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Welcome to the first issue of the newsletter on determination process of 'Habitat Rights' under Forest Rights Act. Our goal in producing the newsletter is to share developments regarding the status of implementation of the provisions under FRA for recognition of rights of PVTGs, ongoing initiatives, learning's and key issue/challenges relating to its implementation, our objective is to keep the reader informed and involved. Since we want the newsletter to be as relevant as possible to the habitat rights recognition process going on across India, we look forward to hearing your comments on the first issue.

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Special points of interest:

- Highlights of the national level research study on Habitat Rights.
- Concept of Habitat
- Case Study: *Kutia Kondha* PVTG Habitat Rights claim facilitation process
- Issues and challenges
- Highlights of the MoTA clarification on Habitat Rights.

Particularly Vulnerable Tribal Groups: Introduction

There are 75 centrally recognised PVTGs in the country. This centrally recognized special category from among the Scheduled Tribe was constituted during the 4th five year plan on the basis of the report of the Dhebar commission (1960-61) and other studies which suggested that there exists inequality amongst tribal communities in terms of their development. This sub-category was originally categorised as 'Primitive Tribal Group' (PTG). Such groups were identified by one or more of the following features: Existence of pre-agricultural practices, Practice of hunting and gathering, Zero or negative population growth, relatively low level of literacy as compared to other tribal groups. The communities were identified based on the recommendations of Tribal Research Institutes (TRIs) of the respective state governments and by 1993-94, 75 groups had been identified and placed on the list of PTGs. Odisha houses for 13 PVTGs which is the highest among all the states.

Rights of PVTGs in the Forest Rights Act

The historic Forest Rights Act of 2006 for the first time provided scope for the recognition of the PVTGs' forest and habitat rights. Section 2 (h) of the FRA defines habitat as,

'Habitat' includes the area comprising the customary habitat and such other habitats in reserved forests and protected forests of primitive tribal groups and pre-agricultural communities and other forest dwelling Scheduled Tribes

The definition thus extends the recognition of habitat rights to other STs in addition to PVTGs and pre-agricultural communities.

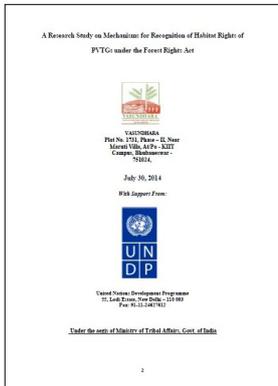
The Ministry of Tribal affairs further clarifies the scope and extent of the definition of habitat rights in the context of PVTG in a FAQ released in the year 2012:

"The right to community tenures of habitat and habitation may be recognized over customary territories used by the PTG for habitation, livelihoods, social, economic, spiritual, cultural and other purposes. In some cases the habitats of PTGs may overlap with forest and other rights of other people / communities".

Section 3 (e) recognises:

'Rights including community tenures of habitat and habitation for primitive tribal groups and pre-agricultural communities'.

National Research Study on 'Habitat Rights'



A national research study was carried out by Ministry of Tribal Affairs (MoTA) in 2014 with support from United Nations Development Programme (UNDP) on “*Mechanisms for Recognition of Habitat Rights of PVTGs under the Forest Rights Act*”. The study proposed a suggestive process for determination of habitat rights and Role and responsibility of various committee under the act.

The proposed guideline can be used to initiate the process but it must be keep in mind that as each of the 75 PVTGs are geographically, socially and culturally different, so there cannot be a one fit in formulae for the habitat rights recognition process. The proposed guideline can be used as a principal to start with but during the claim making process the facilitating organizations need to be dynamic and adaptive in nature to the local dynamic and complexities and must keep in mind the recognition process in no ways dilute the existing age old cultural and traditional practices of the community.

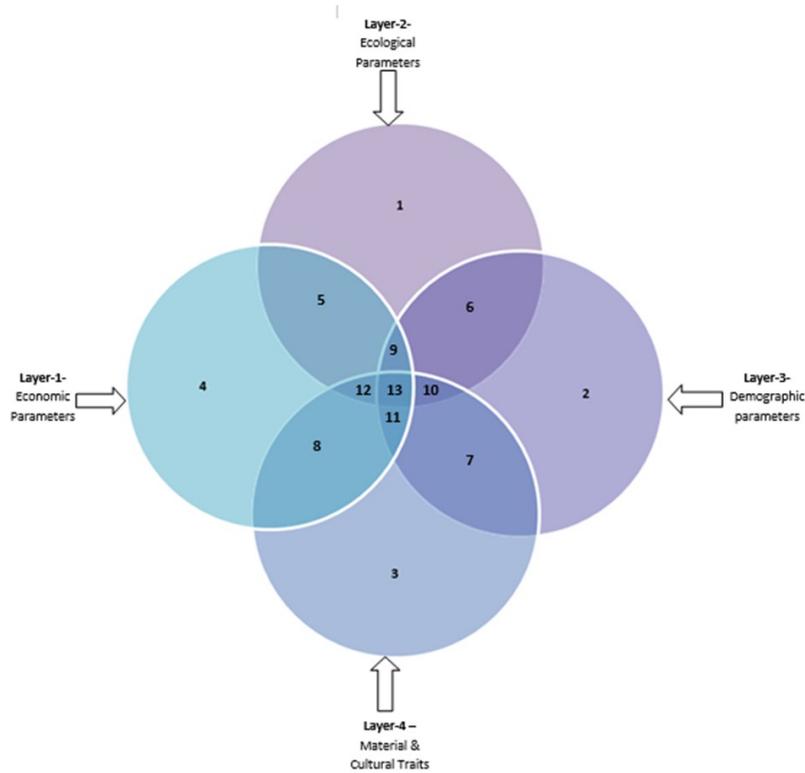
The guideline can be downloaded from : [http://fra.org.in/ASP_OrderCirculars_UploadFile/%7B8597211c-0f2f-446b-bbf6-7a1dfc28047d%7D_Letter%20on%20recognition%20of%20habitat%20rights%20\(1\)%20\(1\).pdf](http://fra.org.in/ASP_OrderCirculars_UploadFile/%7B8597211c-0f2f-446b-bbf6-7a1dfc28047d%7D_Letter%20on%20recognition%20of%20habitat%20rights%20(1)%20(1).pdf)

Issues and Challenges

- The awareness about the habitat rights under the Act is very poor among the members of the various committee constituted under FRA, including the top government officials.
- There is no guideline released form MoTA for recognition of habitat Rights.
- Lack of clarity about the procedure for the recognition of the habitat rights specifically given that their claims may extend across multiple settlements over a large geographical area.
- Tendency to rely on forest records during the rights recognition process, when these are irrelevant to most forest rights and especially so in the case of PVTGs, most of whose rights and activities were either never recorded or were recorded elsewhere (such as in gazetteers, anthropological studies, princely state records, etc.)
- These is absolute lack of interest of DLC to initiate the habitat rights recognition process in consultation with the concerned traditional institutions of Particularly Vulnerable Tribal Group as required under rule 12(b)1
- Resistance to the recognition of PVTG rights by other interests and a lack of clarity among officials about the implications of overlap between PVTG rights and those of other communities and individuals.
- Lack of clarity about the status of other category of land except forest land coming within their habitat.
- No clarity over the process of recognition in case if the habitat of a PVTG exceeds beyond administrative and political jurisdictions like multiple DLC or even more than one SLMC.



Habitat - An Illustration



The Venn diagram showing a set of four circles (layer-1, 2, 3, 4) constitute and represent the universe of a habitat. Each circle represents a particular parameter (Economic, Ecology, Demographic, and Material & Cultural Traits) which include various kind of indicators as mentioned in the above figure, According to the Venn diagram there are places where there is no overlap between two parameters like for example the part highlighted as 1, 2, 3, 4 and there are also places where there is overlap between two parameters, three parameters and also four parameters like the part highlighted in '8', '11' and '13' respectively, it indicates for example the part highlighted as '13' represents a place where all the four parameters can be found like the community habitation area (Demographic parameters) might also include the cultural places like their deities inside there village (material & cultural traits), they might also practice shifting cultivation (economic parameters) and their habitation area might also comprises of Ecological parameters like mountains, streams etc., there might also be places like '3' which is not an over lapping area and only one parameter (cultural rights) can be found like for example the place use for 'Maria' festival by Dongaria Kondha where they use to celebrate it once in three year over a particular place and that place does not comprises of any other parameters and similar example can also be found with Baiga.

The habitat area when mapped thus may be a combination of multiple maps into a single map. However this would solely depend as to how the concerned communities define and explain their habitats rights.

"Kutia Kondha habitat: A combination of all clan territories, a clan territories is a landscape including 'n' number of padars may range from 5-30 each"



Dharani Pennu, Desughati, Jhilpani GP, Kandhamal, (Photo: Subrat Kumar Nayak)

Process of recognition of Habitat Rights: A Case study of *Kutia Kondhs*

The *Kandhas* were the principal inhabitants in the region now called Rayagada, Kalahandi, Boudh, Koraput and Kandhamal districts of Odisha, They have been classified under the ancient Gondid race of the Proto-Australoid group, which according to scholars like Risley, preceded the Aryans by many thousand years. The *Kandhas* in Odisha are divided into three classes, viz., the *Kutia*, *Dongaria*, and *Desia* (all in the Schedule Tribe list and *Kutia and Dongaria* listed among the Particularly Venerable Tribal Groups (PVTG)). The *Kutia_Kondhas* are found mainly in Kotagarh and Tumudibandh blocks of the Baliguda subdivision in Kandhamal district and also in the foothills of *Niyamgiri* (A sacred habitat of *Dongaria Kondha*) in the district of *Rayagada and Kalahandi*. The *Dongaria* lives in high lands in hilly areas of the district. The *Desia* lives in plain areas with the non-tribal. The *Kutia Kondha* worship about eighty-four deities of which the chief is *Sapangada* (A sacred groove, know to be the place of origin of the community) at the community level and *Dharani Penu* or earth goddess at the habitation level. They speak a dialect called '*Kui*' which is their mother-tongue but most of them specially the men folks speak and understand '*Odia*' also.

Initiation of the Habitat rights recognition process

A meeting was held in the month of August 2014 with DLC, Kandhamal regarding the initiation of the process of habitat rights recognition of *Kutia Kondha* under FRA which was then followed by a preparatory meeting with the local NGOs/ Integrated Tribal Development Agency (ITDA) officials and District Level Committee members where the guideline and methodology on the Habitat Rights claim making process was discussed. During which it was decided to hold a two days consultation workshop in the month of September 2014 with the youths and traditional leaders of *Kutia Kondha* at Belgarh. A local NGO *Seva Bharati* working with the *Kutia Kondhs* came forward to host the consultation. In the meanwhile a pilot study was carried out in the Belghar region to get an idea about their concept of habitat, which as the study revealed was found out to be a combination of various clan territory which combines to constitute their larger habitat.



1st Consultation with Kutia Kondha Traditional Leaders. Seva Bharati Office, Mundigarh, tumbudibandha, Kandhamal

Consultation with Traditional Leaders followed by Survey and identification of Traditional leaders, settlements/habitations and clan territories.

The first consultation had been organized for facilitating Habitat Rights of *Kutia Kondha* at *Seva Bharati* office, *Mundigarh*. The consultation workshop was attended by 40 participants including Project Administrator– Integrated Tribal Development Agency (PA-ITDA), *Phulbani*, Range officer(Forest Department), *Baliguda*, Special Officer-*KutiaKondha* Development Agency (KKDA), A team from *Vasundhara*, *Seva Bharti* team and a representative from *Nirman* (A local NGO) and the participants were members of *Kutia Kondha* community from five (gram Panchayat)G.P under *Tumbudibandha* block, (*Kutia Kondha* habitat is spread across 7G.Ps under *Tumbudibandha* block and 2 G.Ps under *Kothagarh* Block in *Kandhamal* district).

The objective of the consultation was to make the community aware about the provisions of Habitat Rights under FRA and to share the proposed guideline submitted to MoTA on Habitat Rights recognition process.

Preliminary information on various parameters which constitute their habitat like: Information regarding their settlements, forest dependency, resources, cultivation, culture, ecology and traditional institution was collected and documented during the consultation.

Then among the participants a team was constituted to help in facilitating the entire claim making process which include identification of traditional leaders, their settlement/habitations inside their habitat, survey of all the habitations with information on clan groups and demography. The work had been divided among the selected 21 surveyors who were provided with data collection formats and training on survey work.

Identification and documentation of the 'Habitat' concept

The process required extensive research and interaction with the community as understanding of the territorial concept of these communities is necessary which is culturally, socially, ecologically and economically interlinked before claiming habitat rights.

In this process it was found that with *Kutia Kondha*, the unit of their larger habitat is a set of clan territories which constitute a group of *padars* (a geo-cultural landscape marked by one or more *dongars* or hills and presided by a deity *Dharani Pennu*).

The finding led to survey and identification of detail clan groups and their territory and the documentation so far has identified 22 different clan groups and also sub-groups within the clan groups having distinct clan territories like for instance the Desughati and Dupi village from two different G.Ps are in-habituated by *Nundruka* clan groups having specific clan territories.

This finding confirmed that the basic unit of habitat for *Kutia Kondha* is their clan territory. A clan territory is mostly not homogeneous and also inhabited by other clan groups and even other tribes and sometime non-tribes and they live in harmony based on age old traditions of mutuality and reciprocity. With this understanding mapping of clan territory has been carried out with the use of GPS (for reference toposheet, revenue and forest maps has also been used) in consultation and participation with the tradition leaders and gram sabha members based on which some clan territory maps has also been prepared.

Second consultation with the Kutia Kondha Traditional leaders

The identification of clan groups, traditional leaders and their territory is time taking process due to reasons like inaccessible area of habitation, involvement of multiple Gram Sabha, non-availability of secondary source of information etc.

During interaction with the traditional leaders of some of the clan territories, suggestions came that the claim process can be initiated at the clan territory level as the entire process of identification of all the clans will take time and there are approximately 168 habitation/settlements which includes more than 100 clan territories and its constitute their larger habitat.

Claims over each clan territory can subsequently be consolidated to a collective claim over larger habitat.

This idea has been then consulted with other traditional leaders, local NGOs, experts and DLC and finally it was agreed to initiate the process at clan wise, starting consultation with traditional leaders of various clan territory and get their final opinion and thereafter getting their consent and endorsement over the information related to their clan groups and territory which was collected during the survey, which will be then followed by organizing Gram Sabha at the clan territory level for claiming rights over their clan territory.

The Kutia Kondha habitat right facilitation is in process.

"A *Padar* is a geo-cultural landscape marked by one or more *Dongars* or hills and presided by a deity called *Dharani Pennu*"

"*Aama Kutia Kondha jati ra parichay aau jiban jibika hauchi aama iilaka, aamar devi debata aau aama jangal.*" -**Pichula Majhi**

(Our identity is our habitat, inside which we have our deity, forest and everything which is required for our very survival)



Traditional leaders of Nundruka Clan, Desughati, Jhilpani G.P, Kandhamal, Odisha (from left: Jani, Majhi, Kutaka), (Photo: Subrat Kumar Nayak)



A Kutia Kondha, Desughati village, harvesting millets from his Podu field (Photo: Subrat Kumar Nayak)



Democratizing Natural Resource Governance

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Vasundhara is a research and policy advocacy group that works on environment conservation and sustainable livelihood issues. Our organization was initially conceived to support and strengthen community-based initiatives to protect and conserve forest 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 the sustainable livelihood of the marginalized sections. We are also embarking on a more direct action on different environmental and biodiversity conservation issues. The interface of conservation and livelihoods now forms the core of our interventions.

Next issue: Habitat Rights claim making process with Paudi Bhuiya and Khadia PVTG in Odisha and Baiga in Madhya Pradesh

**Forthcoming Event: 1) National Level Consultation in the month of September
2) Regional Consultation with Baiga in Madhya Pradesh**

Highlights of the recent clarification letter issued by MoTA on Habitat Rights

1. Clarification on the word 'habitat' which was translated in Hindi as 'aawas' which is commonly understood as house or homestead. This has created confusion and due to misinterpretation, many states have equated the term 'habitat' to mean providing housing facilities as under Indira Awas Yojana and other such housing scheme.
2. The right to community tenures of habitat and habitation may be recognized over customary territories used by the PVTG for habitation, livelihood, social, economical, spiritual, sacred, religious and other purposes. In some cases the habitat of PVTGs may overlap with forests and other rights of other people/communities.
3. Rule 8 of the FR Rules (as amended on 6.9.2012) envisages the role of the District Level Committee (DLC) to examine whether all claims, especially those of primitive tribal groups, pastoralists and nomadic tribes, have been addressed keeping in mind the objectives of the Act. The FR Rule 12(B)(1) that, the DLC shall in view of the differential vulnerability of PVTGs, ensure that all PVTGs receive habitat rights in consultation with the concerned traditional institutions and their claims for habitat rights and filed before the concerned Gram Sabhas, wherever necessary, by recognizing floating nature if their Gram Sabhas.
4. Where the claims of PVTGs have already been filed, the DLCs should take steps to ensure recognition of their rights along with mapping of the area of each claim over which their rights have been recognized.
5. The state Governments need to make all-out effort to recognize the habitat rights of the PVTGs and intimate the Ministry of Tribal Affairs on the steps taken towards recognition of the rights in the periodic reports submitted by them.



A Kutia Kondha Women, Burlubaru Village, Belghar G.P, Kandhamal, (Photo: Subrat Kumar nayak)