of 1978 in which communities reclaimed ancestral

<sup>60</sup>Local activists suggest that the titles were hurriedly given in the wake of visit of Shri Jairam Ramesh, the then Rural Development minister to oversee the "Saranda Action Plan" that he had envisioned.

<sup>61</sup>Tenneti. A. (2013). Jharkhand. (S. Desor, Ed.) Community Forest Rights under Forest Rights Act: Citizens' Report 2013, (pp. 61). Pune/Delhi/Bhubaneshwar: Kalpavriksh/Vasundhara/Oxfam India.

<sup>62</sup>In Singhbhum area especially in the Porhat and Kolahan region that encompasses the Saranda, there was a massive tree-felling movement in 1978 when villagers reclaimed huge patches of forest land that they claim belonged to their ancestors from where they were forcibly removed during forest reservations that started in the year 1860, and studies do show how such original settlers like Mundari Khuntkattidars in the region were alienated from the land.

<sup>63</sup>Based on interview with Mr. Xavier Kujur and Mr. Kunwar Singh Jonko of Jharkhand Jungle Bachao Andolan

<sup>64</sup>For more on this please see: Areparampil, M. (2002). Struggle for Swaraj. Jharkhand/West Singhbhum: Tribal Research and Training Centre, Chaibasa.

lands by clearing forests that were taken away during forest reservations in the 1860s<sup>64</sup>. Discussions with local activists revealed that the process of recognition of individual titles in some forest villages has taken place. However, this process has been initiated by the forest department without the processes under FRA being followed.

### 3. Forest Diversion and FRA

Forest diversion without FRA compliance has become a serious issue in Jharkhand, especially in the Saranda forests of West Singhbhum district, where most unsurveyed villages lie, as well as in other districts like Bokaro which have witnessed mining and industrialisation. While many villages have been resisting the takeover of village forests<sup>65</sup> by the forest department, a lack of awareness about the provisions of the FRA and guidelines relating to FRA compliance in forest diversion among the local activists, facilitating CSOs and communities is emerging as a major hurdle in following up on the concerned issues related to forest diversion.

Between 2011 and 2013, several GS meetings were organised in Saranda forests in compliance with the August 2009 circular on FRA compliance for forest diversion<sup>66</sup>. In Purvi panchayat under Kiriburu mines, 14.974 ha of land was cleared for forest diversion, 118.36 ha of forest land was cleared for diversion under Meghahatu Uttari panchayat<sup>67</sup>, the Baraiburu GS gave consent to divert 70 ha forest land while Merejhgada gram panchayat gave consent to divert 51.686 ha of forest land to General Producers Company Limited for an iron-ore mine<sup>68</sup>. However, activists suggest

that such GSs have not been held at the sites of the affected villages, but have instead been shown to have been carried out by bribing a few community leaders from these villages to give their consent. Also, in certain places, consent has been obtained by giving incorrect information about the project and its effects.

Many communities which have filed claims and have asserted rights over forest land proposed for diversion have also been facing severe problems in getting their claims recognized. Their struggle reveals that the district administration and the project proponents have together allowed for violation of the provisions of the 2009 circular. In Latehar district's Chandwa block, two coal fields (Ganeshpur Coal Block and Banharbi coal block), have been allocated to different industries. Jala village had prepared a CFR claim over 456 ha of its traditional village forests, which also covers the 237 ha land of Ganeshpur Coal Block. In August 2012, the village had passed a resolution against mining, under the FRA. However, in March 2013, two GSs were conducted by the user-agency in the village. In these GSs, villagers' rights were ascertained and a resolution of consent was taken. These were sent to the District Administration by the officials of the user agency. However, villagers claim that this was fraudulently done, taking into confidence only a few village elite, and registered a complaint with the governor about this violation. Following this, members of the SDLC visited the village, rejected the CFR claim and recognised rights over only two burial spots. Since then, the villagers' attempts to organise GSs were thwarted by a local armed group called Tiritiya Prastuti Committee (TPC) which the village alleges are militia promoted by the police to curb naxalism<sup>69</sup>.

<sup>64</sup>Reports reveal that villages like Ghatkuri and Ganda in Saranda resisted a prospecting operation of a company in their traditional place of worship called Hutujhola. Similarly, people from several villages including Pusalota, Murhatu, Govindpur, Beguna, Dighilota launched a massive rally in Manoharpur and submitted a memorandum to the concerned Circle Officer against the takeover of their land for Central Reserve Police Force (CRPF) camps. See: 'Hum jan denge par jameen kabhi nahin'. (2013, August 28). Hindustan.

<sup>65</sup>Dainik Jagran Newspaper: Edition 01.02.13

<sup>67</sup>Hindustan Newspaper; Edition 27.09.13

<sup>68</sup>Prabhat Khabar Newspaper: Edition 18.08.

<sup>69</sup>Post made by Shri Sunil Verma on cgnetswara dated 28th August, 4th, 8th and 9th September, 2014

In 2012, the GS of Bari village, lying on the fringes of the Banharbi coal block, had initiated the process of filing a CFR claim over 499.54 ha of their community forests. Their claim was initially returned by the district administration, the reason cited being that the villagers had not attached a map of the area. Their second attempt to file the claim also proved unsuccessful since the revenue and forest officials failed to remain present for the joint verification process.

In Bokaro district, the devastation brought on by mining and false promises of employment offered by industries in exchange of land to many displaced villages have promoted villages facing imminent forest land diversion to file CFR claims under the FRA and to reject the diversion of forests on which they depend. Badkikori village (Bokaro district, Nawadhi taluka), lying on the fringes of Karo Coal mines is trying to file a CFR claim over 428.55 ha of community forests. However, the village is facing possible forest diversion of around 55 acres of their total CFR area for setting up of a coal washery by the Karo Mines Project of Central Coal Fields Limited (CCL). Though the GS had rejected the company's proposal unanimously, there is relentless pressure from company officials as well as the district administration to clear the project. The district administration has even demanded that NOCs be filed by villages to divert the area for the project.

#### 4. Particularly Vulnerable Tribal Groups (PVTGs)

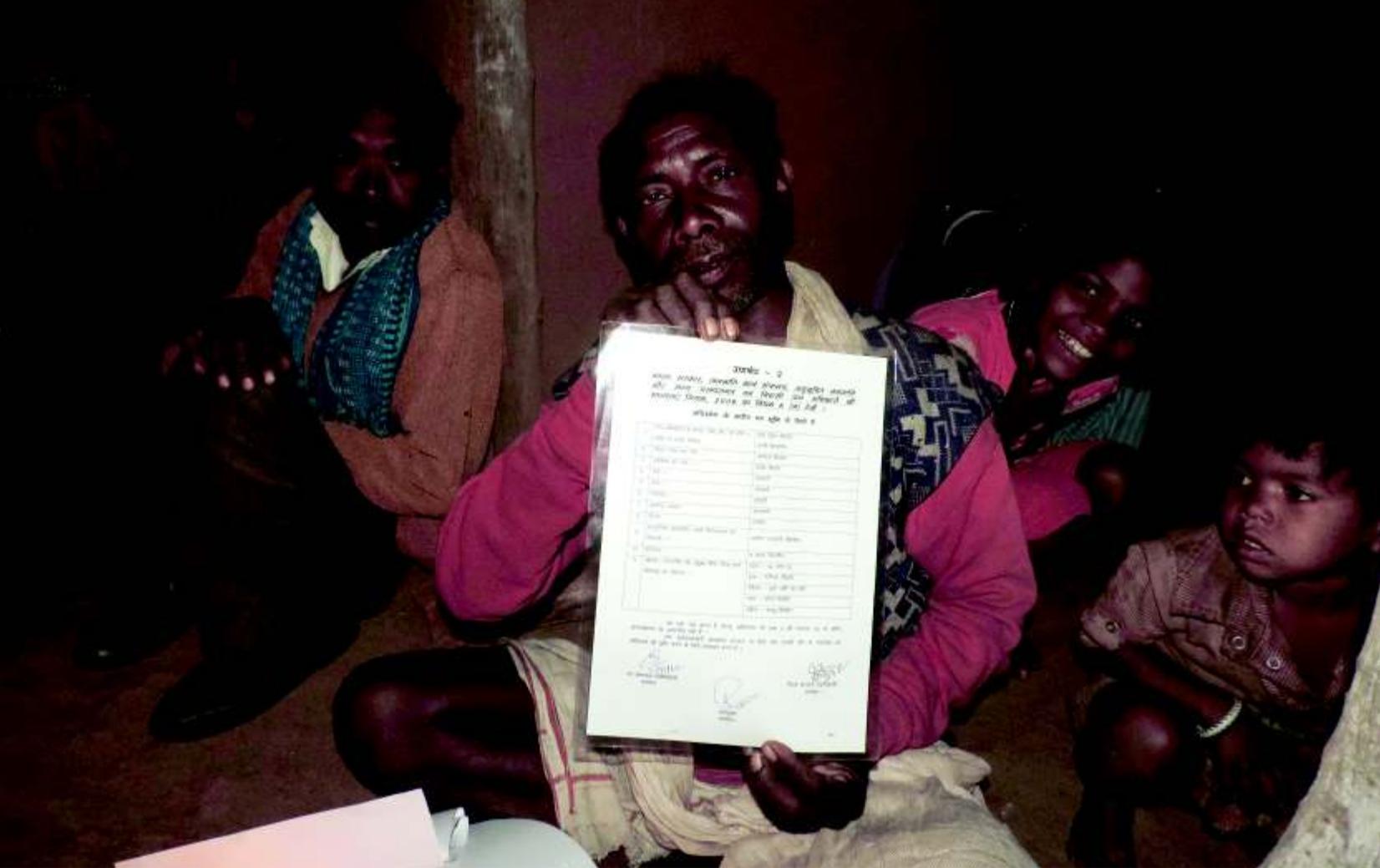
According to the 2011 census, there are only 2.23 lakh individuals belonging to PVTGs<sup>70</sup> in Jharkhand. Concentrated in Sahebganj, Pakur, Dumka, East Singhbhum, Garhwa, Latehar and Gumla districts, these communities have a chequered history of conflict with the State due to curtailment of their rights over forest land, and some of these communities did succeed in getting their rights

recognised in the past<sup>71</sup>. While these groups continue to have a strong articulation about their territory and habitats, the recognition of forest rights of these communities under the FRA presents a highly dismal picture. This is partly because of the social subjugation of these communities by other tribal groups as well as non-tribal communities. Most of these groups have no representation despite having a huge stake in the local GS processes and decision making. There has always been underlying conflict between the settled agriculturists (including tribal groups) and the semi-nomadic PVTGs due to the differing lifestyles and resource use patterns of these communities. The PVTGs subsequently have been forced to settle down and adopt settled agricultural practices or depend on wage labour due the state regularisation of forests. Thus, the inclusion of these marginalised groups in processes like FRA can only happen through external intervention and facilitation. However, there is little awareness about the provision on habitat rights even at the level of NGO actors working with these communities.

Amongst the PVTGs, the Bihors are an extremely vulnerable group. Traditionally nomadic, with rope making from Sal leaves, hunting, food gathering and fishing as chief sources of livelihoods, the Bihors have over time been forced to settle down and have had to adopt agriculture as the chief mode of occupation. While no attempts have been made to help the community file claims for the recognition of their community rights or habitat rights, the district administration has on its own been handing over titles over individual lands to the community while keeping them away from the actual process of claiming rights. One woman member of Birhor Tanda hamlet of Budhachanch revenue village in Giridih district had been a member of the DLC. However, even though she

<sup>70</sup> Jharkhand has 8 PVTGs which include the Asur, Birhor, Birajia, Korwa, Parahiya (Baiga), Sabar, Mal Pahariya and Souriya Pahariya communities.

<sup>71</sup> In 1833, the British government faced opposition from the Mal Pahariyas which led to the recognition of 1338 square mile area of the Rajmahal Hills where they were allowed to practice their traditional cultivation which was made tax-free. See: Pande, R. (2012, February 13). Rajmahal natives seek autonomous council. The Telegraph: [http://www.telegraphindia.com/1120213/jsp/jharkhand/story\\_15127318.jsp#.U3rbKPlDVe](http://www.telegraphindia.com/1120213/jsp/jharkhand/story_15127318.jsp#.U3rbKPlDVe)



A Birhor traditional leader showing the standard 5 decimal title that all families have received in Chalkari Village under Topchanchi Block, Dhanbad district, Jharkhand.  
(Photo: Rana Roy)

Similar is the case of the Mal Paharias of Sahebganj district. The process of recognition of their forest rights is facing stiff resistance from the forest department which has practically complete control over FRA implementation in the State<sup>72</sup>. These communities continue with their traditional practice of shifting agriculture.

#### 5. Claim from Khuntkatti Areas<sup>73</sup>

As reported earlier, 156 villages from *Mundari khuntkatti* (MK) areas of Ranchi district refused to

file claims under FRA as they claim that the forests appropriated by the forest department are actually owned by them by virtue of CNTA<sup>74</sup>. The situation in these villages regarding the FRA remains the same since villagers consider their forests to be private forest and they are not willing to nullify their stance by demanding them under FRA. They perceive that filing claims under the FRA is for forest lands owned by the state but their ancestral forests have always belonged to them<sup>75</sup>.

However, it is important to note that the CNTA has

<sup>72</sup>Assessment of rights recognition has been majorly drawn from discussion with Mr. Raphon Bakhla, Program Manager, EFFICOR, an NGO working in Dumka and Sahebganj district.

<sup>73</sup>As pointed out in a discussion with Mr. Sanjay Bosu Mullick of Jharkhand Jungle Bachao Andolan.

<sup>74</sup>Tenneti. A. (2013). Jharkhand. (S. Desor, Ed.) Community Forest Rights under Forest Rights Act: Citizens' Report 2013, (pp. 58-65). Pune/Delhi/Bhubaneswar: Kalpavriksh/Vasundhara/Oxfam India.

<sup>75</sup>Based on discussion with Mr. Sanjay Bosu Mullick of Jharkhand Jungle Bachao Andolan.

been progressively diluted over time. An amendment passed in 1947 allowed sale and purchase of land between STs and SCs and also sale of land to a non-cultivator. The amendment in 1996 redefined '*public purpose*' in Section 49 to allow transfer of *raiya*ti (land on which owner allows another person to reside) holdings for 'any industrial purpose' or for mining and for subsidiary purposes, as decided by the state government and with the consent of the Deputy Commissioner (DC) with 'adequate compensation'. In this context, the Forest Rights Act has the potential to fill this void

and complement the previous law.

#### Conclusion

While the overall situation in the context of the implementation of FRA continues to be dismal in the state, the tripartite agreement reached between government agencies and various civil society organisations towards better implementation of the Act could be instrumental in facilitating the recognition of forest rights in Jharkhand. However, the larger issues of forest diversion and left-wing extremism continue to affect the state and could affect the implementation of the Act in the coming months.



### III. MAHARASHTRA

Neema Pathak Broome

The state of Maharashtra has 61,939 sq. km of forest land out of its total geographical area of 3,07,713 sq. km making it 20% of the total geographical area. The State has 6 National Parks and 36 Wildlife Sanctuaries (with a total of 15,732 sq. km area, amounting to 5.02% of the state's geographical area) and four tiger reserves: Melghat Tiger Reserve (Amravati District); Pench Tiger Reserve (Nagpur District), Tadoba-Andhari Tiger Reserve (Chandrapur District) and Sahyadri Tiger Reserve (Kolhapur and Sangli districts).

Maharashtra has a number of mass movements, civil society groups and individuals as well as some government agencies providing financial and technical support for working towards an effective implementation of CFR. Hence it has emerged as a leading state in governance and management of forests by the communities after having received titles over their Community Forest Resource. The number of CFR titles being handed over to the communities and processes towards governance and management, however, remains restricted to some small pockets in the state, in areas of Gadchiroli, Chandrapur, Amravati, and Gondia districts<sup>76</sup>. In the last year, CFR claims have been processed by the DLC in Yavatmal and Nandurbar districts.

#### 1. Status of FRA in Maharashtra in 2013-14

Maharashtra has a high rate of rejection (see Table 9 below) of claims which according to the state government is due to the "large number of false claimants", as mentioned in its report to MoTA for April 2014. As can be seen in the table, total no. of claims rejected in the state is 79% of those recommended by the GS. 40% of all community claims filed were also rejected. Most rejections of both kinds of claims are recorded at the SDLC level. Local activists suggest this is due to the fact that government officers are taking decisions without verifying the facts on ground, and claims are being transferred to the forest department for approval instead of being decided upon at a joint meeting of all members of the SDLC, in violation of the FRA. This situation persists despite the Chief Minister's (CM) directive<sup>77</sup> in 2013 to re-evaluate rejected claims.

Table 9: No. of CFR claims filed and accepted in Maharashtra till April 2014

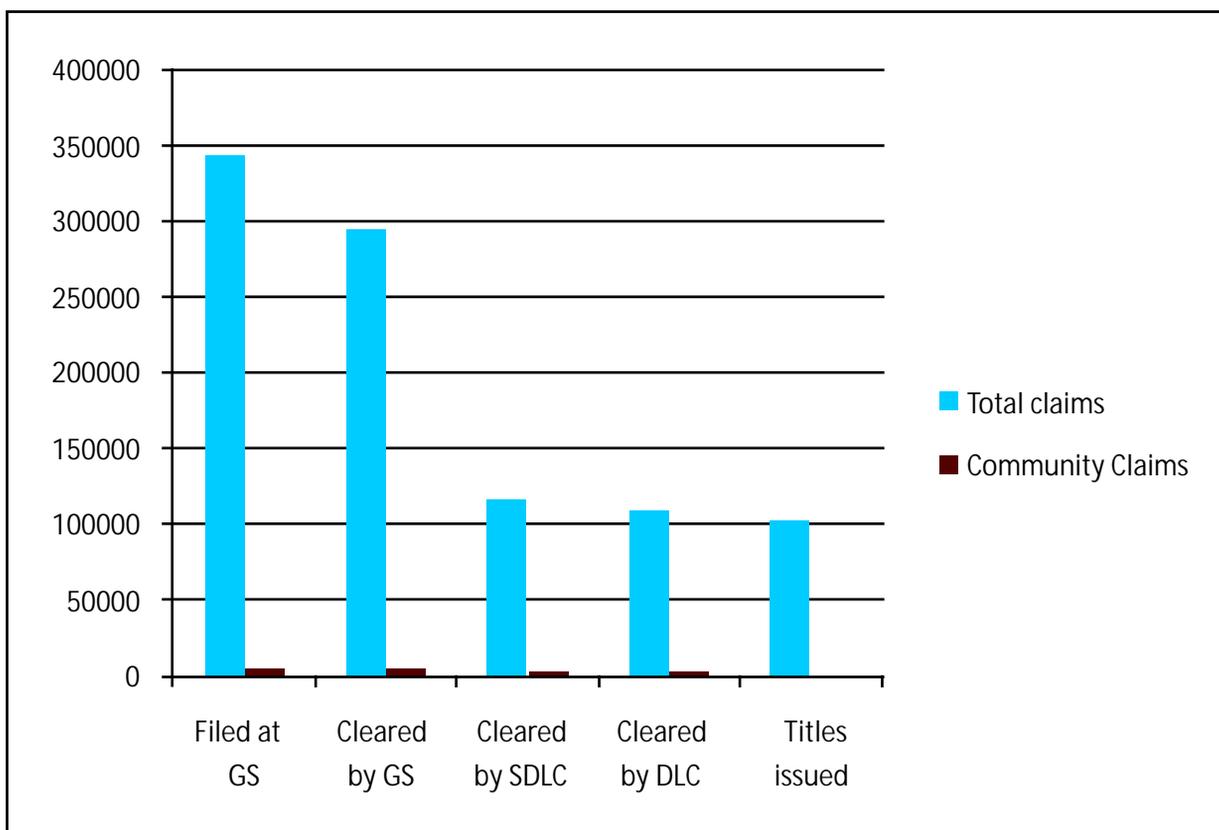
S.No	Particulars	Total	Community
1.	Claims received at GS level	3,46,230	5,245
2.	Claims recommended by GS to SDLC	2,95,755	5,077
3.	Claims recommended by SDLC to DLC	1,17,240	3,208
4.	Claims approved by DLC	1,09,596	2,859
8.	No. of claims rejected	2,33,720	2,079
5.	Titles distributed	1,03,797	2,371
6.	Extent of forest land (in acres) covered by title deeds issued	7,98,638	5,61,997
7.	Average Extent of forest land	7.69	237.03

Source: Government of India Ministry of Tribal Affairs Status report on implementation of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 [for the period ending 30th April, 2014]

<sup>76</sup>Thatte, M., & Pathak, N. (2013). Maharashtra. In Desor, S., Citizens' Report 2013 on Community Forest Rights under the Forest Rights Act (pp.66-77). Pune, Bhubaneswar and New Delhi: Kalpavriksh and Vasundhara in association with Oxfam India.

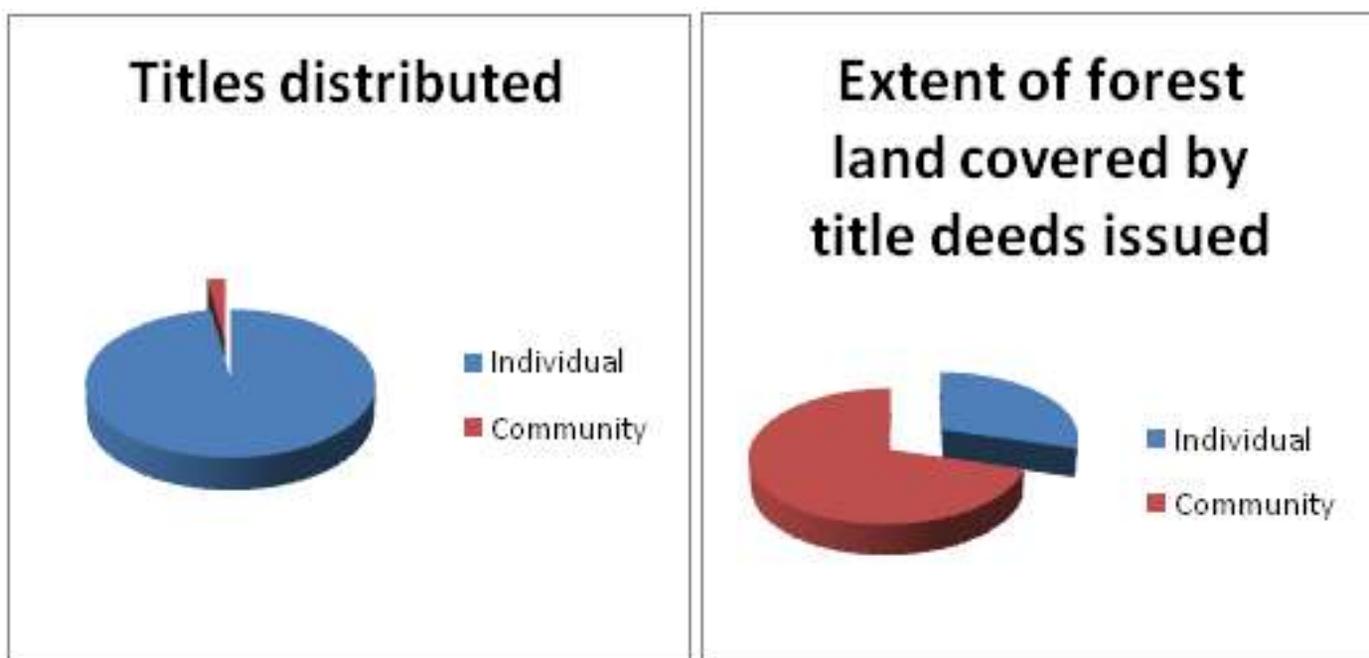
<sup>77</sup>In 2013, the Communist Party of India- Marxist [CPI (M)] and the All India Kisan Sabha (AIKS) called for re-examination of the high number of rejected claims in Maharashtra. As a result of this, on 17<sup>th</sup> April 2013, the CM, Prithviraj Chavan ordered that the claims be re-examined beginning with Thane and Nashik which had the highest rate of claim rejection and put district collectors in-charge of the process. See: <http://www.thehindu.com/news/national/other-states/maharashtra-to-reexamine-claims-rejected-under-forest-rights-act/article4699766.ece>

Box 4: Graph showing the proportion of Individual Claims to those for community rights claims in Maharashtra



While the proportion of individual rights received is much higher than community claims, the extent of forest land distributed under Community Rights is much higher than the forest land distributed under community rights. (See Figure).

Box 5: Extent of Forest land distributed as Individual titles and Community titles in Maharashtra.



About 0.02% of titles have been issued under CFR, but over 70% of the forest land on which titles have been issued is under CFR

## 2. Important circulars and policy decisions related to FRA implementation

- A government resolution (GR) dated 30<sup>th</sup> July 2013 (S-10/2013/L.No 87/F-3)<sup>78</sup> was passed by the revenue and forest departments of the government of Maharashtra, specifying certain rules for issuance of transit permit by the GS as specified under the Forest Rights Act. While the GR acknowledged that the transit permits are to be issued by the GS as per Rule 2(1)(d) of the FRA, the responsibility of printing and issuing the TP book has been handed over to the Forest Department. The GS has to apply for the transit permit to the concerned RFO, who is to provide the transit permit (free of cost) to the GS. However, within 48 hours of issuing a transit pass, a copy of the TP has to be handed over to the forest guard. Although FRA Rules clearly specify that the Transport Permit for the Non-Timber Forest Produce will be issued by the GS, this GR is not being implemented, as demonstrated by the ground situation in villages like Mendha (Lekha) in Gadchiroli and Pachgoan in Chandrapur where the GSs have been paying Rs. 100 per transport permit for a book containing 50 leaves (i.e Rs 5000 for the book).
- On the 6<sup>th</sup> of July 2014 the Chandrapur District Collector issued a deadline of 25<sup>th</sup> July, 2014 to all Forest Rights Committees (FRCs) for filing of claims under FRA. Thereafter, all *tehsildars* and *gram sevaks* were asked to convene GSs on the 28<sup>th</sup> of July, 2014, to verify those claims and the FRCs were asked to pass resolutions

certifying that all claims (individual as well as community) on forest land had been filed and that no claims were pending. These claims were then to be handed over to the Forest Department (by the Tehsil Office) rather than the SDLC. The DLC was to meet on the 14<sup>th</sup> of August to decide on the claims received from the entire district, which includes over 800 villages! This deadline was later revoked when CSOs from across the state protested against the move.

- Following the notification of the PESA rules in 2014, a notification has been issued on the 19<sup>th</sup> of August 2014 by the Governor of Maharashtra<sup>79</sup>, overruling all state acts preventing rights of PESA villages over *tendu*, bamboo and other MFP (as stated in the definition of MFP in FRA) and bringing it in accordance with Sec 3(1)(c) of the FRA. Another notification, dated 19<sup>th</sup> of January 2015<sup>80</sup>, under the PESA rules, calls for organizing special GSs to hand over control of NTFP like *tendu* and *apta* leaves to the villages. The GSs can, through a resolution, either ask the forest department to carry on the sale of *tendu* (although the ownership remains with the GS), or can manage the sale on its own and ask for support from various government departments. To address the problems encountered during collection, processing and sale of *tendu*, a district committee must be formed. Members of the resource management committees under PESA and Rule 4(1)(e) committees under FRA are to be elected in case of any option chosen by the GS to carry out the sale of *tendu*.

<sup>78</sup>Letter No. S-10/2013/L.No 87/F-3 by the Government of Maharashtra. Copy of the resolution is available with the author.

<sup>79</sup>No. RB/TC/e-11019 (15) (2014)/Notification-3/Bamboo-MFP/741, dated 19<sup>th</sup> August 2014 from the Governor, Government of Maharashtra. Copy available with author.

<sup>80</sup>Letter No: PESA-2012/No. 65/-2, dated 19<sup>th</sup> January 2015 from the Rural Development and Water Conservation Department, Government of Maharashtra. Copy available with author.

### 3. CFR recognition processes

The Tribal Development Commissionerate, Nashik, which is the nodal agency for the state, does not display district level FRA data on its website. However, reports from civil society groups indicate that the progress of CFR in most districts continues to be slow.

#### 3.1 Vidarbha region (Gadchiroli, Gondia, Chandrapur, Amravati, Nagpur, and Yavatmal districts)

By February 2014, Maharashtra Government has recognized a total of 1,232 CFR located in villages in Nagpur, Gadchiroli, Gondia, Amravati and Chandrapur districts over an extent of 6,25,890 acres of forest land. These include Phulxari and Lakhapur villages in Ramtek taluka of Nagpur district; 805 villages in Gadchiroli, 324 villages in Gondia, 47 villages in Amravati and 3 villages in Chandrapur district. Much of this has been possible because of the active role played by civil society groups working with the local communities in these areas. In Gadchiroli district the process has moved ahead because of concentrated effort by a network of local NGOs such as Vrikshamitra, Shristhi, Vidarbha Nature Conservation Society (VNCS), Amhi Amchya Arogyasathi and others. The Vidarbha Livelihoods Forum (VLF) has been formed by KHOJ, Dila?sa, Gramin Samasya Mukti Trust (GSMT), Shristhi, VNCS, and Yuva Rural Association covering villages in Gadchiroli, Gondia, Amravati, Nagpur and Yavatmal. The network has facilitated the filing of 155 CFR claims out of which 100 CFR have been recognized while several more are in the process of submission and recognition. The group has been able to bring about convergence of various schemes offered by nine government departments like Forest, Agriculture, Irrigation, Rural Development, Tribal Development, Animal Husbandry, MNREGS, Social Forestry etc., to ensure accessibility of the

schemes to the villages. The group has been able to mobilize funds under various government programmes, especially the MNREGS, in the villages, for forestry and soil and water conservation works in the CFRe and to facilitate the process of direct *tendu* patta trade by the GSs from their CFR by making funds available from the Tribal Development Department for *tendu* collection and disposal from 18 GSs. Another important victory in the struggle for forest rights has been achieved by the network in Jaitadehi village of Amravati district. 23 ha out of the 66 ha forming the CFRe of the community was lost in the submergence zone of a dam. Facilitated by KHOJ, the village had filed a claim over the entire CFRe of 66 ha. In August 2013, their CFR claims over the water body as well as fishing rights were recognized. The water body, however, had already been auctioned to a co-operative society from another village for fishing. The GS, after receiving their CFR, wrote to the DLC seeking clarification on the lease and demanded that their rights be honored by cancelling the lease. The submerged 23 ha of CFR area was finally demarcated and handed over to the GS by the District Magistrate. The villagers have received aid from the Integrated Tribal Development Project (ITDP) for fish seed, nets and boats. The village is now seeking training in fishing skills.

In Bhamragarh taluka of Gadchiroli, Srujan is in the process of facilitating habitat right claims of 109 villages of the Madia Gond community under section 3 (1) (e) of FRA<sup>81</sup>. This PVTG community is entirely dependent on *Bewar* and *Penda* (kinds of shifting cultivation) which have played an important role in ensuring nutritional and food security for these communities.

In Chandrapur, Paryavaran Mitra has facilitated the filing of CFR claims of 8 villages, of which only one village, Pachgaon, has received their title in 2013. Subsequent to receiving the title Pachgaon GS has

<sup>81</sup>Pallavi, A. (2014 January 10). Village gets community rights over forest submerged by dam. Down to Earth: <http://www.downtoearth.org.in/content/village-gets-community-rights-over-forest-submerged-dam>

formulated a management plan. 7 other villages have filed claims on CFR inside the Tadoba Tiger Reserve in Bhadravati taluka, viz., Wadala, Chincholi, Sitaram peth, Ghosri and Kondegaon in the buffer area and Ramtalodi and Khutwanda in the core. The claim from Wadala was rejected in 2013 (as reported in 2012-2013 report) on the grounds that it borders the core of the Tadoba Tiger Reserve.



Part of the forest claimed under Sec 3(1)(i) of FRA by the Wadala GS in Tadoba-Andhari Tiger Reserve. (Photo: Meenal Tatpati)

In Yavatmal, GSTM has facilitated filing of claims in 32 villages out of which 5 villages, Chinchghat, Awalgaon, Dhabadi, Borgaon-Bandhi and Pawnar, have received titles. 23 CFR claims of villages of Maregaon and Zari Jamni taluka have been sanctioned by the DLC in January 2015, and distribution of titles is awaited.

### 3.2 Thane

Updates have not been received regarding any new claims being filed in Thane, since the 24 CFR claims which were filed in 2009, in Murbad taluka. These claims continue to be non-traceable. Some of these

villages, under the leadership of Shramik Mukti Sanghatana have however started de facto management and conservation of their CFR, using funds received from the forest department by the Joint Forest Management Committees (which is also considered by the villagers as their Rule 4 (1)(e) committee under FRA. In Jawhar Mokhada, the CFR claims facilitated by Vayam, are still pending with the SDLC.

### 3.3 Pune

Kalpavriksh, Shashwat, Adivasi Adhikar Rashtriya Manch and Econet have been facilitating FRA processes in Ambegaon, Khed and Junnar talukas of the district, in and around the Bhimashankar Wildlife Sanctuary. Data collected from the district office for these three talukas, where the population of scheduled tribes and forest dependent people is high, indicates that till January 2014, there had been no CFR claims filed. As per civil society organizations such as Shashwat and Kalpavriksh, at least 6 villages have filed community rights claims (but CFR claims had not been filed separately as per the new Rules). These claims, however, are not reflected in the official information.

Table 10: FRA implementation status in Khed, Ambegaon and Junnar Talukas of Pune District (Till 23<sup>rd</sup> Jan 2014)

Taluka	Claims on Community Forest Rights						Development Rights		
	Approved by GS	Approved by SDLC	Rejected by SDLC	Approved by GS	Approved by SDLC	Rejected by SDLC	Filed by GS ?	Approved by SDLC	Rejected by SDLC
Khed	16	4	12	0	0	0	4	3	0
Ambegaon	6	0	5	0	0	0	0	0	0
Junnar	21	10	11	0	0	0	1	0	1

Source: Response received from RTI filed by Pradeep Chavan, Kalpavriksh

An analysis of data from the three talukas in Pune district shows that till January 2014, no CFR claims had been filed in any of the three talukas. Since then, in Khed, 16 community rights claims were filed of which 12 were rejected, in Ambegaon district, 5 of the 6 CFR claims have been rejected and in Junnar district 11 of the 21 claims filed have been rejected by the SDLC. The network of above mentioned civil society groups working in these talukas have sent several letters to the District collector, Pune; Sub Divisional Officers (SDO), Rajgurunagar and Ambegaon; and Project Officer of Integrated Tribal Development Project (ITDP) office, Ghodegaon, raising concerns about the slow progress of FRA implementation. Several meetings have been held with relevant officials to initiate a joint campaign towards raising awareness and filing claims in these villages.

### 3.4 Nandurbar, Jalgaon and Dhule Districts

The only official information available on the number of community claims filed in Nandurbar relates to 4 talukas. In Taloda, 26 CFR claims have been filed, in Shahada 22 claims, in Navapur 32 claims and in

<sup>82</sup>[http://nandurbar.nic.in/html\\_docs/forestright/right\\_view.html](http://nandurbar.nic.in/html_docs/forestright/right_view.html)

Nandurbar 2 claims have been filed by the gram sabhas with the FRCs<sup>82</sup>. Both CSOs working in the region - Narmada Bachao Andolan (NBA) and Lok Sangharsh Morcha (LSM), have facilitated filing of community claims. In Akkalkuwa taluka, LSM facilitated the filing of 136 claims of which 46 have been recognized and titles issued, while in Taloda, 36 claims were filed and 19 have received titles. NBA started out with facilitating claims over CFR rights by undertaking exposure visits to Mendha-Lekha and focusing on helping several villages of Akrani and Akkalkuwa talukas to file claims. These villages include Bhadal (Akrani), Shelda, Zhapi, Khadki, Falie, Navagaon, Savryadighar, Dannel, Chichkhedi, etc.

In Jalgaon district, 178 CFR claims were filed in 2012, of which 37 have been accepted and titles distributed, while 7 more (which include ones inside Yawal wildlife sanctuary), though accepted, are awaiting issue of titles. CFR claims from Yawal wildlife sanctuary have been sent back to the GSs with queries. Subsequent to this, a micro-planning exercise was taken up in 17 villages inside and outside Yawal wildlife sanctuary. LSM has been instrumental in the facilitation of CFR claims and having rights recognised in Nandurbar and Jalgaon district<sup>83</sup> too?. In April and May 2014, the SDLCs in Nandurbar, Dhule and Jalgaon recommended that only JFM forests can be given as CFR under FRA. Taking up this issue, 8000 members of LSM led a **protest march** to Maharashtra Tribal Commissioner's office in Nashik on 11<sup>th</sup> June 2014, and held a *dharna*, demanding that they be heard. Their main contentions were that the tribal department, despite being the nodal agency, had failed to create awareness about the legal provisions of the FRA as well as other beneficial schemes and programmes for tribal communities and that it had to be accountable; that the SDLC and DLC were following directions issued by the forest department without attempts to understand the FRA; and that it was illegal to

consider JFM forests as CFR.

As a result of this, the Tribal Commissioner committed to call a meeting of the SLMC and the chairpersons of all DLCs and SDLCs of these districts to create awareness about the FRA and amended Rules issued in 2012, and to provide assistance to all FRCs in these districts to facilitate filing of claims. However, things did not move much even after this because of state assembly elections in Maharashtra held in October 2014. After the elections, the collectors of Nandurbar and Jalgaon returned all the claims that had been filed, with a letter to the FRCs saying that these claims should be filed again along with written proof (in violation of Rule 12A(11) of the Amendment Rules 2012). LSM members were concerned about the lack of knowledge and information among the implementing agencies about the provisions of the Act as well as the 2012 amended Rules. To bring this lack of awareness to the fore, LSM decided to launch an agitation before the Tribal Commissionerate on 11<sup>th</sup> December 2014. 500 women and men members of the LSM sat in a *dharna* outside the commissioner's office. Finally, the following was agreed upon:

- To understand the hurdles in implementing FRA, the Project Offices of Dhule, Nandurbar and Jalgaon, along with the chairperson of District Level Committees, the secretaries FRCs, and officials of the forest department will organize joint meetings in Jalgaon, Nandurbar and Dhule to come up with strategies for future implementation of the Act.
- Meetings of FRCs and SDLCs will also be held in Jalgaon and Nandurbar.
- Tribal Department should organize a one-day awareness programme for all its Project Officers on FRA in general and CFR in particular.

<sup>83</sup>Update given by Pratibha Shinde over telephonic conversation.

- It was also decided that for every cluster of 4-5 villages in Dhule, Nandubar and Jalgaon an assistant would help villages prepare their CFR claims where they have not filed any so far.

As a result of this, 68 CFR claims to areas ranging from 150 to 1050 ha, have been accepted in Nandurbar.

#### **4. Emerging issues:**

##### ***4.1 Issues relating to Non-Timber Forest Produce***

Non-Timber Forest Produce (NTFP) was brought under state control in Maharashtra through legislations like the Maharashtra Forest Produce (Regulation of Trade) Act, 1969, and Maharashtra Forest Produce (Regulation of Trade in Tendu Leaves) Rules, 1969, which has done little to improve the condition of collectors. While the passing of the FRA has transferred the ownership of minor forest produce (MFP) to the GSs of forest-dwelling scheduled tribes and other traditional forest dwellers in all forest areas, only a few communities have so far been able to take advantage of these empowering provisions, because of a number of complex factors that are intricately linked to NTFP trade.

Despite the July 2013 GR (as stated in III-2 above) transit permits (TP) have not been handed over to the GSs and the latter are currently being forced to TP books at Rs.100 per permit from the forest department.

In other districts, the high-handedness of the forest department and the state's monopoly over

MFP continue. In April 2012, Panchgaon village in Chandrapur district was the first village in the district to receive title to CFR, which covers 1006.416 hectares. However, their relationship with the forest department began to sour soon after that when they started asserting their rights and responsibilities under section 5 of the FRA. In May 2012, when the GS attempted to sell bamboo from its CFR area, the forest department insisted that bamboo could only be cut after a working plan was prepared. The villagers, with the help of Paryavaran Mitra, prepared a working plan, and got it approved from the DFO and CCF. Since November 2013, the GS has systematically harvested bamboo, auctioned about 40,000 bamboo poles through open tenders and has complied with all necessary procedures. While the forest department initially issued transit passes, it subsequently accused the GS of illegal bamboo felling and creation of a bamboo depot. One of the triggers for this was the fact that one of the rules that the village had adopted was to make it compulsory for anyone entering the forest to register their name in the village. In an attempt to apply the rules equally to all, the GS also requested the forest officials entering the forests to register their names. The forest officials took offence at this request and began to bring out various discrepancies they saw, in the bamboo harvesting process. Matters reached a head on 6th May 2014, when officials tried to confiscate the bamboo harvested in 2014. Although the villagers have peacefully opposed the confiscation of their bamboo, the forest department subsequently refused to issue transit permits to the GS.





Villagers from Panchgaon, Chandrapur District, Maharashtra, protesting against the confiscation of their bamboo by the forest department. (Photo: Panchgaon GS)

Further, the forest department filed offenses against the GS under the Indian Forest Act, 1927. This situation of conflict has led to loss of livelihood for the Panchagaon villagers. Till June 2014, 76,000 long bamboos and 9,200 bamboo bundles were lying in store in the depot of the GS. Of these, sale contracts for 35,600 long bamboos and 4,800 bamboo bundles had already been signed but could not be transported for lack of TP Book from the forest department. Villagers were under threat of legal action by the contractors who had purchased bamboos. Not being able to sell the rest of the bamboo also meant that villagers incurred serious loss of income. A TP book was finally given to the village after the intervention of a network of citizens from Chandrapur, including eminent lawyers and ex-government-officials, who came

together to collectively gain an understanding of FRA and to lobby for the rights of the villagers.

While on the one hand stand offs with the forest department continue over minor forest produce, the Vidarbha Livelihood Forum has experimented in *tendu* leaf trade by the GSs, through lobbying with various departments. In 2013, 18 villages in Gadchiroli, Gondia and Amravati districts, after receiving their CFR, decided to collect, process and sell *tendu* leaves themselves. A cluster of villages located close to each other formed joint committees for monitoring and managing the process of collection and sale. Considering the complexities of the trade and lack of experience of the GSs in handling it entirely on their own, a technical advisory committee, consisting of members of each GS, civil society groups, forest

officials and a technical advisor, was set up to prepare tender documents and sign and publish them in leading Daily Newspapers. Though the villagers did not receive any tenders, the Tribal Development Department agreed to purchase *tendu* leaves through Maharashtra Tribal Development Corporation (TDC) in case the villagers were not able to sell them. An initial support price was provided as an advance to the GSs. After many hiccups and under threat from the TDC to withdraw support - sighting sub-standard quality - the villagers, with the help of NGOs, managed to sell the *tendu* leaves at 3600 per standard bag. The GSs were eventually able to pay all collectors, to return the advance money to the TDC and to distribute the profits among the collectors as a bonus<sup>84</sup>.

#### 4.2 Issues with the recognition of forest rights in areas facing forest diversion

In Thane, Maharashtra, villagers are fighting against illegal construction of Kalu dam (being constructed to provide water to Navi Mumbai), with the help of Shramik Mukti Sanghatana. The dam is being constructed without completing legally binding processes under the FRA. Many affected villages have already filed CFR claims, thus asserting their community rights over the forests which are being diverted for the project. The project proposal was initially rejected by the Central Government on the grounds that included non-compliance of FRA. A fresh proposal was subsequently presented by the project proponent to the government of Maharashtra which was forwarded to the central government in March 2013. On April 4, 2013, the FAC (Forest Advisory Committee) recommended that the project be given forest clearance, despite the fact that all the GSs had passed resolutions rejecting the project. In the meanwhile the villagers continue to await

hearings on the case filed by Shramik Mukati Sanghatana in Bombay High Court.

In another example, forest clearance was granted to the windmills project in 2009 within the boundaries of 14 villages in Pune District and situated within a 10 km radius of Bhimashankar Wildlife Sanctuary without GS consent, and through consent letters under allegedly forged signatures of village level FRCs.

#### 4.3 Issues emerging in Protected Areas<sup>85</sup>

In Melghat Tiger Reserve, the official Tiger Conservation Plan (TCP) gives some information on the status of claims under FRA received between 2009 and August 2011 in a tabular format. The table doesn't give information on whether the claims are filed for land under cultivation/occupation or community forest resource. Neither does it explain why the rights have not been recognized and what the level at which the claims are pending, is.

As per an NTCA document, 28 villages within the Melghat Critical Tiger Habitat have to be relocated and a relocation plan for 16 villages has been submitted. Till 2014, 3 to 4 villages have been resettled on the basis of a certificate signed by the collector stating that settlement of these villagers' rights has been completed. While no relocation is taking place without consent from the family being relocated, it has been observed that the recognition of rights has not been completed in any of the villages in the CTH.

According to Khoj, out of the villages still remaining within the CTH, 6-8 have filed CFR claims, which are pending. In June 2013, a CFR claim from Madizadap village was rejected by the SDLC, citing a letter from Assistant Conservator of Forest dated 16/12/2011 saying that rights were extinguished in 1994 (even though villagers had attached

<sup>84</sup> See: Dahat, P. (2013, May 23). A new turn for *tendu*. The Hindu. Available at: <http://www.thehindu.com/news/national/other-states/a-new-turn-for-tendu/article4739840.ece>

<sup>85</sup> Excerpted from Desor. S. (Unpublished). Making of a Tiger Reserve: A study of the process of notification of Tiger Reserves, in accordance with WLPAs 2006. Pune/Delhi: Kalpavriksh and Action Aid India.

<sup>86</sup> Reported in FoC Consultation on FRA and PAs, 2012. Report available at:

grazing passes issued on subsequent dates, - in the year 2007 - along with their claims). Claims were filed by villagers of the now-relocated village Vairat (and also officially acknowledged) but it is clear that relocation happened without recognition of rights claimed under FRA as no titles were granted.

The Tadoba-Andhari Tiger Reserve (TATR) in Chandrapur district has only 5 villages still located inside the CTH, though the CFR areas of many other villages fall under the CTH. Grazing, access to Tadoba temple (an old sacred site), and putting up of gates and restrictions on NTFP collection continues within the core<sup>86</sup>. The process of filing CFR claims in the buffer is being facilitated by Paryavaran Mitra. Wadala-Tukum village, which is located on the western boundary of the national park, had sent notices to the concerned departments (including FD) for joint verification after filing their claims. Joint verification however could not take place because forest department officials remained absent on the set date. In March 2013 the claim was rejected on the grounds that the area claimed bordered the CTH, and any human activity in the area was liable to irreversibly affect wildlife and exacerbate man-animal conflict, and the rights conferred would interfere with the main objective of the Tiger Reserve i.e. to protect and conserve the tiger and its habitat. On 3<sup>rd</sup> May 2013, the GS appealed to DLC regarding this decision, but there has been no progress on the appeal.

#### *4.4 Issues arising out of post-CFR governance and management of forests*

Sec 4(7) of the FRA provides for forest rights conferred to be free of all procedural requirements and encumbrances which include leases over any part of the community forest resource including over MFP. In some GSs of Gadchiroli district, such as Shankarpur in Wadsa block, Yerandi and Ghati villages in Kurkheda block, and Temly in Korchi block the forest department is continuing to implement its working plan despite these villages

having received CFR rights. Some of these villages have been in this state of conflict for over three years. Considering that Rule 4 (1)(f) of FRA mandates the GSs with CFR rights under FRA to prepare conservation and management plans for their community forest resources (to be integrated with the management plan or working plan of the forest department), the state forest department is in fact violating a central government legislation.

Similarly, in Murumbodi village of Bhikarmaushi GS in Gadchiroli, a lake in the CFR area of the village continued to be given on lease to a fishing society of another community by the Block Development Officer (BDO), without any discussion with the Murumbodi villagers. After much petitioning, the society has complied with the demand of the GS and 50% of the benefits are presently shared with the village. In addition, Jaitadehi village of Amravati district, which had lost its entire forest, and hence its livelihood, due to construction of a dam, filed their CFR claim which included forest which was submerged. In August 2013, their CFR claims over the water body as well as fishing rights were recognized. Of the 66 ha of CFR land, 23 ha was under submergence. The water body, however, was already auctioned to another society for fishing. The GS, after receiving their CFR, wrote to the DLC seeking clarification on the lease and demanded their rights be honored by cancelling the lease. However, the lease continues, in violation of the FRA. The DC of Gadchiroli had issued an order dated 23<sup>rd</sup> April 2012, cancelling leases granted by Zilla Parishad, Forest Department or any other department to any private company or organization or individual for the felling of bamboo, and auction of products from water bodies or otherwise or made any agreement to this effect, in 807 GSs which had received their CFR titles. However, no such order has been reiterated after 2012 in Gadchiroli or any other district, and hence villages in the district which have received titles over CFR claims still have to submit to such leases and contracts.

## IV. ODISHA

Subrat Kumar Nayak

The state of Odisha has nearly 58,136 sq. km of recorded forest area. It has two National Parks, 18 Wildlife Sanctuaries and two Tiger Reserves covering an area of 9,110.78 sq. km. There are about 29,302 forest fringe villages in the state and 40% of the total population depends on forests for livelihoods. The forest-based communities have a rich history of community-initiated forest management (Community Forest Management or CFM) practices, where villages or groups of villages have been protecting and managing forests according to their own sets of rules and regulations. However, these initiatives were not legally recognised until the enactment of the Forest Rights Act. The CFR provisions of this piece of legislation have paved the way for legal recognition of existing CFM practices and can lead to better conservation of biodiversity and wildlife habitats along with enhancing the livelihood security of these communities.

### 1. Status of FRA Implementation

According to the Status Report of MoTA (for the period ending in April, 2014), 7,304 CFR claims and 4,249 CFRe claims have been filed at GSs. Out of these, 2,930 CFR claims and 2,048 CFRe claims have been approved by DLC for titles, and a total of 4,979 titles have been distributed covering 405,197.97 acres of forest land, till date. A comparison of the official figures for the period ending 30<sup>th</sup> April 2013 with those of the period ending on 30<sup>th</sup> April 2014 reveal a significant increase in the number of CFRe claims filed and titles issued (see Table 11).

Particulars	Status of Community Rights (as on 30.04.2013)			Status of Community Rights (as on 30.04.2014)			Rise in implementation figures over the year		
	CFR	CFRe	Total	CFR	CFRe	Total	CFR	CFRe	Total
No. of claims received by FRC	5,645	-	5,645	7,304	4,249	11,553	1,659	4,249	5,908
No. of claims approved by GS	2,908	-	2,908	2,930	2,048	4,978	22	2,048	2,070
No. of titles distributed	1,051	-	1,051	1,966	1,172	3,138	915	1,172	2,087

Table 11: A Comparative Table of community forest rights in Odisha (April 2013-April 2014).

While the number of titles distributed has increased in the past year (See Table 11), there are issues related to the applicability and validity of the titles in several districts. As per the information provided by the Project Administrators-Integrated Tribal Development Agency (PA-ITDA), Kandhamal, out of the 2,351 CFR claims received in the district, 1,884 have been recognised for distribution of CFR titles as of August 2014. However, with the exception of 7 CFR titles issued in Krandiballi GP of Phiringia Block, all CFR titles issued in the last one year contain a "provisional" seal, which is not legal. Secondly, a number of titles provided are *not supported by CFR maps covering customary boundaries and prominent identifiable landmarks*. In some villages, CFR titles have been issued based on maps prepared by *amins* (revenue inspector) excluding vast

areas of forests from the CFR maps prepared by the community. Two GSs of Balimusti and Gumakia villages under Balliguda Tehsil had returned their titles for review to the DLC in December 2013, but no action has been taken on their claims so far.

In Keonjhar, 69 CFR claims have been submitted to GS for verification by the existing JFM committee, which is in direct violation of legal provisions. In another instance it was found that govt. officials have been trying to ask the *Juang* community to claim CFR and CFRe rights over an area which has a prior habitat claim on it, submitted by the same community in 2010, which is pending with the SDLC.

Six CFR titles in Turiguda Gram Panchayat of Chandrapur Block in Rayagada District issued to the President of FRC and the villagers do not specify the nature of the rights. This issue has been taken up with the district administration.

2. Important circulars and orders issued in the state for effective implementation of FRA (up to Mar, 2014)

After the FRA Amendment Rules came into force in 2012, the Scheduled Castes and Scheduled Tribes Development Department (SC & ST DD), which is the state nodal agency, has proactively issued circulars to expedite the process of recognition of rights in the state.

- The Commissioner-cum-Secretary of the SC & ST DD has issued a circular<sup>88</sup> dated 26<sup>th</sup> November 2012, to all Collectors and PA-ITDA of Mayurbhanj, Keonjhar, Gajapati, and District Welfare Officers of Sambalpur, Deogarh, Nuapara, Kalahandi, Angul, Cuttack, Nayagarh, Bhadrak, Puri, Khurda and Ganjam to proactively facilitate Community Forest Rights

claims and ensure that all PVTGs receive habitat rights.

- The Director and Additional Secretary of the SC & ST DD of Odisha issued a circular dated 21<sup>st</sup> March 2014, directing all collectors to prepare the final map of the forest land vested under FRA, and the concerned authorities are required to incorporate the same in the revenue and forest records.<sup>89</sup>
- The SC & ST DD issued a letter for deregulation of Tendu leaves trade in the districts of Malkangiri and Nabrangpur and for providing necessary support to the GSs.<sup>90</sup>

3. Mapping of Community Resources using GPS/GIS technology<sup>91</sup>

Vasundhara has initiated a process in collaboration with the district administration, community and local civil society organization on mapping of CFRe using GPS/GIS technology in six districts of Odisha namely, Sundargarh, Sambalpur, Deogarh, Mayurbhanj, Nayagarh and Kandhamal (Similar GPS mapping process has also been carried out by other civil society organization across Odisha). A series of training programs have been carried out in all intervention areas on GPS mapping as well as on map generation using GIS software.

Through this initiative in collaboration with CREFTDA (A NGO based in Jasipur), 42 CFR areas have been mapped in Jasipur block of Mayurbhanj district in the Simlipal Tiger Reserve in the first phase of the mapping process, and these will be submitted to the concerned FRCs for their validation and final approval by the GSs. Titles were also distributed to the 43 villages in the initial phase. Similarly, the process of CFRe mapping through GIS/GPS is under way and at various stages of completion in all the 6 intervention districts.

<sup>88</sup> Available at: [http://www.fra.org.in/New/CFR\\_nov12.pdf](http://www.fra.org.in/New/CFR_nov12.pdf)

<sup>89</sup> Letter no 10496 TD-II (FRA)-28/2014/SSD, Bhubaneswar from the SC & ST DD to all collectors. Available with Author.

<sup>90</sup> Letter no KL-7/2013, 7552 / F & E, Bhubaneswar from the Forest and Environment Department to the PCCF (Forest & Kendu Leaves) & MD, Odisha Forest Development Corporation (OFDC). Available with Author.

<sup>91</sup> Inputs by Bibhore Deo, Vasundhara



FRC members, village elders and women of Madikhol Village, Kandhamal District, Odisha, mapping their traditional-use forests. (Photo: Subrat Kumar Nayak)

#### 4. FRA in Protected Areas (PAs)<sup>92</sup>

In 2010, Jenabil village of Simlipal Tiger Reserve was relocated without the process of recognition and vesting of forest rights. In 2013, two settlements, Uppar Barakhemunda and Bahaghar were also relocated without recognition and vesting of their rights under FRA.

In another development, according to a report by Survival International a *palli sabha* was held in Jamunanagar village, situated in the core of the Simlipal Tiger Reserve, on 19th of September, 2014, where the CFR title was handed over to the villagers by the Forest Department. The District Forest Officer then told the community about the forest department's plan to relocate the village. Those present at the meeting were asked to sign a document, the contents of which were not discussed. Only after the document was signed, it was revealed that they would not receive 5 acres of

cultivable land since there was no land available for resettlement. The community is also being pressurized for relocation out of the reserve. Only three villages now remain inside the Tiger Reserve and there are plans for their relocation too.

In some protected areas like Karlapat and Badrama Wildlife sanctuary, communities have claimed their CFRe rights and CFR within their traditional boundary.

In Badrama Wildlife Sanctuary, the verification process for delineated areas being claimed as CFRe has been completed by both the forest and the revenue departments and approved by the DLC for final title distribution. However, no title has been issued till date.

#### 5. CFRe Management<sup>94</sup>

While Odisha has a long history of community driven forest management processes, true

<sup>92</sup>Pattnaik, R. (2013). FRA Status Report on Protected Areas. Vasundhara. Bhubaneswar: Unpublished.

<sup>93</sup>Complaint made by Survival International to the Secretary of the Odisha Human Rights Commission on the 9<sup>th</sup> of October 2014. Available at: <http://www.survivalinternational.org/news/10488>

<sup>94</sup>Sahoo.H.K. Draft Note on CFR management Plan and learning process in Mayurbhanj.

devolution of power to communities to manage their CFRe has not been effected yet.

Duvia village in Baripada block of Mayurbhuj district has filed a CFRe claim for over 300 ha of its traditional forest. The claim has been pending with SDLC since 2011. The GS has already constituted a management committee. When the cyclone Phailin uprooted several trees in the claimed CFR area, the GS wanted to sell them. It wrote to the FD asking for a transit permit for the same, but the FD refused. This demonstrates a lack of understanding, on the part of the forest department, of critical issues in the exercise of community rights over CFR areas. Despite several circulars being issued by the SC & ST DD, lack of clarity persists on ground.

Since this incident, however, Vasundhara has taken an initiative on CFR governance and management in Mayurbhanj and Kandhamal districts (Madikhola village in Kandhamal and Bilapagha in Mayurbhanj) on a pilot basis. The villages were selected on the basis of their differing forest governance regimes. The district administration of Mayurbhanj and Kandhamal have shown an interest in the study to take forward the findings and to develop possible guidelines for further improvement of forest governance at the GS level. Research and documentation for CFRe governance and management in these two intervention villages has been completed and the endorsement of management plans and approval by GS is under way.

#### 6. Conversion of a Forest village into Revenue Village<sup>95</sup>

An initiative for the conversion of forest villages into revenue villages has been undertaken in Kandhamal District, with support from the district administration. There are 35 forest/un-surveyed villages duly identified in Census 2001 in different blocks (Phiringia- 11, Khajuripadar- 1, Chakapad- 14, Tikabali- 1, Baliguda- 1 and Daringbadi- 7) in

the district. The process of conversion has started in Kirangi Kheta and Tenaspanga villages under Jamjhari GP and Mundrudadi and Mujari villages of Solaguda GP, Demographic and socio-economic data has been collected the history of these villages has been traced with the help of the inhabitants and available documents for these identified forest villages.

#### 7. Rights over Minor Forest Produce<sup>96</sup>

The Odisha state government deregulated trade in *tendu* leaves in the Nabrangpur Tendu Leaf Division on a pilot basis. However, the deregulation was done at the peak of the harvest season with very little time for GSs to carry out leaf procurement and trade as envisaged under the Act. Despite the fact, the Narigaon GS in Boriguma block, Koraput district decided to collect and sell *tendu* leaves and intimated its decision to the district administration including Tendu Leaf Division, Nabrangpur through a resolution. The Gram Panchayat also issued a registration certificate to the 10-member committee formed in the village, to purchase *tendu* leaves. Some of the working capital required to purchase leaves from the pluckers was raised through contributions by the executive committee. Two collection centers were opened to purchase leaves from pluckers.

However, the GS began to face difficulties in selling the procured Tendu leaves to traders since the existing Tendu leaf policy did not clarify the GS's ownership and disposal rights over the produce. The Palli Sabha approached the district administration and Tendu leaves Division many times to seek help for the sale of their collected Tendu leaves but received no support. Through civil society intervention at different governmental levels, a directive was issued by the SC&ST DD to the Principal Secretary, Forest & Environment Department, to provide marketing support to the GS, and the GS could finally obtain transit permits from the Tendu Leaf Division, and eventually they sold the *tendu*.

<sup>95</sup> Inputs from Madhav Jena, Vasundhara

<sup>96</sup> P. Chittaranjan. 2013, "Deregulation of Tendu leaves in Nabrangpur KL division" Vasundhara

On 1<sup>st</sup> January 2014, the state government extended the deregulation of tendu leaves to Malkangiri district and also to entice the pluckers looking to the forthcoming election the Forest Development Tax (FDT) reduced to 2% from 16% in the Kendu leaf trade and distributed Rs 100 Crores came out of that to all the registered Kendu leaves pluckers in 2014.

## 8. Habitat Rights

The only known case of claiming habitat rights by a community is Juang PVTG over the Juang pidha in Keonjhar district. The *pidha*, locally means a clan territory and the Juang have filled claim over three clan territories in the year 2010 [(KathuaPirha(17 villages), Jharkhand pirha (16 villages) and Satkhandpirha (10 villages)] out of a total of six clan territories(six clan territories when combine together constitute the Juang habitat). Although these claims are still pending with SDLC, the district administration are trying to get palli sabhas (local gram sabhas of Odisha) of these villages to claim CFR over the same area, which leads to lot of confusion among the community. Despite these problems, the Juang, majorly concentrated in the Banspal block, have re-initiated the process of claiming rights over the three remaining pidhas (Rebona Pidha, Hunda Pidha and Charigarha Pidha) in collaboration with Vasundhara and Banabasi Chetana Mandal (a Gonasika based organization).

However, a continued lack of clarity within and outside government about the concept and meaning of habitat, as well as the procedure to be used for recognizing such rights over larger landscapes covering multiple villages, has been

found to be a major obstacle in the recognition of habitat rights. Against this backdrop, the United Nation Development Programme (UNDP), under the aegis of the MoTA, GoI, commissioned Vasundhara, to undertake a research study in the year 2013-14 with the broad objectives of defining the concept of PVTG Habitat rights with a suggestive guideline for its determination and recognition process and to explore specific role and responsibilities for different authorities to facilitate the entire habitat rights recognition process. The research study includes the Baiga community in the States of Madhya Pradesh and Chhattisgarh and the Dongaria Kandha community in Odisha as a sample PVTGs. In addition a case study of Juangs of Odisha was also carried out, as they are the first to file claim for their Habitat Rights.

The report after a detail investigation had been submitted to MoTA in September 2014 with a proposed guideline for habitat rights recognition process, prior to submission of the report, during one of the presentation meeting with MoTA, a suggestion was made by Add-Commissioner, SC & ST Dev. Dept, Govt. of Odisha, who was also present in the meeting for piloting the proposed guideline with two PVTG community in Odisha, Further while following up with this, *Kutia Kondha* Community had been selected for piloting the proposed habitat rights guideline, it was further consulted with the Kandhamal district administration to pilot the proposed guideline and finally the process was initiated in collaboration with DLC, local NGO and CBOs in the month of September 2014.

<sup>97</sup>Letter no 24111/SSD TD-II (FRA) 33/2013 dated 17<sup>th</sup> July 2013, from the Director (ST)-Cum-Additional Secretary to Government (ST & SC DD) to Principal Secretary, Forest and Environment Department. Available with the author.

<sup>98</sup>Tatpati, M. (2014). Report of the National Level Consultation on the Relevance of Forest Rights Act in Forest Diversion. Raipur: Community Forest Rights-Learning and Advocacy Network.



A Kutia Kondha settlement, Desughati Village, Kandhamal (Photo: Subrat Kumar Nayak)

Similarly the Dongria Kondh community is also in the process on filing habitat rights claims over their sacred habitat- *Niyamgiri*, extending over four blocks of the Kalahandi and Rayagada districts. A consultation was held with the elders of the community, and the traditional leaders, with support from local CSOs and thereafter initiated the process of identification and listing of the Dongria Kondh habitations and settlements.

Recently in the month of April 2015, the Ministry of Tribal Affairs (MoTA) sent a letter to the Chief Secretaries of all state governments to make an 'all-out effort' to recognize the habitat rights of all 'Particularly Vulnerable Tribal Groups' (PVTG) in

their states. This implies that the state governments, through their respective District Level Committees (DLC), need to ensure that all PVTGs receive habitat rights in consultation with the concerned traditional institutions.

The states must also initiate processes to help the PVTG communities to file their habitat rights claims and where the claims have already been filed, the DLC should take appropriate steps to ensure recognition of their rights along with mapping their customary territories. However there is substantial delay in issuing guidelines related to habitat rights recognition process from MoTA which hindering the recognition process in the state.



## D. PERSISTENT ISSUES AND RECOMMENDATIONS

This section presents a summary analysis of key issues being faced in the implementation of the CFR provisions because of legal, institutional and other problems. The discussion on issues is followed by recommendations for consideration by the implementing agencies.

The issues have been drawn from the National Overview and Case studies, as well as discussions that have taken place during CFR-LA consultations and meetings and on the list serve. The recommendations are drawn from the MoEF-MoTA Joint Committee Report of 2010 along with discussions during several MoTA supported consultations and from civil society groups.



Villagers from locations in and around Yawal Wildlife Sanctuary, Maharashtra, interacting with government representatives on issues regarding the Forest Rights Act (Photo: Meenal Tatpati).

## I. PERSISTENT ISSUES

### 1. Inadequate awareness, misinterpretations and lack of facilitation

A lack of in-depth understanding about the FRA, misinterpretation and misunderstanding about its CFR and CFRe provisions (including the one that rights under Sec 3(2) are also community rights) is a continuing problem in most states.

While playing a proactive role in some areas, in many others the district administration is not actively facilitating the process of claim filing by GSs or providing supporting documentary evidence. In many areas where Forest Rights Act is being implemented the focus is on individual forest rights.

In states like Uttarakhand, Jharkhand, and the North-Eastern states, governments have explained away non-implementation of FRA under the excuse of the existence of state laws which already address forest tenures and customary rights. This is contested by the local communities and is contrary to the spirit of the FRA which has provisions to record customary rights recognized under any customary law implemented by a state.

### 2. Institutional gaps:

The institutional framework necessary to provide support for, and to facilitate the process of, recognition of rights under FRA is often not in place, or is not functioning as it should - at the central level, the state and the ground level.

In many cases there is an undue influence of and reliance on the Forest Department for carrying out the processes of recognition of rights as can be observed in Jharkhand and Chhattisgarh.

Contrary to provisions of the FRA, GSs are being held and Forest Rights Committees formed at the Panchayat level instead of hamlet level. There is also interference of governmental agencies in forming the FRCs as seen in Andhra Pradesh, where in some districts, revenue officials are interfering with the process. In some places, JFMCs

have been chosen as FRCs. Due to this, in several cases, resolutions regarding claims are not being made by the GS but by various governmental agencies.

In many areas, the SDLCs and DLCs have not been constituted, thus stalling the process of implementation. Even where these have been formed, the SDLCs and DLCs do not meet regularly.

The State Level Monitoring Committees have not been meeting regularly and are not monitoring the implementation on a continuous basis, which is why there is a serious gap in dealing with grievances by the community and appeals made by them on issues of implementation and violation of rights.

At the Union Ministry level, the necessary coordination between MoTA, MoEFCC, MoRD and other relevant ministries appears to be weak.

### 3. Obstructions in filing claims

Varied CFR claiming procedures are being enforced in different states, making it difficult for communities to follow these procedures without strong external support and capacity building. While the Act has laid down procedures for filing claims and facilitation of claims by different agencies, processes being followed on ground are seen to be hampering the filing of claims.

#### *3.1 Invalid procedures for filing claims*

In West Bengal and Himachal Pradesh, the implementation of the FRA is still restricted to those districts where there is a sizable presence of Scheduled Tribes, thus completely leaving out Other Traditional Forest Dwellers from the benefits of the Act. The nodal agencies in the North and South 24 Parganas districts in West Bengal have not even started the processes under FRA and the communities are deprived of recognition for their ancestral rights.

In some parts of Odisha like Kalahandi, Nuapada, Mayurbhanj, Boudh, Baleshwar, Deogarh and Nayagarh, the joint verification reports prepared

by GSs for the filing of claims, are being rejected by the SDLC, while it has issued specific formats for making resolutions that has to be used by the gram sabhas while filing claims.

Where these administrative committees are convening meetings regularly, a lack of awareness and misunderstanding regarding CFR claims has resulted in SDLCs asking claimants to file separate claim forms for each of the rights mentioned under Sec 3(1).

In Tamil Nadu, not a single CFR title has been issued to communities due to a restrictive order issued by the Madras High Court in 2008 that restrains issuing of titles under Sec 3(1) unless examined by the court. This has been read by the implementing agencies to mean that no action on the claims can be taken without the order being vacated, despite the courts clarification stating that claims can be processed by the SDLCs and DLCs.

### *3.3 Problems in evidence collection*

SDLCs have been returning claims on the pretext of evidence being provided by the claimants being considered insufficient. And this despite the fact that several communities have been writing to different departments, including the forest and revenue departments and the SDLCs, to provide them with relevant evidence for the filing of claims. By not informing the claimants about acceptance/ rejection of their claims, the nodal agencies seriously hinder the exercise of recognition of rights. If no reports on rejection of claims or on the reasons for rejection are provided, the process is rendered non-transparent and is highly discouraging for claimants.

### *3.4 Invalid deadlines and timelines*

While on the one hand, there are periodic demands from political leadership to complete the FRA processes and for distributing individual forest rights titles under the Act, due to which some districts in states like Maharashtra and Chhattisgarh had issued deadlines for accepting

claims, on the other hand due to the assembly elections, GSs for verification of Community Forest Rights claims were not called, under the pretext of following the code of conduct prescribed prior to elections.

### *4. Incorrect reporting on status of claims*

Information regarding status of claims and recognition of CFR is very scarce. At times there is a discrepancy between the figures for CFR claims and titles reported by state level nodal agencies (such as those appearing in MoTA status reports) and the figures reported by civil society.

Even the monthly MoTA status reports on Forest Rights Act have several lacunae. There is little information available on the subcategories such as *nistar*, NTFP collection, conservation and management, etc. for which community rights have been claimed or recognised. There had been discussions during the National Consultation organised by MoTA on the 3rd December 2012 to revise the reporting format to provide detailed and disaggregated information on FRA claims and titles by states. However, except in Odisha the January 2014 report continues with the old format, providing no break-up of the aggregate figures, rendering the discussions ineffective.

The status reports till September 2014 give tabulated information regarding FRA implementation in only 19 of the 27 states it is applicable to. The September 2014 status report restricts itself to giving complete information about the number of CFR claims filed, titles distributed and extent of area over which titles have been distributed only as pertains to three states - Karnataka, Odisha and Tripura, while for other (how many) states there is no more than aggregate information on claims on individual and community rights. In many cases, figures for claims and titles for public utilities under Section 3(2) are confused with CFR and reported as 'community rights' alongside CFR under section 3(1).

## 5. Faulty titles

CFR titles are granted to Joint Forest Management committees (VSSs) in states like Andhra Pradesh and Chhattisgarh, in violation of both, the FRA and the guidelines issued by MoTA (despite MoTA's instructions to withdraw titles issued to the VSSs in Andhra Pradesh). In states like Maharashtra, Chhattisgarh and Jharkhand, too, titles are being issued to FRCs and Panchayats in violation of the FRA.

Most CFR titles are given over areas smaller than those claimed by the communities. In many cases, titles are decided on the basis of *forest compartments* rather than areas enclosed within traditional boundaries as claimed by the communities. In Odisha's Kandhamal district, titles are being issued with a "Provisional" seal on the titles, although FRA has no provision for such restrictions. CFR titles are also issued, in many states, subject to illegal conditions.

Appeals to the DLCs for correction of titles have been lying with the Committees without any intimation to the GSs in that regard.

After granting titles to the communities, the legal requirement of final mapping of forest land and incorporation of the rights in government records has not been initiated in most of the states, creating confusion about the areas and jurisdiction of the GSs.

## 6. Hurdles in community management of CFR

### 6.1 Issues related to the use, harvesting and sale of NTFP

With only a few districts in certain states being able to harvest minor forest produce, there is no uniformity in the process of the exercise of the rights.

The Forest Department, through various institutions like the Forest Development Corporation Agency (FDCA) in West Bengal, continues to monopolize the trade of NTFP like honey, *tendu*, bamboo, etc. Leases over fishing and collection of honey continue to channelize

valuable resources and profit to neighbouring villages and the FD, depriving the community of what is rightfully theirs. On the other hand, tribal corporations established to support the trade of NTFP, like the Large-Scale Adivasi Multi-Purpose Societies (LAMPS) in Karnataka, have continued to purchase and market NTFP without promoting community-driven sale of these products.

Besides, JFM continues to be used as a front for various activities of harvest and sale of NTFP. In one of the villages of Chitoor Mandal of Khammam District, Telangana, the community decided to harvest bamboo after receiving its CFR title. However, the Forest Department insisted that half the income earned should be deposited in the VSS account of the village, which is contrary to the provisions of the FRA. There are also reports of the forest department booking members of the local communities under various provisions of existing forest laws and seizing NTFP harvested by them, as in the case of honey harvested by the Hosapodu GS in Billigiri Rangaswamy Temple Hills Tiger Reserve in Karnataka, and bamboo harvested by the Pachgaon GS in Chandrapur district of Maharashtra, from their own CFR areas.

There has been no significant change in the transit permit regime though envisaged in the FRA Amendment Rules, 2012. In many states, forest departments continue to issue transit permits to the GS at prices specified in the state laws. There are problems with the inter-state movement of forest produce harvested by communities under the FRA since a uniform system of transit permits for the GSs has not yet been formulated.

The forest department continues to impose restrictions on collection of minor forest produce from protected areas citing SC orders, ignoring clarifications provided in the FRA and the guidelines issued by MoTA.

The Minimum Support Price Scheme announced for MFPs remains unimplemented in most of the states as the necessary institutional mechanisms have yet to be worked out.

## 6.2 Continuation of forest department working plans, leases, policies and schemes

In many states including Maharashtra, Madhya Pradesh and West Bengal working plan operations by the forest department in the CFR areas have caused conflicts with the legal rights and the authority of GSs as underlined in Sec 5 of the FRA. Similarly, in some areas, leases (for example those granted to paper mills) continue despite opposition from villages which have filed CFR claims over such forests or even received title to them.

JFM has continued to obstruct the process of CFR management in many states. The forest department continues to ensure that the control over NTFP and forest resources remains with the JFMCs. International agencies like Japan International Cooperation Agency (JICA) has been funding the government for plantation on forest land through JFM. Green India Mission Reducing Emissions from Deforestation and Forest Degradation (REDD) mechanisms, state level schemes like the *Ama Jungle Yojana* in Odisha are also in direct conflict with the management framework under FRA.

## 7. Areas that require special attention

### 7.1 Protected Areas

In most protected areas implementation of FRA continues to be tardy or non-existent, with the February 2000 ruling of the Supreme Court<sup>99</sup> continuing to be used as an excuse for not implementing FRA in PAs. Implementation is particularly low in Critical Tiger Habitats (CTHs) with the administration often giving the explanation that no rights can continue in such areas. In most PAs it has been observed that the focus of their management plans continues to be on relocation rather than exploring co-existence, as directed by the FRA. Where relocation from

Tiger Reserves is taking place, the required procedure of prior rights recognition (where claims are filed by FRC and titles received through DLC) as prescribed under FRA is not taking place. The notification of many CTHs and buffers had been done in contradiction to legally mandated procedures under FRA and WLPA 2006.

There are also continuing reports of illegal evictions from protected areas, particularly from tiger reserves, without the mandated prior recognition of rights under the FRA, and the settlement provisions of the WLPA, as in Bandipur and Nagarhole National Parks of Karnataka, Kanha Tiger Reserve in Madhya Pradesh, Simlipal Tiger Reserve in Odisha, Sariska in Rajasthan, Achanakmar Sanctuary in Chhattisgarh, and so on.

In areas where CFR have been recognized, there still is ambiguity on the sharing of power and responsibilities between the forest department and GSs in conservation and management. This is because there is no clarity on the applicability of various laws like the Wildlife Protection Act and Indian Forest Act with respect to the provisions of the FRA. There is no clarification regarding the relation of settlement of rights with recognition of rights and the requirement of GS consultations provided only for scheduled areas in the WLPA. Since guidelines for the implementation of the FRA in a Critical Wildlife Habitat have still not been finalized, there is considerable ambiguity in the term "inviolable" which has been used in the Act.

### 7.2 Areas facing Forest Diversion

In most parts of the country, awareness generation about the FRA and its provisions is being poorly handled by the nodal agencies. This apathy is also reflected in forest areas to be diverted for developmental projects, where communities have hardly any knowledge about the FRA, its provisions which allow them to claim rights over forest land, and the power of GSs to make decisions on

<sup>99</sup>The interim order dated 14.2.2000 prohibited the removal of any dead or decaying trees, grasses, drift wood etc. from any area comprising a National Park or a Sanctuary notified under Section 18 or 35 of the Wildlife (Protection) Act, 1972.

diversion of forest land for projects (which the Aug 2009 circular provides). In cases where knowledge of the Act has reached local people (either through civil society action or through official mechanisms), the emphasis has been on individual rights and not on community rights. Thus, very few community rights [Sec 3(1)] have been filed in such areas.

While MoTA has issued several circulars and clarifications against the violative orders of the MoEFCC, the on-the-ground implementation of the FRA in areas facing forest diversion continues to be very poor.

Many large scale projects are under construction in forest areas with resident forest dweller communities, in disregard of recognition of rights. In Himachal Pradesh, the MoEF has allowed forest diversion to take place if a certificate by the District Commissioner, stating that no rights of forest dwelling communities need to be settled, is provided along with the proposal. Despite an official memorandum issued by MoTA to clarify that this stance is incorrect, the Himachal Pradesh government continues to violate this provision, and the August 2009 circular on FRA compliance for forest diversion.

The requirement of GS meetings according to the Aug 2009 circular is being severely violated in most cases, through means like submission of fraudulent evidence of consent from GSs and forging of signatures being resorted to, in order to promote vested interests.

The Forest Advisory Committee (FAC) under the FCA, has also not taken the August 2009 circular into consideration in recommending clearances for several projects. In January 2013, the FAC went against its own resolution of April 2012 and exempted exploratory drilling operations for prospecting of minerals, from providing documentary evidence of settlement of rights under FRA, prior to granting forest clearance, as mandated by the Aug 2009 circular. It has accepted Certificates from District Collectors stating that no

claims are pending under FRA, considering them to be compliant with the Aug 2009 circular.

### *7.3 Forest villages*

The process of conversion of forest villages into revenue villages as outlined in the November 2013 guidelines for the same Aug. 2009 circular of MoTA has not begun in most states. While Chhattisgarh has begun the process, it is being done in a top-down, bureaucratic manner, with GSs being conducted without the required quorum.

### *7.4 Areas facing left wing extremism*

In states like Andhra Pradesh, Odisha, Jharkhand, Chhattisgarh, Madhya Pradesh, Maharashtra and West Bengal, which are affected by left-wing extremism, the process of filing claims, verification and recognition of CFR is especially difficult. Ironically, it has been widely accepted that denial of forest rights and resulting harassment, eviction and impoverishment of forest dwellers due to lack of sincere governance in these areas are major causes of the spread of extremism here. Lack of information on the number of habitations and villages in these areas, the failure of the states to hold GSs in such places, lack of mechanisms to generate adequate evidence in such areas, and the interference of state paramilitary forces, especially in sections which are mineral rich, are some of the reasons that have prevented the communities in such areas from filing CFR claims.

### *7.5 North Eastern states*

North-Eastern states have shown consistent non-implementation of the FRA. In the MoTA status report it has been recorded that Arunachal Pradesh, Sikkim, Nagaland, Manipur, Meghalaya and Mizoram have not distributed any titles so far. Even in Tripura, which has the distinction of being the only north-eastern state that has distributed titles under the FRA, the focus has been on the Individual Forest Rights provisions. There needs to be clarity among the governmental agencies, civil society groups as well as community members regarding the applicability of FRA in the complex

situation of land rights in the north-east.

### 7.6 Municipal areas

MoTA had withdrawn the previous contradictory circulars on non-applicability of FRA to municipal areas and had clarified in April 2013 that FRA is in fact applicable in Municipal Areas, stating that *mohalla sabhas* can be the procedural equivalent of GSs. It has also sought comments from block level and district level tiers from the states. Given that many fringe communities that depend on forest types within limits of municipal areas exist, this order, though significant, has gained little attention. There is no recorded forest right, claimed or received, within a municipal area in any state, as yet.

## 8. Groups requiring special attention

### 8.1 Other Traditional Forest Dwellers (OTFDs)

Recognition of rights of OTFDs is also neglected as states continue to push the Act as a 'tribal' scheme. This coupled with the wrong interpretation of OTFDs requiring proof of "occupation" (and not proof of "residence" as stipulated under the FRA and as clarified by the guidelines issued by MoTA) of forest land for three generations prior to 13th December 2005, has resulted in the poor recognition of rights of OTFDs. In fact, 'Primarily resided in' does not mean occupation but a proof of residence in the village for 75 years where claim has been filed and dependence on forest land will suffice for being considered as OTFD. In states like West Bengal, Uttarakhand and Himachal Pradesh, the state governments have initiated the implementation of FRA only in tribal districts. Most states are still continuing to take little notice of claims by OTFDs.

### 8.2 Particularly Vulnerable Tribal Groups

Recognition of the habitat right of PVTGs is of particular importance and continues to remain a challenge, with no guidelines issued and no habitat rights having been recognized to date. Although provisions for the adequate recognition of habitat

and forest use rights of these communities are elaborated in the FRA, their diverse use of commons, including forest land on which these groups have customary rights poses a problem for implementation as their concerns often clash with the concerns of other forest dwellers. Clarification and guidelines on facilitation of a habitat rights recognition process have been sought by state governments (as in the case of Odisha where the state government has sought clarification to deal with habitat rights claimed by the *Juang* PVTG).

### 8.3 Pastoralists

Rights of pastoralists living in or migrating through several states are largely ignored although civil society organizations have taken an initiative to facilitate claims by these communities. Communities like the *Van Gujjars* in Uttarakhand, *Gaddis* in Himachal Pradesh, *Dhangars* in Maharashtra, *Maldharis* and *Agariyas* in Gujarat and other pastoralists are seasonal users of forest resources, with migration and small dispersed populations being their main features. This creates challenges as migratory routes may vary from year to year thus making mapping complicated. Fixing of boundaries or months is difficult and can subvert the intentions of the Act to protect customary practices, as access for pastoralists to the grazing grounds needs to provide flexibility. Since their rights are not being recognized, pastoralists are facing trouble in gaining access to seasonal resources due to implementation of various governmental schemes on lands often thought of as degraded but of importance to these communities. For instance, the rights of the pastoralists in Rajasthan are affected by the tiger reserves (Sariska, Ranthambhore) and by implementation of MGNREGS (where walls constructed by FD under MGNREGS are obstructing open grazing by the pastoralists). Thus, a detailed analysis and procedure on how the rights of migratory pastoralists can be protected and supported is lacking.

## II. RECOMMENDATIONS

### 1. Creating awareness about the Act

MoTA's role in implementation of the Act needs to be made clear to the different levels of implementing agencies. Dependence of forest department officials for implementation of the Act should be minimized.

MoTA, in association with state tribal/social welfare departments and civil society networks, needs to launch a fresh CFR campaign in a mission mode. This could include mass awareness programmes using mass media, training sessions for FRC/SDLC/DLC members, production and distribution of simple, accurate material in multiple languages, and distribution of translated claim forms. At the same time, MoTA and state level social/tribal welfare departments have the equally important mandate of making the Act accessible to claimants who might not have NGOs and other external agencies to help them. Site visits should be also organized for communities and villages to enable learning from one another's experiences in the filing of claims and forest governance. MoTA also needs to work out a process by which it assesses compliance with its recent circulars on CFR, perhaps by linking with the National Resource Centre at Tribal Research Institute, Odisha.

It should be ensured that the status reports present information in the revised format of the monitoring and information gathering system which was discussed during the National Consultation held on 3rd December 2012. Regular progress reports by districts and states should also be made publicly available with punctuality. Artificial deadlines for filing, and processing of claims should not be given by the state. Rather, the states should actively facilitate awareness generation and provide help for filing claims.

Regular public consultations and hearings at various locations which are accessible to a maximum number of forest-dwelling communities should be held, both to communicate status of implementation and to hear grievances.

It may also be worth it to build into the FRA framework a process of social audit similar to that forming part of MGNREGA to ensure that the process of recognition is monitored by the local communities.

### 2. Institutional support to SLMC, DLCs and SDLCs

The Joint MoEF-MoTA Committee 2010 report had recommended appointment of officials dedicated full-time to FRA implementation at sub-divisional and district levels. In addition, technical advisory teams, including officials and representatives of civil society should be created to help SDLCs and DLCs in their tasks and also to help at the village cluster level to enable communities to carry out boundary demarcation and mapping of CFR. These personnel dedicated to FRA implementation can be funded through the tribal sub-plan and other relevant schemes.

The SLMCs should be held accountable to claimants under the Forest Rights Act and to other forest dwellers whose claims have not been filed, and must meet at regular intervals to guide and monitor the process of implementation, also involving the tribal research institutes and civil society organizations in the process. To ensure that this happens, release of tribal sub-plan funds should be tied to the activation and regular functioning of SLMCs.

The DLCs and SDLCs need to be constituted in areas where they have not yet been constituted and they need to meet at regular intervals to facilitate the FRA process. They should involve civil society groups in the process.

Minutes of meetings of SDLCs, DLCs and SLMCs and regular updates on status of implementation, should be put into the public domain (hard copies being made available at Sub-divisional Officer (SDO) / *tehsildar*/forest offices, in local languages, as well as on the web).

The National Resource Centre for FRA should have an independent role of monitoring the FRA implementation process, conducting social audits, hearing grievances and providing guidance when needed. Similar independent monitoring bodies should also exist at the state and district level.

However, it must be ensured that these bodies consist of individuals from the GS committees and civil society with experience on forest rights issues.

### 3. Facilitating claim filing

MoTA needs to send clear instructions to all states, directing that forest, revenue, and district administration officials be instructed to urgently and pro-actively provide all necessary records and evidence to GSs, to facilitate CFR claims. FRCs and GSs should be assisted in boundary demarcation and other tasks preparatory to filing claims, by the teams mentioned above. There should also be specific focus on explaining and clarifying the differences between CFR claims under section 3(1) and diversion of forest land for public utilities under section 3(2), to avoid confusion in claim filing. The interference of the forest department should be checked.

### 4. Correction of titles

MoTA should issue clarification to states that incongruities in CFR titles (such as titles being in the name of the FRCs or VSS or Panchayat or EDC or JFM Committee or any other committee instead of the GS, or stipulation of conditions on the deeds of titles that do not emanate from the FRA itself, or improper and artificial boundaries) should be rectified with immediate effect. Titles granted should cover all rights claimed and extend over the entire area claimed by GS, as per customary boundaries. Additionally, although a clarification has been issued to the effect that registration of the recognized forest rights in the revenue and forest records is necessary, there needs to be follow-up on the matter to ensure compliance.

### 5. Looking into rejection of claims

As per recommendations of the Joint Committee Report of 2010, instructions should be issued clarifying that SDLCs are not mandated to reject claims, their role is only to examine the claims and make appropriate recommendations on the draft record of forest rights to the DLC.

Information regarding the recommendations made needs to be provided by SDLC to the concerned GSs and claimants, to give them an

opportunity to appeal (to whom?) as provided for by the law. Despite clarifications by MoTA on this point, it has seldom happened to date.

### 6. Updating record of rights

The legal requirement of final mapping of forest land and incorporation of the rights in government records has not been initiated in most of the states, creating confusion about the areas and jurisdiction of the GSs. The process of modification of land and forest records to incorporate rights granted under FRA, particularly CFR, should be immediately initiated. However, it is of utmost importance that all such incorporation is done only after the pending appeals against wrong or reduced allocation of CFR areas is resolved in each district.

### 7. Facilitating community forest governance

The issue of management of CFR areas is critical. There is enough scientific and ecological evidence to show that a top-down, command-and-control approach to management does not work in complex socio-ecological systems, and hence CFR areas should be managed through adaptive forest governance based on precautionary principles. Such adaptive governance is best carried out by people who interact with forests on a day-to-day, intimate fashion. There is a need for proper participatory base line studies of the forest resources and threats. GSs should be facilitated in setting up committees to manage and protect forests under Section 3(1)(i) and Section 5. These committees, however, must not be externally imposed, but be decided upon by the GS, and could well be an existing institution that the GS has set up if it thinks this is appropriate. Governmental intervention, if any, should be only to facilitate membership of disprivileged sections, including women, in these committees, and to help build capacity where required and requested.

#### *7.1 Strengthening the GSs as relevant institutions of management*

The definition of GS should be streamlined in all laws and immediate action should be taken on state rules formulated in violation of the FRA (such as the state-level PESA or Village Forest rules). There should be appropriate FRA rules or an

amendment to FRA to provide clear-cut powers and authority to the GS to carry out the role described in Section 3(1)(i) and Section 5, including powers as given to the Forest department. The planning at village level and village cluster level should be done by GSs, and a requirement for GS consent for external operations in forests should be built into the FRA rules. This should include women, and a linkage to capacity building schemes (for financial, technical and monitoring activities) needs to be introduced. The relationship of the GS and its committee with the forest department needs to be clarified. Mechanisms need be devised to protect rights and authority of rights holders and members of GSs provided under the FRA against cases of violation by state or non-state actors.

### *7.2 Aligning all legislation and policies governing forest land with FRA*

Laws and policies negatively impacting the process of claiming CFR and managing them should be withdrawn immediately. A review of all relevant laws (including the Indian Forest Act, Forest Conservation Act, Wild Life Act, Biological Diversity Act and Panchayat Acts, and state laws related to MFP and forest use) as well as environment related programmes including JFM, to bring them in consonance with FRA, and with each other, should be carried out immediately.

All agencies and their resources should be pooled towards supporting implementation of CFR under FRA and their management by the concerned communities. A number of programmes that are being run or proposed by MoEFCC and relevant state departments, relating to natural resources, should be channeled through GSs. Several programmes are currently being processed or pushed without the GS as the routing agency and maintaining centralised power structures, which is undermining the government's own commitment to decentralised governance. All these must be screened from the perspective of the governance changes that the FRA requires.

Violation of FRA because of the ongoing interventions on JFM, working plans and forestry

programs needs to be stayed while the process of recognition is underway. For those forests where the communities have filed claims (and where these are under consideration) and those where CFR rights have been granted, the forest department should suspend the earlier working plans. In these areas, management plans must be developed by the concerned communities, and they may direct the forest department, if they so desire, to advise them and provide support for their forest management plans. Similar support can be provided through a number of schemes, provided there is a demand from and with the consent of the concerned communities. With such a convergence in mind, the Standing Committee of Ministry of Social Justice had also asked MoTA, in its 10th report, to put in place a National Level Coordinating Committee with top officials of all concerned ministries as its members, to meet at regular intervals and review status of various schemes and identify critical gaps. Directions should be issued by MoTA to all states in line with the instructions it issued to Andhra Pradesh about withdrawing titles which have been granted to VSSs instead of GSs. MoTA also needs to respond to the MoPR against their letter delegating the responsibility of NTFP management to JFM committees.

The new National Forest Policy should take the FRA and PESA into account, emphasizing the importance of rights, community based governance and conservation. A plan also needs to be developed for convergence of FRA with schemes and programmes like MGNREGS, watershed programs for development of the forest land and community resources for conservation and livelihood enhancement; villages with CFR should be prioritized in these schemes.

### *7.3 Supporting mechanisms for management of NTFP by GSs*

The MoTA has sent a letter in 2012 to all Chief Secretaries to modify transit permit rules in states. All states must uphold the GSs' rights over NTFP as provided under FRA and PESA and devise mechanisms to support the GSs in the collection

and sale of NTFPs. This would include ensuring that procedural obstacles in collection, sale and transportation of NTP are removed, and that all states immediately implement the Minimum Support Price Scheme announced for the NTFP, and necessary institutional mechanisms for its smooth functioning are worked out. Special training and awareness programmes should be organized for all concerned actors at the national, state, and district level to gain clarity on legal, procedural, financial and market related issues that emerge from the GS's exercise of NTFP rights. There should also be MFP denationalization with a guaranteed Minimum Support Price where necessary, as well as clarity on GS powers to issue transit permits.

#### 7.4 Changes in forest governance

Given that CFR implementation cannot happen simply at the individual village level, the FRA requires forest governance changes at various levels from local to national.

- Planning for natural resource management should be at the landscape level but with inclusion of all Gss.
- The role of the forest department needs to undergo gradual transformation from that of regulation and control on forests to that of a support agency which can provide technical inputs to local communities and Gram Sabhas (on demand) for facilitating CFR management.
- Forest Development Agencies (FDA) should be replaced by district or landscape level agencies, consisting of GS forest committees, the forest department, the tribal department, other relevant departments, and local civil society organizations; the function of such agencies should be to monitor and guide forest/wildlife conservation and management of community forests, facilitate landscape level planning and implementation, and facilitate convergence of various schemes towards these objectives.

- In addition, for the management of protected areas, biosphere reserves and other conservation landscapes, a body consisting of representatives of the local villages in and surrounding such places along with technical experts should be formed.
- At the state level, too, a forest council or committee should be established, with representatives of communities, relevant departments, and civil society organizations; functions would be similar to those listed above.

#### 8. Forest Rights in Municipal Areas

As implementation of FRA in municipal areas has not yet begun, and a circular clarifying its applicability in such areas has only recently been issued, the process of recognition of rights in municipal areas will require careful thinking through of mechanisms and subsequent monitoring. A clarification on the equivalence of ward/ *mohalla sabhas* or pre-existing hamlets, in municipal but forested areas, to GSs has already been issued. Yet, detailed mechanisms for operationalisation of FRA in municipal forested areas still needs to be thought out for submission of claims by the *mohalla sabha* at the SDLC-equivalent level.

#### 9. Protected Areas

Special emphasis needs to be laid by MoTA and MoEFCC on implementation of the FRA, particularly CFR, within protected areas (PAs) since this has been one of the most neglected or obstructed areas of implementation. States should be asked to explain why claims from within PAs have been pending for a long time.

MOTA should independently review FRA violations in relation to the tiger reserve notifications (of CTHs/cores and buffers). The ongoing relocation from the tiger reserves without implementing FRA must immediately be stopped, and action taken against officials who were involved in such illegal relocation. The option of staying on within the PAs has to be communicated effectively to the local

communities. The process of recognition of rights and relocation from PAs should be strictly monitored by a committee set up jointly by MoTA and MoEFCC, consisting of social scientists experienced in relocation-related issues. There should also be regular monitoring to ensure that conservation outcomes envisioned are achieved.

There is also a need to implement the Critical Wildlife Habitat provision for protected areas. However, CWHs should be recognized through knowledge-based, democratic process. The fact that diverse situations require diverse solutions should be kept in mind, and all possibilities of co-existence within such Habitats should be explored through consultation with local communities.

#### 10. Focusing on nomads, PVTGs, shifting cultivators, and women

Particular attention is required to be paid to CFR and habitat rights, and to the needs of disprivileged groups such as PVTGs, nomads, shifting cultivators, and women. Guidelines need to be issued for facilitating claims of these sections of society, including through relevant action by SDLCs. Special processes will be needed in the case of nomadic groups including pastoralists, as claims for their rights have their own attendant difficulties. There is also a need to accommodate flexibility of routes in the CFR maps for nomadic pastoralists. In the case of PVTGs, recommendations of a national workshop, organised by the MoEF/MoTA Joint Committee in 2010, should be urgently considered by MoTA, especially in order to issue clarifications to states on the concept of 'habitat'. Rights of PVTGS also need to be pro-actively recognized and declared *suo motu* by the Government, using criteria which have been applied in order to declare them as PVTGs, in the first place, as evidence of their forest rights. Additionally there should be a special mechanism for nomadic communities and clear guidelines on PVTG habitat rights (what they mean

and how it should be reflected in the claims process).

#### 11. Particular attention to forest villages

The MoTA unit dealing with the FRA should help states to prepare a complete list of villages in the close vicinity of forests (using FSI, Census and other data as a basis, updating it as necessary), and monitor their CFR recognition process. Forest villages and unsurveyed villages should be identified and listed, to be given special attention for recognition of forest rights.

#### 12. Attention to compliance of FRA in forest land diversion

The MoEFCC, through a number of orders, resolutions and letters has attempted to dilute, violate, provide exemptions from, or in other ways weaken the FRA. This will clearly affect the statutory rights and the decision-making powers of the GS.

All such orders, resolutions and letters contributing to dilution of the FRA should be withdrawn with immediate effect. The Ministry of Tribal Affairs is empowered under the Act to uphold the law and should be able to implement the Act effectively on the ground. MoTA should ensure that compliance with the FRA is monitored through state governments and reported on from time to time.

The Forest Advisory Committee of the MoEFCC should also be made responsible for ensuring compliance of FRA procedure before providing forest clearance. A representative of the Ministry of Tribal Affairs included in the FAC could help accomplish this. The committee should ensure adherence to the FRA processes in all matters pertaining to forest land. Furthermore, since it is understood that the CFR recognition process in its present form requires external agency support in most cases, the Government at the centre needs to issue orders to authorities to respect customary rights like *nistar* as de-facto rights in areas where the CFR process is yet to be completed.



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### WEBSITES

- <https://groups.google.com/forum/#!forum/CFR-la>
- <http://fra.org.in/new/>
- <http://kalpavriksh.org/index.php/conservation-livelihoods1/laws-policies/forest-rights-act.html>
- <http://forestrightsact.com/>
- <http://tribal.nic.in>

## GLOSSARY

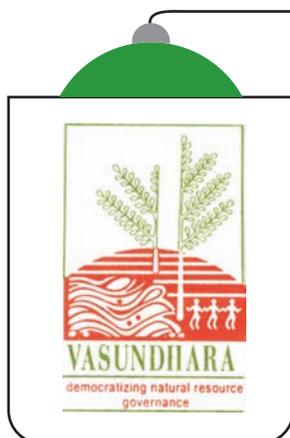
Amin	Revenue inspector
Avla	Chinese gooseberry, <i>Emblica officinalis</i>
Apta	<i>Bauhinia racemosa</i> leaves
Chironjee	<i>Buchanania lanzan</i> seeds
Gram Sabha	assembly of all adults of a village or hamlet
Gram Sevak	village development officer
Karanj	<i>Pongamia Pinnata</i> , leaves and fruit are used by forest communities
Katti	cutting/ clearing
Tendu (or Kendu)	<i>Diospyros melanoxylon</i> ; tobacco is rolled in its leaves for making beedies
Khatiyani Part II	record of community rights
Khunt	Clan
Mahua	<i>Madhuca longifolia</i> , flowers and seeds are used by forest communities
Missal	record of revenue land
Missal haqaiyat	record of rights
Mohalla sabha	assembly of all adult residents of a mohalla (smaller sub-divisions of wards) in municipal areas
Nistar	customary rights
Nistar patrak	record of customary rights
Palli sabha	gram Sabha in the state of Odisha
Raiyati land	land on which owner has allowed another person to reside
Taluka	subdivision of a district
Tehsildar	head of a tehsil who controls land, tax and revenue matters
Van Suraksha Samiti	forest Protection Committee under Joint Forest Management
Vidhan Sabha	State Assembly
Zamindari	a system of land holding and tax collection by zamindars (land owners)



CITIZENS' REPORT  
2015



Kalpavriksh is a voluntary group, working on environmental education, research, campaigns, and direct action. It began as a student's campaign to save Delhi's Ridge Forests from encroachment and destruction in 1979. Starting with these roots in local action, Kalpavriksh has moved on to work on a number of local, national and global issues. Its activities are directed to ensuring conservation of biological diversity, challenging the current destructive path of development, helping in the search for alternative forms of livelihoods and development, assisting local communities in empowering themselves to manage their natural resources, and reviving a sense of oneness with nature.



Vasundhara is a research and policy advocacy group that works on environment conservation and sustainable livelihoods issues. The organisation was initially conceived to support and strengthen community-based initiatives to protect and conserve forests in the state of Odisha. Over the years, while working and retaining its focus on community forestry, Vasundhara has developed a more explicit focus on issues of natural resource governance, climate change and sustainable livelihoods of forest dependent communities. Recently, Vasundhara has been embarking on direct action on different initiatives on environment, conservation and climate change policy issues.



Oxfam India, an independent Indian organisation, is a member of a global confederation of 17 Oxfams. The Oxfams are rights-based organisations that fight poverty and injustice by linking grassroots programming (through partner NGOs) to local, national and global advocacy and policymaking. Oxfam India works in partnership with 165 grassroots NGOs to address root causes of poverty and injustice in the areas of Economic Justice, Essential Services, Gender Justice and Humanitarian Response and Disaster Risk Reduction. Oxfam India's programme is focused on seven states-Assam, Bihar, Chhattisgarh, Jharkhand, Odisha, Uttar Pradesh and Uttarakhand-and four social groups: Dalits, tribals, muslims and women, for:

- a) Building pressure for pro-poor legislations
- b) Implementation of existing laws,
- c) Strengthening livelihoods of natural resource dependent communities and
- d) Generating evidence based research to inform and influence policy.