

COMMUNITY FOREST RIGHTS UNDER FOREST RIGHTS ACT

Citizens' Report 2013



By
Kalpavriksh & Vasundhara

in collaboration with
Oxfam India

An output of Community Forest Rights
Learning and Advocacy Process (CFRLA)

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Cover Pictures: (seen clockwise from top left) (1) The ancient Hatkeshwar temple in Chasole Village, Thane district of Maharashtra, which lies within the submergence zone of Kalu drinking water project (by Shiba Desor), (2) A board marks the forest area on which community rights of village Pondi have been recognized, (3) Baiga women of village Pondi, Dindori district, Madhya Pradesh, (4) Salim Desai Node, a pastoralist of the Maldhari community in the Banni grassland of Kachchh (all 3 by Ashish Kothari).

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This report is an outcome of the **Community Forest Rights – Learning and Advocacy (CFR-LA)** process which was initiated in 2011 to facilitate exchange of information and experiences and to reinforce national level efforts for evidence-based advocacy on CFRs. The process involves organisations and individuals working at local, national and international level on facilitating and/or understanding CFRs. As a part of this process, a website and an email group have been initiated.

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LIST OF ABBREVIATIONS

Abbreviations	Terms
ATREE	Ashoka Trust for Research in Ecology and Environment
BCFPC	Budhikhamari Community Forest Protection Committee
BRT WLS	Biligiri Rangaswami Temple Wild Life Sanctuary
CFM	Community Forest Management
CFR	Community Forest Rights (the term 'community rights' is also used to mean CFR)
CFRe	Community Forest Resource
CFRLA	CFR Learning and Advocacy
CREFTDA	Centre for Regional Education Forest and Tourist Development Agency
CSD	Campaign for Survival and Dignity
CSO	Civil Society Organisation
DC	District Commissioner
DCF	Deputy Conservator of Forests
DLC	District Level Committee
EDC	Eco Development Committee
FAC	Forest Advisory Committee
FCA	Forest (Conservation) Act, 1980
FD	Forest Department
FRA	Forest Rights Act (refers to Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Rights) Act 2006)
FRC	Forest Rights Committee
FPC	Forest Protection Committee
FSI	Forest Survey of India
GP	Gram Panchayat
GS	Gram Sabha
IFA	Indian Forest Act, 1927
IUCN	World Conservation Union
JASM	Jungle Adhikaar Surakhya Mancha
JFM	Joint Forest Management
JJBA	Jharkhand Jungle Bachao Andolan
KMDA	Khadia Mankirdia Development Agency

LAMPS	Large-Scale Adivasi Multi-Purpose Societies
LPPS	Lokhit Pashu Palak Sansthan
MFP	Minor Forest Produce
MM Hills	Mudumalai Hills
MoEF	Ministry of Environment and Forests
MoPR	Ministry of Panchayati Raj
MoTA	Ministry of Tribal Affairs
NAC	National Advisory Council
NTFP	Non-Timber Forest-Produce
NIWCYD	National Institute for Women, Child and Youth Development
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)
PESA	Panchayati Raj Extension to the Schedule Area Act, 1996
PFCS	Primary Fishermen Cooperative Society
PRI	Panchayati Raj Institution
PTG	Particularly vulnerable Tribal Group (earlier called Primitive Tribal Group)
RI	Revenue Inspector
RTI request	Request for data filed under the Right To Information Act
SAS	Soliga Abhivrudhi Sangha
SDLC	Sub-Divisional Level Committee
STR	Simlipal Tiger Reserve
TR	Tiger Reserve
UNESCO	United Nations Education, Scientific and Cultural Organisation
VGKK	Vivekananda Girijana Kalyana Kendra
WEO	Welfare Extension Officer
WLPA	Wild Life (Protection) Act, 1972
ZBGAS	Zilla Budakattu Girijana Abhivruddhi Sangha

SUMMARY

The Scheduled Tribes and Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (hereafter called FRA) is being implemented since 2008. While there is still a long way to go for effective implementation of the Act in letter and spirit, there have been some encouraging developments over the last year, such as:

- Amendments to the FRA Rules in September 2012 and issuance of various guidelines and circulars for strengthening the provisions of CFRs and clarifications on instances of ambiguity;
- Consultations, workshops and learning sessions on FRA issues (held by both MoTA and by CSOs) at state, regional and national level;
- Preparation and sharing of Action Plans for FRA implementation by state governments;
- Cases of decentralization of NTFP governance (to a limited extent, and with some associated problems);
- Supreme Court judgement upholding need of prior recognition of forest rights and Gram Sabha consent in the case on clearance for mining by Vedanta/ Sterlite in Niyamgiri hills, Odisha;
- On-ground assertions of rights against continuation of activities such as felling or mining in forest without prior Gram Sabha consent.

At the same time, there have also been some setbacks or persisting issues. To name a few:

- Rushed implementation to show achievement as reflected in numbers, without on-ground empowerment;
- Lack of institutional clarity and support in moving towards community forest governance in the post-recognition scenario, especially because of persisting ambiguity at the interface of FRA with other laws.
- The recent exemption of projects requiring linear diversion from the provisions for requirement of Gram Sabha consent (through a modification of the 3-08-2009 MoEF circular on 5-2-2013);
- Continued neglect of forest rights for PTGs, shifting cultivators and nomadic pastoralists and lack of effective implementation in Protected Areas;
- Cases of violation of FRA in notification of Tiger Reserves and diversion of forests for developmental projects;
- Pre-existing rights regime or prior settlement processes being considered, at district or state level, as sufficient reason, for not facilitating implementation of the Act.

There is, thus, an overall need to build a deeper understanding at the levels of administration, CSOs and forest dependent communities about the significance, objectives and provisions 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 PTGs and rights in forested municipal areas. Recognition of rights through titles in itself can also not be considered sufficient unless contradictions with other laws are reduced and complementarities are strengthened. Only then will CFRs become an effective tool to enable forest dwelling communities to move towards decentralized community based governance and conservation of forests.

SECTION A INTRODUCTORY SECTION

This section provides a context regarding policies related to forest governance in India and the significance of the provision of Community Forest Rights within the Forest Rights Act for strengthening community-based forest governance. The section also describes the objectives of the Community Forest Rights Learning and Advocacy (CFR-LA) Process and this report, the methodology followed, and the limitations.



Figure 1 Salim Desar Node, a pastoralist of the Maldhari community in the Banni grassland of Kachchh (Ashish Kothari)

1.1 Background

As per the Forest Survey of India 2009, nearly one-fourth (23%) of India's land surface is covered with forests. The estimated number of forest-dependent people in India ranges from 250 to 350 million². During the long association between forests and the forest-dependent communities, various social, cultural and economic aspects of their lives have become linked with forests and community practices for managing forest resources have also evolved correspondingly.

Before colonial rule in India, such forest-dwelling communities used to have a degree of sovereignty in management of local forest resources. Many of the colonial laws imposed were aimed at achieving easier administration and control in areas under forest cover. The most significant of these laws was the Indian Forest Act (passed in 1865, 1878 and once again in 1927) which brought forest resources under the direct control of the state³. While there has been legal acknowledgement that 'historic injustice' was meted out to forest-dependent people during consolidation of forests as government property, till date the colonial Indian Forest Act continues to be implemented, with a few amendments.

The Post-Independence National Forest Policy (1952) and laws like the Wild Life (Protection) Act of 1972 and the Forest (Conservation) Act of 1980 did little to alleviate the situation of social injustice and loss of livelihoods for the forest dependent communities. The regulations further curtailed the local use of forests, thereby further alienating village communities from their age-old relationship with forest, even labelling these communities as “encroachers” or “illegal” users. At the same time, movements led by forest dependent people against rights deprivation and mis-governance in forested landscapes have also occasionally driven forest tenure reforms to accommodate forest-people relations. The category of village forests in Indian Forest Act, the provisions of community forest governance in the fifth and sixth schedule in the Constitution, the category of ‘community reserve’ in WLPA,



Figure 1 A stone engraved with the special provisions for the Mundari Khuntkatti Villages under the CNTA 1908. Recognition of rights under this act has led to reluctance in many villages of the Khunti district of Jharkhand to claim CFRs. (Ambika Tenneti)

² 250-350 million people partially dependent on forests (Poffenberger, M, McGean, B, (1998): Village Voices, Forest Choices. Joint Forest Management in India. Oxford University Press. New Delhi), 275 million (World Bank. 2006. India: Unlocking Opportunities for Forest Dependent People in India. Report No. 34481 - IN, World Bank: South Asia Region. 85 pp)

³ Although the technical classification under IFA described Reserved, Protected and Village Forests, the third category (Village Forests) has been, for all practical purposes, a non-starter

the recognition of Van Panchayats in Uttarakhand as a managing institution and the Chhota Nagpur Tenancy Act (CNTA) are some such examples.

Yet, it was only in 2006 that after a history of people's movements for recognition of customary rights of forest dependent people, the Scheduled Tribes and Other Traditional Forest Dweller's (Recognition of Forest Rights) Act was enacted. This Act, often called a 'watershed legislation' for forest governance in India, is the first to acknowledge that 'the forest dwelling scheduled tribes and other traditional forest dwellers are integral to the very survival and sustainability of the forest ecosystem'. The Act (hereafter referred to as Forest Rights Act or FRA) aspires to undo 'historic injustice' of neglect of their rights by recognizing and vesting the rights to use, manage and conserve forest resources and legally occupying forest lands that they have been residing in and cultivating. By recognizing customary rights of local communities over forest resources, it attempts to ensure livelihood and food security while empowering them to use biodiversity sustainably and conserve it to maintain ecological balance.

1.2 Community Forest Rights and their significance

Rights under FRA which are claimed by a village community (i.e. the whole Gram Sabha rather than individuals), such as rights of *nistar* or those used in intermediary regimes such as *Zamindari*, right of access, use and disposal of non-timber forest produce (NTFP), and rights over the products of water bodies and grazing grounds, are referred to as Community Forest Rights or CFRs.

Unfortunately, community rights have often been confused with the provisions within the same Act for diversion of forest land to provide the communities with facilities for education, health and connectivity. It is hoped that the recent amendment to FRA rules, which legally defines the term 'community rights', will bring more clarity to the issue. As per the amendment, community rights will include the following rights, listed under Section 3(1) of FRA:

- (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;
- (l) any other traditional right customarily enjoyed by the forest dwelling Scheduled Tribes or other traditional forest dwellers, as the case may be, which are not mentioned in clauses (a) to (k) but excluding the traditional right of hunting or trapping.

In this report, the terms ‘community rights’ and ‘community forest rights’ may be used interchangeably. Please see annexure 1 for some frequently asked questions (FAQs) regarding eligibility, applicability and the process of recognition of CFRs.

Significance

The CFR provisions are crucial for changing the manner in which forests have been viewed and governed thus far. CFRs have a potential to change the top-down centralised style of governance of forests to enable greater decentralisation and site-specificity, and for providing collective livelihood security to communities. The Act has particular significance in taking a historic step in supporting community based conservation and management (see box).

Despite the potential of the CFR provisions, it has been noticed that only a few communities are utilising these. The progress and thrust of implementation in most parts of the country so far has been on claiming individual rights to land while rights over community forest resources (CFR) have been largely ignored. Though this lacuna has been now recognized by many government and non-government agencies, the actual step of not just claiming but operationalizing CFRs is easier said than done. There are issues of lack of nuanced understanding of the provisions and challenges in their operationalization and effective implementation that will be discussed in detail in subsequent chapters.

Box 1: Rights specifically related to conservation and protection of community forest resource

The Act has taken a historic step in providing for community rights to “protect, regenerate, conserve and manage” any community resource for sustainable use. The provisions of section 3(1)(i) and section 5 of the Act together with Rule 4(1)(e) entrust the Gram Sabha with the rights and responsibility for sustainable use, for conservation of biodiversity and wildlife, ensuring that internal and external factors do not destroy their community forests and for maintenance of ecological balance. This is recognition of the fact that the forest dwellers are integral to the very survival and sustainability of the forest ecosystems. Thus these provisions together strengthen the conservation regime while ensuring livelihood and food security for the concerned community.

Community Forest Resource

Chapter 1 Sec 1(a) of the Act defines “community forest resource” as, “customary common forest land within the traditional or customary boundaries of the village or seasonal use of landscape in case of pastoral communities, including reserved forests, protected forests and protected areas such as Sanctuaries and National Parks to which the community had traditional access.”

Section 3(1)(i), Section 5 and Rule 4(1)(e):

Sec 3(1)(i) provides the “right to protect, regenerate, conserve or manage any community forest resource which they have been traditionally protecting and conserving for sustainable use”.

Section 5 of FRA empowers the holders of forest rights, Gram Sabhas and village level institutions to protect the wildlife, forest and biodiversity and to regulate access to community forest resources and stop any activity that may adversely affect the same. The Gram Sabha is also empowered to ensure that the ecologically sensitive areas are adequately protected and the habitats of forest dwelling communities are preserved from any form of destructive practices that may affect their cultural and natural heritage.

Rule 4(1)(e) under the Act states that communities which claim rights under the Act have a right to “constitute Committees for the protection of wildlife, forest and biodiversity, from amongst its members, in order to carry out the provisions of section 5 of the Act”.

1.3 CFR Learning and Advocacy process: the idea and the approach

In view of the significance of the CFR provision and the many challenges faced in its effective implementation, many civil society organisations (CSOs), networks, movements and alliances involved in advocacy and facilitation of CFRs have felt a need for a platform for learning from different experiences in implementing this provision. Keeping this in mind, CFR Learning and Advocacy process was initiated through a national brainstorming meeting⁴ on CFRs in 2011 as a collective exercise for learning and advocacy towards better and effective implementation of CFR provisions of the Act. The process involves grassroots level organisations and people’s networks working with communities on FRA in general and CFR in particular, and other support groups like legal advisors and individuals involved in research. The objective of the CFR-LA process is to facilitate exchange of information and experiences and to reinforce national level efforts for evidence-based advocacy on CFRs. As a part of this process, a website⁵ and a list serve⁶ have been initiated with a focus on updates and advocacy on CFRs.

The CFR-LA process has also been engaged in national and state level consultations and learning workshops. Two-days-long national consultations were organised in Delhi in March 2012 and March 2013. Many grassroots organisations, researchers, and community representatives participated in these. Officials from the nodal ministry of FRA viz. MoTA also participated in both of these consultations. Apart from the national consultations, state-level consultations and regional learning workshops have been organised or participated in by members of the CFR-LA process to learn from the success stories and highlight the major challenges being faced. There has also been publication of the first CFR-LA report on status of implementation of the CFR provision and related issues in 2012.

About the CFR-LA Citizens’ Report 2013

The objective of the study was to understand both the ground level situation of CFR implementation and major policy level developments that may be obstructing or strengthening the provision of CFRs, and to provide an assessment based on the collected information about the same.

The present report is an attempt to build upon the studies conducted for the first National Report published in 2012, by

- providing information on the more recent policy-level developments for CFRs,
- consolidating information on CFR implementation status obtained from different states in India (updating information for studies conducted in 2012, as well as undertaking new studies), and
- reporting the main findings on issues and recommendations discussed during the national CFR-LA consultations of 2012 and 2013.

Methodology

⁴ organised by Kalpavriksh and Vasundhara in collaboration with Oxfam India in New Delhi on 17th December 2011. See report at http://www.fra.org.in/new/CFR_brainstorming_report_%20delhi.pdf

⁵ Visit <http://fra.org.in/new/> for the CFR-LA website

⁶ For joining the email group cfr-la@googlegroups.com, visit <https://groups.google.com/forum/#!forum/cfr-la>

This study used a combination of varied research approaches and sources such as

- review of secondary sources (see Bibliography) and information exchanged on CFR-LA list serve,
- collection of regional information from members of the CFR-LA process through a pre-designed information format,
- field visits and interviews by the study team, and
- proceedings of the National CFR consultation held in New Delhi.

For the purpose of the study:

1. A national level review on CFR status was undertaken based on secondary sources, discussion during the national consultations and telephonic interviews.
2. Detailed case studies involving field visits were compiled across the states of Rajasthan, and Jharkhand, and the Dindori district of Madhya Pradesh. The CFR case studies detailed in CFR Report 2012, covering Odisha, Maharashtra and the BRT Wildlife Sanctuary in Karnataka have been updated in the present study with the developments that have taken place over the interim period.
3. The latest policy level developments, in terms of guidelines, amendments and circulars, have been summarized, based on the understanding reflected in the recent CFR-LA consultation and the information exchange over the CFR-LA list-serve.
4. The list of issues and recommendations for strengthening effective implementation of CFR provision has been updated based on the findings of the case studies and on discussions between CFR-LA members during the consultation as well as on CFR-LA list serve.

Limitations

Although there has been an attempt to represent accurate and reliable information to the best of our efforts, there may be gaps and weaknesses. We would also like to clarify that the information represented in the report does not in any way represent the full and diverse range of situations in India. We will be happy to receive suggestions and criticism from the readers and will try our best to keep the same in mind for further editions. We also urge readers to join the CFR-LA process and send in stories and studies for strengthening the learning process. The format used for detailed case studies for this report can be shared on request for conduct of case studies by interested individuals, local communities or organizations.

SECTION B NATIONAL OVERVIEW

This section provides an overview of the recent developments, at both policy and implementation level, relevant to the provision of CFRs. For information, it depends upon a study of circulars, guidelines, reports and discussions that have taken place during the two National Consultations (in 2012 and 2013) on CFRs organised by CFR-LA. It also broadly represents some of the situations studied for the detailed case studies (provided as annexures to this report). Please note that the section does not cover the full range of situations all over India, and is based on limited information.



Figure 2 Baiga women of village Pondi (in Dindori district, Madhya Pradesh) which has received recognition of community forest rights (Ashish Kothari)

2.1 Introduction

In 2012, there has been a pro-active role of MoTA in advocacy for better implementation of FRA. This has been done through the FRA Amendment Rules and through issuing of guidelines, circulars and letters to various Government departments raising issues of concern and clarifying where there are areas of ambiguity. At the same time there have been some discouraging developments such as the exemption of projects requiring linear diversion from Gram Sabha consent as per the MoEF circular of February 2013. This chapter briefly describes various such developments and the significance these may have for over-all strengthening of the CFR provision.

2.2 Amendment to FRA Rules, September 2012

On 6th September 2012, FRA rules were amended⁷. Prior to that, MoTA had circulated a draft which received many submissions of comments and suggestions, including some from members of the CFR-LA process.

The amendment makes some significant clarifications such as that on defining community forest rights and making certain clarifications that support decentralisation of NTFP governance. It also provides a standard claims and title format for recognition of rights under Section 3(1)(i) on Community Forest Resource. It gives additional functions at different levels for better implementation. It does however clarify that the amendment does not mean that FRC will have to reopen or reinstate processes where the titles have been received or the verification process already initiated. Some main features of the amendment relevant to CFRs are provided as Annexure 2.

A letter was sent by MoEF (Additional Director General of Forests) on 15 Jan 2013 to the Principal Chief Conservator of Forests of all state governments and Union Territories bringing to their notice the guidelines issued by MoTA under Section 12 of FRA and the Amendment to Rules, and asking them to take appropriate action on the same. In relation to the amendment, there has been some follow up by state governments. For example, the Odisha government (Commissioner-cum-Secretary of the ST and SC Development Department) has issued a circular on 26 Nov 2012, giving specific instructions to all district collectors for implementation of FRA amendment rules.

2.3 Guidelines on FRA 2012

On 12 July 2012, guidelines regarding implementation of FRA were issued by the MoTA office to the Chief Secretaries of all states and administrators of all Union Territories. The Guidelines have many clarifications that strengthen community forest governance. Examples are:

- The State Governments' transit rules should be amended to exempt MFPs from their purview. Imposition of fee/charges/ royalties for processing, value addition and marketing of MFP by rights holders would be *ultra vires* of the Act.
- Claims for pastoralists should be facilitated by DLC recognising their floating population.
- Through Section 3(1)(i) and 5(d), 'Gram Sabha is empowered to regulate access to community forest resources and stop any activity which adversely affects the wild animals, the forest and the bio-diversity.'

⁷ The amendment rules are available online at <http://tribal.gov.in/writereaddata/mainlinkFile/File1434.pdf>

- For cases of diversion of forest land for non-forest purposes under FCA after enactment of FRA 2006 but before the MoEF circular of 2009 for FRA compliance, if any eviction of STs and OTFD has taken place without settlement of their rights, the DLC ‘may be advised to bring cases of evictions, if any, to the notice of the State Level Monitoring Committee for appropriate action against violation of the provisions contained in Section 4(5) of the Act.’
- SLMC should monitor compliance of provision under Section 3(1)(m) of right to *in situ* rehabilitation including alternative land in cases of illegal eviction and right under Section 4(8) to land when displaced without compensation due to State development Activities.
- A question has been raised on whether the four hectare limit specified in Section 4(6) of the Act, which provides for recognition of forest rights in respect of the land mentioned in clause (a) of sub-section (1) of section 3 of the Act, applies to other forest rights mentioned in Section 3(1) of the Act. It is clarified that the four hectare limit specified in Section 4(6) applies to rights under section 3(1)(a) of the Act only and not to any other right under section 3(1), such as conversion of pattas or leases, conversion of forest villages into revenue villages etc.
- ‘On completion of the process of settlement of rights and issue of titles as specified in Annexure II, III & IV of the Rules, the Revenue/ Forest Departments shall prepare a final map of the forest land so vested and the concerned authorities shall incorporate the forest rights so vested in the revenue and forest records, as the case may be, within the prescribed cycle of record updation’.

2.4 Letters and circulars by MoTA for effective implementation of the Act

MoTA has been playing a pro-active role in writing to various state governments, implementing agencies and at times the Ministry of Environment and Forests to raise issues requiring attention in implementation of FRA. The following letters have been issued by MoTA in the past year (May 2012 to May 2013):

Table 1: A chronology of general letters by MoTA issued in 2012-13 for better implementation of FRA⁸

Date	Subject of the letter	Addressed to	Remarks
24 th May 2012	listing suggestions for better implementation of the Act	initially sent to Chief Ministers of a few states, but subsequently (through dispatches on 28 June 2012 and 3 July 2012 covered all the states).	
23 rd July 2012	clarifying that no deadline can be imposed for acceptance of claims as it is an ongoing process.	to Chief Secretaries of all states (except Punjab, Haryana and J & K) and administrators of Union Territories (except Lakshadweep)	A state-level development based on this letter: the nodal agency of Odisha wrote to the Rayagada collector on 28 August 2012 asking him to withdraw the imposed deadline of 31 August

⁸ This excludes letters issued specifically in the context of FRA compliance in forest diversion

				2012 for claims from SDLC Gunpur.
18 th December 2012		raising concerns on the poor implementation of the CFR provisions within their states.	to states of Uttar Pradesh, Bihar, Karnataka, Uttarakhand and Tamil Nadu	
4 th 2013	April	Urges Governors to invoke their executive powers to ensure that rights of scheduled tribes in scheduled areas are not trammelled upon. The letter urged them to secure the rights of Scheduled Tribes and forest dwellers and 'also for ensuring peace in several disturbed areas of our country'. It specifically mentions forest rights and livelihoods in the context of land acquisition.	To Governors	It has been reported that a Commission has suggested to MoTA that the ministry should prepare a uniform format for governors to submit their reports, which should review Union and state laws and their compatibility with the constitutional rights of tribal communities ⁹ .
4 th 2013	April	urges CMs to ensure effective implementation of FRA and mentions some continuing violations such as equating Joint Forest Management Committees with Forest Rights Committees, lack of adequate modification of transit permit regime to match amendment of rules, illegal rejection of rights and illegal operations such as building high stone walls or large fences barring traditional or customary access, non-cognizance of alternative propositions (for land diversion for projects), and neglect of the criminal offence provisions of the FRA	To Chief Ministers	
12 2013	April	asks the SLMC to share quarterly status reports on FRA.	to Chief Secretaries of States	
29 2013	April	Clarifies that FRA is applicable in municipal areas and withdraws earlier contradictory circulars on the issues. The circular states that mohalla sabhas can be procedural equivalent of Gram Sabhas, and seeks suggestions on block level and district level tiers	To all the Principle Secretaries/ Secretaries/ Commissioners of the States'/ UTs' Tribal Welfare Department.	

⁹ Jitendra 2013, 'Governors in the dock', *Down to Earth*, April 15
<http://www.downtoearth.org.in/content/governors-dock>

2.5 Letters and circulars by MoTA on FRA compliance in Forest Diversion

MoTA has had a pro-active role in urging both MoEF and state governments to ensure compliance to FRA provisions in diversion of forest land for developmental activities.

Letters to State Governments

Letter on 24th May 2012 regarding non-implementation of FRA in Sheopur district of Madhya Pradesh: The letter requested the Chief Minister 'to ensure that no clearance of construction of proposed dam near Chentikheda village in District Sheopur is granted until all statutory provisions and conditions of Forest Rights Act 2006 are met.'

Letter on 28th September 2012 on bauxite mining in Vishakhapatnam, Andhra Pradesh: This letter was written to the Chief Minister raising the issue of violations of FRA in projects of bauxite mining in Vishakhapatnam district of Andhra Pradesh. On the same date, an office memorandum was also passed cancelling bauxite leases for many violations, but particularly the violation of the Alienation of Land Transfer Regulation which imposes strict prohibition on purchase or leasing of land by non tribal groups in a scheduled area.

Letter to Chief Minister of Himachal Pradesh on 28th February 2013: The letter states that implementation of FRA can not be set aside due to settlements done in the past. This was followed by an Office memorandum from MoTA on 1st April 2013 by Director (SG) in the case of settlement of rights in Himachal Pradesh. This memorandum, addressed to MoEF, asks for withdrawal of the MoEF directive dated 20th September 2012 issued to to Principal Secretary (Forests) of Himachal Pradesh.

The letter was issued because the MoEF directive provided directions conflicting to FRA. According to the directive, a certificate from District Commissioner stating that there has been settlement of rights is sufficient, in consideration of the specific situation 'where according to the Hon'ble Chief minister, rights and concessions on forest land throughout the State, including the tribal areas, have been settled long back and recorded in settlement reports, and that no FRA compliance issues exist which need to be settled.'

Letters after the Niyamgiri judgement: On 2nd May 2013, the Joint Secretary, MoTA issued directions under Section 12 to Commissioner-cum-Secretary. The directions are for issuing an advertisement for claims, preparing and publicly sharing a draft list of villages and hamlets, organising sensitisation meetings involving independent experts and maintaining audio and video records of the palli sabha meetings. There was a follow-up letter by the secretary, MoTA to Chief Secretary of Odisha on 23rd May 2013 raising concern on inaction on the previous letter, informing about a module prepared by the Ministry for FRA orientation in Kalahandi and Rayagada, and specifying that orientation sessions using that module should be held jointly with the Ministry in the last week of May.

Letters to MoEF

A letter was sent by the Minister of Tribal Affairs on 19th November 2012 and then again on 7th December 2012 to MoEF regarding significance of FRA compliance in forest diversion and requesting to ensure that the compliance to the 03-08-2009 circular issued by MoEF on the same is upheld for all projects requiring forest diversion. In the 19th November 2012 letter, the minister requested that steps described in the 2009 order should be followed before granting Stage 1 clearance, MoTA should be represented on the Forest Advisory Committee and Gram Sabha meetings discussing such diversion should be videotaped. In the letter dated December 7

2012, the MoTA minister again raised concern that MoEF's order dated 3.8.2009 to ensure that diversion of land under Forest (Conservation) Act 1980 "appears to be honoured in breach".

2.6 MoEF circular on exemption from Gram Sabha consent for linear projects requiring forest diversion

A committee headed by the Prime Minister's principal secretary Pulok Chatterjee, and including as members the secretaries of MoEF and MoTA was formed in 2012 to make recommendations for speeding up project clearances in forested areas. Their recommendations suggested relaxing the requirement of Gram Sabha consent for forest diversion in many different cases such as the cases where public consultations have occurred for other clearances, or where linear diversion is required, or where the diversion does not substantially or significantly affect the quality of life of the people (whose rights have been recognised) residing in the area where the site of diversion is located.

The recommendations of the committee were severely criticized by many national and international groups working on the issues of conservation, livelihoods and human rights. Their arguments were based on concerns related to both environmental and social justice. It was felt that the two processes of public hearing and Gram Sabha consent cannot be equated. Besides, the requirement of completing rights recognition cannot be substituted by a mere statement from the State government¹⁰ stating as much. They have also protested saying that such relaxation would be a legal violation of the FRA¹¹.

As a final consequence of the whole debate, MoEF has issued a new circular on 5th February 2013 stating that the requirement of public hearing and Gram Sabha 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. This circular has been seen by many critics as a mockery of the Act in letter and spirit, and there have been demands to have it withdrawn¹². MoTA has also written to MoEF urging the ministry to revise the circular. On the other hand, the exemption is being justified by some as a 'special window' for easing processes of bringing development into tribal villages¹³ and by others as a step in the right direction towards fast-tracking clearances to bring in investment to strengthen the Indian economy.

2.7 Developments at the interface which may influence CFRs

As long as other policies and directives continue to contradict or undo the empowerment or rights recognition envisioned under FRA, the objectives listed in the preamble of the Act (of undoing historic injustice) will remain unfulfilled. At present there is a continuing lack of convergence of objectives at the interface of different laws related to forest land, use and rights. While in the past year there have been some policy developments at the interface that could lead to strengthening of CFR provision, there have also been others which are perceived to be in conflict with the letter and spirit of FRA.

¹⁰ Kalpavriksh, Vasundhara and others, 2013, 'Open Letter to Prime Minister Manmohan Singh: Gram Sabha's voice in forest clearance needs to be strengthened, not diluted', January 24

<http://kalpavriksh.org/images/LawsNPolicies/Open%20Letter%20to%20Dr.%20Manmohan%20Singh.pdf>

¹¹ Business Standard, 2013, 'Jurists write to PM on claim of forest land', January 28 http://www.business-standard.com/article/pti-stories/jurists-write-to-pm-on-claim-of-forest-land-113012800577_1.html

¹² One such letter of protest can be accessed at

<http://kalpavriksh.org/images/LawsNPolicies/Letter%20to%20MoTA%20re.%20Feb%202013%20circular%20on%20forest%20diversion.pdf>

¹³ Girija Shivakumar, 2013, 'Centre draws up 9-point action plan to develop Naxal-affected areas', *The Hindu*, April

¹⁴ <http://www.thehindu.com/todays-paper/tp-national/centre-draws-up-9point-action-plan-to-develop-naxalaffected-areas/article4615836.ece>

Conflicts

A recent draft amendment to Indian Forest Act (IFA), cleared by the Union Cabinet in 2012, increases the limit of fine for compounding forest offences from Rs. 50 to Rs. 10,000. However what constitutes a forest offence has changed and will further evolve as FRA is implemented. In view of this, the present amendment may be yet another source of contradictions and may spawn clashes. Many groups and organizations have protested against this amendment¹⁴. Reportedly¹⁵, in November 2012, even the Parliamentary standing committee constituted for gathering evidence on the proposed amendment, headed by T. Subbarami Reddy, quizzed upon how activities recognized as rights under one Act (FRA) could be still deemed as a criminal offence under another Act (IFA). There has been no update on the status of the amendment at present.

There are also contradictions and violations of rights of forest dwellers in the provisions of the new Land Acquisition bill (according to which community rights of forest dwellers can be alienated through a compensation amount fixed by the Collector) and the new mining bill which does not give adequate protection to various rights of tribals on their customary forest resources in Scheduled Areas and elsewhere. Concerns have also been raised regarding some contradictions of FRA provisions in the PESA rules framed by state governments.

Complementarities

Minister for Rural Development, Jairam Ramesh, has written a letter on 9 August 2012 to the Chief Ministers urging them to over-ride objections of FD and hand over transit pass book to Gram Sabhas following the Mendha Lekha example.

As per a press release issued by MoEF on 4 October 2012, the Union Cabinet has approved the amendments to WLPA for provisions for the following:

- Consultation with Gram Sabha in the event of the intention of the State Government for declaration of a Sanctuary and a National Park¹.
- Consultation with Gram Sabha for management of the sanctuary
- Consultation for declaration of National Park.
- Records of Gram Sabha and Panchayat for the enquiry in claims for consideration during notification of the sanctuary.

While this could be a welcome move, the actual text of the amendment is not publicly available at present and would be required for a more detailed analysis of implications of such an amendment.

2.8 Court Cases, Orders and Judgements

The case of Ajay Dubey vs. NTCA and Others

Ajay Dubey versus NTCA and others is a case of Public Interest Litigation (PIL) asking for implementation of the national Tiger Conservation Plan, which was filed in 2011. While the main controversy has revolved around the ban on tourism in core areas of Tiger Reserves, several connected matters of tiger conservation have come up, increasing the complexity of the situation. The subsequent interventions and orders by the Supreme Court have had a significant

¹⁴ One example of comments on the amendment is the memorandum submitted by members of Kalpavriksh. [http://kalpavriksh.org/images/LawsNPolicies/views%20on%20Indian%20Forest%20\(amendment\)%20bill%202012-Kalpavriksh.pdf](http://kalpavriksh.org/images/LawsNPolicies/views%20on%20Indian%20Forest%20(amendment)%20bill%202012-Kalpavriksh.pdf)

¹⁵ Nitin Sethi, 2012, 'House panel highlights forest law conflicts', *The Times of India*, Nov. 16 http://articles.timesofindia.indiatimes.com/2012-11-16/developmental-issues/35156015_1_forest-bureaucracy-indian-forest-act-forest-service

impact on the governance of Tiger Reserves, on the rights of local communities and on the implementation of the Forest Rights Act.

In the proceedings of the case, an interim order was passed on 24 July 2012, ordering a temporary ban on tourism in Tiger Reserves, also directing all states to notify buffer areas for their Tiger Reserves within three weeks, and warning that failure to do so would invite initiation of contempt proceedings. Apart from raising a debate on tiger tourism, the interim interventions led to protests¹⁶ because of the danger of it leading to arbitrary circumvention of legally mandated procedures of Gram Sabha consultations, and of demarcation of areas where communities exercise various livelihood rights, including in revenue village area, into the category of ‘buffers’ which could pose restrictions on their exercise of rights (an intervention on this matter of buffer notification has been filed by Kalpavriksh). Additionally, during the course of debates on tiger tourism, a former NTCA member had admitted that the CTHs of Tiger Reserves were notified over large tracts of forest land in a hurry without following required procedures.

On 29th August 2012, the SC instructed the MoEF to prepare guidelines for conservation and management of core areas, buffer areas and on tourism in Tiger Reserves. In September 2012, a committee was constituted by NTCA to draft the guidelines. Two members of that committee have submitted notes of dissent to the MoEF on the grounds that the guidelines do not adequately deal with the subject of co-existence, the implications of buffer notification on resident communities and the detailed process to be followed in such notification.

The Supreme Court made an interim decision on 16th October 2012 to lift the ban on tourism. However, it has repeatedly delayed a final decision, leaving the forest dwellers uncertain of their future.

The Vedanta Niyamgiri Judgement

The Vedanta Niyamgiri Judgement of 18th April 2013 is being lauded for upholding the customary and religious rights of forest dwellers, drawing upon the Forest Rights Act (specifically section 5 and section 4(3)), the Panchayati Raj Extension to the Schedule Area (PESA) Act, 1996, and Articles 244, 25 and 26 of the Constitution. As per the judgment in this case against bauxite mining by Vedanta in Niyamgiri hills of Odisha, the Gram Sabha has to decide if religious rights are held in the forest area being diverted for mining, and if such rights exist, these need to be preserved and protected. Gram Sabhas have been directed to consider all claims on forest rights, especially religious rights, and to come to a decision within three months. The Gram Sabha proceedings need to be verified by a district judge to ensure transparency. This decision has to be communicated to the MoEF which will take the final decision ‘in light of the decisions of the Gram Sabha.’

According to an analysis by Campaign for Survival and Dignity (CSD), the judgement is a significantly empowering one because it treats the Gram Sabha as a statutory authority and goes beyond the requirement of mere consent by asking for the question of ‘religious rights’ to be put before the Gram Sabha for active consideration. Additionally by stating that religious rights need to be protected where these exist, the judgement implies that projects violating religious rights cannot be given clearance irrespective of whether the Gram Sabha consents to it or not. Moreover, the judgement, by not mentioning phrases like the need to protect the ‘national interest in mining’, clarifies that such empowerment is without any caveats.

¹⁶ ‘Supreme Court’s Order on Tiger Reserve Buffers Encourages Illegality’, Press Release by Future of Conservation Network, August 13, 2012

<http://www.fra.org.in/New/document/Buffer%20area%20SC%20order,%20press%20release,%2013.8.pdf>

At the same time, other critics are of the opinion that the judgement lacks teeth as:

1. It opens the case of forest diversion in Niyamgiri for reconsideration of approval and leaves the final decision to the MoEF,
2. It holds on to the government's power of using eminent domain for land take-over, and
3. It gives inadequate attention to habitat rights.

Gujarat Judgement

In response to public interest litigation by a group of NGOs in Gujarat, the High Court has ordered on 3rd May 2013 that the state government needs to comply with the provisions of FRA and status quo will be maintained on possession of forest land by tribal groups until a decision has been taken on the claims.

Chapter 3 IMPLEMENTATION UPDATE

3.1 Introduction

The present chapter provides an overview of the implementation status of the FRA based on:

- Official information presented in the MoTA status report, state action plans, reports of National and Regional Consultations, and
- Information provided by civil society organisations, researchers and others engaged in facilitating implementation of the Act at the community level.

3.2 A review of official data

3.2.1 From the MoTA status reports

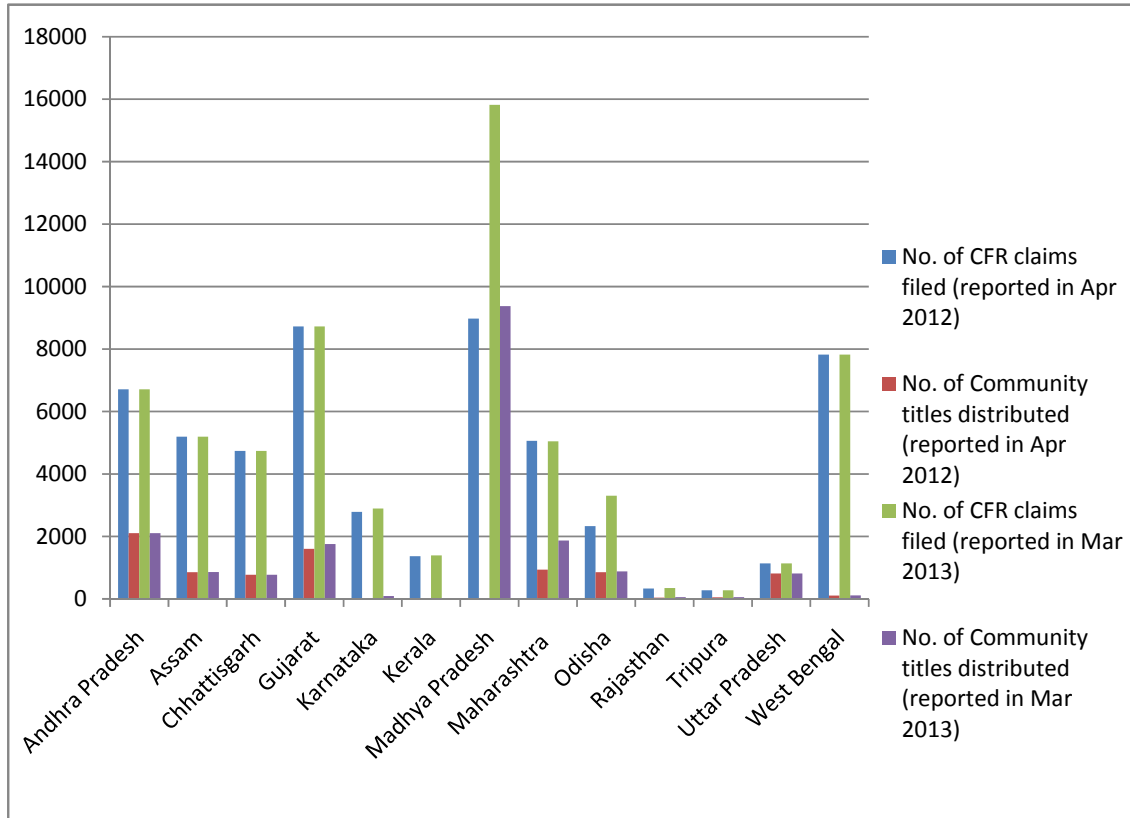
It is very difficult to get a national picture on status of CFRs. Although, MoTA has a system of monthly reporting on the implementation of the FRA, it must be noted that the numbers given in MoTA status report cannot be completely or solely relied upon for making assessments as these are based on poor and inaccurate reporting by states and do not provide segregated data on community rights claimed and titles issued under different sections such as nistar, NTFP collection, conservation and management, etc. (see chapter on ‘Persisting Issues’).

Comparison with 2012 figures: As per figures given in consecutive MoTA status reports, there has been no change in the number of claims for community rights recognised in Andhra Pradesh, Assam, Chhattisgarh, Tripura, Uttar Pradesh and West Bengal since April 2012, while there has been some increase in the corresponding numbers for Kerala, Maharashtra, Odisha and Rajasthan. For Madhya Pradesh, there seems to be a significant increase in the number of claims filed and a large number of community titles (which were not given separately in the 2012 report) are being shown as having been recognised. Figure A and B given below compare figures for claims filed and titles granted, based on MoTA status reports for April 2012 and March 2013.

Table 2: Status of CRs as on 31 Mar 2013, as reported on the MoTA website

States	No. of community rights claims received till March 31, 2013	No. of community titles distributed	Forest land covered by titles distributed (in acres)
Andhra Pradesh	6,714	2,106	Not available
Assam	5,193	860	Not available
Bihar	Not given separately	Not given separately	Not available
Chhattisgarh	4,736	775	1,772.69 (for 250 titles)
Gujarat	8,723	1,758	Not available
Himachal Pradesh	Not given separately	Not given separately	Not available
Jharkhand	Not given separately	Not given separately	Not available
Karnataka	2,896	90	Not available
Kerala	1,395	4	Not available
Madhya Pradesh	15,816	9,373	Not available
Maharashtra	5,048	1,868	3,77,776.25
Odisha	3,304	879	55,251.65
Rajasthan	346	57	419.53

Tripura	277	55	56.79 (not for all titles)
Uttar Pradesh	1,135	814	Not available
West Bengal	7,824	108	50.29



Comparative graph of total claims filed and titles granted for community rights as of 2012 and as of 2013, as reported in MoTA status reports of April 2012 and March 2013

On implementation in North-East India: Insufficient attention has been paid to understanding the implications of the FRA for forest dwellers of the states of the north-east, especially because of the Sixth Schedule. As the details given in MoTA status report of 31st March 2013 show, many of these states have excused themselves from implementation, claiming that the pre-existing rights regime is strong enough, and that the FRA is not applicable in their special situations. Some information on claims filed and titles granted in only two of these states, Tripura and Assam, can be seen in the MoTA status reports and the state level action plans. It must be noted that for the states of Meghalaya, Mizoram, Manipur, Nagaland and Arunachal Pradesh the reasons for lack of implementation have remained unchanged since 2010 in all MoTA status reports.

The Joint MoEF-MoTA Committee report of 2010 states that “A reading of the Act’s provisions, along with the individual powers that most north-eastern states (or parts of these states where Sixth Schedule applies), suggests that the fear of undermining existing rights is unfounded if the Forest Rights Act is implemented in its true spirit and letter, and that rather, the Act could further strengthen customary or traditional rights.” Additionally, the recent report

of the MoTA-UNDP meeting on FRA held in December 2012 has also clarified that ‘pre-existing regimes of rights recognition, such as those in Himachal Pradesh, Uttarakhand, Jharkhand and the North-east, are not necessarily a substitute for recognition of rights under this Act. This Act provides for issue of written titles and also covers a different set of rights than many of these other systems (in several cases, rights under the Act are not covered under pre-existing systems).’

Table 3: State-wise Information on FRA status in North-eastern states

State	Information on FRA implementation status
Arunachal Pradesh	<p>The state has not appointed a nodal officer although it has selected a nodal agency (the department of Social Welfare). The following remark has been made:</p> <p>‘State Govt. has informed that though they have constituted the SDLC, DLC and SLMC under the Act but unlike the other States where the STs and other traditional forest dwellers are in minority, 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 few pockets of land under wildlife sanctuaries, reserved forests, most of the land in entire State is community land. Territorial boundaries of land and forest belonging to different communities or tribes are also identified in the same line leaving no scope for any 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.’</p>
Manipur	<p>Manipur is one of the few states which has reported absolutely no activity related to the FRA. It has been mentioned that ‘reasons why no action has been initiated for implementation of the Act are not available nor were they forthcoming in the Review Meeting held on 11.11.2008 and also during the Conference held on 4th and 5th November 2009.’ In the category of ‘problems’, it has been mentioned that ‘in tribal communities and tribal chiefs are already holding ownership of forest land as their ancestral land in non-Reserved Forest Area. Therefore, implementation of the Forest Rights Act is perceived minimal in Manipur.’</p>
Sikkim	<p>The Government of Sikkim has issued a notification dated 28.1.2008 regarding constitution of an Expert Committee for identification of Critical Wildlife habitats in Protected Areas (PAs) and has also constituted the various Committees under the Act namely SDLC, DLC and SLMC, but has not sent any report regarding the progress of implementation of the Act in the State so far. The ‘remarks’ section mentions that ‘In Sikkim, there are no Forest Dwelling STs and Other Traditional Forest Dwellers in the true sense of the terms. Most of the STs of Sikkim hold revenue land in their own name and they are not solely dependent on the forests for their livelihood.’</p>
Nagaland	<p>‘Government of Nagaland has informed that the land holding system and the village system of the Naga people is peculiar in that the people are the landowners. There are no tribes or group of people or forest dwellers in the State of Nagaland. Hence, the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 per se may not be applicable to the State of Nagaland. However, a committee has been constituted to examine the applicability of the Act in Nagaland as per provision of Art. 371(A) of Constitution of India’.</p>
Mizoram	<p>No nodal officer has been appointed but SLMC, DLC, SDLC and FRC has been reported to be constituted. However, there is no information on claims and titles. It has been remarked that ‘the Act was to be approved by the State Legislative</p>

	Assembly as per the Article 371 (G) of the Constitution. In the sitting on 29.10.2009 of its Fourth Session, the Sixth Legislative Assembly of Mizoram has resolved that the Forest Rights Act shall be adopted in the entire State of Mizoram with effect from 31.12.2009. The same has also been notified by Govt. of Mizoram on 3.3.2010.’
Meghalaya	A nodal officer has been appointed. Monitoring Committees at District and Sub-Divisional levels have been set up. The SLMC has been constituted. However, there is no information available regarding constitution of Forest Rights Committees by the Gram Sabhas. It has been remarked that ‘96% of forest land is owned by clan / community / individuals. Implementation of the Act has, therefore, limited scope.’
Tripura	In Tripura, while on the positive side there has been some FRA implementation, it is important to note that out of the 277 CFRs filed, 220 have been rejected with only 55 (covering 56.79 acres) approved for issue of titles.
Assam	In MoTA status report of March 2013, projected date for distribution of title deeds is still given as 31-12-2011. There has been no change in the reported number of claims filed or the titles distributed over the last one year.

3.2.2 Regional and National Consultations by MoTA

In 2012, through collaboration between MoTA and UNDP, there have been certain initiatives undertaken for better implementation of the Act. To facilitate implementation, a ‘training module for Government Functionaries on Forest Rights Act, 2006’ has been published¹⁷ and a series of regional and national consultations have been organised¹⁸.

The priority areas needing attention, as discussed during the regional consultations and listed in the synthesis report of the regional consultations (quoted verbatim from the report), are as follows:

- Each State is to demarcate exact areas where FRA is to be implemented listing out all such habitations which have a forest interface, whether such habitations are recorded or unrecorded, whether they are in forest land or outside;
- Each State is to develop a state-specific strategic action plan for implementation of FRA in the light of amended Rules; different states are at different stages of implementation of FRA, and Action Plans must be designed accordingly also highlighting the post claim processes; a special meeting of State Level Monitoring Committee may be convened for this purpose to finalize the state level plan; this strategic action plan is to be the new phase of the FRA implementation based on this renewed initiative and understanding;
- MoTA to prepare a Training Manual on FRA to help State Governments undertake training of State level functionaries;
- Similar consultations on FRA to be held at state, district, and block levels;
- Good practices to be documented with regard to implementation of FRA and post-implementation process;
- A ‘Resource Centre’ for FRA may be set up in States where FRA is being implemented well. This could further be developed as a National Centre on FRA;

¹⁷ The training module and frequently asked questions can be accessed from the MoTA website at:

<http://tribal.nic.in/index2.asp?sublinkid=1336&langid=1> and
<http://tribal.nic.in/writereaddata/mainlinkFile/File1539.pdf>

¹⁸ The reports of the regional and national consultation can be accessed at

<http://tribal.nic.in/writereaddata/mainlinkFile/File1540.pdf> and
<http://tribal.nic.in/writereaddata/mainlinkFile/File1568.pdf>

- Building a network of Panchayat elected representatives, people's organizations, voluntary organizations, etc. in mobilizing the community for implementation of FRA.

The national and regional consultations organised under the MoTA-UNDP process and related orders have pressurised state officials to conduct meetings and training sessions on FRA for implementing agencies. Civil society participants of the regional and national consultations raised the issue of being given a very short intimation (3-4 days before the consultation). Information to civil society regarding such workshops needs to be sent well in advance and in writing so that there can be consultation among civil society networks on who can participate and on how to best provide constructive inputs.

From the proceedings of the National Consultation on December 3, 2012, it was clear that while implementation of the FRA in all states was far from satisfactory, some had gone much further than others, and had clearer action plans. There continued to be misunderstandings or misconceptions about several aspects; e.g. 'habitat' rights was interpreted as 'habitation', OTFDs were still considered to need 75 years' occupation of the forest land rather than 75 years of residence in the area, etc. From this it is also apparent that while MoTA's recent guidelines and the new Rules have succeeded in bringing about clearer interpretations and better implementation, there are many aspects of the Act on which implementing agencies still need guidance and advocacy¹⁹.

3.2.3 State Action Plans: Main features and issues of concern

State governments had been instructed by MoTA to draw up their own action plans which were to have been presented during the National Consultation organised by MoTA on 3rd December 2012. It should be appreciated that the format of the action plan provided has encouraged states to propose specific actions on community rights, rights within PAs, rights for PTGs and other vulnerable communities, post-recognition convergence, grievance handling mechanisms, review of rejections, and monitoring/evaluation. However it should be noted that only 18 states have presented draft action plans for implementation of FRA. Details regarding action plans of other states are not publicly available.

In response there have been various proposals and suggestions from states in the action plans, such as those for setting up a district-level grievance redressal cell (Maharashtra), a regional monitoring cell for six different states (located in Madhya Pradesh), and for a Community Rights database and resource centre in Odisha.

However there are also many problems with these action plans. Many of them have a very short time line; e.g. the Chhattisgarh action plan aims to complete the rights recognition process by end of June 2013 including entry in official records. If we indeed want to ensure an effective and democratic process rather than achieving a mere increase in number of titles, it is important that the implementation is not in such a hurried manner. . At the same time, some states (e.g. Himachal Pradesh) which have given information on action plans have still not updated information in the MoTA status report. In other cases, such as West Bengal, the state action plan is not available, though information is provided in the MoTA status report. There is a need for detailed assessment and monitoring of State action plans and strategies. Following are some aspects of the action plans which seem to reflect a misinterpretation of FRA provisions or a counter-productive approach to recognition of rights (the list is indicative, not exhaustive):

1. **Andhra Pradesh:** In the section on 'reasons for rejection', 'Claims of OTFDs in scheduled areas' is included. This is invalid as there is no rule hindering OTFDs to file

¹⁹ Information shared by Ashish Kothari, Kalpavriksh, who participated in the National Consultation held on December 3, 2012.

claims in Scheduled Areas. The deadline of January 2013 is unrealistic, and has clearly not been followed. Additionally, the plan states that habitat rights have been recognized for all PTGs in the State. Since there are no reports of habitat rights being recognized anywhere in India, the veracity of such a statement is doubtful.

2. **Bihar:** As the process of rights recognition under FRA has not even been initiated, the statement about villagers around forest areas in general and in protected areas in particular, enjoying traditional forest rights is surprising and may be based on a mis-interpretation. Such an explanation is in any case not sufficient reason for neglecting FRA implementation.
3. **Chhattisgarh:** Habitat right under 3(1)(e) for PTGs seems to have been confused with habitation right for homestead land. Also, the post-recognition details seem to indicate a flawed attitude of 'distribution' rather than 'recognition' of rights.
4. **Gujarat:** post-recognition scenario, the plan seems to substitute FPCs with JFMCs which is invalid and can be problematic.
5. **Jharkhand:** The statement in the plan that '81.27% forest in Jharkhand is protected forest, where adjacent villages have been given many rights like rights of firewood, grazing, timber for their need, collection of MFPs etc. since long.', as well as the fact that no information is available on titles, seems to suggest that the government is trying to justify poor implementation of FRA with pre-existing rights-arrangements.
6. **Karnataka:** There is barely a mention of CFRs or reasons for a high rate of rejection.
7. **Kerala:** It is stated that all claims will be settled before Dec 31 (except in Idukki district where the deadline is March). The year is not specified but in case it is December 2012 and March 2013, the timeline is very short and unrealistic. Also, it is unclear what clarification (as mentioned in the action plan) could be required for implementation of FRA in PAs. Additionally, sale by Vanasree units of Forest Department for NTFP, mentioned in the post-recognition support strategy contradicts the vision of decentralized forest governance under FRA.
8. **Madhya Pradesh:** The Act does not make a distinction between nationalized and non-nationalized NTFP regarding transit permit regime, but such distinction seems to be made in this action plan.
9. **Maharashtra:** The state action plan ignores the issue of rights of nomadic pastoralists.
10. **Rajasthan:** The statement that rights of pastoralist and nomadic communities have already been recognized has a high probability of being incorrect since the rights recognition process of CFRs in Rajasthan has been very poor with no details being made available about the few community rights have been recognized as of now.
11. **Tripura:** The plan specifies that a Critical Wildlife Habitat is being established and 2055 families have been selected for relocation. However, there is no mention of the process used for selection, especially whether there has been prior recognition of rights and Gram Sabha consent.
12. **Uttarakhand:** The plan lists these as problems: 'less number of claims is received, lack of evidence, lack of awareness, fear to leave their land and home and lack of dedicated mechanism'. The reasons seem inadequate to justify complete neglect of implementation of the Act. It also seems unrealistic that the very brief period of one year will be sufficient for completion of the process that has hardly been commenced.
13. **Uttar Pradesh:** Rejection of PTG claims for the sole reason of non-availability of written documents is a violation of the FRA; there could be other supporting evidence.

There needs to be pro-active facilitation for PTGs and other vulnerable groups to file claims.

14. **Tamil Nadu:** The plan states that MFP collection in PAs is not affected by FRA because it is not a traditional right. As FRA includes protected areas in its definition of forests, all customarily exercised rights are eligible for recognition irrespective of boundaries of PAs.

3.3 Update on implementation based on voices from the field

3.3.1 *Pre-claims facilitation in general:*

There are persisting issues of poor understanding amongst the implementing agencies about both the objectives and the provisions of the Act, and a confusion at district and lower levels on institutions for implementation (see chapter Persisting Issues for details). In the rush, there is also at times simply a drive to show that 'implementation is complete' as seems to be the case of Madhya Pradesh²⁰. Chhattisgarh state drew up its own set of implementation guidelines, according to which claims had to be submitted to the Sarpanch, instead of to a newly constituted Forest Rights Committee, which would then be passed on to the Forest Guard or Patwari (in the case of revenue land). Also, government studies on implications of FRA have at times (as in the case of the study by the Forest Department of Maharashtra) based their analysis and conclusions solely on satellite data and on ecological impact of exercise of land rights under 3(1)(a) for cultivation, which is problematic and dangerous²¹.

In Uttarakhand, considering the historical background of Van Panchayats and clash with JFM strongholds, there is poor awareness about FRA at the village and administrative level and a negation of the hamlet level process of FRC constitution and recognition of OTFDs and of community forest rights. In Tamil Nadu, the implementation is mainly stalled because of a stay order of Madras Court according to which title for any rights should be granted only after obtaining orders of the Court. There are also some positive examples such as the preparation and implementation of a practical model for recognition of rights on Community Forest Resource through a collaboration between administration and Vasundhara and JASM (Jungle Adhikar Surakhya Manch) initiated in Kamatana village of Krandiballi Gram panchayat and then replicated all over Kandhamal district of Odisha.

Since the 2012 amendments to the Rules, there has been improvement in administrative facilitation in some areas. For instance there has been official administrative support by many state governments such as Odisha, Maharashtra, Bihar and Rajasthan for producing informative literature on CFRs. An example is the Guide to CFRs (or 'Margadarshika on Samuhik Vanhakk') recently published by the Gadchiroli (Maharashtra) district administration. Also, the Gujarat government has announced in January 2013 that all formerly rejected claims will be re-verified. At the same time in some cases, the amendment to Rules has led to DLCs demanding a fresh round of filing of claims where these have already been filed which is against the provisions of the amendment itself.

²⁰ Lemuel Lall 2012, 'More than 67000 forest dwellers get home in Madhya Pradesh', The Times of India, August 18, http://articles.timesofindia.indiatimes.com/2012-08-18/bhopal/33261144_1_forest-dwellers-land-rights-revenue-and-forest-departments

²¹ CSD (Campaign for Survival and Dignity), 'Lies, Damn Lies and Satellite Data - the Maharashtra Forest Department's 'Study' on the Forest Rights Act', April 14, 2013, <http://forestrightsact.com/>

3.3.2 Conflicts between FD/ other State authorities and forest dependent communities



Figure 3 There is local opposition to coupe felling in many villages of Baiga chak region, Dindori district, Madhya Pradesh (Ashish Kothari)

Conflicts between the Forest Department and the forest dependent communities have intensified in some areas of continued operation of FD plans in areas where CFRs have been recognized or are in process of being claimed. Examples are coupe felling operations in Dindori district of Madhya Pradesh, bamboo cutting by Central Pulp Mills in Sagbara tehsil in Narmada district and in the Dangs in Gujarat, paper mill operations in Kandhamal in Odisha and Vidarbha region of Maharashtra, and timber harvesting in Manikera village of Kalahandi district of Odisha, in Ghati village of Gadchiroli district of Maharashtra and in Chilapata forests of northern West Bengal. In fact in West Bengal, false charges were slapped against a few leading activists protesting the tree felling, but the Court has, in its bail order, argued that Gram Sabha members, being protected under Section 10 of FRA, should be treated as public servants under section 21 of the IPC, rather than as forest offenders²². There have also been conflicts between forest dwellers of four villages in Budhikhamari in Odisha and the Forest Department because of opposition from the former to the ecotourism project launched by the Forest Department in the forest area. The villagers have claimed CFRs over the area and have been customarily protecting the forest since 1985. There have also been reports from Chhattisgarh of the pulling down of 30 huts of Baiga families living adjacent to Boramdeo Reserve Forest in Kawardah district to ensure the 'safety of the wildlife'²³. In Latehar district of Jharkhand, forest offence cases have been filed against FRA claimants in villages of Jeru, Cope and Jatu. Battles between villagers of Dhinkia in Odisha state and authorities continue eight years after the deal for 12 billion dollars' worth of steel plant was signed with POSCO in 2005. It is reported²⁴ in a news article that 'State authorities have often resorted to brute force, destroying betel vines and taking over lands in

²² As reported by Soumitro Ghosh of Uttar Bango Van-jan Shromojivi Manch

²³ <http://www.thehindu.com/news/national/in-chhattisgarh-a-primitive-tribe-in-trouble/article4459842.ece>

²⁴ <<http://www.livemint.com/Leisure/ZX8B0CCM7qpTDYbCTfSpBO/Photo-Essay--Defiant-in-Dhinkia.html>>

neighbouring villages in intermittent police operations, including a particularly violent one in February-March (2013)'.²⁵

3.3.3 Status of Implementation in Protected Areas (PAs)

Recognition of rights in Protected Areas continues to be poor. Plans for management of such Protected Areas (including those leading to restrictions on customarily exercised rights) and for relocation from core areas of Tiger Reserves continue to be drafted without active participation of affected communities. There is also confusion regarding relative powers of local communities and the PA management officials in the post-recognition context.

After recognition of CFRs in Biligiri Rangaswami Temple Wildlife Sanctuary (BRTWS) in Karnataka in October 2011, and in Simlipal Tiger Reserve, CFRs have been recognized for 33 villages within the Shoolpaneshwar Wildlife Sanctuary in Gujarat on 11 February 2013²⁵. This includes rights under 3(1)(c), (d), (i), (j), (k) and (l).

The existing protocol for relocation from CTHs released by the NTCA is apprehended to lead to more violation of forest rights in the tiger reserves²⁶. In general, recognition of forest rights in protected areas and especially that in tiger reserves continues to be a major concern, with relocations and evictions being implemented without completion of due processes of recognition of rights. Examples of such violation are reported from protected areas such as Bandipur and Nagarhole National Park in Karnataka, Simlipal in Odisha, Sariska in Rajasthan, and Udanti and Achanakmar in Chhattisgarh.

In Tamil Nadu, the declaration of Tiger Reserves and an elephant corridor in the forests of Sathyamangalam and Mudumalai has caused concern among the local communities who fear displacement. In Kumbhalgarh Wildlife Sanctuary of Rajasthan, the FRA rights recognition processes are being postponed and discouraged on the pretext of the ongoing process of its conversion into a National Park, with the claims of the village Latada in Pali district being recently rejected (in January 2013) on the grounds that the process of claiming did not comply with the new amendment. In some of the PAs the Supreme Court order on NTFP collection in PAs is still being used as an excuse to stall claiming process. In Palamu Tiger Reserve in Jharkhand, CFR claims have been pending since 2011 and the villages of Kujrum and Lattur, situated in the core area, have been told that they will be relocated with a compensatory package of Rs. 10 lakh per family. In Wadala, in Tadoba Andhari Tiger Reserve, CFR claims were rejected by the SDLC, citing the negative impact of villagers on wildlife as the reason. The village plans to challenge the rejection under Section 7 and 8 of FRA²⁷.

The provision of declaring CWHs within Protected Areas under FRA also remains unimplemented. In Yawal Wildlife Sanctuary of Maharashtra, a committee was formed for demarcation of a CWH but with no involvement at village level. As the process of CWH demarcation requires consultations with Gram Sabhas and the process being employed by the Committee had little local involvement, there was local opposition to the processes leading to dissolution of the Committee.

In BRT Wildlife Sanctuary of Karnataka, despite recognition of community forest rights including rights over NTFP, there was an incidence of confiscation of honey collected by the Gram Sabha of Hosapodu in Chamarajanagar taluk by a range officer in May 2013. Such

²⁵ Information provided by Trupti Parekh of ARCH Vahini

²⁶ Concerns regarding the draft relocation protocol conflicting with FRA were raised through submissions by various organisations (example: http://kalpavriksh.org/images/CLN/FOC/Relocation%20protocol_Comments.pdf). However, the protocol was finalized without addressing the concerns adequately.

²⁷ Information provided by Vijay Dethe of Paryavaran Mitra

incidences discourage local communities in decentralising NTFP governance. In Simlipal Tiger Reserve, as the process of rights' recognition was government-driven rather than being bottom-up, the post-recognition scenario is unclear.

3.3.4 Recognition of rights of pastoralists



Figure 4 The banni grasslands of Kachchh where Maldharis are trying to have their grazing rights recognized (Ashish Kothari)

The concerns of transhumant pastoralists are entirely different from those of settled communities and need a detailed analysis in the light of FRA for protection of their grazing rights (see Issues in next chapter for further information on problems in operationalising rights recognition process for pastoralists). Many legal decisions on grazing land continue to exclude all involvement of traditional pastoralists. Besides, grazing lands have often been termed as 'waste lands' and have been diverted for other use or are being converted into 'forests' through plantation drives. In other cases these have been declared as Protected Areas with a ban on all grazing. There is also an increase in the incidences of conflict between settled populations and migratory pastoralists over access to grazing areas.

Information on the status of holders of grazing rights in some parts of the country, as reported by members of CFR-LA is given below:

- Grazing restrictions and penalties are being faced by pastoralists of Madurai, Virudhnagar and Erode districts of Tamil Nadu because of forest working plans, formal declaration of the area as a sanctuary and restrictions on night halt in the forest. In 2012, Gram Sabhas of these districts had passed resolutions under Section 7 of FRA against violation of forest rights²⁸ (in such cases, the Gram Sabha can move the court if no

²⁸ Information provided by P. Vivekanandan of SEVA, Tamil Nadu.

action is taken by the SLMC in a notice period of 60 days; however there have been no reports as yet of this power being exercised by any Gram Sabha).

- Approximately 25,000 members of the Maldhari tribe live in 48 villages in the Banni area of Kachchh in Gujarat. The recent order by the state government for implementation of FRA in non-scheduled areas has the potential of facilitating recognition of the Maldharis'²⁹ rights.
- For grazing cattle in Kumbhalgarh Sanctuary of Rajasthan, no permits have been issued to members of the Raika tribe since 2002, though they have traditionally been grazing their cattle in the area since the colonial era. In fact, higher penalties are being imposed in the past few years, while little action is being taken on the CFR claims that they have filed³⁰.

3.3.5 Recognition of habitat rights for PTGs

There has been no recognition of habitat rights in India, though they have been provided for vide Section 3(1)(e) of the FRA. There is no established reference material for a process of recognition of habitat rights (see Issues in a subsequent chapter for further details).

In Odisha, claims of PTGs on habitat rights have been pending for verification and recognition in Juang Pirha of Keonjhar district because of lack of clarity on the this issue . Diversion is proposed in areas coming under customary habitats of PTGs like the Dongria Kondh in Kalahandi and Paudi Bhuyans in Keonjhar, Angul and Sundargarh; and in the Gandhamardan hills of Bargarh district. Furthermore, only the villages covered under Micro-Projects are being considered as PTG villages instead of the entire habitation or villages of PTGs, which in most cases stretches far beyond the present administrative arrangement of “Micro Project” areas. The State Tribal Research and Training Institute has announced in 2012 that an expert group will be set up to provide technical inputs to the process of facilitation of claims over habitat rights.

Through facilitation from NIWCYD, members of the Baiga tribe of Dindori district in Madhya Pradesh have started the process of claiming habitat rights under Section 3(1)(e) in 2012 in the Baiga Chak area; but in the absence of a proper mechanism and clarity on the process of recognition of habitat rights even at the national level, as also the absence of any inspiring example to follow, progress has been slow.

3.3.6 Recognition for OTFDs

Overall, little attention has been paid to the rights of OTFDs in the implementation of FRA. Non-recognition of CFRs in villages with a mixed population of STs and OTFDs is a very old issue in Nayagarh district of Odisha where CFR titles have been issued only to ‘ST Only’ villages. In Jharkhand, as reflected in the Welfare department report of June 2012, 73 claims out of 147 claims filed by OTFDs, have been rejected (i.e. 50% rejection), with only 10 CFR titles issued (see annexure for detailed case study on Jharkhand).

On the other hand, reports show two positive initiatives:

- Reiteration that the 75 years’ condition for eligibility for OTFDs relates to their residence in the general area, and not to occupation of the piece of land exactly where they now are, in the MoTA-UNDP regional consultation in Hyderabad and in the summary report of regional consultations.

²⁹ Information provided by Sabyasachi Das and Ramesh Bhatti of Sahjeevan.

³⁰ Information provided by Hanwant Singh of LPPS, Rajasthan.

- GR issued by Gujarat government regarding implementation of FRA in non-scheduled areas of the state (earlier implementation had been restricted to 12 scheduled areas).

3.3.7 Conversion of Forest villages into Revenue villages

The provision for conversion of forest/unsurveyed villages into revenue villages remains unimplemented in most of the forest villages, with some notable exceptions to be found in Gadchiroli district in Maharashtra, and three forest villages in Uttar Pradesh. The converted villages in Uttar Pradesh include Surma village in Dudhwa Tiger Reserve which was converted into a revenue village on 8th April 2011. There has been consistent public pressure in Uttar Pradesh for recognition of Taungiya villages as Revenue villages³¹.

3.3.8 In Community Forest Resources falling in Municipal areas

There is a situation of non-implementation of Forest Rights Act in cases where traditional forest dwellers may be exercising forest rights, but the area falls within municipal limits. The MoTA circular issued on 4th December 2010 had increased this confusion by stating that FRA is not applicable in municipal areas where DLCs and SDLCs with required composition can not be formed. For instance, there is confusion regarding applicability of FRA in the Singrauli municipal area in Madhya Pradesh where forest based livelihoods are being impacted by coal mining taking place for Reliance’s Sassan thermal power project³².

During the MoTA-UNDP Consultation on FRA, held on 3rd December 2012, implementing officials of Maharashtra sought a clarification on the issue, since claims for forest rights by members of the Katkari tribe in and around Sanjay Gandhi National Park were not being recognised on account of the area falling within municipal limits. A fresh circular clarifying the applicability of FRA in municipal areas has been issued on 29th April 2013 (see details in the Policy Update chapter) and its impact remains to be seen.

3.3.9 Post-recognition of rights scenario

The situation after recognition of CFRs and issuance of titles is different in different villages. It has been noticed that a more effective exercise of such CFRs is taking place in villages with a history of engagement in issues of community forest management and where there was active community participation in the process of recognition. In some of the villages where the process of recognition of rights was essentially government driven (as in Godda and West Singhbhum districts of Jharkhand) and had taken place without active engagement of Gram Sabhas as required, not much has changed after recognition of rights.



Figure 5 Bamboo auction by a Gram Sabha in Odisha (Chitta Ranjan Pani)

Still, CFRs are being used, especially in the post-recognition scenario, as a tool for demanding more democratic processes of decision-making on forests. An example is the case of local opposition to coupe-felling in forests of Baiga Chak (Dindori district, Madhya Pradesh). CFRs are also used to protest against restrictions on customary access to forest resource as in BRT Wildlife Sanctuary. The rights for conservation and management under 3(1)(i) as well as the right

³¹ Information provided by Roma, NFFPFW, Uttar Pradesh.

³² Kohli, K, Kothari, A. and Pillai, P. 2012 ‘Countering Coal? Community Forest Rights and Coal Mining Regions of India’. Kalpavriksh, Delhi/Pune and Greenpeace India, Bengaluru.

to traditional knowledge under 3(1)(k) have been recognized in many situations but there is insufficient information and lack of clarity on incidences of their operationalisation.

For NTFP Governance: There have been some developments in facilitating NTFP governance using CFRs, predominantly, in the two states of Odisha and Maharashtra. Examples of some state level policy initiatives in this regard are given in the box.

Box 2: State Circulars on NTFP Governance

State circular by Odisha regarding CFR-holders being free to harvest and sell bamboo during 2012-13, and state operations in such areas being conducted only on request of the community. Transit permits for bamboo are now being issued in Odisha, with the first such permit issued to the Gram Sabha of Jamaguda.

State circular in Maharashtra where in February 2013 the government decided to recognise the communities' right to collect and sell tendu leaves in 81 Gram Sabhas in Gadchiroli and Gondia districts.

A letter from the Forest Secretary of Maharashtra to the Principal Chief Conservator of Forests (PCCF) dated 8th April 2013, stating that all forest areas where CFRs have been granted will be excluded from the forest department's tendu auction notice. Such villages would, however, be free to opt for the government agents, if they chose to do so.

In Nabrangapur district of Odisha, government is in the process of deregulating tendu leaf trade.

Such instructions need to be issued with more care since, at present, many Gram Sabhas face the issue of lack of Working Capital and access to government godowns. The government of Maharashtra is fixing the amount that can be harvested, and yet it is refusing to guarantee any wage level or bonus. In the case of tendu leaf deregulation in Odisha, scattered collection of the leaves means local communities will find it that much harder to organize themselves and get good prices when they conduct auctions. Piecemeal de-regulation is not the way to go. The government must put in place structures that will enable communities to transit smoothly to self-run viable cooperatives. This will take time and effort.³³

In Maharashtra, a handful of villages in Gadchiroli, including Mendha-Lekha have the capacity to carry out regulated extraction, set up a marketing mechanism, to account for the transactions, and to ensure conservation of their CFRs. Such capacity however does not exist uniformly in all villages. Much debate is currently raging in the district among various government and non-government actors to arrive at a mechanism by which CFR Gram Sabhas are empowered to collect and sell their NTFP in a regulated manner while also being protected from vested market interests.

An incidence has been reported from BRT Wildlife Sanctuary of Karnataka of a range officer of Punanjanur range using the Karnataka Forest Act to confiscate the honey collected by a Gram Sabha of Hosapodu which had initiated collective honey collecting and processing after receiving CFRs³⁴. Such actions, apart from violating the FRA, also discourage Gram Sabhas from asserting their rights in fear of retribution.

³³ As explained by Sharachchandra Lele, ATREE on CFR-LA list serve and presented through a study by Safia Agarwal during CFR-LA consultation in March 2013.

³⁴ Archana Sivaramakrishnan, Keystone Foundation.

3.3.10 For forest diversion for developmental projects³⁵

Increasingly, local communities (with some success and some failures) are attempting to use the provision of CFRe rights and Section 5 of FRA as a tool for assertion of their rights, to be a part of the decision making process relating to these forests, and especially against environmentally destructive developmental activities like mining and hydro-electric power projects.

Examples are attempts in Singrauli in Madhya Pradesh and Kandhamal and Bijahan region in Odisha. In Singrauli, first-stage clearance for coal mining has been given, based on what NGOs claim were staged Gram Sabhas. The CFR claims process is underway in 62 villages; however, some villages, such as Dongri village, are on disputed land (land with unclear legal status)³⁶.

In Thane, 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 processes under FRA. Many affected villages have filed CFR claims thus asserting their community rights. Though the proposal for the project was rejected by the Central Government, a fresh proposal has been presented by the project proponent to the government in March 2013 and this has been recommended by the FAC (Forest Advisory Committee) on 4th April 2013, despite non-completion of the FRA process. However, clearances are being given without due compliance of FRA and even the minutes of the FAC meeting minutes reveal an inconsistent approach to considerations of FRA compliance while giving clearances (see box).

Box 3: Inconsistent approach to FRA reflected in FAC minutes

All proposals requiring forest clearance from MoEF are sent to a Forest Advisory Committee which recommends approval or rejection. In the minutes of its meeting of April 2012, the FAC for the first time made a substantive mention of the FRA, taking cognizance of the August 2009 circular, and that it was in general not being followed, urged for its compliance. Following that, there was no mention of FRA recorded in the minutes of subsequent FAC meetings till the 27 November 2012 meeting where the FAC recorded requirement of information regarding settlement of rights under FRA for many of the projects under consideration. In the 22nd December 2012 minutes, FAC has recommended clearance for two mining projects in Odisha (Agenda Item 12 and 13) even after admitting that no rights recognition under FRA, as required, has taken place in either. For these two diversions, the FAC has ordered eviction of all *encroachers* which in itself is a violation of FRA (It is legally incorrect to term any forest dweller as encroacher before the process of recognition of rights under FRA is complete and leaves the decision of whom to evict completely open to interpretation and misconstruction). In the 22 January FAC meeting, forest diversion for Luhri hydroelectric power project in Himachal Pradesh has been recommended despite admitted noncompliance with the 2009 circular and in absence of rights recognition under FRA in the area. The decision is based on MoEF's letter of date according to which a letter from District Collector stating that there has been prior settlement of rights is sufficient to exempt the project from the need of completing FRA procedures of recognition of rights prior to clearance. The move has been criticised by various conservation and human rights NGOs.

³⁵ Also refer to Niyamgiri judgement, letters by MoTA on FRA compliance and the recent circular exempting linear diversion, discussed in the Policy Update

³⁶ Input about Singrauli from Priya Pillai, Greenpeace India.

C DETAILED CASE STUDIES

For understanding the on-ground situation better, detailed case studies have been carried out based on a format prepared for documentation. Fresh studies are being undertaken for Jharkhand, Baigachak region in Dindori district of Madhya Pradesh and Rajasthan while an update on the CFR situation is provided for the three case studies of Maharashtra, Odisha and BRT Wildlife Sanctuary of Karnataka.



Figure 7 The ancient Hatkeshwar temple in Chasole Village, Thane district of Maharashtra, which lies within the submergence zone of Kalu drinking water project (Shiba Desor)

4.1 Introduction

In certain villages of Dindori district of Madhya Pradesh, the forest-dependent community of Baigas has made up its mind to protect the forests surrounding their villages. This resolve is strengthened by the fact that these villages have received legal recognition of Community Forest Rights over their customarily accessed forest land. This case study describes how the CFR provision is being used by several villages of the Baiga Chak area of Dindori district for conservation and management of forests.

About Baiga Chak

Formerly part of Mandala district, Dindori was formed as a separate district in May, 1998. 37.2% of the area of Dindori is under forest cover and 64.48% of its population is tribal. Baigas are a forest dependent tribe, occupying the Maikal range of Satpura hills, and the districts of Dindori, Mandala and Balaghat. Baigas of Madhya Pradesh have been declared as a Particularly Vulnerable Tribal Group (PVTG) by the Government of India.

In early 1900s, an area called Baiga Chak or Baiga Reserve was set aside in Madhya Pradesh for Baigas where their traditional method of shifting cultivation was allowed to continue by the colonial administration, but with certain restrictions. The area of Baiga chak extends to approximately 1.5 lakh hectares stretching from Amarkantak to Mawai with three blocks (Samnapur, Karanjia and Bajag) of the Dindori district falling under this. Initially Baiga chak was formed with 8 villages but with the population growing over the years, at present the area has 52 villages. The population is predominantly Baigas but there are also other tribes and communities living in the area.

Sources of Livelihoods

Baigas have been traditionally well known for having devised forest-based cures for diseases related to people, animals and crops. They have been culturally renowned for their tremendous knowledge of forests and traditional rules and conservation practices.

The main sources of livelihood in the area are subsistence agriculture, daily wage labour (migrant or in nearby areas through government schemes like MGNREGA) and NTFP collection. Predominant crops for agriculture are *makka* (maize), *jowar* (sorghum), *kodon* (a type of millet), *kutki* (a type of millet), *sarson* (mustard), *dbaan* (paddy) and *ramtil* (niger). As these are forest villages, most of the agriculture is on land given on 15 years long leases by the District level administration.

Formerly, shifting cultivation or *bewar* was the predominant occupation of most villagers in the area but it was banned by the government in 1966. Traditionally the Baigas used to refuse using plough for cultivation considering the earth as their mother. However, with the ban on *bewar*, that has changed now and they practise plough cultivation. Upto 22 varieties of millets, pulses, vegetables and tubers was grown through *bewar*. According to village elder, Malkhu Chandrania of Dhaba, 'Government banned *bewar* calling it a wasteful practice and promising good land for agriculture but our quality of life was better during the days of *bewar*. The crops were more nourishing and suited the soil.'

Forests are an essential part of the lives and livelihoods of Baigas. They supplement their diet through forest produce and depend on the forest for at least 33 types of vegetables, 18 types of

tubers, 8 types of mushrooms (*piri/ putu*), and countless medicinal herbs, seeds and fruits. Fishing is often on fixed days, mostly by women. The prevalence of hunting varies from village to village but there are certain norms that are observed in almost all cases (e.g. taboos on hunting of monkeys, big cats, wild buffalo and pythons). Hunting of pigs and jungle fowl is common.

Other than food and medicine, villagers depend on forests for a variety of forest produce both for purposes of use in household or for sale. Examples are harra, baheda, mahul leaves, tendu leaves, mahua flowers and seeds, sal seeds, mova grass and ram datun. For instance, mova grass is used for making garlands and the wild tuber of potar (ram datun) is sold in the market. Villages observe customarily imposed bans on felling of trees of jamun, (*Syzygium cumunii*), peepal (*Ficus religiosa*), bargad (*Ficus benghalensis*) and gular (*Ficus racemosa*).

Ceremonies of religious and cultural significance such as the Ramdhoom ceremony are celebrated in sacred sites such as Kasai Kund in village Pondi, *maha risbi ka jungle* near phitari, kowa kur near gowra and atarimara near Chappar village. People from many villages congregate for such events.

4.2 Forest quality and interactions between the Forest Department and the Baigas

In Dindori district, forests covering 2,47,899 ha are under the control of the Forest department. The forest types present in the area are moist peninsular sal forest and southern dry mixed deciduous forest. The forests host a substantial population of bears and red jungle fowl, and also some population of cheetal, sambhar, hyena, gaur and leopard³⁷.

According to villagers there has been significant loss of biodiversity since the 1970s and the forests have turned from mixed forests into monocultures of sal trees. In particular there has been a significant reduction in presence of vines like the mahul bel in the forest leading to drying up of water sources and also loss of medicinal plants. Villagers link forest degradation with food scarcity and water scarcity.

The practice of coupe felling by the forest department is a contentious issue in the area. Coupe felling is an exercise of timber felling by the Forest Department with the argument that it encourages re-growth, keeps a check on sal borer epidemic and converts 'inferior' forests into more 'valuable' forests. Villagers challenge the methods used by forest department in coupe felling while forest department justifies it as a scientific method. Villagers argue that coupe felling damages not only vines supported by the tree (which have to be cleared for cutting the trees) but also small herbs and seedlings present on the ground.

According to Balwant Rahangdale of NIWCYD, one of the first incidences of opposition to coupe felling began in 2004 in village Dhaba where villagers who had been protecting the forest protested that the trees marked for felling were ten times the trees which were supposed to be cut as per Forest Department's written instructions. Eventually the then DFO Shri Subudhi came for inspection to the forest and gave instructions for remarking of trees for felling. He also instructed that marking should be with villagers' involvement. Although this intervention led to reduction in the number of trees felled, the operations continued in general.

Since then many villages such as Ranjara, Pondi, Seetalpani and Dhaba have been opposing forest department operations and there have been many attempts at meetings of the department with Gram Sabhas for reconciliation, but in general the conflicts and occasional face-offs on the issue continue. At the same time, employment in the felling operations becomes one of the

³⁷ This information is taken from the revised working plan of Dindori district prepared by Mr. Manoj Kumar Agarwal, and presented at a public hearing on January 3, 2013.

sources of livelihood for some of the villagers, leading to incidences of conflicts at the village-level.

There are no strict restrictions imposed by FD on NTFP collection. A few activities such as construction of access road or forest tank, though not regular, have been undertaken through Van Suraksha Samitis under Joint Forest Management Scheme.

4.3 Claiming rights to community forest resources



Figure 8 Baiga women of village Pondi, Dindori (Ashish Kothari)

Significance of CFRs

CFRs are of particular significance to the community as an assertion against Forest Department's operations of coupe felling in the area. There had been a series of clashes over the coupe-felling operations and other management practices of the Forest Department between the department and the local communities. The prime reason for discontent in some villages such as Dhaba has been that their opinions regarding felling are not taken into account and their right to protection and conservation of the forest resource is not acknowledged. In such a scenario, FRA provided a flicker of hope as it empowers Gram Sabhas to protect forest, wildlife and biodiversity and preserve natural and cultural heritage from destructive activities and to ensure that decisions taken by Gram Sabhas are complied with. Another reason for communities' interest in FRA was because land rights of most Baigas were not adequately recorded and recognized under other Acts.

Exchange visits with Mendha Lekha in Gadchiroli, amongst the first villages in India to get CFRs, awareness meeting by the CSO, Kashtakari Sanghatan, and facilitation throughout the processes by NIWCYD played a crucial role in enhancing understanding among the Baigas about

CFRs. However, it must be noted at the outset, that the interest of Baigas of Dindori district in claiming forest rights is not uniform throughout the region and varies from village to village.

Claiming CFR Rights

Even before the FRA rules came into force, the villages of Baiga chak, with facilitation of NIWCYD and support of other NGOs, initiated a post-card campaign where thousands of people wrote to the administration for implementation of FRA in Baiga chak.

The first two attempts at filing of claims in 2008 were procedurally flawed (the first time submitted to panchayat, the second time submitted through NIWCYD to the district level administration) and received no response. In March 2009, a 16 days long *padyatra* on FRA provisions and implementation was organized in Dindori by various NGOs including NIWCYD. This *padyatra* received participation from 30 villages and support from district level administration ending in a consultation where government officials, NGOs, and villagers participated. Villagers raised issues related to FRA and also submitted a letter to the administration asking for making available supporting documents for filing of claims. The letter received no response.

The process of filing claims was supported and facilitated by administration. The erstwhile collector, Shri Borekar explained procedures and distributed claim forms. Oral evidence from 2 elders was attached with the claims since no documents from FD were made available despite requests. By May 2009, claims has been filed at SDLC level.

According to Phool Singh of village Pondi, CFR claims were filed for fodder, fuel, timber for house, medicinal plants, access to water points, protection and management and access to *samsban* (burial ground) land. One member of each family of the village did a full round of forest including names of coupe sites, etc. For Pondi, village mapping included sacred sites, and forest compartment numbers (based on information received from the beat guard). The map for community forest resource included a *nazariya naksha* (visual map, not to scale) of customary boundaries and common names of forests. However such a mapping was only undertaken in a few villages like Dhaba and Pondi where there was facilitation by NIWCYD. The Gram Sabha resolution was passed and forwarded to SDLC.

Though there was administrative support upto a certain extent, there was a lack of clarity on certain provisions and procedures of FRA both among the community members and the implementing agencies. There were many flaws and procedural irregularities on the administrative level as well. Eg. the distributed claim forms did not mention all rights provided under Section 3(1). Particularly, there was no mention of habitat rights or right to traditional knowledge, which would have special relevance to Baigas because of their history and tradition of extensive knowledge on forests, and their being a PTG. Recognition of habitat rights would have further strengthened possibilities of community forest protection at a landscape level. Recognition of their right to traditional knowledge and customary practices would have provided a legal acknowledgement to their customary wealth of forest-related knowledge.

Through facilitation from NIWCYD, the Baigas have started the process of claiming habitat rights under Section 3(1)(e) in 2012 on the Baiga chak area but in absence of a proper mechanism and clarity on the process of recognition of habitat rights even at the national level, and absence of any inspiring example to follow, the progress in that process has been slow.

Recognition of rights

381 CFR titles have been recognized in Dindori district. For the purpose of understanding the titles, the titles for villages of Ranjra (625 acres), Dhaba (3830 acres), Pondi (4425 acres) and Phitari (620.5 acres), in Samnapur block of Dindori district, were studied. The date on the titles

received is of December 2009, but the villagers became aware that the titles had been issued only in 2011 through a public hearing at Dindori. Subsequently, they demanded a copy of the title, and it was made available to them from the office of Tribal Welfare Department, Dindori on 15 November 2011. The covering letter dated 22 October 2011 and attached with the title copy mentions that the original title has been made available to the Gram Panchayat earlier.

There are many issues with the title. For instance:

1. The titles for NTFP collection, as in the case of village Dhaba, are in the name of the Van Suraksha Samiti (Forest Protection Committee), set up under Forest Department scheme of Joint Forest Management, whereas they should be in the Gram Sabha's name.
2. Rights had been given conditional to the colonial IFA 1927
3. The title missed out listing numerous CFRs that are recognized under the FRA, notably the right to manage and protect the forest under Section 3(1)i. Most titles only mention *nistar* rights and/or rights to NTFP collection.
4. In many cases such as Ranjara and Phitari, the title extends to a much smaller area than was claimed by the village, the claims having been according to customary or traditional boundaries as provided for by the FRA. The village of Ranjara has raised this issue in the public meeting called by CEO through a submission and has filed fresh claims (based on a circular issued by MP Government allowing re-filing for claims wrongly processed).
5. According to Balwant ji, in some cases such as villages Chakrar, Pandripani and Keembharabhara of Karanjia block of Dindori, the title did not even mention the area or forest compartment numbers, so villagers do not know where their rights extend to.
6. In many cases, agricultural land i.e. land falling in compartment B (usable for cultivation) has been given in the CFR title instead of compartment A which is Reserved forest/ Protected Forest land). This is both inappropriate and illegal.
7. Original document of titles has not been handed over to the Gram Sabha; only a photocopy of the titles have been made available.

Some villages such as Dhaba and Pondi have filed an appeal on 21 October 2011 to SDM, DC and state tribal nodal officer raising the following issues (and other issues related to implementation of FRA):

- Imposition of the condition of compliance to Indian Forest Act is invalid and this condition should be removed from the title.
- The original titles, rather than the photocopies should be made available to the Gram Sabhas.
- All titles should be made in the name of Gram Sabha and not Van Suraksha Samiti.

4.4 Management of Community Forest Resource in the post-recognition scenario

A question that arises is: have the titles made a difference on the ground? According to Balwant ji, 'now that villages have the strength of CFRs, government has not been able to blindly over-rule public voices of protest.' Recently (on January 3, 2013) a meeting was organized to consult public representatives about the revised working plan. Events of this kind where the working plans are discussed with villages have seldom happened in the past in Dindori district.

Some of the main focus areas in post-recognition scenario are:

Coupe felling opposition

Coupe felling opposition has also been strengthened with many villages having passed numerous Gram Sabha resolutions against such felling. In a recent incident of clash between the Forest Department administration and the right holders, when coupe felling started in village Pondi in December 2011, villagers confiscated the load of timber being cut. FD filed an FIR against the

villagers but police, on investigation, and being told about FRA, dismissed the case. After that there was a negotiation with FD on 29 March 2012 where FD signed on the Gram Sabha register saying that they would stop all operations and not engage in any further felling without permission of Gram Sabha. Yet, it restarted in October 2012, at which time there were again village protests and confiscation of implements by the villagers. On 19 November 2012, Gram Sabha passed a resolution that no coupe felling will be allowed in the Community Forest Resource area of Pondi. In September 2012, in the village of Ranjra, 216 trees were marked for felling. The process was discontinued when villagers started protesting about it. Eight Gram Sabhas have passed a resolution between 26 January 2013 and 6 February 2013, stating that any kind of felling operations will not be allowed in community forest resource area.

Forest conservation: why and how

Forest conservation efforts in some villages such as Dhaba had been initiated in 2001-2002 long before the FRA was promulgated. Portions of forests in Dhaba have been closed to grazing for more than three years. Villagers claim that the forest protection activities and stoppage of coupe felling has led to greater availability of water in the streams near the village as well as regeneration of *char*, *tendu*, fuelwood, medicinal plants, tubers, mushrooms and fodder. Similarly, in Pondi, villagers claim that forest protection has caused the streams in the surrounding Kasai Kund area of forest to become perennial in their flow again.



Figure 9 A discussion on the post-recognition scenario of forest governance in the village of Ranjara (Dindori district, Madhya Pradesh) (Ashish Kothari)

In the post-recognition scenario, although no formal Forest Protection Committees have been made, many villages through their Gram Sabhas are taking decisions to protect forests. Additionally, the Jungle Adhyayan Mandal, an initiative of NIWCYD, is involving local youth in documenting the biodiversity of the area and in encouraging villages to be more sensitive towards forest conservation (See box on Jungle Adhyayan Mandal).

Discussions with women of Pondi village reflected that they believed that the forest was initially of good quality but 'has been sold into the city'. There seemed to be a general consensus that

forest conservation is important for livelihood of their next generation. There has been a conscious decision of ensuring that trees of great significance to local livelihoods are not cut. Example is the rule narrated by Sukarti bai of Pondi village, '*Kachi daal ko nabi kaatna hai, char ko bachana hai.* (tender or young branches are not to be lopped, and the trees of *char* need to be protected)'. Some rules that some of the villages such as Dhaba and Pondi have imposed for their own villages for forest protection are:

- Protection from fire
- No young bushes should be cut. Fine to be imposed on cutting of green trees.
- People need to stick to their customary boundaries for collection, grazing based on mutual understanding between neighbouring villages. Fine to neighbouring villagers who violate this. Fine to people from same village who flout rules.

In addition, there has been some planting of locally used plant species such as bamboo in areas where CFRs had been claimed and that had been denuded of trees.

Other possibilities of rules discussed by villagers, which are still being considered but not yet implemented are:

- Ban on collecting unripe fruits.
- Ban on grazing in one plot to increase mahul (*Bauhinia vahlia*). Some forest patches being considered for such a ban are the sacred patches of *thakur dev kadan* and *sibra dadar ke kadan*.
- Imposition of strict rules in some stretches of the forest resource area such as collection of only dried wood for 3 years.
- Patrolling (*paaribandhi*) for preventing exploitation of forest.

According to the women of pondi, while the protection could be managed essentially by the villagers themselves, they would prefer support and assistance for understanding law better and getting strength from legal provisions. They would also require support and understanding on issues like new plant diseases, and in capacity building.

Box 4: Jungle Adhyayan Mandal

The Jungle Adhyayan Mandal is a Forest Study Group started in 2003 with the support of NIWCYD involving around a dozen village youth. Started in the villages of Dhaba, Jheelan and Serajhar, JAM expanded to 12 villages in 2004. The study group is inspired by the example of Mendha Lekha of Gadchiroli district in Maharashtra.

The Mandal is a platform to undertake:

- Studies on biodiversity especially what is valuable locally, what is lost/ rare and how it can be brought back, and understand patterns of flowering and fruiting.
- Discussions in the meetings with Gram Sabhas to inform villagers of various actions they can undertake for forest protection.
- Encouraging stoppage of felling and fire in forests.
- Information and knowledge exchange with village elders and *vaids* (healers).
- Documentation of knowledge especially on rare plants, crops, tubers, grasses and medicinal plants.

The members meet monthly while regional quarterly meetings are held with heads of FRC, VSS and key elders. In the long term, JAM would like to expand to all 52 villages of Baiga chak. There have been a few meetings of JAM with 30 villages.

Ambiguities influencing community's forest protection efforts

While many villagers seemed to believe that focused efforts on protection are leading to some regeneration, at the same time, there were also voices with more skepticism, such as Malkhu baba of Dhaba, according to whom, 'government has not left anything good in the forest for conservation attempts to make much difference. No *mabul* anymore. Stricter rules are required, present rules are not enough. People have no real voice in decision making'. Some ambiguities in issues of management and conservation raised in discussions on post-recognition management are:

Conflict resolution with neighbouring villages on use of forest resource: Right holding villages such as Pondi expressed doubts on how to tackle issues of flouting of rules by neighbouring villages.

Perception of fire: While the common belief in villages is that forests must be protected from all fires but there are some differing opinions about role of fires. Example is village elder and *vaid* Malkhu Chandrania of Dhaba who feels that some amount of fire is required by forests, and at present 'the forest looks sick without fire and may reduce to nothing in 3-4 years'. A similar opinion is voiced by Najru Singh of Pondi who says, 'there should be small fires once in three years to get rid of dried litter. Pests including Sal borer increase when there is no fire.' In complete absence of fire, there is also a possibility of too much accumulation of dried biomass leading to a much more intense and damaging fire. The situation of fire-forest interaction needs to be understood and studied in greater depth by teams including local and outside experts before coming to any conclusions. Such studies need to inform the final management practices.

Working plan conflicts: In a discussion in November 2012, a senior forest official in Jabalpur admitted that 'most of the conflicts between Forest Department and forest dependent communities in Dindori district are taking place because working plans are usually drafted without taking on board public opinions and aspirations.' At the same time, he also maintained the position that what is prescribed in the working plan needs to be followed by the department irrespective of public positions regarding the same. He also asserted that the operation of the Indian Forest Act (IFA 1927), which provided legal backing to the working plan, cannot cease simply because communities have received CFR titles under the FRA; if this was to be done it will require explicit clarification from the Central Government.

This is contradictory to the general interpretation of FRA. The FRA clearly states that all rights recognized under it are notwithstanding any other law in operation; so if the community's CFRs are recognized, they should supersede the IFA in cases of contradiction. Otherwise what is recognized as forest rights in one law will be considered as forest offences in another law (IFA). Moreover section 5 of FRA empowers communities to protect forests, biodiversity and wildlife. How can that be exercised if there is simultaneous felling of trees? The FRA Amended Rules of September 2012 clearly mandate Gram Sabhas to make plans for their CFRs and direct that such plans be integrated into the forest department working plans.

In a welcome move, the new draft working plan was presented at a public hearing in Dindori on 3rd January 2013. However, the plan continues to propose logging in the forests and received strong opposition from villagers. It remains to be seen whether the local opinions and concerns are sufficiently taken into the final plan.

Using CFRs for NTFP governance

CFR titles have not, as of now, led to any change in the structure or mechanism of NTFP collection and sale for enhancing livelihoods. At the same time, during the forest protection efforts, special attention is given to understanding and protecting locally valuable species of plants and trees.

4.5 Challenges and suggestions

The forest protection efforts of the Baigas of the 52 villages in Dindori district could play a key role in rejuvenating and stabilising the ecosystems of the forest belt of Central India. But for this to happen, there needs to be administrative facilitation, an acknowledgement of local forest based knowledge and values and also a closer look at overcoming the following specific challenges:

- Pro-active post-recognition management is only taking place in the few villages where there is active NGO facilitation and engagement. For such actions to be sufficient to lead to landscape level protection, there needs to be such facilitation in all 52 villages. Additionally, recognition of PVTG habitat rights can also help in management of a larger landscape.
- There should be facilitation for detailed mapping of the community forest resource and studies on flora and fauna of the forests, involving local youth through Jungle Adhyayan Mandal and other initiatives in key roles.
- Understanding forest-fire interactions better will be crucial for forest conservation. This aspect needs further ecological research and studies, based on both traditional and modern knowledge.
- Amalgamation of indigenous and modern systems of forest-based education and health needs to be encouraged.
- Women's participation in capacity building workshops continues to be very limited.
- There seems to be a continued lack of detailed understanding of the legal provisions and procedures under Forest Rights Act among the villages, the NGO and the administration.
- There is lack of pro-active facilitation from administration and ongoing conflicts over coupe-felling.

5.1 Introduction

In January 2011, the Biligiri Rangaswamy Temple Wildlife Sanctuary was declared a Tiger Reserve through a notification by the state government despite protests by the Soliga tribal community anticipating displacement from the core area. On 2nd October 2011, Soliga adivasis of 25 Gram Sabhas (covering 35 podus) within BRT Wildlife Sanctuary were granted CFRs under the FRA. BRT thus became the first tiger reserve where CFRs have been officially recognized and recorded.

The Biligiri Rangaswamy Temple (BRT) wildlife sanctuary is spread over an area of 540 sq. km across sections of three *taluks* of the Chamarajanagar district of Karnataka: Yelandur, Kollegal and Chamarajanagar, with 10, 26 and 25 *podus* (small villages or settlements) located in the respective *taluk*. The 61 *podus* are home to a population of 16,500 Soligas. The Soligas are a scheduled tribe and the dominant community living in the sanctuary. A few members of other communities live in revenue lands within the sanctuary and are engaged in labour in the coffee plantations or are associated with activities surrounding the temple. The Soligas have a clan-based social structure. Those living in BRT belong to 6 clans.

Forest-people interactions

The Soligas used to practice shifting cultivation, with some hunting and gathering, before the notification of the sanctuary, but have now been settled and sedentarised. However, only 40 percent of Soliga households own cultivable land on which they practice rain-fed agriculture, growing crops such as ragi, maize, beans and coffee. The sources of income for the majority of households include labour on coffee plantations and agricultural fields, and collection of non-timber forest produce (NTFP) in addition to the agriculture produce such as coffee from their small holdings where conditions for growing coffee are conducive. Soligas collect NTFP for sale, and forest produce such as tubers and greens for subsistence. They also engage in daily wage labour for the Forest Department as and when such work is available. A few Soliga families maintain livestock from which they get some income.

BRT has been the centre of much ecological research by ATREE and other institutions for nearly two decades. The main vegetation categories of BRT wildlife sanctuary, as classified by ecological studies using scientific methods, are scrub forest, dry deciduous, moist deciduous, woodland savanna, grasslands, Shola, semi-ever green and evergreen forest. Soligas have their own classifications of forest type which, while broadly corresponding to the scientific categories, differ in the number of subclasses which are based on topography, soil type and slope, reflecting their layered and situated knowledge. Soligas classify forests into 6 main types, each of which are divided into 3 to 8 subclasses.

There is a high dependence on forest produce for subsistence use and some sale for supplementing their meagre income. Studies in the adjoining MM Hills reserve forest have shown that Soligas and other forest dwellers use about 92 species of plants for subsistence and that single households harvest about 12 to 130 kg of wild plants, belonging to 25 species, per year (R. P. Harisha *personal communication*). This use of forest plants indicates not just dependence but also knowledge about the forest which the Soligas have been using in order to manage the forest for as long as they have been residing in the forests of the region.

Soligas customarily used litter fires (*taragu benki*) as part of their management and forest use before the declaration of the Wildlife Sanctuary in 1974. Soligas claim that the suppression of the earlier practice of fire, forest use and cultivation has changed the composition of the forest. A large part of BRT is today covered with the invasive species *Lantana camara*. This species inhibits growth of other plants, and affects habitats of wildlife. The lack of fire has resulted in an increase in tree hemi-parasites (mistletoes) which ultimately kill adult trees. The effect of fire suppression due to modern forest management has thus resulted in growth of lantana and parasites, the former reducing the regeneration of native species and the latter killing adult trees. Such invasive species affect not only the health of the ecosystem but also local livelihoods. Recent research by ATREE shows that these observations are valid and that the forest is rapidly being transformed.

The six Soliga clans in BRT have, over generations, demarcated clan-specific forest areas that they call *yelle* or *jaaga*. Each *yelle* contains 6 types of sacred sites such as burial sites, stone shrines, god and goddess sites. There are 46 *yelles* in BRT and 489 sacred sites, all of which have been mapped by Soligas with the support of Ashoka Trust for Research in Ecology and the Environment (ATREE). The composite map that was produced as a result of this effort was used as evidence by Gram Sabhas for claiming CFR rights. Sacred sites are visited by Soligas 2-5 times a year. However the notification of the wildlife sanctuary in 1974 and the displacement of Soligas over the last few decades has resulted in significant hardships to the Soligas in accessing these sites.



Figure 10 Soligas in a village of BRT Wildlife Sanctuary, Karnataka (Ashish Kothari)

5.2 Rights recognition process in BRT

Significance of FRA:

The immense interest of Soligas in CFRs was primarily due to the ban on NTFP collection that was implemented in 2006 following the 2002 amendment to the WLPA. Prior to the ban on NTFP collection, Soligas used to get around 60 percent of income from the NTFPs through LAMPS (Large-Scale Adivasi *Multi-Purpose* Societies). The ban led to unemployment, resulting in

an increase in out-migration seeking employment as labourers or daily wage earners. The hardships that this ban had imposed on the Soligas were severe due to their high dependence on forest produce. When they realised that the FRA could give them rights to NTFP collection they began to file their CFR claims even before claiming individual rights.

The nodal agency for the implementation of FRA in Karnataka is the Social Welfare Department, Karnataka, under State Tribal Directorate, Bangalore. During the process of rights recognition, the Revenue and Tribal Welfare departments were cooperative but the Forest Department raised objections, initially insisting that CFRs for NTFP cannot be granted in BRT Wildlife Sanctuary, as the WLPAs bans such NTFP collection in sanctuaries and national parks. They even claimed that a specific request for lifting the ban had been placed by the Karnataka Forest Department before the National Board for Wildlife, and as the matter was under consideration there was little they could do. Several meetings were subsequently held with officials from different departments to come to a common understanding. It is interesting that over the course of the three years that the process took, 5 District Commissioners (DC) and 4 Divisional Conservators of Forest (DCF) held office. While all DCs were favourable to CFRs being given, none of the DCFs were suggesting an institution-level commitment to supporting or hindering the granting of CFRs.

Processes for filing claims

To facilitate initiation of the process, a workshop was organised by ZBGAS (Zilla Budakattu Girijana Abhivurudhi Sangha), ATREE, Vivekananda Girijana Kalyana Kendra (VGKK), and Kalpavriksh in 2007, even before the notification of FRA rules. Once the rules were notified, the process of filing claims by the Gram Sabhas was as follows:

Formation of FRC: FRC was formed at *podu* level except for *podus* which were too small in terms of the number of households. During the FRC formation, the secretary / president of Gram Panchayat and local Gram Panchayat members were involved. Ten men and five women members were chosen and the president and secretary were selected from among the 15 members. Local level NGOs like ZBGAS, and Taluk Soliga Abhivrudhi Sangha were involved in the process.

Mapping of resources: The *Podu* level Gram Sabha held meetings and filled the claim forms. During the meetings, the forms were read out aloud, and opinions and suggestions from all members were taken into account. The participants listed out in detail the various aspects of forest dependence such as list of NTFPs collected and collection areas, information regarding livestock and grazing areas, and cultural aspects of sacred sites like *Devaru, Maramma, Kallugudi, Veeru, Sagga, Habbi*. Soligas also proposed measures for conservation and management of forests through activities such as removal of hemiparasites from Amla trees and Lantana camara, reporting wild animal deaths and poaching incidences to the Forest Department and helping in control of forest fires.

Range-wise mapping of community forest resource was done since the collection of NTFPs through LAMPS had also been in correspondence with forest ranges. Fishing rights were claimed by naming the tanks under customary use by respective villages. There were no incidences of conflict during the process of mapping because there is mutual understanding among the Soligas about access to forest resources.

Filing of claims: In all cases, Gram Sabhas approved the claim forms based on evidence, and submitted them to the SDLC with a resolution and a letter from the secretary of the concerned Gram Panchayat in 2008. The documents enclosed with claim application included:

- List of *Podu* members along with their signatures,

- List of NTFPS and other forest produce,
- Documents containing evidence of grazing, fishing, conservation, traditional cultural rights to 489 sacred sites, etc.,
- Information on NTFP collection and marketing through LAMPS.
- Agreement of the Forest Department about LAMPS,
- Maps of cultural sites and *yelles*.

In the first phase of filing of claims, the villages of Kollegal taluk had not filed for CFR claims. In the second phase, between June 2012 and February 2013, 56 Forest Rights Committees from the Kollegal taluk have filed recognition of CFRs to the Sub-divisional Level Committees. Out of these, the four Podus of Keredemba Podu, Gombegallu, Kadakalukind and Nellikadaru Podus fall under the core zone of the BRT Tiger Reserve and the remaining podus are located on its periphery. Filing of claims is still pending for one FRC in Chamarajanagar taluk and 23 FRCs in Gundale-pete taluk of Bandipur National Park.

Processing of claims

Completed claim forms for community rights for Chamarajanagar and Yelandur were sent through all the Gram Sabhas to SDLC in 2008. At the meeting of the SDLC, the Forest Department opposed the granting of rights to Soligas. It took 3 years of consistent effort, and repeated meetings to clear the claims through the SDLC, after which it went to the DLC. At the DLC level, the district level forest officers again opposed recognition of CFR rights. After actively working with the DC, titles were finally granted in 2011.

The claims for the Kollegal taluk, filed in 2012, still remain with the SDLC.

CFR Title

In October, 2011, CFR titles were issued to 25 Gram Sabhas formed by 35 *podus*. Individual Forest rights (for land under occupation) were also recognised for 1,516 families. The CFRs granted to the 25 Gram Sabhas cover 3 of the 5 forest ranges, that cover BRT Tiger Reserve. The total area of the three ranges for which CFRs have been granted is 335 sq. km. The forest ranges are Yelandur, K. Gudi and Punjur as shown in the adjoining figure.

The rights that have been granted are:

1. Right of ownership, access to collect, use and dispose of Minor Forest Produce as defined under 2(i) and 3(1)(c) of the Act.
2. Right over collection and ownership of products from water bodies, such as fish, access to grazing, and customary rights (including those of nomadic and pastoralist communities), and rights to seasonal resources and other rights defined under section 3(1)(d) of the Act.
3. Right to protect, regenerate or conserve, or manage any community forest resources for sustainable use under section 3(1)(i) of the Act and managed by a committee constituted by the Gram Sabha under section 4(1)(e) of Rules.
4. Right of access to biodiversity and community right to intellectual property and traditional knowledge related to biodiversity and cultural diversity as per Section 3 (1) (k) of the Act.
5. Right to visit, access and worship at the 489 sacred sites by Soligas under the section of 3 (1) (k) of the Act.

Conditions under which rights are recognised, as mentioned on the CFR title, are:

1. Rights holders must protect wildlife, forest and biodiversity.
2. Recognised traditional rights exclude the right to hunting and trapping.

3. The Gram Sabha should regulate the use of forest resources and ensure that there are no adverse effects on wildlife, forest and biodiversity.

As is clear from the table, while the process has been initiated in all four taluks, different regions are at different stages of rights recognition:

- Yelandur and Chamarajanagar have received recognition of CFRs.
- Claims for Kollegal taluk have recently been filed at the SDLC level, and continues to remain at that stage.
- CFR claims for Gundal pete have not yet been filed, although FRCs have been constituted.

The taluk-wise status of Community Rights recognition in Chamarajanagar district:

Name of the Taluk	Total No. of Podus/ colonies present	No. of Forest Rights Commit tees formed by these podus	No. of CFR claims filed	No. of CFR titles received as of 31-03-2013	No. of Podus covered by CFR titles received	No. of CFR claims pending at SDLC level	No. of CFR claims pending in DLC
Yelandur	10	8	8	8	10	0	0
Chamarajanagar	25	18	17	17	22	0	0
Kollegal	80	56	56	-	0	56	0
Gundal pete	33	23	0	-	0	0	0
Total	148	105	81	25	32	56	0

Post-recognition recognition scenario:

Influence of the Tiger Reserve notification: The post-recognition scenario is unclear as the Forest Department has been indifferent about CFRs. While rights have been painstakingly obtained, there has been a parallel process of an increasing conservation status of BRT Tiger Reserve under the Wildlife Protection Act. The notification of the tiger reserve has come despite Soliga and civil society protests against the declaration. The protests were based on potential truncation of decades-long collaborative efforts at forest management, adivasi welfare, ecological research and potential displacement of Soligas from the critical tiger habitat. The haste with which the notification was issued without final approval from the NTCA, is evident in the continued confusion over the exact area of the core or critical tiger habitat (CTH). The state notification mentions an area of 359 sq. km (which includes 20 podus) and the official map from the Karnataka Forest Department, which was obtained by ZBGAS through an RTI request, shows an area of 300 sq. km (which includes 8 podus).

The WLPA mandates that critical tiger habitats be kept inviolate, to accomplish which, villages within the CTH will be voluntary relocated following conditions set down in section 38(V)5 of the WLPA. The podus located within the notified and mapped core have received individual and

community forest rights. Although there were initial discussions on relocation after notification of the BRT forest as a tiger reserve, there has been predominant opposition to this idea from Soligas along with a demand to provide public utilities within the area. At present, there are no ongoing discussions or proposals from the Forest Department regarding the relocation of Soligas. If the state proceeds with relocation efforts within the CTH it will be met with some resistance. The tightening of protection and control by the Forest Department will challenge the ability of Soligas to exercise their rights.

Additionally, according to the affidavit submitted by the government of Karnataka following the Supreme Court's order of 24 July 2012 in the matter of Ajay Dubey case, there are plans for declaring a buffer area of 1,081.37 sq. km (597.16 sq. km of forest area and revenue (or partially degraded forest land) land, and 484.21 sq. km of area within 87 village limits) for the BRT Tiger Reserve. It states the following as the reason for no notification of buffer yet: 'Since the concurrence of the Gram Sabhas is required for the notification of the buffer zone, the Gram Sabhas are being pursued for obtaining their concurrence. Presently the matter is under process for obtaining the concurrence of Gram Sabhas'. However, reports from the ground indicate that there have been no discussions on buffer notification in BRT with the Gram Sabhas yet.

NTFP collection: Recognition of CFRs has given the Soligas a respite from the fear of penalties, loss of livelihood and enforced illegality created by the 2006 ban on NTFP collection. After CFR titles were received by 25 Gram Sabhas, there have rarely been cases of obstruction to NTFP collection for Soligas all over the sanctuary. Still, even post- recognition, in a meeting of LAMPS of Chamarajanagar, the presidents of the cooperatives (who were Assistant Conservators of Forest Department) stated that Soligas need to seek permission from the Conservator and Director of BRT Tiger Reserve for NTFP collection. Consequently in 2011, Soligas had to approach the conservator of forests, Mr. Vijaya Mohan Raju, each time that they needed to collect NTFP (honey in June 2011, lichen later).

While predominantly, NTFP collection continues to be through LAMPS, , the Hosa Podu hamlet of Chamarajanagar taluk (falling within BRT sanctuary, but outside the notified core area for the tiger reserve) has initiated a process of honey processing, bottling and local marketing with support from Keystone foundation as an activity independent of the LAMPS cooperative since November 2012. The activity was undertaken by the Soligas of Hosa Podu following discussions with the local NGOs (ZBGAS and SAS) as well as the conservator of BRT wildlife sanctuary. However, there were conflicts between the forest department and villagers on 9 May 2013, when the Range Forest Officer of Punanjanur Range seized the honey stored in the village community hall and destroyed the processing equipment, filing a forest offence case (under Sec 2(7) of the Karnataka Forest Act, 1963 and Karnataka Forest Rules, 1969, Sec. 144, 145 and 165) alongwith a plea for immediate disposal of the honey. The Gram Sabha has appealed to the Court, claiming ownership of the honey under Sec 3(1)(c) of the FRA and requested the Court to stay the disposal of honey and for it to be returned to them. (The honey seized is 1150 kg according to the villagers, 300kg according to the Range Forest Officer's statement to the Court).

Now that rights have been recognized under FRA, there is a need to re-look at these arrangements and to explore models of more democratic governance of the NTFP resource. Recently a discussion was organized by ZBGAS and SAS to look at possibilities of Gram Sabhas taking over the process of NTFP marketing. A majority of Soligas voiced apprehensions regarding lack of sufficient funds with the Gram Sabha to be able to pay for the collection of NTFP and decided that it may be best to continue with LAMPS for the time-being.

It is clear that at present, CFR titles have done little to change the nature of NTFP collection and this is probably due to Soligas still being dependent on LAMPS for the sale of their harvest. Since independent channels for NTFP trade have not yet opened up, this reliance on LAMPS

will continue and thus the FD will continue to have a say in NTFP collection and sale. There is however no restriction on areas selected for the collection. The Soligas are collecting NTFPs from the entire forest area.

Issues of range wise (instead of village wise) collection: Soon after the grant of rights at an event at which no representative of the Forest Department was present, the Divisional Conservator of Forests held a meeting with Soligas at Kanneri colony. He told the assembled Soligas that the procedure that was used to get rights was improper. This is surprising as he and his predecessors were party to the entire process and his signature was on the CFR application form. He now wanted Soligas to map their areas so that each Gram Sabha could unambiguously identify their CFR area, avoiding overlap. Based on these arguments, there has also been an attempt by the DCF, and then the Tribal welfare department, at having the titles returned. This attempt has been resisted by Soligas.

The DCF's observation was based on the overlapping areas for CFRs that each of the Gram Sabhas had claimed. Soligas have claimed rights to the entire forest range citing this as their customary collection area under LAMPS. This is based on the fact that NTFP are patchily distributed and Soligas have to travel vast distances to access various products. Restricting CFR areas therefore runs counter to their decades-long NTFP harvest practice. The harvest was contracted to LAMPS by the Forest Department for each range, and collection areas were more or less captured by range divisions. Soligas thus claimed that their customary collection overlapped with range boundaries and they provided proof of sale to LAMPS as evidence of range-wise collection. The recent plans by Soligas for the management of the wildlife sanctuary also revolve around the idea that large areas need to see similar management rather than discrete management over small parcels of land around the podu. The suggestion by the Forest Department to restrict CFR areas to podus is not conducive either to management or to resource collection. However, just a few weeks after debates on the issue, the DCF was transferred and Conservator of Forests was appointed in his position resulting in confusion about where the process was heading.

Community-based conservation, livelihoods and governance plan: 200 Soligas had participated³⁸ in a workshop that was organized on 12 and 13 July of 2011 to evolve a collaborative management plan. This plan included conservation, livelihoods and governance strategies. Drafted in Kannada, the plan was then circulated for suggestions, feedback and approval by 50 Gram Sabhas (61 podus) of BRT. Subsequently all the podus organized Gram Sabha meetings and passed resolutions giving their feedback for the plan.

As a follow up to this, a one-day workshop on Community-based conservation was held on 31.8.2012 at VGKK, B.R.Hills. The workshop was organized by ZBGAS and supported by ATREE and VGKK. Around 200 Soligas, members of civil society groups and a Range Officer from the Forest Department attended. The follow-up actions decided upon during the meeting were:

1. The Biligiri Community-based Tiger conservation plan will be implemented after the remaining Gram Sabhas of BRT have received CFRs, as Soligas felt that only after all BRT podus received CFR would it be able to implement the plan.
2. A one-day meeting on the Biligiri Community-based Tiger conservation plan will be organized at the District level, and the Deputy Commissioner, Conservator of Forests, and the director, BRT Tiger Reserve and officials of the Tribal Welfare Department and other officials will be invited for this meeting, along with Soliga representatives from the 61 podus.

³⁸ Refer to article 'Conservation through democratic governance' by Shiba Desor, Ashish Kothari and Nitin Rai, <http://www.trinet.in/?q=node/733> for further information about the July 2011 workshop in BRT.

3. The Biligiri Community-based Tiger conservation plan will be submitted to MP and MLAs of Chamarajanagar district to ensure policy change.
4. Periodic meetings on issues of FRA implementation with the President and Secretary of the DLC and corresponding office bearers of the SDLCs .
5. Podus that have received forest rights have also received funds for basic facilities like that for drinking water, roads, community hall, etc. from the Tribal Directorate, Bengaluru. SAS will be involved in the setting up of these facilities and will claim Rights for Basic Facilities under section 3(1)2.

Status of exercise of other rights: The major focus in the post-recognition scenario has been on NTFP rights because of its more apparent and immediate connection with livelihoods. At the same time, soligas continue to exercise their rights of forest access for worshipping and grazing. Fishing rights are presently not being exercised as there is no water in the forest tanks. The process of exercising the right to protect, manage, conserve and regenerate forest resources is moving slowly through plans and group-meetings as elaborated above. Little attention has been given to the right under Section 3(1)(k) of access to biodiversity and community right to intellectual property and traditional knowledge related to biodiversity and cultural diversity.

5.3 The way ahead

Tiger Reserves are now positioned as the jewels of the conservation firmament and thus pose a serious challenge to exercise of rights by local communities. It would be important for all *podus* to get their rights recognised for better livelihood options and landscape level management and conservation. While 25 FRCs have received titles, claims from another 56 Gram Sabhas have only been recently submitted to the SDLC and there are yet other villages where the process has barely been initiated. There may also be a need to motivate the Soligas to exercise their conservation rights more pro-actively, and also to engage in dialogue with government officials from the Forest, Revenue and Tribal Departments.

One of the major challenges is the constant demand for high levels of motivation by local groups or individuals for successful recognition and exercise of community forest rights. This is exacerbated by repeated transfer of District level officers (as has been the case in BRT) and lack of adequate financial support. Consequently, it becomes a slow process as most of the activities have to be taken on a voluntary basis by the Soligas, using their own resources.

The forest governance regime in Protected Areas (PAs) in which people have received rights under the FRA is currently ambiguous as the WLPA and the FRA are both silent on how such a forest area will be jointly managed. Amendments to the said legislation are needed to provide guidelines for PA governance by Gram Sabhas and the Forest Department. The WLPA needs to be amended to acknowledge that once rights under the FRA are obtained, the authority for management will have to be shared by the Forest Department and the Gram Sabhas while being cognisant of biodiversity conservation goals. In addition to that, an integrated vision of conservation and livelihoods for BRT needs to be reflected in the recent government initiatives for convergence of schemes and programmes for the welfare of right holders.

The collaboration among Soligas, researchers and civil society groups in BRT has produced a unique long-term effort that could form the basis for a collaborative management of protected areas based on local and scientific knowledge. The example of BRT provides us with an opportunity to understand and build on the relationships between forests and people. Only through such efforts will it be possible to bridge the chasm that at present seems to divide modern and traditional knowledge, conservation and livelihoods, nature and culture.

6.1 Introduction

The state of Jharkhand came into being on 15th November, 2000, when it was separated from the state of Bihar. Jharkhand literally means ‘the land of forests’. It is located on the Chotanagpur Plateau and the Santhal Parganas. The state has forests, rolling hills and rocky plateaus. The total population of the state as per 2011 Census is 3.297 crores (32.97 million). 28% of the population is tribal, formed of 30 different communities of PVTG and STs³⁹. The recorded forest area of Jharkhand is 23,605 sq. km, which is 29.61% of the total geographical area of the state. 81.28% of this area falls under Reserved Forest while 18.58% and 0.14% fall under Protected and Unclassified Forests respectively. The State has one National Park, eleven Wildlife Sanctuaries and one Tiger Reserve (Palamau Tiger Reserve).

6.2 Forest dependence for livelihoods and a history of land alienation

More than 10,000 forest villages of Jharkhand, mostly populated by marginal farmers and landless labourers, rely on forests and forest produce for their sustenance⁴⁰. 89% of the population in the forest villages goes to forest for collection of non-timber forest produce. The percentage dependence on NTFP for income, as compared to other sources, was found to be 24.85%. Maximum dependence is on produce like tendu leaf, mahua, char, tamarind, sal and amla. Fuel wood is also collected and sold in the open markets while timber is collected by the village people for household construction and agricultural implements.

Jharkhand has a long history of alienation of land, forests and customary rights of tribal communities. Starting from the Permanent Settlement Act of 1793, not only did such laws change the landscape but also affected the social organisation of the region. Many revolts mark the adivasi people’s long-prevailing protest against the destruction of forests and the exploitative regime of the British, the *Zamindars* and the money lenders. Legislation passed in response to such agitations includes the Wilkinson Rules in the Kolhan area in 1837, the Santhal Pargana Tenancy Act (SPTA) of 1855⁴¹, and the Chotanagpur Tenancy Act, 1908 (CNTA). The CNTA was an outcome of revolt against State appropriation and exploitation of tribal forests and lands, led by Birsa Munda, in 1900. This law, apart from being a tenancy law, also had the provision of recording the rights of the villagers over the forests in two documents called Khatian (or jungle) Part II and Village Note.

It is interesting to note that according to some, documenting the customary rights under CNTA through the survey and settlement operations in fact alienated the people further from their forests since the unwritten customary laws were more fluid with the usage changing according to needs and availability⁴². However, these documents and the CNT Act are what the people hold in high regard today and many a political battle over land is being fought using these as proof of ownership. And it is these same records which according to the state government are leading to slow implementation of FRA in the state.

³⁹DFE undated, *The Green Corridor*, Department of Forests and Environment, Government of Jharkhand.

<http://www.jharkhandforest.com/files/Green%20Corridor.pdf>

⁴⁰ Kumari, I & Yadav, N, 2011, *Dependence of Forest Villagers on NTFP Collection: A Study of Dependence of Forest Villagers on Non-Wood Forest Product (NTFP) Collection in Jharkhand State, India*, September 12, Lambert Academic Publishing (LAP).

⁴¹ <http://chotanagpurinus.tripod.com/jharkhand/>

⁴² Interview with Mr PNS Surin who is??, and information from survey and settlement officers Reid and Macpherson

The Indian Forest Act, 1927, is a landmark legislation which still rules the forests of the country and which has further curtailed the rights of the people. With its implementation, forests belonging to the *Zamindars* became Private Protected Forests (PPFs). In 1951, the Bihar Land Reforms Act was passed, under which the *Zamindari* system was abolished and these PPF lands were passed on to the State. The *Babar* (outer) jungles of the PPFs became PFs and the *Bhitar* (inner) jungles, the Reserved Forests. The Wildlife Conservation Act, 1972, put a ban on hunting, and notified areas of forests as National Parks or Wildlife Sanctuaries. Consequently and ironically, people were displaced or their use of local forest produce severely curtailed in the very areas where they had co-existed with the wild animals for centuries.

6.3 Implementation of the Forest Rights Act in Jharkhand

6.3.1 Official data

The Nodal agency for implementation of the Act in Jharkhand is the Welfare Department. As per information presented in the Jharkhand action plan in December 2012, District Level Committees (DLC) had been formed in all 24 districts. 35 Sub-divisional Level Committees (SDLC) and a ten-member State Level Committee (SLC) have been constituted. 20,484 Forest Rights Committees have been constituted.

There is no information available on community rights in Jharkhand in the MoTA status reports since these give combined data on individual and community forest rights. According to Jharkhand Welfare Department report dated June 11, 2012, collected on 28th June, 2012, the total number of CFR titles distributed in the State is 552. Data in table 4 and 5 is from that report.

Table 4: Details of claims for CFRs and titles granted in Jharkhand

Community Claims and Titles	FDST	OTFD
Total number of claims filed at the Gram Sabha level	3,571	147
Number of claims recommended by Gram Sabha to the SDLC	736	74
Number of claims rejected by the Gram Sabha	26	73
Number of claims pending with the Gram Sabha	2,873	0
Number of titles granted	542	10

As can be seen, the report claims that most of the claims have either been rejected by the Gram Sabha or are pending with the Gram Sabha. This information needs verification from the respective Gram Sabhas.

Details of Rights given under CFR in various districts⁴³

Table 5: Details of district-wise CFR claims and title distribution in Jharkhand

Category of District	No.	Districts	Number of Claims								No. of Titles Distributed	
			Filed at Gram Sabha level by		Recommended by Gram Sabha		Rejected by Gram Sabha		Pending with Gram Sabha		ST	OT
			ST	OT	ST	OT	ST	OT	ST	OT		
Integrated Action Plan Districts	1	Bokaro	80	14	80	14	0	0	0	0	3	0
	2	Chatra	0		0		0		0		0	
	3	Garhwa	12		0		0		0		0	
	4	Gumla	0		0		0		0		0	
	5	Hazaribagh	3	45	3	0	0	45	0	0	3	0
	6	Latehar	18		0		0		18		0	
	7	Lohardaga	0		0		0		0		0	
	8	W. Singhbhum	3,043		264		0		2,855		229	
	9	Palamu	0		0		0		0		0	
	10	E. Singhbhum	0		0		0		0		0	
	11	Ramgarh	22	41	22	41	0	0	0	0	0	0
	12	Simdega	3		1		2		0		1	
	13	Seraikela-Kharsawan	2		2		0		0		1	
	14	Koderma	59		59		0		0		3	
Total - IAP Districts			3,242	100	431	55	2	45	2,873	0	240	0
Non-IAP Districts	15	Ranchi	0	2	0	2	0	0	0	0	0	2
	16	Khunti	54		54		0		0		54	
	17	Dumka	31	25	7	0	24	25	0	0	6	0
	18	Jamtara	0	2	0	2	0	0	0	0	0	1
	19	Sahebganj	8		8		0		0		8	
	20	Pakur	0		0		0		0		0	
	21	Godda	230		230		0		0		230	
	22	Dhanbad	0	18	0	15	0	3	0	0	0	7
	23	Giridih	4		4		0		0		2	
	24	Deoghar	2		2		0		0		2	
Total – Non-IAP Dists			329	47	305	19	24	28	0	0	302	10
GRAND TOTAL			3,571	147	736	74	26	73	2,873	0	542	10
Combined ST + OTF			3,718		810		99		2,873		552	

⁴³ Due to paucity of time, it was not possible to verify these claims on the ground. Therefore, details of these titles were collected from the District Welfare Offices of a few districts to look at the number of CFR titles issued, issued to whom, nature of rights recognized, area of CFR, etc. The districts visited include Godda, West Singhbhum, Ranchi, Dhanbad and Khunti.

It is interesting to see that number of CFRs titles issued in different districts vary widely (see table 6 for details). Thus while the number of CFR titles in Godda district indicate the actual number of villages which have received the titles, the same is not true for West Singhbhum where the titles have been distributed to individual households in two villages in Noamundi Block and the list includes 147 households from three villages (Chiriya, Binuwa and Loro) in Chiriya Block whose claim forms have been accepted but titles not yet distributed.

The CFR title deeds distributed in Godda are very limiting in nature. They only talk of four MFPs that the villagers can collect (sal, tendu leaves, mahua flowers and fruits) or cultivate (*tasar* worms). It is not clear whether the villagers can also sell these products. Other than that, there is no mention of any rights under Section 3(1) of the Act. The rights in the CFR titles distributed in West Singhbhum have been granted under three clauses, which are 3(1)(b), (c) and (g), but the equally important one under 3(1)(i) is missing.

In Dhanbad and Giridih district only rights to public utilities under Section 3(2) have been given, and these are shown as community rights.

The case of Khunti district stands out amongst all these as 54 title deeds (56 as per village verification) have been distributed to groups of people within 4 villages of Arki, Khunti and Murhu blocks for khalian, grazing and other community purposes. Unfortunately, it was not possible to get copies of the titles due to the absence of the DWO on the day his office was visited.

In Ranchi, district level administration selected 5 villages for pro-active facilitation of claim filing. During the month of May 2012, it was found through the proceedings of a meeting called by the DC that the CFR claims were being objected to by the forest department on two counts: one, the inclusion of *kendu* leaves on the claim forms, and other, the 'vast area' being claimed by the villages. At the end of July 2012 it was found that Ranchi district has issued titles for public facilities under Section 3(2) to 5 villages but no titles under Section 3(1).

Box 4: Why Mundari Khuntkatti villages are not claiming CFRs

Interestingly, Mundari Khuntkatti⁴⁴ (MK) villages seem to have taken a stand to not apply for CFR titles because of pre-existing rights. All the 156 Mundari Khuntkatti villages of Jharkhand state have taken a collective decision to not file either individual claims or community forest rights claims. They maintain that they are exercising rights under special provisions under the CNT Act, which is much older and which clearly gives them the rights over the use of their land and forests, and therefore they do not need to file claims for rights under the FRA. They also maintain that since there is no mention of Khuntkatti lands in the FRA, it means that they are independent entities ruled by their own traditions and customary law.

⁴⁴ Mundari Khunt-katti villages are villages originally settled by a clan by clearing forest land to make way for agriculture and homestead. The village community belongs to a single clan and all male members inherit community rights over the land and forests. *Khunt* = clan and *katti* = cutting/ clearing

Table 6: Nature and area of rights given under CFR in various districts of Jharkhand

District	Number of Title Deeds distributed	CFR Title-holder's name	Area of land covered by CFRs titles granted	Nature of rights specified in the Title Deeds
Godda	230	All villagers	Range from 2.82 acres to 435.66 acres	Right to pluck leaves of tendu and sal, flowers and fruits of mahua, and to nurture silk worms
West Singhbhum	229 of which 147 have not been distributed	Individual households in two villages	633.90 acres in one village	For nistar rights, collection of NTFPs and fishery and burial / cremation ground u/s 3.1 (b), (c) and (g) respectively *
Khunti	56	Groups of villagers in four villages	29.49 acres	For grazing land, threshing ground and community development work u/s 3.2
Ranchi	2	All villagers	3.45 acres	For grazing land, threshing ground and community development work u/s 3.2
Giridih	2	All villagers	4.15 acres	For community development work u/s 3.2
Dhanbad	10	All villagers, Primitive Tribal Groups and an individual in a total of six villages	5.72 acres	For grazing land, threshing ground and community development work u/s 3.2

* Based on empirical findings of the case study conducted by Ambika Tenneti

6.4 Key issues⁴⁵

Some of the key issues affecting implementation of FRA and CFR provisions are discussed here.

Lack of awareness regarding implementation

- There is an apparent lack of coordination between the Forest Department (FD), Welfare Department and the Revenue Department with respect to training programmes for site-

⁴⁵ Based on field level studies and the state level consultation organized by Vasundhara and Kalpavriksh in collaboration with SPWD on 2nd March 2013 at Ranchi

specific facilitation. Consequently there is a lack of clarity on certain provisions of the Act. There have been instances of the administration forwarding the filed claims to Forest Department with the general impression that processing of such claims would be their responsibility. In Latehar district forest offence cases are being filed against claimants under FRA in the villages of Jeru, Cope, Jatu, etc. Communities are not made aware of the provision of CFR in the Act and if they are, then they are not guided properly in the application process and most miss out on the important Section 3(1)(i) which talks about the right to protect, regenerate, conserve or manage community forest resources. In several cases there has been a predominant focus by villagers and facilitating NGOs on individual claims or for developmental facilities under Section 3(2) rather than for community forest rights.

- The Revenue Department has become the de-facto implementing agency since the Welfare Department had indicated lack of manpower for the same. Therefore all claim forms are being submitted in the office of the Circle Officer and in many cases, the COs refuse to accept these forms.
- After the State Government received orders from the Centre to proceed with the formation of FRCs at the end of 2008, a large number of FRCs were formed in a very short period of time. Most of these FRCs were on paper and villagers were ignorant of their existence. The result is apathy and unawareness regarding implementation of the Act in Jharkhand.

Challenges faced by communities in claim filing

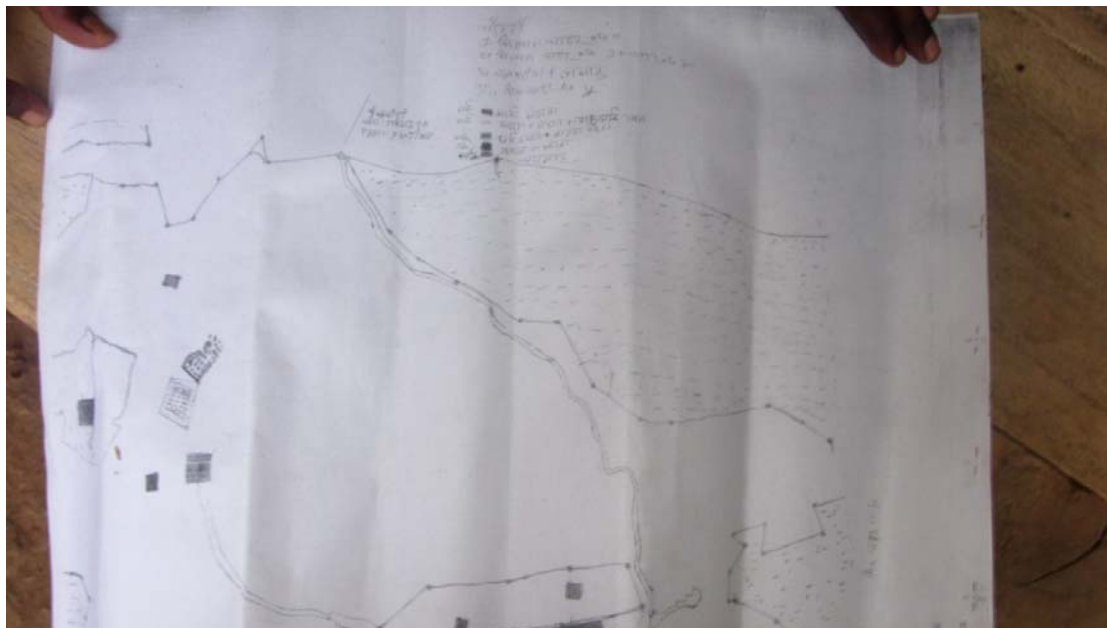


Figure 12 One of the 7 sheets of map of community forest resource of Chaingada village, Ranchi which has claimed CFRs but recognition is pending (Ambika Tenneti)

- People in the village find it difficult to complete the claim form and provide the necessary documents. Those communities where people are aware of the Act and have people to take initiative have been more successful at filing appropriate claims. In other places, village communities have let the government staff file their claims resulting in non-inclusion of certain important sections especially 3.1(i). These are reflected in Godda and West Singhbhum where the administration took the initiative of helping people file CFR claims.
- While individual claim forms are being freely distributed by the government, the CFR claim forms are not being given. There are instances where people have reported that the Welfare

Department said that these forms are out of print or not available. New forms (Form C) to claim rights over community forest resources have not been provided at the village level.

- Revenue department is not providing land record details including maps and Khatian Part II of villages in many cases.
- The FD does not cooperate with the implementing agencies by not reaching for site verification at a pre-decided date and time. They often refuse to sign the forms claiming that the forest area requested is much more than required or legally due to the individual/village.
- In some districts, claim forms of OTFDs are not being accepted as the district government is not accepting oral evidence from elders which is allowed as per the Act.
- Lack of formation of informed and pro-active FRCs at the village level or the presence of Gram Sabhas that take definitive and positive actions for their village.

Legal issues

- Jharkhand has two special and local laws recognised by the Constitution of India – the Chotanagpur Tenancy Act, 1908 (CNTA) and the Santal Pargana Tenancy Act, 1855 and the subsequent, supplementary amendments, which provide for tenurial rights over land and forests to the communities and raiyats. Both of these Acts pre-date the Indian Forest Act, (IFA) 1927. There are varying opinions regarding these Acts and the FRA which needs to be analysed in detail. The Welfare Department report mentions that the process of implementation of FRA in the State is slow owing to the presence of these two Acts under which rights are already being recorded in Khatian II and the rights are also addressed in the forest settlement process under Indian Forest Act. State level officials like the Chief Secretary, PCCF on occasions have also held similar views.
- Legal experts in the area are divided over the issue. One group feels that as forest rights are already recorded in most of the villages in Jharkhand under SPTA and CNTA, Forest Rights Act is not relevant to most of the villages. In Jharkhand, this act is relevant for forest villages and villages that are not notified by either the FD or the Revenue Department⁴⁶. At the same time, there are others who feel that even if these rights have been given, the records are old and in most cases not available with the villagers and also that there has been significant increase in the area of recorded forests in post independence where customary common forest lands are declared protected and reserve forests without addressing customary rights. Therefore FRA provides an opportunity to the communities to reassert their rights and reclaim their customary lands alienated due to various interventions before and after independence.

Institutional Issues

Current political crisis has affected administrative interventions on FRA. After the Panchayat elections new PRI members are not nominated in the SDLC and DLC which is affecting decision making at the sub-district and district level. In some parts of the state (as in Chhatra district) FRCs are still not constituted in villages. There has not been any action on the Amendment Rules 2012. In some areas list of VSS committee has been sent as list of FRCs.

Forest land diversion and mining

In Bokaro district FRA is not implemented in mining areas. Mining projects are implemented in areas claimed as CFR. VSS members gained over by companies (CCL, BCCL) are encouraged to clear forests. There is confusion regarding the applicability of FRA vis-à-vis Coal Bearing Areas

⁴⁶Interview with Mr PNS Surin and Rashmi Katyayan

Act. Gram Sabha need to reorganized and held at the hamlet level (tola) as in case of coal mining it is seen that the hamlets are not able to participate in the Gram Sabha of the main village and their consent is not obtained in the process of forest diversion.

Protected Areas, PTGs and Conversion of forest villages into revenue villages

Claims on forest rights are not received in Palkot wildlife sanctuary. In Topchanchi wildlife sanctuary, FRA is not implemented. While habitat rights of PTGs are recognized, but the process has not been initiated and in some areas like in Chatra PTGs have received only 5 dc of land as rights under FRA. The process for identification and conversion of forest villages into revenue village has not been initiated. In the government list there are only 24 forest villages whereas actually the Saranda area itself has about 300 forest villages.

Box 5: CFR status in villages of Palamu Tiger Reserve

(Based on group discussion in Garu block, Latehar district)

Little action on CFRs has been taken in villages of Latehar district falling in the CTH area of Palamau Tiger Reserve (PTR). The notification of the CTH in July 2007 was done without prior consultation with the villages, and led to inclusion of a large area comprising of many villages, located in what earlier used be the buffer zone, into the core zone. The villages in the area have been filing CFR claims since September 2011. The villages that have filed claims are Samodh Tola, Purni Armu, Goaindi and Daldaliya, while there are others that have initiated the process and will file their claims soon. For evidence they have submitted village maps, statements of village elders and the 29th Report of Dr B D Sharma prepared for the Planning Commission. They have stated in the forms that since the government has the records of the Khatian Part II of all the villages they have not attached the same. The claims have been filed according to forest compartment numbers rather than customary village boundaries as the villagers felt that these overlap to a great extent.

People from Kujrum, a village in the core area, have been granted individual titles but no CFRs. The claims have been received by the DWO but the villagers are yet to hear from the government. They have not received any communication from the DWO. No site verification has been undertaken either. The villagers of Kujrum and another forest village, Lattur, have been told by the Forest Department that they are to be relocated from the area with each family getting a compensation of Rs 10,00,000/- (Rupees Ten Lakhs). In this context it is important to note that FRA and WLPA 2006 prescribes a detailed process to be followed prior to any relocation.

6.6 Concluding remarks

On this backdrop, it is important and imperative that people once again get their forest rights recorded with full participation and take active interest in the implementation of FRA in the State. There is no contradiction between FRA and the state laws as FRA under Section 3 (1)(j) recognize rights which are recognized under any State law or which are accepted as rights of tribals under any traditional or customary law of the concerned tribes of any State. In fact it reinforces the customary rights of the communities in the state and provides a scope for reasserting those rights in the present context where there has been dilution of the rights and local governance.

Milind Thatte and Neema Pathak

This status report is based on presentations made during the State level Workshop, interviews with various relevant civil society members, and information based on government records and other sources

7.1 Introduction

Maharashtra boasts of one of the highest numbers of CFR claims and titles granted in the country, with recognition of 1,868 CFR titles for 3,77,776.25 acres (according to MoTA status report 31-3-2013). These figures, however, may not be a correct reflection of the actual situation on the ground, where the implementation varies hugely from region to region and district to district. The above figures, for example, are a reflection of effective implementation largely in two districts, namely, Gadchiroli and Gondia.

Maharashtra has a number of mass movements, civil society groups and committed individuals working for an effective implementation of CFRs in the state. The methods for advocacy have been different depending on the local contexts and histories. The success attained, however, has been varied depending on a number of local factors, social-political histories and other circumstances. The following gives us an idea of the circumstances in some of the districts:

- In Gadchiroli, the process moved ahead because of a concentrated effort by a network of local NGOs such as Vrikshamitra, Srushti, Vidarbha Nature Conservation Society (VNCS) and others, and with the support of the district administration.
- In Gondia, the advocacy efforts have been focused by groups such as VNCS at the political level and state departments (with the current forest secretary playing a crucial role).
- Groups like Khoj-Melghat have been involved with lobbying at the level of the Governor, apart from initiating work in villages in Amravati district. As a result the governor's office in Maharashtra has also followed up on various issues, particularly related to FRA implementation, effective record maintenance, and convergences of schemes for post-recognition management. The governor's office also organized regular Video Conferences with all district collectors to follow up on the processes.
- In Thane, villagers are fighting against illegal construction of Kalu dam (being constructed to provide water to Navi Mumbai), with the help of Shramik Mukti Sanghat na. The dam was being constructed without completing processes under FRA. Many affected villages have filed CFR claims thus asserting their community rights. Though the proposal was rejected by the Central Government, a fresh proposal has been presented by the project proponent to the government in March 2013 and this has been recommended by the FAC (Forest Advisory Committee) on April 4, 2013, despite non-completion of FRA process.
- Nandurbar and Jalgaon districts have a long history of conflict resulting from forest destruction, migration of those displaced by hydroelectric power projects, migration and encroachments by villagers from Madhya Pradesh, violation of human rights, political mobilization and movements fighting for the rights of the local people, etc. These conflicts are also reflected in the manner in which forest rights claims were filed (initially focusing only on individual rights) and handled by the concerned agencies (all claims were rejected in the first round). Facilitated by Lok Sangharsh Morcha, more than 5,000 community members participated in a 580 km long *pad yatra* to Mumbai, to meet the

chief minister and to demand implementation of FRA. Local political mobilization has been the means for lobbying and advocacy, apart from initiating positive action on the ground.

7.2 District-wise status of CFR implementation

According to the MoTA status report, in the state of Maharashtra, 5,048 claims have been filed and 1,868 CFR titles for 3,77,776.25 acres of forest land have been granted as of 31 March 2013. However, district-wise detailed information is only available updated till June 2012 and was presented by the Tribal Commissioner's office at the State level CFR workshop held in Mumbai on 22 January, 2013.

Table 7: CFR Data as presented by Tribal Commissioner's office during the State level CFR workshop held in Mumbai on 22 January, 2013

Sr. No	District	Claims received	No. of Titles distributed	Total forest area under CFR titles distributed (acres)	Total forest area under CFRs accepted but titles not distributed yet (acres)
1	Thane	860	0	0	4,049.36
2	Raigad	569	1	2.39	2.39
3	Nashik	95	4	2.60	2.60
4	Jalgaon	55	6	36.73	36.73
5	Dhule	206	132	489.23	526.53
6	Nandurbar	0	0	0	0
7	Ahmednagar	22	2	9.36	9.36
8	Pune	110	15	4.61	4.61
9	Satara	7	2	3.13	3.13
10	Sangli	197	0	0	0
11	Kolhapur	167	0	0	0
12	Aurangabad	118	0	0	60.54
13	Nanded	3	0	0	0
14	Hingoli	0	0	0	0
15	Buldhana	0	0	0	0
16	Akola	69	3	4.37	0
17	Amravati	59	7	0	4,510.96
18	Yavatmal	32	0	0	0
19	Washim	0	0	0	0
20	Wardha	32	9	15.72	15.72
21	Nagpur	86	29	18.10	41
22	Bhandara	250	5	10.09	10.09
23	Gondia	657	1	2.55	2.55
24	Chandrapur	13	12	17.89	17.89
25	Gadchiroli	1,434	805	3,72,658.17	421,094.92
	Total	5,041	1,033	3,77,324.29	4,30,388.38

Gadchiroli district

Gadchiroli district has a high number of CFRs filed and titles received. Claims have been filed and granted in both tribal and non-tribal villages. Mendha-Lekha and Marda, arguably the first villages to receive CFR titles in the country are also located in this district. Civil society groups working in different parts of the district have been facilitating the process of rights recognition. Coordinated action of civil society working very closely with the government machinery, has also reacted positively in providing the necessary documents for filing claims and taking the process forward. However, gaining CFR titles has led to some conflicts arising from villagers demanding their rightful benefits from the forest resources (particularly bamboo and tendu patta). A handful of villages, including Mendha-Lekha have the capacity to carry out regulated extraction, set up a marketing mechanism, to account for the transactions, and to ensure conservation of their CFRs. Mendha has developed a detailed plan of action with the help of a number of experts from within and outside their village. Such capacity however does not exist uniformly in all villages. Much debate is currently raging in the district among various government and non-government actors to arrive at a mechanism by which CFR Gram Sabhas are empowered to collect and sell their NTFP in a regulated manner while also being protected from the vested market interests.

Gondia district

In addition to Gadchiroli, Gondia district also has been granted a large number of CFR claims. The process has been facilitated by VNCS along with the district administration. As a result of coordinated action 1,042 (the number may be flawed as it includes development rights under Section 3(2)) community titles have been recognized in the district under a combination of section 3(1)(b-m), Section 3 (2) and section 7, including 324 which fall exclusively under section 3(1) (b-m), to an extent of approx. 25,00,000 acres of forest area. VNCS has been facilitating a process of putting together and implementing a development plan in villages of Gadchiroli and Gondia where CFRs have been recognized.

Nagpur district⁴⁷

In the villages of Nagpur, CFR claims were filed by Gram Sabhas of Pathrai, Khanora, Lakhapur, Dahoda, Akola and Fulzari. A letter was written by Tehsildar to the RFO of the area who had refuted the CFR claim based on the area being claimed. . This was followed by a meeting at Ramtek between SDLC officials, Forest and Revenue Department Officials, VNCS members and community representatives, where the provisions of FRA were discussed in great detail. The meeting also highlighted the rights of the FRC and Gram Sabha in the verification of claims. After this meeting the claims of the villages mentioned above were approved by the SDLC in March 2013 and forwarded to the District Level Committee where the claims are currently being deliberated upon.

Amravati district

Facilitated by Khoj, 45 CFR claims have been filed and corresponding titles issued in Amravati district. There are other villages contemplating filing claims through discussions being held. In the meanwhile, in both kinds of villages where titles have been received and those where claims have not been filed yet, Khoj is facilitating a process of convergence of various government schemes towards conservation and livelihoods development.

The SDLC in the areas is highly unorganized and has been reported to have lost or misplaced many claims. Many CFR claims are thus pending and/or lost. Where titles have been received, villages have formed committees under rule 4(1)(e), but there are no clear directives from the

⁴⁷ Input by Mr. Dilip Gode, VNCS

SDLC about which committee is to exercise what rights; especially because multiple committees like JFMC, BMC, FRC, FPC exist in many villages.

Raigad district⁴⁸

Raigad district in the Konkan region lies close to the metropolitan region of Mumbai and has been hugely impacted by urbanization. The tribal villages in this district can be broadly divided in three types; viz. 1) villages dependent on forests for livelihoods, 2) villages with urban livelihoods, 3) villages populated by educated youth with urban aspirations. The villages of the first type are genuinely interested in CFRs and are in need of the same. The district witnesses seasonal distress migration as well as aspirational migration by marginal and landless tribal families. The implementation of FRA becomes redundant during the period of migration that extends from Oct-November to March or May.

Until June 2012, only one CFR title had been granted in Raigad district. 459 claims were filed at the Gram Sabha level, of which 447 were recommended to the Sub-divisional Level Committee (SDLC), of which only five were accepted and sent to the District Level Committee (DLC); of those five only one has been accepted by the DLC. For such a large number of rejections the reason given is that most of these CFR claims received were under section Sec. 3 (2), and, as per the Act, public utility-related claims are supposed to be filed by the concerned divisions to the Forest Department. The confusion and misunderstanding at the government-level regarding Sec. 3(1) and Sec. 3(2), lack of focus on implementation of CFR by both government agencies and civil society groups in the Raigad district till recently has resulted in only one community getting CFR rights under Sec. 3(1).

Sarvahara Jan Andolan (SJA) has facilitated filing of 83 claims under Sec 3(1). These claims however have not moved beyond SDLC level. Since the process of individual claims is over (at village level), FRCs are virtually defunct. The SJA has also noted that tribal members i.e. people's representatives in the DLC are not aware of CFRs and the potential of other rights in FRA. There is need for their orientation, so as to enable them to participate actively in implementation. The issue unique to this district is that of *Dali* lands. *Dali* land is a community asset and Dali rights include grazing and usufruct rights over forest. The *Dali*-book records ownership rights of a clan or community over a stretch of land. This was completely ignored by the government while implementing FRA in the district which has 13,000 acres of *Dali* land. Shramik Kranti Sanghatana (SKS) has facilitated initiation of CFR claim process in five villages. People here have compiled the data required for a CFR claim but have not filed their claims.

The district and Konkan region in general, have a tradition of preserving *Devrais* (sacred groves) and village forests. These traditions exist among the non-tribal populations as well, but are seldom acknowledged by the administration.

Thane district⁴⁹

In Thane district, Kashtakari Sanghatna (KS) has been facilitating the process in four *talukas* – Dahanu, Jawhar, Vikramgad and Mokhada – for the implementation of FRA. The organization conducted an exercise of mapping CFR areas and assessed people's dependence on forests by helping them prepare lists of NTFP, water bodies, pathways and sacred places. However, only between 16 and 20 CFR claims have been filed from Dahanu and Jawhar *talukas*, and all of them are pending at the Sub-Divisional Level Committee. According to KS, the staff at SDO office has orally communicated to the activists that all claims have been rejected. There has been no

⁴⁸ Based on inputs by Surekha Dalvi of Shramik Kranti Sanghatana and Ulka Mahajan of Sarvahara Jan Andolan

⁴⁹ This information is based on inputs by Brian Lobo of Kashtakari Sanghatna, Indavi Tulpule of Shramik Mukti Sanghatana, and Milind Thatte of Vayam

written communication to claimants. KS claims that the government is not willing to accept the claims and has deliberately kept them pending. Communities here have filed individual claims, in which they have demanded rights over land under cultivation as well as over a patch of land from where they extract biomass for burning in their fields to prepare them for cultivation (*rab*). However, many such claims have been rejected. Since the individual claims were rejected, KS believes that communities lost faith in the FRA and hence, were not willing to file CFR claims, which has become one of the reasons for fewer claims from the area.

Shramik Mukti Sanghatna in Shahapur *taluka* of Thane district helped 12 villages file CFR claims. The claims, after approval by the Gram Sabha, were filed with the Tehsildar, who forwarded it to the Circle Officer. While a receipt was issued to the claimants, there has been no further processing. Government has not conducted any awareness activities about CFRs. The revenue and tribal department officials are unaware of amended rules. Officials have not recognized oral and circumstantial evidence for CFR. The forests in many parts of this district have been degraded and the local community has little belief in possibility of regeneration of forests. SMS has also helped file 25 CFR claims in Murbad Taluka which were also given to Tehsildar to be passed forward. The filing of CFR claims gained momentum due to the Kalu dam coming up in the area which people are strongly opposing, SMS is going to file an RTI to understand the status of the claims.



Figure 13 The site of construction for the Kalu drinking water project on river Kalu, near Thane district, Maharashtra (Shiba Desor)

Vayam has helped villages in Jawhar (3 claims) and Vikramgad Taluka (1 claim) file CFR claims. The villages have completed the due process at village level and Gram Sabhas have approved these claims. The villages have used the format developed by Vrikshamitra of Gadchiroli district, and have attached elder's statement, hand-drawn map, supporting resolution from neighboring

FRCs, and PBR (People's Biodiversity Register as per Biodiversity Act 2002 Sec. 41) as evidence. The claims were submitted to the SDLC in March 2012. Since then the government has not processed any these claims any further. A written reminder by villagers and an RTI application seeking status information have received no response from the SDO. Vayam had also filed an RTI application to the State secretary, Tribal Development Department, seeking reasons for rejection of claims. The response by the Commissioner of the Tribal Development Department has revealed that the district collectors have not given any data to the commissioner, although the said data was sought by the union government one year ago.

There have also been actions in total violation of prescribed procedure. It was reported that the district collector of Thane had issued a circular directing *talathis* or the land record officer to file CFR claims; however, it emphasized on Sec. 3(2) and to some extent Sec. 3(1)a and (g), which are related to land holding. As a consequence of this circular, in Dahanu sub-division, 180 CFR claims have been filed without the consent of the local community and titles have been granted to cover 10 acres of land for each CFR claim.⁵⁰

Nandurbar and Jalgaon districts⁵¹

123 and 67 CFR claims under Sec. 3(1) have been filed from Nandurbar and Jalgaon districts respectively. Claims in Nandurbar are pending with SDLC while those in Jalgaon are at the DLC level.

Lok Sangharsh Morcha (LSM), a *Jan Andolan* based in Nandurbar and Jalgaon, has facilitated the process of filing CFR claims in villages. As mentioned above the representatives of communities and civil society groups met the Chief Minister, after a *pad yatra*, who agreed to their demand for training sessions at district level for CFR implementation. Accordingly, in April 2011, a training session was conducted for officials of the district collector's office, the Forest Department, the Tribal Development Department and civil society groups. However, the administration conducted this single training event for 700 villages all together, inviting all FRC presidents and secretaries (i.e. 1400 persons). Vrikshamitra provided LSM with the format that has been used in Gadchiroli district for claiming CFRs. Along with these documents, elders' statements, village maps, receipts of fine charged by the Forest Department and records of contracts given to the villagers for harvesting tendu leaves and cattle grazing have been attached as evidence.

Since the mid-1970s, forests in Nandurbar district have undergone severe degradation under various development projects such as Sardar Sarovar, and wind energy projects by Suzlon among others. The changing land-use pattern has alienated communities from their forest resources, resulting in large numbers of families out-migrating for wage labour. At the same time there has been a process of community mobilization in areas where LSM has been active for almost two decades, leading to considerable number of CFR claims from these two districts.

With help from LSM, two villages – Gorjabari in Akkalkuva taluka of Nandurbar district and Jamanyagadraya village in Yawal taluka of Jalgaon district – have formed committees under Sec. 5 of FRA. In these two villages LSM plans to develop models for post-recognition management of CFR areas. In January 2013, LSM organized a training session on Community Biodiversity Registers for the local youth. The process of making the register will begin in two villages inside Yawal wildlife sanctuary in June 2013.

Implementation of Joint Forest Management (JFM), in the past, has led to clashes among some villages with large land-holders being members. This has affected the process of filing claims at

⁵⁰ This data is based on a brief conversation held with Mr. Brian Lobo of Kashtakari Sanghatna. A copy of this circular and any other relevant documents was not available for perusal.

⁵¹ This data is based on a brief telephone conversation with Pratibha Shinde of LSM. Copies of relevant documents not available for perusal.

the very first stage of forming a Forest Rights Committee (FRC) and verification of claims by it. Aatgaon village of Chopda taluka of Jalgaon district is one such village where, though FRC was formed successfully, the committee did not allow approval of any individual or CFR claims. LSM has appealed against the FRC to the state monitoring committee. The issue is being followed up in order to initiate the claiming process again.

Nandurbar is the only district in Maharashtra that has Forest Villages, 73 in all. The district has the responsibility to settle the forest rights of these villages and those of the tribal villages displaced or ousted due to the Sardar Sarovar project. There are no *nistar* records of these villages. Although the villages are recognized as ‘forest villages’, the SDLC has turned down all CFR claims citing absence of records as the reason. The Lok Sangharsh Morcha has helped file 126 CFR claims, but the government has not taken any action.

Other districts

Yavatmal: The civil society groups from Jivati, Karegaon, Ghatanji, and Jhari-jamni talukas have helped 55 villages file CFR claims. The groups have followed up with the SDO. However, the latter has rejected all 55 claims and has informed the claimants. Reasons for rejection have not been stated.

Bhandara: Activists of the district have reported that the DLC in general and the Collector and the DCF (Deputy Conservator of Forests) in particular do not hold any meetings. There is no push or motivation from DLC to SDLC for speedy implementation of the FRA.

Pune: The report on the district shows that more than 100 CFR claims have been filed *Prima facie* these appear to be for development activities under Section 3 (2). Local organizations such as Shashwat and Kalpavriksh have facilitated filing of 5 claims. Most of these were filed in 2011. Nothing however, has moved on the ground since then. The exact status of these claims is not known. There has been no training or sensitization at taluka level and people are largely unaware of CFR provisions in the Act. After the state level meeting in Mumbai in January 2013 local organizations have come together and lobbied for taking the process forward. SDO Khed has agreed to organize training programmes on CFRs at three talukas in the month of May 2013. Shashwat has organized a *padyatra* in April to create awareness about CFRs in a few talukas in the district.

7.3 Issues requiring special attention

7.3.1 Implementation in Protected Areas⁵²

In many protected areas, claims filed have been pending for over two years. This is despite clarifications by MoTA about applicability of FRA in PAs through the 24 May 2012 letter and the 12 July 2012 guidelines. Using the same, the Tribal Development Department needs to send letters to all the district collectors to clarify this and ask them to ensure that claims are being filed, received and processed from protected areas in the state. Before such a process is carried out, no relocation, settlement of rights or diversion of forests for any non-forestry purpose should be allowed.

⁵² Inputs by Purnima form KHOJ, Melghat, and Vijay Dethe, Paryavaran Mitra, Chandrapur

CFR in Melghat Tiger Reserve 8-10 claims under Sec 3(1)(b-m) were filed in Melghat in 2011 in the villages of Dharni and Chikhaldara Block. These remain pending at SDLC level, at Dharni, because the FD staff on the committee has expressed that, being located within the Critical Tiger Habitat, these villages cannot be given Community Forest Rights. Resettlement is being carried out without bothering with the process prescribed under the FRA which is in gross violation of the FRA.

CFR in Tadoba Andhari Tiger Reserve The Gram Sabha of Wadala village, Taluka Bhadravati of Chandrapur District had filed a CFR claim on 29th January 2013 over 620.321 ha forest land. This village lies in the buffer zone of Tadoba Andhari Tiger Reserve. It was rejected by the SDLC on 5th March 2013. The reasons for rejection, given in writing, were:

- Wadala village lies in on the border of Tadoba Andhari Tiger reserve in the buffer zone.
- The area claimed under CFR rights falls under the Tadoba Andhari Tiger Reserve and any human activity in the area is liable to irreversibly affect wildlife, exacerbate man-animal conflict (since cattle grazing will be carried out and the area claimed under CFR has many natural water bodies which host wild animal populations, especially carnivores, all year round) and interfere with the main objective of the Tiger Reserve i.e. to protect and conserve the tiger and its habitat.

The village intends to file an appeal against this rejection since it is based on flawed grounds - the assertion that CFRs can not be granted in Tiger Reserves. Additionally, SDLC is supposed to forward the claims to DLC with their comments, rather than rejecting claims outright.

Conservation Projects in the Jalgaon district: In the Jalgaon district there are conservation proposals in the pipeline, but no consultations have been carried out with the local villagers and little information is available about these proposals.

A critical wildlife habitat was proposed around Yaval wildlife sanctuary in Jalgaon district in 1012. This was shelved after objections were raised in a meeting that the declaration of a CWH while the guidelines for creating them have not been finalized by the MoEF and MoTA would be illegal. The area however is still under consideration by way of a Tiger Corridor as this is believed to be the western-most stretch of the Tiger habitat along the Satpura range. No process towards this end has started on the ground. A two km radius around Yaval Wildlife Sanctuary has been declared an Ecologically Sensitive Area (ESA), which did not follow any process of on the ground consultation either.

In the meanwhile, Yaval Wildlife Sanctuary continues to report conflicts ranging from hardships on the local community because of the government blocking the only access road for the villages located within the sanctuary, to heavy smuggling of timber from across the border with Madhya Pradesh (MP), to the settlement of new villages (by people from MP) within and around the sanctuary area. In a discussion jointly organized by Kalpavriksh and LSM with the local villagers, people suggested that one of the best solutions towards local as well as wildlife needs would be to claims rights under FRA, settle land records, and start Gram Sabha-based processes aimed at local development and conservation.

7.3.2 CFRs for PTGs and Pastoral communities

Pastoralists in Maharashtra (with *Dhangars* in Solapur, Satara, Ahmednagar and Pune districts) have not been able to file any claims, largely due to the fact that there is low awareness among them and they are seldom consulted about village development plans as they do not reside in their home villages for much of the year. In the protected area of Rehkuri extension in Ahmednagar district, pastoralist groups have been told that the land they purchased in the 1980's now falls under the protected area.

So far, no claims have been filed by any of the pastoralist communities and particularly vulnerable tribal groups in Maharashtra. According to groups working on these issues, how these claims can be filed remains quite unclear. The 2012 amendment rules mandate the district collectors to facilitate the process, while the participants at the state consultation explained that there are a number of issues that need to be understood and resolved before implementation can begin, and called for a state-level meeting on PTGs and nomadic and pastoralist communities.

7.3.3 Joint Forest Management/Eco-development and CFR

The state government issued a revised GR on Joint Forest Management/eco-development in December 2011, and the Forest Department has been actively implementing the schemes in various parts of the state. As has been the experience with JFM in the past, in some areas the scheme is working well while in others it has not been very successful. The Forest Department has however been criticized by civil society groups for pushing for JFM (which is provided through merely a circular) instead of helping implement provisions for CFRs (which are provided through an Act and thus have a stronger legal basis). Many argue that implementation of JFM (and financial allocation for it) will distract local communities from understanding their legal empowerment and responsibilities towards the forest resources.

A number of experiences are already emerging from across the state, in some cases JFM committees are not willing to file for CFR claims, in others CFR claims have been filed and granted even in villages which have had JFM schemes implemented, but there is now confusion about roles and responsibilities of committees formed under JFM and those required to be formed under Rule 4(1)(e) of FRA. There are also examples where JFM has been implemented but villagers are also filing for CFR and considering the Gram Sabha to be the committee for both. Many civil society groups have argued that the Forest Department needs to change its outlook and facilitate the process of granting CFRs. Funds available with the department must be used for planning for management of the forest area by the Forest Rights Committees formed under FRA. The current practice of involving a forest official in the decision making process needs to be discontinued and whether or not CFR claims have been filed; the nature of the committee however should be the same as described in Rule 4(1)(e) of FRA, with the ultimate vision that CFRs will be eventually claimed.

7.3.4 NTFP governance

Many groups have also been active in the state in working towards development of a post-recognition management strategy. The debate related to extraction and marketing of bamboo in Mendha-Lekha resulted in paving the way for a number of circulars and orders facilitating bamboo extraction and sale by the CFR villages.

Similarly, groups such as VNCS and others have been pressing for a Gram Sabha process for extraction and sale of *tendu patta*. In 2013, 74 villages of Gadchiroli and 30 villages in Gondia district with CFR titles were taken off the list of *tendu* auction units of the state forest department. As a result of negotiations with relevant state agencies, the state government, as per a letter from the forest secretary of the state to the Principle Chief Conservator of Forests (PCCF) dated 8th April 2013, has taken a decision that all forest areas where CFRs have been granted will be excluded from the forest department's *tendu* auction notice. Such villages would, however, be free to opt for the government agents, if they chose to do so.

Experiences of both kind – those where processes are well-monitored and those where concerns have been raised about the process (including those regarding misuse by vested interests) - have already started emerging in the state. What needs to be worked out now is a state-level NTFP policy which will ensure security to the villagers while at the same time providing for a monitoring mechanism. Such a policy needs to be based on extensive consultations at village, taluka, district and state levels. The issue is whether forest governance can be looked at through a new lens, with communities as the primary decision makers and the forest department providing the necessary support and facilitation.

7.4 Suggested Actions

Many of the above issues were discussed in great detail during a state level consultation organised in January 2013⁵³. A number of suggestions for better implementation of CFRs in the state came from that gathering and these are listed below:

7.4.1 Areas where CFR implementation is progressing slowly

Part I: Currently it appears that the environment in these regions is not conducive for filing claims. There is an urgent need to create such an environment, which can be done by taking the following actions:

- All relevant documents including new rules/laws/circulars need to be translated into Marathi and distributed widely to all relevant stake-holders.
- Training programmes need to be organised at the SDLC level, DLC level and state level; these should include people's representatives and NGOs working in that area.
- Forest officials at the level of beats and ranges also need to be trained.
- An awareness campaign of the kind that was carried out through advertisements and jingles for individual rights needs to be launched for CFRs under section 3(1) and 3(2), making a clear distinction between the two kinds of rights.
- A detailed circular, clearly specifying what the process of filing, verifying and granting claims should be, needs to be sent to all SDLCs and DLCs.

Part II: Actual implementation to be started on the ground.

- Filing of the claims should also be taken up in a mission mode but ensuring that all processes are being followed.
- Two *talukas* could be taken up in each district as a model for following correct process which would then be extended to all other villages in the district.
- All government departments should make available all relevant documents to the concerned communities, which can be used as evidence (as has been done in Gadchiroli district) while filing the claims.
- Circumstantial and oral evidence should be accepted in areas where finding evidence is becoming a problem. This kind of evidence currently has low acceptance, the level of acceptance needs to be raised to bring it at par with documentary evidence like receipts for fine paid.
- Pro-activeness from the government agencies is welcome, but such pro-activeness should be shown, keeping in mind the appropriate processes to be followed and should have “achieving social justice” at the core of the actions.

⁵³ A state level workshop on ‘Community Forest Rights (CFRs) under the Forest Rights Act, 2006: Status, Trends and Way Ahead’ was organised by Tata Institute of Social Sciences (TISS) with support from Kalpavriksh, Vidarbha Livelihoods Forum (VNCS and Khoj Melghat) and Vrikshamitra, at YMCA, Colaba, Mumbai, on the 21st and 22nd of January 2013.

- Every district should set up a grievance redressal committee, to meet regularly and to take stock of the status of implementation and complaints if any.
- Tribal Development Department should upload on their website (on the model of MREGS) all the information about each CFR application in every district, and its progress.
- JFM should be kept out of the ambit of implementation of the FRA, including the filing of claims for CFRs. It should not be mandatory to constitute JFM committees to be able to file claims.
- Likewise, JFM areas should not be automatically converted to CFRs; a separate process for filing CFR claims based on the traditional boundary of the village should be initiated afresh.
- In protected areas where settlement of rights under Wildlife (Protection) Act is being carried out, such as in Yaval Wildlife Sanctuary in Jalgaon district, this process should immediately be stopped and the implementation of FRA should be carried out instead.
- A state level meeting on PTGs and nomadic and pastoralist communities needs to be organised, the participants of which should include members of these communities in order to help understand the best way to move ahead.
- There is already a circular from the Ministry of Tribal Affairs to clarify that the FRA is as applicable in PAs as it is in any other forest area. There needs to be a clear letter from the Tribal Development Department to all district collectors to clarify this, and to ask them to ensure that claims from protected areas in the state are being filed, received and processed. Until this process is complete, no relocation, settlement of rights or diversion of forests for any non-forestry purpose should be carried out.

7.4.2 Areas where CFR titles have already been granted

- There should be a common title format for CFRs all over the state (This has also been provided for in the 2012 amendment rules). Titles which have already been granted should be re-issued for the sake of uniformity. Many conditional CFR titles were issued (this has not been provided for in the Act and is hence illegal). Such titles should also be re-issued following the new common format and without any conditions being stipulated.
- Records of rights should be appropriately corrected in official records, communicated to all relevant departments and a copy sent to the concerned Gram Sabhas.
- A letter from the Tribal Development Department should be sent to all concerned departments which are likely to promote village level committees, such as State Biodiversity Board and JFM /eco-development implementing agencies, stating that in all villages where CFRs have been granted, the Gram Sabha shall decide whether or not a new committee needs to be formed, or if the committee to be constituted under section 5 of the FRA and its rule 4(e) for wildlife management will be in charge of implementation of all other programmes. If the Gram Sabha so decides it can dismiss all previously-constituted committees without affecting the implementation of the concerned programme.
- All Gram Sabhas shall prepare a set of rules and regulations for sustainable harvest, management and conservation and protection of wildlife in their CFR forests. Such rules and regulations can be sent to various concerned departments for their comments and for ensuring a uniformity at the district level and for parity with other land related Acts. The final decision on rules and regulations will remain with the Gram Sabha.
- All existing management plans, working plans and leases operating in CFR forests should be suspended with immediate effect. Each Gram Sabha shall prepare a management plan for its Community Forest Resource. The Gram Sabha may send the working plan (like its rules and regulations) for comments to all relevant departments. The final decision on the working plan will be taken by the Gram Sabha.

- All departments will extend any technical, advisory and financial help to the Gram Sabha, if the Gram Sabha so desires, and asks the department in writing. A letter to this effect should be sent by the Nodal Agency and SLMC to all departments.
- The Tribal Development Department should provide Rs. 5 lakh to each of the CFR villages for their management and conservation strategy and planning, including creation of community biodiversity registers. This funding should be made available after the Gram Sabha has established a set of rules and regulations, opened a bank account, established a system for accounting, and sent a letter to the District Collector informing him about the same. The funds should be released by the latter within two months of having received this letter.
- A detailed letter (as per a standard format prepared at the state level) should be sent by the District Collectors to all the Gram Sabhas which have received CFR titles in their districts, to follow the above steps in order to receive the grants for management and conservation strategy and plan.
- The state government should soon come up with a support policy and price or NTFP including bamboo and *tendu patta* to ensure that contractors and other market elements do not take advantage of the situation where Gram Sabhas have received CFR titles, have NTFP for sale but have little support or experience to do so. The Tribal Department should also prepare detailed information on floating tenders, and marketing forest produce. This information should be sent to all CFR villages by the District Collector.
- The Gram Sabha or any committee set up by the Gram Sabha should be the implementing body for MREGS. A gram panchayat functionary *gram sevak* or an equivalent should be appointed for every CFR Gram Sabha, who would also be present in the *meetings where* rules are drafted, management strategies are decided, and budgets are made, to help the Gram Sabha in maintaining the records. The Gram Sabha will make payments to the concerned person, resources for which will be provided to the Gram Sabha through convergence of different welfare schemes.

8.1 State Overview

Odisha is located on the east coast of the country and constitutes 4.74% area of the country. The recorded forest area of Odisha is 58,136 km² which is 37.34% of its geographical area. Of the total forest area in Odisha, the Reserved Forests constitute 45.29%, Protected Forests 26.70% and Un-classed Forest constitute 28.01%. Odisha has two National Parks, 18 Wildlife Sanctuaries and two tiger reserves covering 9,110.78 sq. km which constitutes 5.85% of the State's geographical area.

Forests play a vital role in life and livelihood of the majority of the population as it provides different services to the local population, particularly the marginal section in terms of non-timber forest-produce, fodder, medicine and timber for various needs. There are about 29,302 forest fringe villages in the state and 40% of the total population depends on forests for livelihoods.

Odisha has its own identity for self-initiated Community Forest Management (CFM) where villages or groups of villages protect and manage forests according to their own sets of rules and regulation but without any legal recognition. CFR recognition according to FRA-2006 has the potential of paving the way for legal recognition of existing CFM practices and promoting good practices of CFM in other areas. This can lead to better conservation of the biodiversity and habitat and enhance livelihoods of marginalized communities.

8.2 Status of CFR Implementation in Odisha: official data

According to the Status Report published by the Scheduled Caste and Scheduled Tribe Development Department, Govt. of Odisha, as on 31st January, 2013, 4,524 CFR claims have been filed at Gram Sabhas, out of which 3,685 claims have been submitted to SDLC. 3,019 nos. of claims have been approved by SDLC and 2,908 claims have been approved by DLC for titles, out of which 972 titles have been distributed covering 57,794.47 acres of forest land. A comparison of the official figures for 31-01-2013 with those of 31-01-2012 reveal a significant increase in number of claims filed and titles issued (see table 2).

Table 8: District Wise Status of Community Claims and Titles in Odisha

Sl. No	Name of the District	No. of Claims Received by FRC	No. of Claims Approved by GS and sent to SDLC	No. of Claims Approved by SDLC and sent to DLC	No. of Claims Approved by DLC for Title	No. of Titles Distributed	Area Covered (in Acres)
1	Cuttack	29	25	13	13	2	20.93
2	Mayurbhanj	45	45	45	44	44	19,418.16
3	Nayagarh	91	2	2	2	2	500.00
4	Dhenkanal	72	68	64	60	9	105.84
5	Keonjhar	382	361	343	343	126	7,436.65
6	Sambalpur	343	189	78	78	26	325.15

7	Gajapati	41	41	41	41	28	4,442.75
8	Ganjam	62	52	34	24	24	129.78
9	Kalahandi	184	177	177	172	158	20545.70
10	Kandhamal	2,351	2,115	1,907	1,907	66	4725.97
11	Koraput	330	99	99	58	58	2,780.87
12	Malkangiri	131	117	79	73	69	2,292.84
13	Nawapara	35	35	20	20	5	32.98
14	Nawarangpur	84	74	32	32	32	1,075.62
15	Rayagada	28	28	28	28	21	470.55
Total		4,208	3,428	2,962	2,895	670	64303.79

Table 9: CFR implementation in Odisha – A Comparative Table (From 31.03.2012 to 31.03.2013)

	Status of CFR as on 31.01.2012	Status of CFR as on 31.03.2013	Improvement in Implementation Status of CFR in One year
No. of claims received by FRCs	3,239	5,392	2,153
No. of claims verified by FRC and	2,321	4,525	2,204
No. of claims approved by the	1,442	3,689	2,243
No. of claims approved by SDLC	991	3,019	2,028
No. of claims approved by DLC	902	2,908	2,006
No. of titles distributed under section 3.1	558	1,046	414

After the enactment of Amendment to Rules, 2012, Government of Odisha has taken some proactive steps and issued circulars to expedite the process of recognition of Community forest rights in the state as follows:

1. The Commissioner-cum-secretary of the SC & ST Development Department of Odisha issued a circular⁵⁴ dated 26th November, 2012 addressing all Collectors to take action in the field areas for the effective implementation of FRA after the enactment of Amendment to Rules, 2012.
2. Forest & Environment Department of Govt. of Odisha has issued a notification on 28th December, 2012, on transportation of Bamboo where it is mentioned that the Transit Permit will be issued by the Gram Sabha for the year 2012 – 13 and for which permit books will be supplied by the Forest Department free of cost.
3. There has been development of Information, Education and Communication (IEC) materials for popularizing the provisions of the FRA after enactment of Amendment to Rules, 2012.
4. There have been attempts at capacity building of WEOs by extending phase-wise training programme on the process of Community Forest Rights.

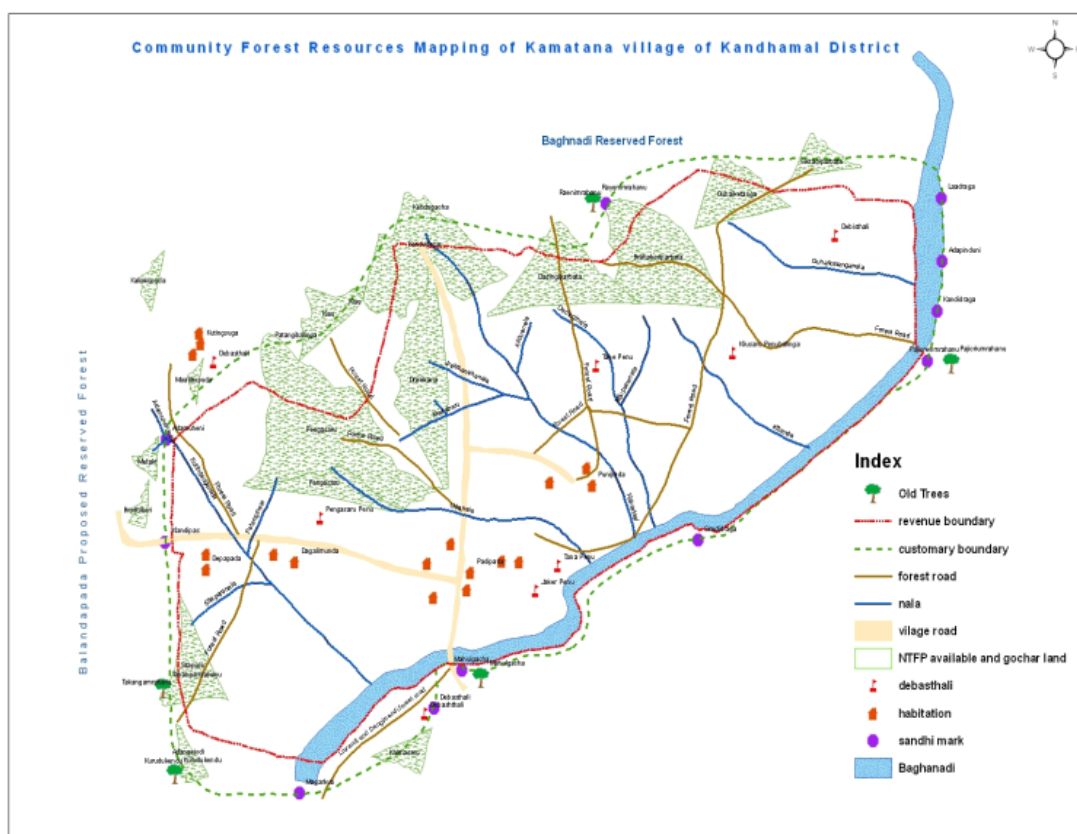
8.3 CFR situation in Odisha: based on field level experiences

⁵⁴ An online copy of the circular can be accessed from http://www.fra.org.in/New/CFR_nov12.pdf

CFR Recognition in Kandhamal District⁵⁵

Kandhamal district consists of forested landscapes interspersed with habitations and hills. As per 2001 Census, 51.96% of the total population is tribal. 71% of the total land area of the district is forested. Kandhamal has spearheaded the process of CFR recognition in the state with support from Vasundhara. A local people’s organization called Jungle Adhikaar Surakhya Mancha (JASM) has facilitated the process of claim filing. A practical user friendly model for community forest resources was prepared in Kamatana village of Krandiballi GP. The CFR claim was filled on 4th March, 2011 and the rights recognized on 04.12.12. The PRI representatives, local leaders and village youths of the FRCs have played significant role in steering this process. This endeavour has been replicated in the entire district using a model devised by Vasundhara. The model has been well taken by the district administration and, barring some exceptions where a more site specific treatment was required, most of the communities have followed the model. Until the time of preparation of this report around 1906 CFR claims have been approved by the District Level committee with an estimated area of 1,43,035 acres of forest land.

Figure 14 Map of Community Forest Resource of Kamatana village of Kandhamal District (prepared by Dr. Sricharan Behera and Jitendra Sahoo)



CFR Recognition over Water Bodies in Keonjhar District

In Keonjhar, community rights of fisherfolk for fishing over an area of 4,867.50 acres of Salandi reservoir in Hadgarh reserve forest have been recognized. However it appears that the process of

⁵⁵ Based on Vasundhara, 2012, The Scheduled Tribes And Other Traditional Forest Dwellers (Recognition Of Forest Rights) Act 2006; Implementation Status And Good Practices In Odisha, Vasundhara 2012, Study Commissioned by SCs & STs Research and Training Institute (SCSTRTI), Bhubaneswar, Govt of Odisha

issuing of these CFR titles has been followed in a top-down bureaucratic fashion, with the Forest Department rather than the local communities playing the key role in the rights recognition process, and with little significance being given to Gram Sabha. Also, the title has incorrectly been issued in the name of President of Hadgarh Primary Fishermen Cooperative Society, instead of the Gram Sabha. (See detailed case study for further information)

Transit Permit to Jamguda Gram Sabha for Sale of NTFPs

After Mendha Lekha village in Maharashtra, Jamuguda village in the remote rural backyard of Kalahandi district became the second village in India to get official permission for selling bamboo in March.2013. This village of Kalahandi caught media attention when the Union Tribal Affairs minister visited the village and formally handed over transit permit to the local tribals, thus facilitating exercise of forest rights over over bamboo as an NTFP. These passes will help assert the right of the tribal community to harvest and sell bamboo without any imposed external interventions. The whole initiative and facilitation was carried out by the Odisha Jungle Manch with facilitation of numerous supporting organisations including Vasundhara.

Recognition of CFRs in Rayagada

Six CFR titles have been recognized in Turiguda Gram Panchayat of Chandrapur Block in Rayagada District. However, there are some critical issues relating to the titles which are being followed up on with the district administration.

- Instead of issuing titles in the name of Gram Sabha, these have been issued to the President of FRC and the villagers.
- Only the category of land is reflected in the title but the nature of the rights have not been mentioned in the title.

Communities use FRA in Budhikhamari to Stall Eco-Tourism Project⁵⁶

There has been an incidence of local opposition to the Forest Department's ecotourism project initiated on 26th January 2012 in a forest area which has been claimed as Community Forest Resource by four villages (Bagdiha, Goudadiha, Mahulia & Swarupvilla) through claims filed in 2010 and 2011. Approximately 200 families critically depend on the forest for their livelihoods and have been engaged in community forest protection initiatives since 1985. Under the ecotourism project⁵⁷, there were plans to fence off the whole forest with only one gate for entry, construct jogging tracks, staff quarters, deer park, etc. The four villages felt that the project will adversely affect the existing community forest rights of the villagers and came to a common platform with the facilitation by Bishnu Purty and Lalit Mohan Mahanta and help of the Budhikhamari Community Forest Protection Committee. They decided to assert their CFR rights to challenge the FD's authority over their CFR. Since then, they have organized strong protests against the project in different forms asserting their authority under Section 5 of the FRA and have succeeded in stopping the project.

Diversion of Forest Land and CFRs in Niyamgiri (Vedanta Case)

In an affidavit filed in the Supreme Court in the on-going Vedanta case, the Union Ministry of Environment and Forests (MoEF) reiterated that mining in Niyamgiri hills, sacred to the Dongaria Kondh tribal group of the area in Odisha's Kalahandi district cannot be allowed⁵⁸. Yet

⁵⁶ Vasundhara 2012, Budhikhamari Community Forest Protection & violation of rights by Ecotourism Project Mayurbhanj, Odisha, sponsored by Rights and Resources Initiative

⁵⁷ Details available at <http://www.newstrackindia.com/newsdetails/2012/06/03/73--Woman-power-Tribals-stall-eco-tourism-project-in-Odisha.html>

⁵⁸ www.downtoearth.org.in/content/centre-set-dilute-tribal-rights-over-forestland

it seems like the document has sought to dilute the requirement of the Gram Sabha consent for projects under the Forest Rights Act (FRA), and it is apprehended that this move may open the gates for other such projects elsewhere.

FRA states that forest dwellers cannot be resettled from forestland unless their traditional rights over such land are recognized, and a 2009 order of MoEF had made it mandatory for all the projects which require forestland diversion to obtain consent of the affected Gram Sabhas.

The affidavit filed in the apex court on February 15 2012, however, says that such consent will be required only in cases where “displacement of large number of people” is involved and which “affect the quality of life of the people”. The ministry said that for the projects for which diversion of such forest is “unavoidable” where rights of the forest dwellers are recognized, the rights may be “circumscribed or extinguished using the eminent domain of the state”. The order of Supreme Court in this matter, dated April 18 made it clear that the religious and cultural rights of the tribals need to be protected, claims on CFRs to be filed before the Gram Sabhas in Rayagada and Kalahandi districts, and Gram Sabhas to be conducted to decide on the issue. As per the court’s order, the final decision will need to be taken by the MoTA giving due consideration to the records of the Gram Sabha meetings.

Initiatives in Deogarh District for Conversion of Forest Villages into Revenue Villages

Like other parts of the state, in Deogarh also FRCs were constituted only in revenue villages. After subsequent advocacy by the people’s organizations working in Deogarh, and most importantly after the letter from the Special Secretary of ST SC Development Department of Govt. of Odisha regarding constitution of FRC in the 12 forest hamlets in the district identified in 2001 census, the collector and the Sub-collector gave directions for the formation of FRC in these forest hamlets also. Accordingly, three separate FRCs have been formed; one at Kamilibandh for three forest hamlets (Kamalibandh, Angarpada and Ambahuli), another at Amabadihudi just after the order of the sub collector and one at the forest hamlet of Badataila along with the forest hamlet/village Bachhatihudi. After the formation of FRC, individual forest rights claims have been filed.

Deogarh Zilla Bhumihin Sangrami Parishad, a District level federation of landless people, has been actively involved with the facilitation of FRA. In course of its facilitation, volunteers came with the information that there has been some forest, un-surveyed and old habitations in Deogarh where no right settlements have taken place. A series of special training programmes were organized for these communities where apart from the SDLC members, independent activists and resource persons from Vasundhara also participated. Subsequently resource mapping was undertaken in these forests, un-surveyed and old habitations.

Upon instructions from the SDLC, the forest dept. along with personnel from revenue department facilitated mapping and demarcation of the Community Forest Resource. The process took two months to complete and included details of the village road, burial place, places of worship, grazing and pastureland. The process of conversion of forest village into revenue village is supposed to be based on this demarcation. During the verification and boundary demarcation process some volunteers of Bhumihin Sangrami Parishad were also present.

Recently, the entire community received recognition over individual claims but nothing has yet been done on the conversion into revenue village. The people’s organization involved in the issue has time and again brought this before the appropriate authority but no concrete steps have been taken on that front.

At the same time, the fact that CFR demarcation for the three FRCs constituted in these forest villages has been officially completed and verified by the Forest Department and the SDLC is in

itself a positive step that needs to be acknowledged. Towards this, the efforts of the villagers, the local volunteers of Bhumihiin Sangrami Parishad and support of the administration have played a contributing role.

PTGs and Habitat Rights in Odisha⁵⁹

Odisha has the distinction of 13 Particularly Vulnerable Tribal Groups (which is the highest number for any single state in the entire country) namely Bonda, Chuktia Bhunjia, Didayee, Dongria Kondh, Hill Kharia, Mankirdia, Birhor, Juang, Kutia Kondh, Lanjia Soura, Lodha, Paudi Bhuyan and Soura. These groups are found in specific compact areas spread over 12 districts of the state.

Odisha is the only state that has taken some pro-active steps on PVTGs and issued a number of circulars focusing on their rights, and entrusted the responsibility on the Micro-Project officers & Project Administrators of ITDAs⁶⁰. Even then no progress has taken place in this regard.

With the 2012 Amendment to FRA Rules, there has been some visible change in the approach of the district administration of certain districts such as Keonjhar. The SC & ST Development department of the Govt. of Odisha issued instructions to concerned district collectors to give special emphasis to the PVTG issue with special reference to habitat rights.

Issues

1. Claims on habitat rights have been pending for verification and recognition in Juang Pirha of Keonjhar because of lack of clarity on the issue of PVTG and habitat right. (See detailed case study on Juangs of Keonjhar for more information)
2. Diversion is proposed in areas coming under customary habitats of PVTGs where claims on Habitat rights and CFR are pending for verification and recognition as they fall within areas of Dongria Kondh in Kalahandi and Paudi Bhuyans in Keonjhar, Angul and Sundargarh; and in Bargarh district, CFR claims in Gandhamardan hills have not been received by local authorities.
3. Only the villages covered under Micro-Projects are considered as PVTG villages, but not the entire habitation or villages of PVTGs, which in most cases goes far beyond the present administrative arrangement of “Micro Project” areas.
4. There is a lack of clarity on how to deal with non-forest land covered by habitat area. Even if the preamble of the Act talks about the traditional access forest area, the implementing agencies such as DLCs and SDLCs are of the opinion that only forest land should come under the purview of habitat, and hence, almost no progress is being observed on ground.

Recommendations

- Detailed procedural guideline should be issued for determination and claim of habitat rights for DLC/SDLC.

⁵⁹ Based on Vasundhara, 2012, PTG And Forest Rights Act; Case Studies on Juang Pirha of Keonjhar, Chuktia Bhunjia of Nuapada & Paudi Bhuyans of Deogarh District of Odisha.

⁶⁰ A detailed and comprehensive review of the tribal peoples' problem was taken up on the eve of the Fifth Five Year Plan period. The main objective of ITDA is socio-economic development of tribal communities through income generating schemes allied with Infrastructure Development programmes and protection of the tribal communities against exploitation. The ITDA project areas are generally contiguous areas of the size of a Tehsil or Block or more in which the ST population is 50% or more of the total. Due to the demographic profile of the tribal people in these regions, however, the ITDPs in Assam, Karnataka, Tamil Nadu, and West Bengal may be smaller or not contiguous. Andhra Pradesh and Odisha have opted for an Agency model under the Registration of Societies Act and the ITDPs there are known as ITD Agencies (ITDAs).

- Consultation with PVTGs, a process required under amendment rules, should be undertaken for 13 PVTGs in the state. These consultations should be organized in co-ordination with SC & ST Research and Training Institute, local and state / national level? NGOs, SDLC and Micro Project officials.
- Non-forest land coming under PVTG habitat areas are also to be considered and recognized as intended in FRA and wherever required, PESA and other state laws should be used for the purpose.
- Rights recognized in PVTG areas need to be reviewed and reinitiated as these processes have not taken into consideration their traditionally accessed areas.
- Training and orientation should be started afresh for micro-project officials and district level officials.
- Involvement of traditional institutions and leadership of the PVTGs for filing claims? and verification of Habitat Rights must be ensured by providing govt orders to that effect.
- The State Government should constitute an expert committee at SLMC, DLC and SDLC levels, comprising of senior research officers from Tribal research institute, Anthropologists or Sociologists, Professors from reputed universities and institutions, and representatives of civil society groups working on PVTGs of that area, which would assist the SLMC, DLC and SDLC in realising the rights as mentioned under Section 3(1) of the Act, especially for nomadic, pastoralist communities, pre-agricultural communities, and PVTGs.

FRA in Simlipal Tiger Reserve⁶¹

In the year 2009 Khadia Mankirdia Development Agency (KMDA) pushed the process for recognition of rights in PTG micro project⁶² areas within the core/ buffer area⁶³ of Simlipal Tiger Reserve where a local civil society organization named Centre for Regional Education Forest and Tourist Development Agency (CREFTDA) along with Vasundhara played an active role organizing a series of training programs and workshops on awareness on FRA implementation & FRA process in Simlipal area. PRI members and Community people at village and GP Level participated.

The Mankirdias of Simlipal Tiger Reserve received recognition of CFRs in 2010. The process of recognition was pushed by KMDA, along with CREFTDA and Vasundhara. Although CFR titles have been given, the process of recognition of rights did not adhere to the procedures laid down by the Act of facilitating and encouraging a bottom-up process. Additionally, not much has changed in the post-recognition scenario. In no case, these people have been involved in any kind of decision making process or made aware of their rights over forest resources

⁶¹ Vasundhara 2012, The Scheduled Tribes And Other Traditional Forest Dwellers (Recognition Of Forest Rights) Act 2006; Implementation Status And Good Practices In Odisha, Study Commissioned by SCs & STs Research and Training Institute (SCSTRTI), Bhubaneswar, Govt of Odisha

⁶² Government of India has recognized 13 Primitive Tribes in Odisha. They reside in parts of 20 blocks spread over 12 districts. For total development of these PTGs, 17 Micro Projects are operating in the State. PTG families are being assisted by Micro Projects under various schemes like agriculture, horticulture, soil conservation and animal husbandry, etc. besides, basic infrastructure facilities, like drinking water, education, health and link roads are being provided in the Micro Project areas with focused attention. The PTGs of Odisha are localized groups, which are found in specific compact areas spread over 12 districts of the state namely Kalahandi, Nuapada, Sundargarh, Deogarh, Angul, Mayurbhanj, Keonjhar, Malkangiri, Rayagada, Kandhamal, Gajapati and Ganjam.

⁶³Under the Wildlife (Protection) Act, the state governments have to notify the list of core and buffer areas of tiger reserves in their territory. Core zone is where tigers usually rest, reside, feed and breed. Buffer zone is the areas that lie in the periphery of the core zone. Buffer zones constitute the fringe areas i.e outside boundary of tiger reserves up to 10 km.

8.4 A few detailed case studies on CFRs

8.4.1 Process of Claims on Habitat Rights of Juangs in Keonjhar

The Juangs of Keonjhar: The Juang is a primitive tribal group inhabiting only the Keonjhar and Dhenkanal districts in Odisha. Gonasika in Juang Pirh in Keonjhar is considered as the original seat of the Juang and here they are known as the *Thania* group. It is said that in course of time, some of them had migrated to Dhenkanal where they were known as the *Bhagudia* group.

Juang Pirha (Customary Habitat of the Community): Juangs are divided into **Pirhas**, traditional administrative units set up by the Juangs for the management and control over the area. The entire Juang Pirha consists of 6 Sub Pirhas. Though this table indicates that Junags live in 68 villages, the Juang Development Agency considers the Juang Pirha to consist of 35 villages only. The total Juang population in Keonjhar is 8,281 (Survey by Juang Development Agency, Bansapal, Keonjhar in 2007)

There is much documentary evidence to prove that the Pirha as a unit and a larger piece of landscape and habitat had its own institutional framework for regulation, conservation and marketing of such produce. “Juang Jeevan Sangeeta” written by Jagabandhu Padhi in the year 1956 gives an account which confirms that there was no notion of individual property right amongst the Juangs. All the *Taild*⁶⁴, *Goda*⁶⁵ and even the homestead land belonged to the community. An example is the book by Dr. Jagannath Prasad Das published in 2010, a historical sketch on Odisha called “Desa, Kaala Paatra”, where the author has stressed how the erstwhile Pirhas had their own traditional territorial jurisdiction and how the erstwhile king of Keonjhar Garh used to send special arbitrator in case of boundary disputes between different Pirhas. The *Kaabulyat Survey* of 1959 reemphasizes the fact that the Rayats of Pirhas would be the sole administrators of their own Pirha, and the rates of their agricultural and forest produce was being determined by them. There was also a system called Nirukh which can well be equated with modern day “Regulated Market Price” and according to it “whatever produce the Pirha shall accrue shall be sole property of the Pirha and they can sell it out of their own.”

Traditional Governance of Pirha areas and Management of Forests: Pirha has its own traditional management and conservation ethos whereby the *Pradhan*, *Pirha Sardar* and *Karji* defined the *Pirha* law with regard to the management of the *Pirha* forest resources. Within a village, trees having timber value are not subject to any rules or regulations regarding their exploitation. However, no *Juang* would cut fruit bearing trees, be it in *swidden* or in the forest. No plant of totemic nature is also destroyed by the conferred clan members for fear of ancestral retribution, although some transgression of this rule has started happening in recent times. Cutting of such trees, traditionally prohibited, would be fined in cash or in kind, generally rice. A distinction is visible between a Juang-owned *swidden* plot and those of the caste neighbours (*Gauda and Pano*) in that, there are generally no trees (dead or alive) in the *swiddens* of the latter.

Table 10: Sub-pirhas of the Juang Pirha

Sub-Pirhas	No. of villages
Satkhand Pirha	7
Jharkhand Pirha	18
Kathua Pirha	22
Hunda Pirha	5
Charigarh Pirha	4
Rebana Pirha	12
Total	68

Source- A detailed survey carried out by a people's organization called “Aadibasi Chetana Mandal” located in Gonasika of Bansapal Block of Keonjhar district.

⁶⁴ Taila land are generally low land and mostly good, fertile and productive lands.

⁶⁵ Goda lands are less fertile and productive in comparison to the Tail Land.

Processes Adopted In Habitat Claim Making: In 2010 Adivasi Chetana Mandal, a local level people's organization in the Juang area, started awareness programmes on forest rights with support from Vasundhara. Its Secretary Veerabara Nayak took proactive steps to organise the Juangs and brought the traditional Pirha Sardars and Pirha level institutions to a common platform whereby continuous engagement could be ensured on governance issues. Vasundhara provided active support in the form of tracing the history of Juangs, the survey and settlement process and the traditional land and forest governance practices.

The Mukhya Sardar called the Pirha *Mahasabha* meeting of all the Sardar, Pradhans, Dehuris and Nayaks of all the villages of the Juang Pirha. In the 1st Mahasabha meeting, the Mukhya Sardar and the village chiefs discussed the Forest Rights Act and rights provided under it, especially community forest rights, which include the right of community tenure of habitat. In this meeting they prepared a list of various community rights and their extent. Here extent refers to spatial dimensions of the rights or the levels of enjoyment of such rights. This exercise was taken up for determining other community rights such as grazing, use of water bodies, protection and conservation of forest, access to biodiversity and intellectual property and traditional knowledge relating to biodiversity and cultural diversity, and other customary rights such as podu cultivation, cultural practices relating to forest and biodiversity.

Each village of the Pirha (whether revenue, hamlets, or unsurveyed forest villages) convened its separate Gram Sabha meeting, called by the traditional leader of the village (Pradhan, Dehuri). The Gram Sabha discussed the Forest Rights Act and the provisions thereof. As per the norms of the Forest Rights Act, the Gram Sabha elected the Forest Rights Committee (consisting of 10 - 15 members, where not less than 1/3rd of its members were ST and 1/3rd were women).

In the subsequent meetings all the villagers (men and women, village elders, user groups, etc.) sat together, and determined the nature and extent of each of the community rights and decided on the customary boundary of their own village. The following aspects were taken into consideration during the determination:

- Customary practices
- Traditional resource use pattern
- Cultural linkage (listing out in details the sacred areas, places of worship, festivals, functions, etc.)
- Livelihood dependence/occupation in forest land (identification of places of collection/use/occupation along with seasonality)
- Social structure/institutions

After all the villages of the Pirha had finalized and consolidated their map, a Pirha level meeting was convened by the Sardar of the Pirha. Pradhans, Dehuris, Naiks, elders, women representatives, Panchayat Secretary and Secretary and President of Forest Rights Committee for each village falling within the Pirha participated in the meeting. Individual village maps with clearly demarcated boundaries, and showing extent and nature of resource use were presented at the Pirha level meeting. At the Pirha level, too, a similar exercise of identification of the Pirha's customary boundary was undertaken based on the above mentioned aspects. To avoid any conflict in future the overlapping areas of resource use by more than one village were clearly spelt out and the rules and regulations for the use and management of the resources were decided and finalized with the consent of the villagers, village chiefs and the Sardar of the Pirha.

The Pirha map was finalized by the Sardar (traditional Pirha leader) with the consent of the Pradhans, Dehuris and all elders/important members of the villages of the Pirha where Panchayat Secretary and FRC Secretary had taken an active part. The Sardar and the village

leaders prepared the detailed management plan for sustainable use, regeneration and conservation of the resources falling within their traditional territorial unit and which they use and depend upon in different seasons for their livelihood and other socio-cultural purposes. The claims have been submitted to SDLC in 2011 but no step has yet been taken over that.

The way ahead: In spite of there being circulars⁶⁶ issued, focusing on the rights of PTGs and entrusting the responsibility to the micro Project officials, no Pirha Sardars, Pradhans, etc. have been accorded a place in the SDLC and DLC in Keonjhar.

When contacted, the SDLC members, sub-Collector & PA, ITDA expressed ambiguity on whether PVTG habitat can extend to non-forest areas within the customary boundaries. As FRA does not normally govern such areas how can the decision to that effect be made by the SDLC?

Since the 2012 FRA rules amendment and related state circular on 26 November 2012, the district administration of Keonjhar has shown a keen interest in this issue. It has come out with a broad plan and started consulting different stake-holders for a possible streamlining, hopefully with an intention to recognize the habitat rights.

The indigenous knowledge-base of the Juang with relation to forest resource management is under severe strain owing to their growing external contact. The contact has shaken the constructive resource use orientation of the Juang and they have ceased to care for the preservation of the forests, largely due to an ongoing erosion of indigenous knowledge, and mounting pressures of external agencies on these resources.

8.4.2 Community Fishing Rights over Salandi Reservoir within Hadgarh Wildlife Sanctuary of Keonjhar District

River Salandi is a major tributary of Baitarani river in the state of Odisha. Salandi reservoir is built at site of the dam built over the river.

Hadagarh sanctuary in the district of Keonjhar and Mayurbhanj is close to Hadagarh reservoir of Salandi dam. Also located near the Salandi dam is the Hadagarh village which is a revenue village coming under Hadgarh Gram Panchayat of Hatadihi block of Anandpur sub-division in Keonjhar district. It consists of 11 Wards and 9 hamlets.

The Primary Fishermen cooperative was registered in the year 1976 under the Society Act, 1860s and it is a union of fishermen who have been dependent on fishing in Salandi Reservoir. This cooperative is used to catching and marketing fish. Though Hadagarh Wildlife Sanctuary was notified in 1978, Forest Department imposed restriction on fish catching in 2005 – 2006. But after the enactment of Forest Rights Act, the then Sarpanch and the Forest department officials initiated the CFR claim making process of Primary Fishermen Cooperative and finally a title has been issued to the Primary Fishermen Cooperative Society for collection and marketing of fish from the Salandi reservoir.

Community Rights recognition process of Primary Fishermen Cooperative Society (PFCS):

There is no clear-cut information available with the community regarding the claim making process. According to the Secretary of PFCS, the process was initiated by the then Sarpanch with assistance of Forest Department Officials. Communities only knew about it after that they got rights (title) over Salandi reservoir for fishing through their cooperative which they have been doing for many years where there were some restrictions of Forest Department.

are⁶⁶ http://www.fra.org.in/New/CFR_nov12.pdf,
<http://www.fra.org.in/Circular%20regarding%20implementation%20of%20FRA%20in%20PTG%20areas.pdf>

According to the report of PA ITDA, Keonjhar, the PFCS has 542 members of which 432 are from Scheduled Tribes and rest are from other communities. As evident from the Gram Sabha Resolution dated 3/02/2010, this co-operative consists of members of 8 villages and the Gram Sabha was presided upon by the President of PFCS Mr. Kalandi Nayak and attended by ward members, and dignitaries of the locality. In the resolution they have requested the District Collector to recognize their fishing rights.

From the report of ITDA, Keonjhar it is observed that on the same day (03/02/ 2010) Gram Sabha and SDLC has passed their respective resolutions. Within a week from the day of SDLC's resolution, DLC has approved the resolution citing that no objection received⁶⁷. Clearly it is evident that there has been little role of Gram Sabha in this process and the recognition of rights has taken place without going through the actual CFR process.

Post claims scenario

The Fishing Rights which have been recognized cover 4876.5 acres of water body in Hadgarh Reserve Forest land. The forest land is a part of the Hadgarh Wildlife Sanctuary.

The title is issued in name of president, Hadagarh Primary fisherman Cooperative Society under Hadagarh Gram Sabha for Pisciculture and Collection over 4867 Acre of forest land in Hadagarh Reserve forest.

This right is subject to the following conditions clearly listed in the title:

1. Protection of Forest, Wildlife and Bio-diversity.
2. Protection of Watershed area, water source and other eco – sensitive areas.
3. Protection to habitat of Scheduled Tribes and Other Traditional Forest Dwellers habitat and to ensure protection to cultural and natural heritages from destructive practices.
4. To respect the Gram Sabha resolution on regulation of use of community forest resources and to stop such activities that affects forest, wildlife and Biodiversity.

It is observed that Primary Fishermen Cooperative Society has been managed according to the State Reservoir Fishery Policy and there is no change in the process of management of the cooperative after the recognition of their rights.

8.5 Key Issues relating to CFR Implementation in Odisha

In spite of several circulars issued by SC & ST Development Department, there is lack of clarity on the implementation of Community Forest Rights at the district administration level. Some of the key issues were identified during various State Level Workshops as well as National Level workshop focusing on CFR where participants from different NGOs, Civil society groups, bureaucrats / officials and community representatives participated.

Following are some of the critical areas of concern that need to be addressed urgently. These emerged from the National Level workshop⁶⁸ as well as the State Level Workshop⁶⁹:

1. There has been no uniformity in understanding the critical issues by the district level authorities both in SDLCs and DLCs. In most of the districts in Odisha, Community forest resources and customary boundaries have not been identified properly.

⁶⁷ As mentioned in the order sheet of DLC Chairman dated 11/02/2010

⁶⁸ Learning workshop on Community Forest Rights organized by Vasundhara & Kalpavriksh from 2nd – 4th Nov, 2012

⁶⁹ State Level Consultation on issues of implementation of Forest Rights Act at Bhubaneswar from 29th – 31st Oct, 2012

2. CFR rights, particularly rights over minor forest produce (MFP), are not being recognized in protected areas like Badrama Wild life Sanctuary in Sambalpur and Similipal Tiger Reserve in Mayurbhanj districts of Odisha.
3. Exercise of community forest rights and MFP rights by Gram Sabha is constrained by lack of provision of subsidiary support mechanisms like transit and marketing.
4. Different plans and programmes for harvesting, plantation, ecotourism and other related activities are being implemented by Forest Department in forest areas claimed/recognized as CFR without the consent of Gram Sabhas.
5. Without conducting actual Gram Sabha meetings and without taking the consent of Gram Sabha, decisions on claims are being taken at the SDLC and DLC level and titles distributed accordingly, which is in totally violation of the Act.
6. There is lack of clarity with govt. officials about the recognition of community forest rights. For example, in the Annual Board meeting of Deogarh Zilla Jungle Manch, the district collector of Deogarh district openly declared that community rights cannot be recognized in the reserve forest area which is a clear violation of the Act.
7. Community rights over water bodies given to Primary Fishermen Cooperative under Forest Rights Act is a process of top down approach where the communities are not aware of the process of recognition and their role and responsibility to manage their resources. Though community rights of Fishermen's cooperative have been recognized under FRA, the management tasks remain with the Forest Department.
8. Non-recognition of Community forest rights in villages with a mixed population of STs and OTFDs is a very old issue in Nayagarh district where CFR titles have been issued only to purely ST villages.
9. The actual claims submitted have not been reflected in the status report of SC & ST development department
10. Management plan of Forest department is still in force in the CFR recognized area.
11. There is a lack of understanding at DLC/SDLC level on 'Habitat Rights' and procedure for claim and recognition. There are also violations related to forest diversion in PTG area without prior recognition of rights (See section on PTGs and habit rights in Odisha for details).

9.1 Introduction

Rajasthan stretches across two of India's major physiographic divisions, namely the Great Plains (Indian Desert) and the Central Highlands. The state has 33 districts, 249 blocks with 41,353 villages. Demographically, the state has little over 17% of total population belonging to the Scheduled Castes and over 12% belonging to the Scheduled Tribes. As per 2001 census, Rajasthan has 7.10 lakh scheduled tribe population. 94.6% of which resides in rural areas.

In Rajasthan, forest cover extends over 9.54% of total geographic area as compared to the country's average of 20.6%. Nearly 11 districts of western Rajasthan are under desert ecosystem. 38% of forests are reserved forests where no human activity is permitted, while 53% are categorized as protected forests within which rights holders are entitled to exercise their rights to meet the demand for major and minor-forest produce. Unclassified forest area constitutes about 8 per cent of the total forest cover. There are 5 National Parks and 23 Wildlife Sanctuaries covering an area of 0.96million hectare which constitute 2.80% of TGA of the state. Rajasthan has 2 Tiger Reserves namely, Ranthambore and Sariska.

9.2 The Status of Community Forest Rights (CFR)

The nodal agency for CFR claims in Rajasthan is Social Justice and Empowerment and Tribal Area Development Authority.

Procedural impediments during the initial years of FRA (2008-2010)

According to the field report of Joint MoEF-MoTA Committee dated August 2010, communities have been discouraged from filing CFRs through procedural impediments in the initial years of FRA. One such example is the June 2008 circular issued by the Tribal Welfare Department which prescribed a one month deadline for all claims in violation of the Forest Rights Act. After people's protests, a clarification was issued that the Act's provisions will be duly followed. A second example is the 11 page *kulak* (claim form set) for filing claims, requiring claimants to not only fill in the forms prescribed by the FRA Rules, but also to get endorsements from a number of officials such as the *patwari, tehsildar, district authorities, forester and RFO, and president and secretary of Gram Sabha* which is totally illegal. In January 2009, following mass demonstrations, the government withdrew the 11 page proforma, but then later said that it would continue but officials would be required to fill the form instead of people.

Present status of CFR implementation

As per the implementation status report of the state department of December 2012, in Rajasthan:

- DLCs have been formed for only 18 districts out of 33 districts in the state.
- In two districts Ajmer and Churu, the DLCs have been formed but no SDLC have been formed. SDLC in all the blocks of the other 16 districts have been formed and they are functional.
- the claims have been received from 14 districts only. The process to constitute the FRC in rest of the districts is yet to be started.
- 53 CFRs have been recognised.

There is little information available about the nature of those 53 recognised CFRs and it has been speculated that these have been wrongly recorded as CFRs and are in fact rights to public utilities under Section 3(2).

With facilitation from Seva Mandir and Van Utthan Samitis, 87 claims for CFRs (under section 3(1)) have been filed in Udaipur district (or are in process of being filed). 61 claims have been filed at Jhadol block and are at the Sub-Divisional Level Committee (SDLC); 11 claims in Kherwada Block and 8 claims filed at the Gogunda block are with the Panchayat Samiti; 8 claims from the Kotra block are at the village levels. FES in Udaipur has facilitated 10 CFR claims but there has been no action and response on the status of these. LPPS has facilitated the process of CFR claims Section 3(1) for one village, Latara, in Pali district focusing on grazing rights of the *Raika* community to forests within the Kumbhalgarh Wildlife Sanctuary (see box).

However there has been little response on these claims, except rejections or keeping them pending.

Rajasthan State Action Plan on FRA

As per information received from the Tribal Department regarding the state action plan, presented on 3 December 2012 during the MoTA-UNDP Consultation on FRA, the state government has recently launched FRA advocacy as a part of “Prashasan Gaon ke Sangh Abhiyan” and have prepared an action plan. As a part of this, for training and awareness, have prepared a booklet of circulars and guidelines and are in process of developing a one-pager in local dialect. 15 august 2013 has been kept as the deadline for getting detailed information on claims filed and titles issued. (issues of concern with the state action plan are discussed in the subsequent section)

Implementation in Protected Areas

1. The pastoralist groups of Raikas and Rabaris in Kumbhalgarh Wildlife Sanctuary face restrictions on grazing. In Pali District falling within the KWS, there has been no recognition of community rights in Desuri, Bali and Kharchi Tehsils. There has been a process initiated by the government to convert the sanctuary into a national park. In February 2012, the District Collector had asked for any objections and claims before establishing the National Park. Through LPPS, 43 villages or Gram panchayats had sent a letter requesting recognition of their Forest Rights. No reply has been received. 4 villages have filed claims in 2012. While CFR claim for 1 village (Latara) has been rejected citing inadequate evidence as the reason, response on claims for other villages three are still pending (see Box 6).

Table 11: CFR information for districts of Rajasthan

District of Rajasthan	CFR titles	CFR area (in hectare)
Banswara	41	12.03
Pratapgarh	-	-
Dungarpur	10	5.03
Udaipur	-	-
Sirohi	-	-
Rajsamand	-	-
Baran	3	0.47
Pali	-	-
Bhilwara	3	152.25
S. M.	-	-
Kota	-	-
Jhalawad	-	-
Bundi	-	-
Jaipur	-	-
Total	57	169.78

Box 6: CFR claims rejected in a village of Kumbhalgarh wildlife Sanctuary

The village of Latara in Pali district of Rajasthan falls under Kumbhalgarh wildlife Sanctuary. The village has a predominant population of Raikas. During the princely state era, Latara was listed as a *Khalsa* village i.e. village where land revenue is collected directly by the princely state. The villagers had few records to prove their residence for 75 years. None of the State Departments were aware of any such documents in existence. Getting to talk to the Collector and access to documents of the Land Records Dept was a challenging task for the village and the supporting organisations.

The villagers of Latara prepared a rudimentary map marking all areas traditionally visited by them with their local names and ascertaining boundaries between them and forests belonging to other villages. The Raika Biodiversity Protocol was used as evidence. Apart from that, in the claim file, oral evidence/affidavits by village elders had been provided. In addition, the *Rav*, the traditional record keeper of the Raika community also had provided evidence. Records from first and second settlements of rights had also been included as evidence from three generations. The Forest and revenue departments had been invited throughout the process, but forest department never came, although the *patwari* helped and came for *bhautik satyapan* (ground verification).

With facilitation from LPPS, the village has filed CFR claims in March 2012. On 19 January 2013, the Community Forest Rights application of the village Latada which had been submitted in March 2012 was **rejected** by the Sub-district Officer during a "*Prashasan gaon ki aur*" visit on the grounds that it did not comply with the requirements of the new amendment. He said that "you will have to apply through new amendment and we will give training to the Village Forest Community. You need to provide evidence before 1930."

Information provided by Hanuwant Singh of LPPS and Tilottama Sarkar



Figure 15 Villagers of Umri (present in core of Sariska Tiger Reserve) who have been relocated to Maujpur Roonth, in a discussion on problems being faced after relocation (Vinay Nair)

2. There are continued efforts to relocate villagers from Sariska Tiger Reserve and Ranthambore Tiger Reserve. In Sariska, the FRA has not been implemented hence this relocation is in clear violation of the law. The villages in sariska are predominantly occupied by OTFD gujjar pastoralists. Relocated villages are made to transition into agriculture from pastoralism as the predominant occupation. Additionally, many villages in the buffer zone of the sanctuary have been recently notified under the Critical Tiger Habitat leading to a freezing of any transfer of land. It is alleged that the whole process of CTH and buffer notification for the tiger reserve is being carried out without the legally mandated Gram Sabha consultations.
3. In Phulwari Ki Nal Sanctuary 13 CFR claims have been pending for over a year.
4. Desert national Park (DNP) has been declared in the desert districts of Barmenr and Jaisalmer. It covers all those areas where village commons of *Orans* and *Gochar* lands were existing. Around 90 villages come under DNP. These lands have been fenced off restricting access. Neither people are aware of the FRA 2006, nor has any attempt been done so far to make people aware.
5. In the Keladevi sanctuary, there are plans for relocation of 43 villages and notification of the area as a tiger reserve.
6. It has also been observed (as in Sariska Tiger Reserve of Rajasthan) that the relocation in practice simply involves including a monetary 'settlement of rights' as 30% of the relocation package instead of recognition of rights and completion of the FRA processes. Such a practice is in violation of FRA.

9.3 Key Issues in CFR recognition in Rajasthan

Problems with the State Action Plan presented in December 2012

Following are some issues of concern regarding the Rajasthan action plan on FRA:

- The plan says that 'in all those districts where claims have not been received yet Collectors have been directed by SLMC to submit "no claim pending" certificates. This is dangerous as it equates no claims filed to no eligible right holders. The absence of claims could be because of many reasons ranging from lack of awareness of the process to non-formation of an SDLC where the claim could be submitted.
- According to the plan, 'all the District Collectors have been directed to ensure to constitute FRC's by Gram Sabhas before the Commencement of *Prashashan Gaon ke Sang Abhiyan* (PGSA) January 13.' This again is against the bottom-up process which needs to be present for formation of FRCs. DCs can not constitute FRCs, they can only provide a fair level of understanding and awareness about the process and its significance.
- The plan does not understand habitat rights and confuses it with habitation rights. There also seems to be lack of understanding within the plan on pastoralist and nomadic rights since according to the plan all such rights have already been recognised, which is far from the on-ground reality.
- Additionally, with its present state of barely any progress on CFR recognition, the plan declares 'Time bound Action Plan has been envisaged. It is to start with Prashashan Gaon ke Sang Abhiyan in January, 2013. It is proposed to be finished by August, 2013.' It further goes on to say 'Final declaration by all Gram Sabhas about setting all claims by Aug.2013.' Such a rushed process could be counter-productive to the letter and spirit of FRA and could lead to rightson paper without much understanding or empowerment.

Rejection of claims

While in some cases, the claims have been summarily rejected citing ‘inadequate evidence’ as the reason, in other cases the claims have been pending for years, with no action or response on their status.

This has even been admitted in the state action plan, presented on December 3, 2012 during the MoTA-UNDP Consultation on FRA, ‘Claims have been rejected for incorrect reasons, often on the basis of official records (such as encroacher lists of forest department) alone, all forms of evidence listed in the rules to the act are admissible. No claims accompanied by admissible evidence should be rejected on the basis of official records alone.’

Insufficient on-ground facilitation for Community Forest Resource management

Even though there have been various provisions under different schemes or Acts for decision making powers with village on natural resource management, they have usually not been implemented. For example, the issue of management of upper reaches of watershed areas through village micro plans under MGNREGA remains unresolved. Even in schedule V areas where Gram Sabhas are theoretically empowered by PESA, there is little execution of community plans to manage “minor water bodies”. The same has happened in the case of “Participatory Irrigation Management” where such rights and powers have always been ignored by the state. The tradition continues with FRA, where even though theoretically community rights of forest management are recognised, but there is little encouragement or facilitation on the ground in that direction. The inclination and involvement of communities in the process has largely depended upon the understanding of the provisions and uses from the forests.

Also reportedly, a circular issued at the Sub Divisional Magistrate level on 14th February 2013 in Rajasthan gives unjustified requirements for documents to be submitted with claims (including domicile certificate and certificate proving ‘occupation’ for three generations, and FSO judgement describing settlement of rights). There is also an improper identification of ‘family’ including in the SDM circular where married sons of a father are included with him as one single family⁷⁰.

History of NTFP monopoly: Legally, FRA and PESA both respond radically by granting the ownership of minor forest produce to the Gram Sabha along with Panchayat at appropriate level. Till date the NTFP collection and marketing rights are with the RAJAS Sangh (Rajasthan Janjati shetriya Vikas Sahkari Sangh) which has a monopoly over NTFP. The villagers still require transit pass (TP) for carrying any NTFP. In absence of awareness about the full significance and potential of CFR provisions and having being treated as culprits of deforestation, people are reluctant towards claiming CFRs on NTFPs.

The issue of Governance: At present, the forest department deals with the management issue in terms of working plans. Through VFPMCs, micro plans are being made for soil moisture conservation (SMC) works, aided natural regeneration aspect, plantation and silviculture operations as prime activities. The present official participation of communities in forest management is limited to undertaking a few activities as part of VFPMCs based on FD’s instructions.

Under CFR, the village community has to take the responsibility of protection, conservation and management of the community forest resource. The issue of who are the primary decision makers in forest governance becomes important. It becomes important that the respective roles of forest department and community should be more clearly defined.

⁷⁰ As mentioned in the report of the State level Consultation in Rajasthan organized in Jaipur by CFRLA members on 26th and 27th February, 2013

The issue of boundary wall construction: Construction of boundary wall by Forest Department in many forest block is leading to curtailment of access to forest resource for villages. Upon objections being raised by the villagers, the official response is that the work is being carried out under MGNREGA. In a recent letter to Chief Ministers of many states on 4 April 2013, the Ministry of tribal affairs has raised this issue as a violation of FRA.

Neglect of rights of PTGS

Saharia tribe identified as Primitive Tribal Groups (found in Shahbad and Kishanganj blocks of Baran district) are one of the most marginalized and vulnerable groups in the state. The Government has in the past provided them with Housing facility with agricultural fields and attempted to settle them in the revenue villages. The families which have been allotted the land, have mortgaged it. The Saharia families have become either agricultural or other labour and are still dependent on forest produce (chirongi, gum, honey etc.). There are still pending issues related to their resettlement. Total 3310 claims for individual rights were put under FRA out of which only 661 claims have been settled. Not a single CFR was either claimed or recognised yet. 1412 claims were rejected and maximum pending claims (1237) are lying in Baran district. Therefore, regular monitoring is required especially in the case of Saharias to ensure their equal rights under CFR as well as Individual claims.

Rights of pastoralists

Conflicts over grazing lands between nomadic pastoralists and settled communities have been increasing. In Udaipur, villagers of Jhali Kagua village of Jhamar Kotra Panchayat, a tense situation of conflict arose when local villagers blocked routes on realising that pastoralists were accessing for seasonal grazing a forest patch which had been customarily used by the local villages alone.

At the same time, pastoralists are also facing restrictions on grazing from the forest department in protected areas.

Lack of forest department support in furnishing required documents

Since the area claimed under CFR often ends up being a big stretch of forest area, especially for pastoralists, no one knows the khasra (demarcation made by the Revenue Department on land, numbering each plot of land) numbers of these stretches better than the Forest Department. The Patwari is usually not aware of the details of land that falls under the jurisdiction of the Forest Department. In such a case, the absence/non-cooperation of the Forest Department (which is the situation in most cases) in the process of claiming rights is liable to hinder the delivery of such rights.

Rights and disputed claims on unsettled lands

The Kotra Block of Udaipur district has three forest blocks as Kotra (15535.39 ha), Devla (24762.14 ha) and Kukavas (36931.91 ha). Here the forest lands are of two types: territorial forest and Wild life sanctuary (The Phulwari ki Naal). In Kotra Block, the issue of unsettled land between forest department and Revenue department has yet to be finalized. There are still some areas where people are living and they have yet to claim their individual as well community rights.

Forest diversion

Also, there is an increasing demand for forest diversion under development projects in Rajasthan. The army, air-force and BSF have also captured a large chunk of lands. They have

also dug tube-wells. Such *Gochar* lands have also been allotted for wind-mills. Forest falling on revenue land, as in Banswada district, where there have been claimants, but the land has recently been purchased by a private marble-manufacturing company.

9.4 Concluding remarks

No information could be obtained about details of CFR titles under Section 3(1) in Rajasthan either from the government or the civil society. It is being speculated that it is development rights under section 3(2) of FRA (i.e. public utilities) which have been shown as CFR titles in the official data.

CFR claiming mechanisms are complex and require an external body to strongly assist the locals in claiming rights. There is a continuing lack of clarity in understanding about the details of both the process of claiming rights and its implications at the level of administration and local communities. Diversion of forest land for non forest activities and relocation from tiger reserves is continuing without prior recognition of rights under Forest Rights Act. There is little clarity or support for facilitation of claiming rights of pastoralist to seasonal grazing grounds. It is apprehended that the rushed process and timeline being followed as part of the present Rajasthan action plan for FRA will lead to further procedural violations and a top-down process of claim filing and recognition, with little involvement of concerned forest dependent communities.

D. ISSUES AND RECOMMENDATIONS

This section presents a summary analysis of key issues being faced in implementation of the CFR provision because of legal, institutional and other problems. The discussion on issues is followed by a list of recommendations for consideration by the implementing agencies. This section draws on the lessons from national review and the conducted case studies (annexed), as well as discussions which have taken place during the CFRLA Consultations and on the CFRLA list-serve. It is also based on lessons shared in the MoEF-MoTA Committee report of 2010.



Figure 16 A discussion on community forest rights and relocation in village Kraska of Sariska Tiger Reserve in Rajasthan (Vinay Nair)

CHAPTER 10 PERSISTING ISSUES

Based on inputs from different grass-roots organizations, the detailed studies and various reports, the following issues/lacunae in implementation of the CFR provision have been identified:

10.1 Inadequate awareness, misinterpretations and lack of facilitation:

There is a general lack of in-depth understanding about CFR provisions and the empowerment they bring to local communities in most states. Sometimes, even awareness of the FRA at a rudimentary level is lacking. There is continued misinterpretation and misunderstanding about the provisions of the Act, including the misconception that section 3(2) also deals with community forest rights. In some cases, the amendment to Rules has led to DLCs demanding a fresh round of filing of claims where these have already been filed. This is contrary to the provisions of the very same amendment.

Many state-level nodal agencies have an inadequate understanding of the significance of the CFR, often equating it with individual claims and asking for documentary evidence to prove ownership. In several areas under reserved forests or PAs, the need of forest dwellers for filing CFR claims is being dismissed on the grounds that CFR rights were already given during the settlement period. While in some areas agencies play a proactive role, in many others the district administration is not actively facilitating the process of claim filing by Gram Sabhas or providing supporting documentary evidence. In many areas where Forest Rights Act is being implemented the focus is on individual forest rights, with claim form B (for CFRs) and C (for CFRe) not even being distributed.

In regions like Chhattisgarh, Rajasthan, Dadra Nagar Haveli, Jharkhand and parts of Maharashtra, such as Raigad district, rights under section 3(2) of FRA (i.e. public utilities) are predominantly - and mistakenly - being granted as CFRs. This also appears to be caused by a lack of availability of appropriate information to the claimants as well as government officials, even though the procedure for diversion of forest land for public utilities under section 3(2) is totally different from the one for claiming individual rights.

10.2 Institutional gaps:

The institutional framework necessary to provide support 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. Also, the Gram Sabhas are being held and Forest Rights Committees formed at the Panchayat level instead of hamlet level. The SDLCs and DLCs are not constituted in many areas, thus stalling the process of implementation. Even where these have been formed, in many places, 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 and appeals coming from the community level on issues of implementation and violation of rights.

In some areas of West Bengal, the SDLC committees had formed a lower level committee - a Block Level Task Force committee - to carry out FRA implementation, although such a committee has no existence in the FRA implementation process specified in the FRA Rules. In Himachal Pradesh, although the Tribal Development Department is the official nodal agency, the officials trained for implementation at village level were those of the Revenue and Panchayati Raj Department. In Uttarakhand the nodal agency is "Samaj Kalyan Department" which has inadequate human power to implement the provisions of FRA. In some states, like Chhattisgarh, even though the Tribal Welfare Department is the nodal agency, it is observed that the Forest Department, the Revenue Department and the Panchayati Raj Department are involved in the

implementation the Act. Overall, there is a lack of coordination between the Tribal Department and other concerned departments of Forest and Revenue affairs. In states like Maharashtra and Rajasthan the Forest Department often has an undue influence on decisions on claims. At the Union Ministry level, the coordination needed between MoTA, MoEF, MoRD and other relevant ministries appears to be weak.

There is also a continued lack of clarity on

- applicability of FRA in areas of disputed legal status (neither forest nor revenue land) and forest land outside the purview of Forest Department;
- mechanisms for rights recognition in municipal areas where forest rights exist;
- how to operationalize certain features of the Act, such as rights over seasonal landscapes by nomadic pastoralists, and habitat rights of PTGs.

Recognition of CFRs has not even been initiated yet in 'conflict zones' such as regions of Chhattisgarh where villages have been shifted to camps because of naxalism activities in the region.

10.3 Obstructions in claim filing and cumbersome processes

CFR claiming procedures being enforced in different states can be difficult for communities to follow and therefore the process of claiming requires strong external support and capacity building. Failing availability of such support, the cumbersome procedures may defeat the stated purpose of the Act of correcting the historic injustice meted out to communities located in various forested regions of India.

Prescribing invalid procedures for claim filing: Reports from Chhattisgarh say that the Secretary of the Nodal Agency had initially refused claims containing details of NTFP (Sec 3 (1)), saying that NTFP rights have already been given under PESA. In Rajasthan, an 11 page format (*kulak*) had been distributed and used for filing claims for individual rights and CFRs, requiring signatures of many different officials. Such invalid and cumbersome procedures deter forest dwellers from seeking recognition of their rights. Moreover, artificial conditions are also being imposed on the extent and kind of claims such as recognizing boundaries only under JFM or in *nistar* records, or restricting community claims to NTFP collection.

Problems in collecting evidence: CFR claiming mechanisms are complex and several documents are demanded by officiating agencies. Information has to be derived from various agencies like the Land Records Department, Forest Department, Revenue Department, etc. In many instances, supporting information is not put in the public domain and only becomes available on filing RTIs. There is also little consolidated information available to the claimants regarding the extent of forest area around each village, to guide and support the process of CFR claims.

Deadlines and Timelines: The hurried approach of 'completing' FRA processes under State action plans and the setting up of artificial deadlines or targets, etc. could subvert the process. Placing a deadline for completion of process dealing with all claims in an area / state is resulting in many states such as Rajasthan demanding no-claims-pending certificates from Gram Sabhas and Collectors. Such focus on numbers and showing implementation on paper can be dangerous, and is in total violation of the spirit of the Act.

10.4 Information gap in status of claims

Information regarding status of claims and recognition of CFRs is very scarce. At times there is a discrepancy between the figures reported for CFR claims and titles presented by state level nodal agencies, the figures given in MoTA status reports and the figures reported by civil society.

Even the monthly MoTA status reports on Forest Rights Act have certain lacunae such as:

- The status report gives tabulated information FRA implementation on only 19 states, out of which information on CFR claims is available on 13 states only. States such as Bihar, Himachal Pradesh and Jharkhand continue to show aggregate information on claims on individual and community rights. Kerala and Madhya Pradesh have not provided segregated information on how many of the total titles issued were for CFRs.
- In many cases, figures for claims and titles for public utilities under Section 3(2) are confused with CFRs and reported as ‘community rights’ alongside CFRs under section 3(1).
- There is little information available on most states regarding 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 on 3rd December 2012 on revisions in the reporting format so that detailed and disaggregated information on FRA claims and titles can be provided by state governments. However, the March 2013 report which has been made available after a three-month break in reporting, resumes with the old format showing aggregate information.
- Many states have not given details of the area (in acres) covered by CFR titles distributed.
- There are cases of incongruity in data. For instance, the number of community claims recognised in Karnataka was reported to be 2917 in December 2012, and 2896 in March 2013, implying a reduction in total number of titles issued over time. For Karnataka again, the area under CFR titles was reported to be 8680.31 acres in December 2012, but is no longer given separately in the 2013 report.

By not informing the claimants about acceptance/ rejection of their claims, the nodal agencies can seriously hinder the exercise of rights’ recognition. If no reports on rejection of claims or the reasons for rejection are provided, the process is rendered non-transparent and is highly discouraging for claimants.

10.5 Insufficient attention to certain community rights

Implementing agencies have predominantly focused their attention on individual rights and public utilities under FRA. Among community forest rights, more attention has been focused on the right to grazing and NTFP collection. Administration, civil society as well as forest dwellers have given insufficient or negligible importance to other community rights listed in FRA, such as the right to traditional knowledge and intellectual property rights 3(1)(k) and the right to rehabilitation where communities have been illegally evicted. In many areas, local communities are not being made aware of, or encouraged to claim the right to protect, conserve and manage community forest resources under Section 3(1)(i). More attention also needs to be paid to securing grazing rights for seasonal pastoralists, to habitat rights for PTGs and PACs, and to various cultural and religious rights which have been provided for under section 3(1)(l) as ‘other traditional rights’. The significance, implications and operationalising of these rights needs further discussion and elaboration.

The provision for conversion of forest/unsurveyed villages into revenue villages remains unimplemented in most forest villages, with some notable exceptions in districts like Gadchiroli in Maharashtra, and three forest villages in Uttar Pradesh. The procedure for conversion of forest villages into revenue villages is ambiguous. While the MoTA circular dated 25th February 2008 requires the conversion process to follow the MOEF guidelines issued in 1990, which in turn require compliance procedure under Forest Conservation Act, section 4(7) of FRA promises that forest rights shall be conferred on forest dwellers free of all encumbrances and procedural requirements.

10.6 Ambiguity at the interface of laws

Existing laws, policies and programs particularly on forests and MFPs need to be reviewed in view of the rights recognized under FRA to reduce conflict and to increase complementarities. There remains widespread misunderstanding on the actual scope of the Act. Specifically, there is confusion over how it relates to other acts and legislation (such as the Indian Forest Act, 1927, the Wildlife (Protection) Act, 1972, and the Forest Conservation Act, 1980, as also the Mines and Minerals Bill, and the Land Acquisition Bill (soon to be passed). These Acts have not been amended in accordance with the FRA, causing misleading directives by actors such as the Forest department. In some states, such as Rajasthan, state rules under PESA contradict the FRA. Conflicting policies include the imposition of JFM programmes in states such as Odisha and Maharashtra. There are also serious apprehensions at the community and civil society level regarding the negative impact of the proposed Green India Mission and the REDD mechanisms on forest rights and local governance.

10.7 Communities presently neglected in implementation

10.7.1 Other traditional forest dwellers:

Challenges remain in sensitizing Gram Sabhas that OTFDs are also eligible as claimants under the FRA. There has also been an unfortunate misunderstanding of the Act as a ‘Scheme for tribals’, neglecting the OTFDs in many cases, e.g. in Gujarat, until March 2013, where the tribal department had commenced implementation only in tribal districts, leaving out the other parts like Kachchh where the local communities, including the Maldharis of Banni, have been demanding recognition of their forest rights. There have also been reports of officials commenting that the Act will be implemented for STs first and for OTFDs later on (e.g. in Ranpur in Odisha).

Claims filed by OTFDs are not recognized in most states, partly due to the wrong interpretation that they require to have occupied the land for 3 generations (and not only to have resided in the area for this period, as stipulated by the FRA), and partly due to the difficulty in finding evidence, and partly because oral evidence from elders in such villages is not being accepted as evidence. It is a step in the right direction that in areas like Ranpur block of Odisha community claims by OTFDs have been filed, although they have not yet been considered. Unfortunately, in other states such as Andhra Pradesh and Gujarat, there have been negligible numbers of claims filed by OTFDs. The insistence by officials on the claimants providing documentary evidence for living in the area for 75 years has been the major deterrant in the process.

10.7.2 PTGs

The provisions for community/habitat rights of PTGs, pre-agriculture communities and shifting cultivators, and seasonal access of nomadic and pastoralist communities, have not been implemented so far.

PTG communities have been demanding and claiming their rights in different states. In Odisha habitat rights have been claimed by Juangs in Keonjhar and by Dongria Kondhs in Niyamgiri. Recognizing the fact that the challenges and needs of the PTGs are different from those of the other scheduled tribes, section 3(1)(e) of the Forest Rights Act provides for recognition of “rights, including community tenures of habitat and habitation for particularly vulnerable tribal groups and pre-agricultural communities”. This provision has been made in order to protect the culture, customs and territory of the PTGs and pre-agricultural tribes. The Act defines “habitat” as including the area comprising the customary habitat and such other habitat in reserve forests and protected forests of particularly vulnerable tribal groups and pre-agricultural communities

and other forest dwelling Scheduled Tribes. However, habitat rights have not been recognised anywhere in the country, as of now. A few challenges to their recognition are listed below⁷¹:

- How should the habitat of PTG be identified and defined on the ground, and what would be its implications for governance and management of the area?
- What processes would facilitate PTG claims to their habitat?
- How can habitat right be established where habitat includes patches of land falling under Revenue Department, held by private owners or other categories?
- How should the contours of rights and responsibilities in relation to a PTG habitat be defined?

10.7.3 Nomadic and pastoralist communities

Rights of nomadic and pastoralist communities such as Mankadias in Simlipal, Raikas in Rajasthan, Van Gujjars in Uttarakhand, Maldharis in Gujarat and Gujjars in Rajasthan, among others, also remain unaddressed. There is lack of clarity on the mechanism for claiming rights involving multiple Gram Sabhas especially in the case of nomadic tribes and seasonal pastoralists.

Seasonal use of forest resources, migration and small dispersed populations are features of such populations which create further 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 of protecting customary practices, as access of pastoralists to grazing grounds needs to provide flexibility. For instance the home villages of Dhangars of Maharashtra are usually in the dry Deccan plateau in areas called *maal raams* which are open stretches unsuitable for agriculture but excellent for grazing. Dhangars inhabit these villages until the monsoons end and then they set off on migration in different directions in search of fodder depending on its availability, and return to their home villages only when the monsoons return. An entire habitat for grazing may have to be recognised in such rights. A detailed analysis and procedure on how the rights of migratory pastoralists can be protected and supported is lacking⁷².

10.7.4 Shifting cultivators

There is also the issue of rights to shifting cultivation lands being treated as Individual forest rights over currently cultivated plots as reportedly happened in Tripura and in some regions of Odisha. This is a serious concern because it risks treatment of the rest of the shifting cultivation land under customary use as ‘encroachments’ by the forest department or other Government departments.

10.8 Areas presently neglected in implementation

10.8.1 Protected Areas

Awareness about the CFR provisions under FRA is very poor in most Protected Areas. Despite several communities being involved in protecting forests, their CFR claims are being rejected. Lack of / poor record of recognition of forest rights in protected areas and tiger reserves continue to be a major concern, with relocations and evictions continuing without prior rights recognition. There have also been violations of forest rights in the current process of buffer notifications for tiger reserves. In general there is also a need to revise the approach taken by authorities for the notification of any protected area and for the formulation of management

⁷¹ Input from Pratap Mohanty, Vasundhara

⁷² Input from Nitya Ghotge, ANTHRA, Maharashtra

plans for protected areas to involve communities in the decision making process, for convergence with the FRA.

10.8.2 Rights in municipal areas

Rights on forest land in municipal areas are not being considered under FRA in most states. There was confusion on applicability due to MoTA's circular dated 4th March 2010, which has only very recently been withdrawn (on 29th April 2013).

10.9 Inadequate or inappropriate titles

CFR titles are often issued with inappropriate or illegal names of rights holders such as those of a few villagers or the JFMC, rather than the whole Gram Sabha, or with restrictions and conditions attached, or being restricted in area by artificial boundaries. In many such cases, appeals have been filed, but there has been no response. Restrictions on titles to artificial boundaries rather than customary boundaries (as in some areas of Kalahandi district of Odisha) discourages use of local and traditional institutions for forest management and protection. There are also problems of CFR titles being issued in the name of individual households or for small groups within villages (e.g. 229 CFR titles were issued to 5 villages of West Singhbhum district of Jharkhand). Similarly, titles for fishing rights (for Hadgarh reservoir in Keonjhar district in Odisha) were issued in the name of the President of the Hadgarh Primary Fishing Cooperative Society. There has also been confusion over section 3(2) and 3(1) in granting titles despite these involving completely different processes and implications. Titles are at times handed to villages long after the date of their issue, as in the case of Garbu tola in Godda district of Jharkhand and in Dindori district of Madhya Pradesh.

10.10 Problems with the exercise of rights and management of CFRs post-recognition

Even where titles have been distributed, Gram Sabhas are faced with a number of hurdles in exercising their rights. This is primarily due to the lack of clarity regarding post-recognition governance and management in the contested space of forests.

There is much ambiguity regarding the role of the Forest Department and other government agencies in the management of the community forests where CFRs have been recognized. This is especially relevant in view of continued Forest Department control and operations, even where communities are objecting to these, such as plantations and working plan activities (e.g. in Rajasthan and Odisha, government is collaborating with funders like Japan International Cooperation Agency (JICA) to implement forestry projects under which plantations are carried out on FRA-recognized community lands). The Rules amended in 2012 call for Gram Sabhas to integrate their conservation and biodiversity management plans with working plans of the Forest departments. It is unclear what the process of integration and relationship between the two working plans will be, what the Forest Department's continued role is meant to be (i.e. will it continue to enforce and regulate?) and what specific powers shall rest with the Gram Sabha when it comes to the protection and management rights over forests under CFR. There is continuation of JFM or related programmes, including those adopted through recent resolutions (e.g. in Odisha and Maharashtra) which may not directly hinder FRA but are contradictory to many aspects of community forest governance. There is also a lack of clarity on the specific powers that remain with the Gram Sabha for exercise of the granted rights and for management of Community Forest Resources.

Continued operation of government prerogative in diverting forest lands for non-forest purposes, under the Forest Conservation Act despite the Ministry's own circular of 30th July 2009 (this point is separately dealt with in this note). There is also a lack of convergence between different forest related laws and policies, partly because the government has not issued any clarification on the relative powers, roles, functions, and responsibilities of the Gram Sabha and

the Forest Department, despite clear recommendations in this regard from a number of sources including the Joint MoEF/MoTA Committee and the NAC.

10.11 Conflicting role of Forest Department

While there are instances of Forest officials or state Forest Departments playing a pro-active role in the facilitation of rights, in many cases FD activities are conflicting and contradictory to the assertion and recognition processes for CFRs. There are instances of communities being discouraged from filing CFRs (as in Madurai, Virudhunagar, and Tirunelveli Districts of Tamil Nadu) because forest rights like grazing have been curtailed under simultaneously existing JFM programmes. In Ranchi (Jharkhand), CFR claims are reportedly pending for recognition, because FD officials are objecting to inclusion of rights over Kendu leaves and because of the vast area being claimed.

Interference of FD (in areas within Madhya Pradesh for example) in the claiming process, insisting that claimants (village Gram Sabhas) produce "receipts for fine" issued by the department, or have a record of being "encroachers" as proved by its "eligible encroachers list" (which they put together in 1994) as evidence of their residence in the forest, is contrary to the provisions of the FRA.

10.12 Diversion of forest lands for non-forest purposes

There are instances of forest land diversion on a large scale without compliance to the Forest Rights Act and the MOEF circular of 30th July 2009. Such diversion is being further pushed by the recommendations of the Pulok Chatterjee Committee formed by the PMO for faster clearances, by the recent setting up of the Cabinet Committee on Investments (CCI) and by the MoEF circular dated 5th February 2013 on exemption for linear projects. According to a briefing note prepared by MoEF in March to inform the CCI of its streamlining efforts, "During January-February, 2013, development projects worth over Rs. 45,229 crore were given Environment Clearance by MoEF." The CCI has also cleared the coal ministry's proposal to fast-track implementation of twelve projects worth 36.97 million tonnes of coal production which had been 'stranded due to green clearances'⁷³. Such speeding of clearance becomes problematic because legal procedures for sufficiently acknowledging rights of forest dwellers and for complete environmental impact assessments of such clearances are essential for social and ecological justice.

Cases of violation of FRA in diversion of forest land have been reported from most states. Local communities have protested against forest diversion in cases of POSCO, Vedanta and Renuka dam on the basis of non-compliance with this circular, but clearances given to such projects remain in force. Further, leases and contracts in forests (e.g. for paper mills in Gujarat and Maharashtra) and plantation activities or felling operations by the Forest Department continue without any consultation with or consent of Gram Sabha. Such actions/activities of both state governments and the central government (MoEF) are in serious violation of the law.

10.13 Issue of development and forest resource

Dependence on forests continues to be mainly looked at as something which needs 'weaning off' from. For example, the exemption from Gram Sabha consent for linear projects requiring forest diversion has been described in one news report as a special window for bringing development into the area⁷⁴. Similarly, in Rajasthan certain officials exclaim that villagers living around forests

⁷³http://www.thestatesman.net/index.php?option=com_content&view=article&id=449627&catid=40

⁷⁴ Girija Shivakumar, 2013, 'Centre draws up 9-point action plan to develop Naxal-affected areas', *The Hindu*, April 14 <http://www.thehindu.com/todays-paper/tp-national/centre-draws-up-9point-action-plan-to-develop-naxalaffected-areas/article4615836.ece>

do not need FRA as their financial incomes are sufficient to buy goods from the market rather than requiring legal access to forest resources. Such viewpoints are problematic as these do not sufficiently acknowledge the forest-people's interactions as being a way of life in various social, cultural, economic and ecological dimensions.

CHAPTER 11 RECOMMENDATIONS

Fulfilment of the objectives given in the preamble of FRA is an enormous task fraught with many challenges, as discussed in the previous chapter. Recommendations include both possible solutions for better recognition of rights, and exploring means to create larger changes in the structure of forest governance which will be necessary to support forest dependent communities in the post-recognition scenario.

11.1 For strengthening processes of effective recognition of rights

11.1.1 *At national level*

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 should hold both regional and national consultations in which civil society, other important ministries (MoEF, MoRD and MoPR) and state government agencies are present. State action plans must be reviewed and monitored on a regular basis with civil society involvement. If it is found that action plans violate the FRA, immediate amendments and corrections must take place. It should be ensured that the status reports present information in the revised format of 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. Rather than following artificial process completion deadlines set by the state, it should be clarified under what circumstances the process is "complete" and who can certify it. There should be a National FRA Council (along the lines of the NREGS council), which would 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 Gram Sabha committees and civil society with experience on forest rights issues.

11.1.2 *CFR campaign on mission mode*

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 should include mass awareness programmes using mass media, training sessions for FRC/SDLC/DLC members, production and distribution of simple, accurate material especially a 'how-to' guide or ready reckoner in multiple languages, and distribution of translated claim forms. Training should especially take place at the sub-divisional level with an orientation on the new rules. There should also be a higher budget for training and a consolidated database with all state and district level circulars relevant to FRA implementation.

At the same time, the Act should make itself more 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 claims and forest governance.

The MoTA unit dealing with the FRA should help states to prepare a complete list of villages that have forests adjacent to them (using FSI, Census and other data as a basis, updating it as necessary), and monitor progress on how many of these are being facilitated to make claims and to receive CFR titles.

11.1.3 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, with civil society members, 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 CFRs. These personnel dedicated to FRA implementation can be funded through the tribal sub-plan and other relevant schemes.

The SLMCs should be activated and asked to meet at regular intervals to guide and monitor the process of implementation, and should involve 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 (utilizing also the monitoring results of the proposed National FRA Council).

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

11.1.4 Facilitating Gram Sabhas in claim filing

MoTA should 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 Gram Sabhas, to facilitate CFR claims. Where required, FRCs and Gram Sabhas can be assisted in boundary demarcation and other processes while making the 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) by the different specified procedures to avoid confusion in claim filing. Although a clarification on the equivalence of ward/ mohalla sabhas or pre-existing hamlets in municipal but forested areas to Gram Sabhas has been issued, detailed mechanisms for operationalisation of FRA in municipal forested areas still needs to be thought out for submission of the claims by the mohalla sabha at the SDLC-equivalent level.

11.1.5 CFR 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 any other JFM Committee instead of the Gram Sabha, or mention of conditions within the titles that do not emanate from the FRA itself, or improper and artificial boundaries) should be rectified with immediate effect. Titles should be given on all rights claimed and over full area claimed by Gram Sabha as per customary boundaries.

Additionally, although a clarification has been issued to the effect of registration of the recognized forest rights in the revenue and forest records, there needs to be follow-up on the matter.

11.1.6 Looking into rejections of claims

As per the Joint Committee Report of 2010, instructions should be issued clarifying that rejections cannot happen at the SDLC level, its role is only to examine the claims and make necessary recommendation on the draft record of forest rights to the DLC. The Standing Committee of Social Justice and Empowerment had also instructed MoTA to review rejected

cases on their merit and to undertake at once a sample survey of rejected claims⁷⁵. Information regarding the recommendations made by SDLC needs to be provided to the concerned Gram Sabhas and claimants, to give them an opportunity to appeal as required under the law. Despite clarifications by MoTA on this point, it has seldom happened to date.

11.1.7 Transparency building mechanisms

Regular public consultations and hearings, at various locations accessible to a maximum number of forest-dwelling communities should be held, both to communicate status of implementation and to hear grievances. Minutes of meetings of SDLCs and DLCs and regular updates on status of implementation, should be put into the public domain (on the web, and with hard copies being made available at SDO/tehsildar/forest offices). MoTA needs to work out a process by which it assesses compliance with its recent circulars on CFRs and MFP, perhaps by linking with the proposed National FRA Council. Also it may be worth considering building into FRA framework, a process of social audit similar to that present in MGNREGA to ensure that the process of recognition is monitored by the local communities.

11.2 For addressing areas where FRA is being largely neglected

11.2.1 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.

11.2.2 Protected Areas

Special emphasis needs to be laid by MoTA and MoEF on implementation of the FRA, particularly CFRs, 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 (in some cases over 2 years). MoTA should independently review FRA violations in relation to the tiger reserve notifications (of CTHs/cores and buffers) and bring them to the attention of the Supreme Court in the matter of Ajay Dubey vs NTCA and others.

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 protocol released by the NTCA on relocation needs to be withdrawn, as it does not ensure such implementation and a revised protocol incorporating inputs already provided by civil society groups should be drafted. 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 MoEF, 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 according to the guidelines proposed by Future of Conservation Network which emphasize the need for a knowledge-based, democratic process of identifying and notifying CWHs. 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.

⁷⁵ As provided in the Tenth Report (October 2010) of Standing Committee on Social Justice and Environment. There was a follow-up Eighteenth report (December 2011) by the Committee regarding actions taken by the Ministry based on the Standing Committee's recommendations.

11.2.3 Focusing on nomads, PTGs, shifting cultivators, and women

Particular attention is required for CFR and habitat rights, and to the needs of disadvantaged groups such as PTGs, 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 they find it difficult to make claims all along their route. There will also be a need to accommodate flexibility of routes in the CFRe maps of nomadic pastoralists. In the case of PTGs, recommendations of a national workshop organised by the MoEF/MoTA Jt. Committee in 2010, should be urgently considered by MoTA, especially to issue clarifications to states on the concept of 'habitat'. Rights of PTGs also need to be pro-actively recognized and declared *suo moto* by the Government using the criteria which have been used to declare them as PTGs in the first place as evidence of their forest rights. Additionally there should be a special mechanism for nomadic communities and clear guidelines on PTG habitat rights (what they mean and how it should be reflected in the claims process).

11.2.4 Particular attention to forest villages

Forest villages and unsurveyed villages should be identified and listed, to be given special attention for recognition of forest rights. MoTA should issue a clarification withdrawing the earlier instruction (in the 25th February 2008 circular) which requires the process of conversion of forest villages to revenue villages to follow 1990 guidelines of MoEF under FCA.

11.2.5 Attention to compliance of FRA in forest land diversion

The July 2009 circular of MoEF, on making FRA implementation and Gram Sabha consent compulsory before granting clearance for diversion of forest land, should be expanded to include other forest land uses such as plantations, and be made legally binding through rules under FRA or FCA. MoEF should be urged to withdraw the circular issued on 5th February 2013 exempting diversion for linear projects on forest land from the required Gram Sabha consent.

MoTA should institute an independent investigation into forest diversion, checking the compliance process and taking action in the case of violations. MoTA should ensure that the compliance is monitored through state governments and reported on from time to time. The Forest Advisory Committee in MoEF should also be made responsible to insist on adherence of this procedure in all matters they advise on.

Furthermore, since it is understood that the CFR recognition process in its present form requires external agency support in most cases, Government needs to issue orders to authorities to respect customary rights like *nistar* as *de-facto* rights in areas where the CFR process has not yet been completed.

11.3 Post-recognition of rights scenario of forest governance

At present, after recognition of rights, the situation is still unclear, with particular reference to the following issues⁷⁶:

1. Specific powers of the Gram Sabha (and its FRC) and means of exercising these powers.
2. Enforcement of legal provisions that may not be fully under the Gram Sabha's powers, if any (e.g. would hunting of Schedule 1 species under WLPA be handled by the Gram Sabha, or by the forest department, or by both together in some way?).
3. Relationship of Gram Sabha plans and higher-level working plans or management plans (this is linked to the following point).

⁷⁶ Input from Ashish Kothari, Kalpavriksh

4. Governance changes on a wider scale, including institutional structures and functions at landscape/division/district level (currently we have Forest Development Agencies, these need replacement or significant change in composition), and at state level (both forest and wildlife institutions); this would also determine the way in which working plans/management plans are conceived and formulated, starting from the grassroots and building them up gradually.
5. Fund generation and flow, e.g. legal/policy changes needed to enable funds currently going to JFM committees to go to Gram Sabha committees (if they need funds).
6. Ways in which holders of forest rights can protect not only their CFR (including 'habitat') areas, but also "adjoining catchments area, water sources and other ecologically sensitive areas" (Sec. 5); this is an undefined, untested area.
7. Immediate reforms/steps needed while the above governance changes take place (e.g. the availability/accessibility of existing working plans and management plans to Gram Sabhas in local languages, stoppage of commercial forestry operations that Gram Sabhas object to, etc).
8. Facilitation of Gram Sabhas to build capacity for governance, planning, management, monitoring, etc.

In such a scenario, the following recommendations are being made (based on the Joint MoTA-MoEF Committee 2010 Report and subsequent discussions among CFR-LA members in National Consultations):

11.3.1 Facilitating community forest governance

There is a need for proper participatory base line studies of the forest resources and threats. Gram Sabhas 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 Gram Sabha, and could well be an existing institution that the Gram Sabha 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. There should also be MFP denationalization with a guaranteed Minimum Support Price where necessary as well as clarity on Gram Sabha powers to issue transit permits.

There should be appropriate FRA rules or an amendment to FRA to provide clear cut powers and authority to institutions 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 Gram Sabhas, and a requirement for Gram Sabha consent for external operations in forests should be built into the FRA rules. This should have involvement of women, and a linkage to capacity building schemes (for financial, technical and monitoring activities) needs to be clarified. The relationship of the Gram Sabha and its committee with the forest department needs to be clarified (see below).

11.3.2 Forest governance changes at higher levels

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. This includes the following:

- a) Planning for natural resource management should be at the landscape level but with inclusion of all Gram Sabhas.
- b) The role of forest department needs to undergo gradual transformation from that of regulation and control on forests to that of a service agency which monitors forest

- management and conservation and provides technical guidance and capacity building to local communities for better forest governance.
- c) Forest Development Agencies (FDA) should be replaced by district or landscape level agencies, consisting of Gram Sabha forest committees, the forest dept, the tribal department, other relevant departments, and local civil society organizations; such agencies should have the function to monitor and guide forest/wildlife conservation and enjoyment of CFR rights, facilitate landscape level planning and implementation, and facilitate convergence of various schemes towards these objectives. In addition, there should be Joint Management Committees (with genuine power sharing) discussing and managing issues on protected areas, biosphere reserves and other conservation landscapes.
 - d) At the state level, too, a forest council or committee should be established, with representation from communities, relevant departments, and civil society organizations; functions would be similar to those listed above.

11.3.3 Natural resource funding schemes to be dovetailed with CFRs

A number of programmes that are being run or proposed by MoEF and relevant state departments, relating to natural resources, should be channeled through Gram Sabhas and PRIs. Several programmes are currently being processed or pushed without keeping the Gram Sabha at the centre, 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.

11.3.4 Convergence and consistence in policies of different departments

As also discussed in March 2011 National Workshop on CFRs and stressed by Joint MoEF-MoTA Committee in 2010, a review needs to be carried out 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. Within this exercise, the definition of Gram Sabha 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). Additionally, a review of the National Forest Policy should be conducted, taking 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 programs like MGNREGA, watershed programs for development of the forest land and community resources for conservation and livelihood enhancement; villages with CFRs should be prioritized in these schemes.

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 if they so desire and demand then the Forest department should play a supportive role. 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.

1. Who is eligible for applying for recognition of CFRs?

- a. Forest dwelling Scheduled Tribes in states or areas in states where they are declared as Scheduled Tribes: “forest dwelling Scheduled Tribes” is defined in the Act as ‘the members or community of the Scheduled Tribes who primarily reside in and who depend on the forests or forest lands for bona fide livelihood needs and includes the Scheduled Tribe pastoralist communities’.
- b. Other traditional forest dwellers: “other traditional forest dwellers” means ‘any member or community who has for at least 3 generations prior to 13th December 2005 primarily resided in and who depend on the forest or forest land for bona fide livelihood needs’.

2. On what legal categories of land are CFRs applicable?

CFRs can be conferred on all kinds of “forest land” which is defined under Section 2(d) of FRA as “land of any description falling within any forest area including unclassified forests, undemarcated forests, existing or deemed forests, protected forests, reserved forests, sanctuaries and national parks.”

3. What is the process of recognition of CFRs?

The recognition of CFRs is a three-tiered process going through the Forest Rights Committee (FRC) constituted by the Gram Sabha, Sub Divisional Level Committee (SDLC) and District Level Committee (DLC). The process, detailed in Section 11 and 12 of FRA rules, briefly comprises of the following stages:

- a) The Gram Sabha initiates the process of constituting the FRC which in turn initiates the process of determining the community forest resource (CFRe) of the village. (For information about dispute resolution between different villages on area of CFRe and related issues, see box 1)
- b) The FRC on behalf of the Gram Sabha verifies claims filed using Form B (for CFRs) and C (for CFRe) which have been provided as annexures to FRA rules. Prior intimation regarding the date and time of verification of claims and area of community forest resource needs to be given to Forest and Revenue departments so that they can be present during the process.
- c) The Gram Sabha considers the claims with the findings of the FRC, passes appropriate resolutions and forwards the claims to the SDLC.
- d) The SDLC then forwards the same to the DLC with its recommendations which may then approve or reject the claim.
- e) After final approval the titles are prepared and given to the community/Gram Sabha.

Dispute resolution between multiple Gram Sabhas on CFRe

Once the members of the Gram Sabha have determined the area of their community forest resource, the boundaries of the area are intimated to its adjoining Gram Sabhas. For resolution of disputes between multiple Gram Sabhas, the FRCs of the Gram Sabhas shall hold a joint meeting to discuss the extent of claimed areas and submit the findings to the respective Gram Sabhas.

If the Gram Sabhas are still not able to solve the dispute the Sub-divisional level committee’s intervention is sought for resolution. The sub-divisional level committee calls a meeting of the concerned Gram Sabhas to resolve disputes, and if, within a period

within thirty days of the date of meeting, there is no mutual agreement between the Gram Sabhas, the sub-divisional level committee shall pass a resolution.

(Based on Section 12(3) and 4(7) of FRA rules)

4. How can rights holders protect their Community Forest Rights against violations?

Section 7 of FRA provides that if any authority or officer contravenes the provisions of FRA, it is deemed as an offence and the Gram Sabha can pass a resolution to request the State Level Monitoring Committee to take action against the offender.

While passing such a resolution some procedural requirements need to be kept in mind:

- A notice for the Gram Sabha meeting should be issued in advance, following applicable legal provisions.
- The Gram Sabha meeting should have a quorum of not less than half. At least 1/3rd of the members present should be women.
- The meeting should be held at the level at which Forest Rights Committee was formed.
- The resolution is to be passed by a simple majority of those present and voting. Where resolutions are being passed in respect of claims to forest rights, at least fifty percent of the claimants to forest rights or their representatives need to be present.
- The resolution and signatures should be recorded in the register maintained for such meetings. Additionally, where possible, a video-recording of the meeting should be made.

Additionally, violations should be brought to the notice of the MoTA and where relevant, to the notice of the MoEF.

ANNEXURE 2 Features of the FRA Rules 2012 Amendment

Some features of the new rules that are of direct relevance to CFRs are:

1. Community rights have now been defined. This has resulted in some clarity and reduced incidences of incorrect reporting of claims for public utilities under Section 3(2) as ‘community rights’ which has often led to confusion.
2. With regard to Community Rights on minor forest produce,
 - ‘bona fide livelihood needs’ include ‘sale of surplus produce arising out of exercise of such rights’.
 - ‘disposal of minor forest produce’ includes beyond selling, individual and collective processing, storage, value addition, transportation and so on.
 - transit permits to be issued by the committee constituted under 4(1)e or the person authorized by the Gram Sabha.
 - ‘the Gram Sabha shall approve all decisions of the committee pertaining to issue of transit permits, use of income from sale of produce, or modification of management plans.’
3. With regard to recognition of rights over Community Forest Resource:
 - format for filing claims and for preparing titles for recognition of right to community forest resource under Section 3(1)(i) is provided (the amendment adds claim preparation for Form C in functions of FRC);
 - it is a function of DLC to ensure that a certified copy of the CFRe record and title is provided to the concerned Gram Sabha or the community whose rights are being recognised. The DLC also has to ensure that traditional practices of protection and conservation are recognized and upheld under clauses related to protection, regeneration, conservation and protection of forest resources. Where in a village no community forest rights have been recognized, the Secretary of DLC has to record the reasons for the same.
 - ‘the FRCs are to delineate the customary boundaries of the community forest resource with other members of the Gram Sabha including elders who are versed with such boundaries and customary access; prepare a community forest resource map with recognizable landmarks and substantial evidence, which shall be approved by a resolution of the Gram Sabha passed by a simple majority.’ The community forest resource claim shall be approved by a resolution of the Gram Sabha passed by a simple majority. The amendment to the rules further states that ‘such delineation shall formalize and recognize the powers of the community in access, conservation and sustainable use of community forest resources.’
4. With regard to conservation and management of Community Forest Resource:
 - Gram Sabha will constitute the committee for protection of wildlife, forests and biodiversity and monitor the plan prepared by the committee for sustainable and equitable management of the community forest resource for the benefit of STs and OTFDs.
 - Gram Sabha shall ‘integrate such conservation and management plan with the micro-plans or working plans or management plans of the forest department with such modifications as may be considered necessary by the committee.’ While this is a significant provision, it would have been better if the language had explicitly clarified that it is the Forest Department’s working plans that would need modification, and provided a mechanism for dispute resolution between Gram Sabha and Forest Department on the extent of modification of management plans.

5. Regarding responsibilities of implementation agencies (SLMC, DLC, SDLC and Gram Sabha),
 - state governments are to ensure that every panchayat prepares a list of hamlets, habitats and unsurveyed or unrecorded land, which is not recorded in current forest or revenue land records. Such a list has to be approved within the Gram Sabha, passed on to the sub-divisional committee for consolidation and finalized by the District Level Committee.
 - the SLMC is to meet at least once in three months to monitor the process of verification, recognition and rejection of claims.
 - the SDLC is to ensure that claim forms are easily available,
 - the DLC is to provide Gram Sabhas with a certified title in case of community rights recognition, and On the process of community rights recognition: The DLC is to ensure that PTGs receive habitat rights (as this implementation has been low across all states); that claims are filed by pastoralists and nomadic communities;
6. 'the Forest Rights Committee shall not reopen the forest rights recognized or the process of verification of the claims already initiated before the date of coming into force of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Amendment Rules, 2012.' According to our interpretation this doesn't overrule Gram Sabha's authority to review claims recognised without following prescribed legal procedure.

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GLOSSARY

<i>Gram sevak</i>	Secretary, Gram Sabha
<i>Beedi</i>	A local, cigarette-like tobacco-based product
<i>Tendu patta</i>	Leaves of <i>diospyros melanoxylon</i>
<i>Dhangar</i>	Traditional pastoralist community
<i>Nistar</i>	Customary rights
<i>Nistar patrak</i>	Record of customary rights
<i>Talathi</i>	Land record officer at the sub divisional level
<i>Taluka</i>	Subdivision of a district
<i>Gaon-rabati</i>	Village forests
<i>Devrai</i>	Sacred grove
<i>Pad yatra</i>	A rally marching in protest
<i>Dali land</i>	Land given to a community for their customary use on an annual lease basis
<i>Rab</i>	Burning of biomass in the field to prepare it for cultivation
<i>Jan andolan</i>	People's movement
<i>Jungal</i>	Forest
<i>Jhari</i>	Shrubs
<i>Khand</i>	Region
<i>Raiyats</i>	Subjects
<i>Babar</i>	Outer (jungles)
<i>Bhitar</i>	Inner (jungles)
<i>Khunt</i>	Clan
<i>Katti</i>	Cutting/ clearing
<i>Korkar</i>	Conversion of waste-land into paddy-growing land Or paddy field created from wasteland
<i>Dhuna</i>	Resin of the sal tree
<i>Raiyat</i>	Clan member settled by the original settler
<i>Digar</i>	Service-provider people brought in by the villagers and settled on small parcels of land, such as potters, black-smiths, etc.
<i>Hata</i>	Market
<i>Pallisabha</i>	Gram Sabha in the state of Odisha
<i>Taluk</i>	A sub-division of a district . Also called a tehsil,
<i>Podu</i>	Small village or settlement
<i>Yelle or jaaga</i>	Demarcated areas in the forest which are specific to Soliga clans
<i>Taragu benki</i>	Litter fires
<i>Uppilu</i>	A hemiparasite (Mistletoe)
<i>Amla</i>	Chinese gooseberry, <i>Embluca officinalis</i>
<i>Maal raans</i>	Open fields unsuitable for agriculture but excellent for grazing



Kalpavriksh (KV) is a voluntary group based in India, working on environmental education, research, campaigns, and direct action. It began in 1979, with a students' campaign to save Delhi's Ridge Forest area from encroachments and destruction. Starting with these roots in local action, KV 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 livelihood issues. The organization 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 a more direct action on different initiatives on environment, conservation and climate change policy issues.



Oxfam India, an independent Indian organization, is a member of a global confederation of 17 Oxfams. The Oxfams are rights-based organizations 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 over 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:

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

CFRLA email group : [https:// groups. google.com/forum/#!forum/cfr-la](https://groups.google.com/forum/#!forum/cfr-la)
Website: <http://fra.org.in/new/>