

National Consultation on Protected Areas and Forest Rights Act
7th -8th December 2009
Red Cross Bhavan, Bhubaneswar

Memorandum

A two days national consultation on implementation of Forest Rights Act in protected areas (sanctuaries and national parks) was organized by Odisha Protected Area Network (OPAN) and Vasundhara on 7th and 8th December 2009 at Red Cross Bhavan, Bhubaneswar. The specific focus of the consultation was on the recognition and exercise of community forest resource rights and identification of critical wildlife habitats under the Forest Rights Act in Odisha and neighboring states like Chhatishgarh, Madhya Pradesh, Maharashtra, Karnataka etc. Community representatives, NGOs, experts, researchers and activists working in different protected areas of the states participated in the workshop.

The major issues which came up during the deliberations are:

- **Deadline for completion of the process under the Act:** The Ministry of Tribal Affairs press release dated 30th November and other government communications in different states indicate that the government has set the arbitrary deadline of December 31, 2009 to complete the process of vesting of forest rights. In view of the fact that a large number of forest communities in different states are yet to be able to claim rights because of lack of awareness and necessary support the said deadline will deprive the communities of their land and forest rights.
- **Recognition of community forest resource (CFR) rights in protected areas:** In many states the process of receiving claims for CFR rights has not started. As per the ministry of tribal affairs' latest report, out of the 24 lakh claims received so far, only 30,000 are for community rights. Even out of these, only a miniscule number of community claims have been approved for titles. In Odisha only 2136 community claims have been filed with Gram Sabhas out of which only 76 claims have been approved. Compared with the 29302 forest dependent villages of the state, it is evident that a large number of forest communities are yet to make community claims. The problem is more pronounced in protected areas where claims for community forest rights are not even accepted owing to the misinterpretation of the Wildlife Protection Act and the Supreme Court order of February 2000 directing states not to order removal of dead and dry wood, grasses etc. from sanctuaries and national parks.

- **Habitat rights of Primitive Tribal Groups (PTGs):** There are a number of primitive tribal groups living in and around the protected areas of different states. In Odisha, PTGs like Khadia, Mankadia, Kutia Kondh, Chuktia-Bhunjia, are living in Simlipal, Sunabeda, Kotgarh and Karlapat wildlife sanctuaries. These PTGs have distinct habitats which are spatial and cultural domains that sustain the cultural integrity of the communities and provide them their livelihood sustenance. Although the Forest Rights Act specifically provides for recognizing the rights of PTGs over their habitat, these rights are not being recognized in protected areas or elsewhere.
- **Community forest rights vs Joint Forest Management policy:** Thousands of community conservation groups protecting their forests and biodiversity who have for long demanded legal recognition of their initiatives, have claimed or are planning to claim statutory CFR rights under section 3 (I) (i) and section 5 of the Forest Rights Act which empowers local communities to protect, conserve, regenerate and manage community forest resources for sustainable use. Till now, the state governments have not given due attention to supporting the empowering provisions for conservation of forests, wildlife, biodiversity and the natural and cultural heritage of STs under Forest Rights Act. Instead, they continue to promote the existing Joint Forest Management policy based on administrative orders and which does not recognize any rights. This has led to a situation of conflict and confusion at the village level.
- **Rejection of claims:** A large number of claims for community forest rights have been arbitrarily rejected without explanation and without providing the rejected claimants an opportunity to appeal provided for in the Rules.
- **Declaration of critical wildlife habitats:** There is a great deal of opaqueness in the way critical wildlife habitats (CWH) are being identified by state governments, with communities in protected areas that are likely to be affected, not knowing or being consulted about the process. In none of the official processes, is local or traditional ecological knowledge being used in the process of identification. State governments also appear to be taking a narrow view that CWHs have to be free of human use, using an unnecessarily restrictive definition of the term 'inviolate'.
- **Violations of the Act:** Serious violations of the Act have been found in different states. Some of the violations are,
 - **Undertaking plantations on lands over which rights are being claimed:** The participants reported forced plantations of jatropha having been done on the lands claimed under FRA in states like Chhattisgarh. In Odisha, plantations of commercial species are similarly reported to have been undertaken by the Forest Department under government and externally aided projects even in a sanctuary like Kotgarh, in addition to other forest lands.

- **Acquisition of land on which rights have been recognized:** In Chhattisgarh, government/private companies have reportedly started acquiring the land on which claimants have received titles under the Forest Rights Act, violating the provisions of non-alienability and non-transference of forest rights.
- **Relocation from tiger reserves:** In tiger reserves like Simipal and Satkosia in Odisha, and Tadoba-Andheri, Melghat, Pench, Nagzira in Maharashtra, villages are being targeted for relocation even during the process of recognition of rights or without recognizing rights required by law. This may be in violation of not only the law, but also of a circular issued by the National Tiger Conservation Authority (on 8 September 2008), requiring that the “overall interest” of the Forest Rights Act be kept in mind while proposing relocation in tiger reserves.
- **Rights of Other traditional forest dwellers:** in many states, rights of other traditional forest dwellers are not being recognized by the implementing agencies for want of documentary evidence regarding 75 years of occupation. In situations of villages or village clusters with mixed populations, this is likely to lead to serious conflicts as the claims of only one of the two deserving sections of society will be considered.

Recommendations of the workshop:

- While the process of recognition of rights needs to be speeded up, the Ministry of Tribal Affairs should urgently clarify to the states that the Act itself does not provide for a deadline and that the procedural integrity of the Act and the Rules needs to be maintained by the implementing agencies. Further, it needs to be ensured that all potential claimants have an opportunity to claim their rights.
- The Ministry of Tribal Affairs and state governments should take proactive steps to raise awareness about the diverse community forest rights provided for in the law and to provide necessary support to the Gram Sabhas and Forest Rights Committees in the process of determination of community forest resource rights. Particular focus should be on Section 3(I)(i) and Section 5, enabling communities to be empowered to protect and manage forests.
- Implementing agencies and special agencies of the government should be asked to support and facilitate the process of claiming of habitat rights by the primitive tribal groups (PTGs).

- Decisions taken by SDLCs and DLCs on the claims must be conveyed to the claimants and the Gram Sabhas to enable them to exercise their right to appeal.
- Strict instructions should be issued by the government to stop blatant violations of the law such as forced plantations on the land claimed under the FRA, acquisition (for industrial or other purposes) of lands on which rights have been granted, relocation from tiger reserves without completing the process of recognition of rights, non-recognition of rights of the other traditional forest dwellers, or fresh encroachment and other forms of misuse by those not eligible under the FRA.
- Existing forest management policies of the state and central governments, especially the JFM policy or eco-development schemes, should be reformulated to make them compatible with the provisions for community based conservation provided under section 3 (I)(i) and section 5 of the Forest Rights Act which are more empowering and equitable.
- The process of identifying and notifying critical wildlife habitats (CWH) should be carried out in a fully transparent manner, using the best available traditional and modern knowledge, centrally involving local communities and independent outside experts, and using a notion of 'inviolable' that ranges from no-use to compatible human use. For this, guidelines issued by the Future of Conservation Network (http://www.atree.org/foc_gl_cwh.pdf) should be used.
- Gram sabhas should be pro-actively facilitated by state governments and civil society, to identify and secure legitimate community forest rights, to determine boundaries of their community forests, to resist misuse of the FRA by vested interests from within or outside the village, and to conserve forests and wildlife including through the identification of critical wildlife habitats where relevant, by providing legal, technical, and financial support as found appropriate by the gram sabhas.

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