

Key Recommendations of State Level Consultation on Forest Rights Act

"Community Forest Rights: Scope, Challenges & Prospects"

Held at

DRTC, Bhubaneswar

From

1st to 3rd September, 2009



Organized by

VASUNDHARA

**Plot No. A/70, Sahid Nagar,
Bhubaneswar, Orissa**

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Backdrop to Consultation

Odisha has the unique distinction of being one of the few Indian states where thousands of local communities are actively protecting and conserving their forests while also meeting their own livelihood requirements from them. With one third of the state population critically dependent on forest resources, biodiversity conservation has always been an integral part of their socio-cultural life. The ethos of conservation and living harmoniously with nature are ingrained in the life styles and livelihood systems of the local people.

However, these groups have been struggling since long to assert their rights over the forest resources which were customarily enjoyed, protected and conserved by them since ages.

In medieval India, although the ownership of forests was with local rulers, local communities enjoyed almost unhindered access rights to them for their needs. From the beginning of the colonial period, forests started being targeted for commercial exploitation and revenue generation. The traditional/customary rights of the people were often neither recognized nor recorded by the colonial government while declaring forests to be state property. There are numerous examples of rebellions against reservation of forests by tribal communities in the history of the freedom struggle.

Even after Independence, the policies and laws remained unchanged. During the amalgamation of princely states and abolition of zamindari, unsurveyed non-private lands were declared government property either as forests or revenue wastelands. Lack of proper survey and settlement resulted in the local people losing their rights over their ancestral lands and being treated as “encroachers”. This historical injustice was further accentuated by the Wildlife (Protection) Act 1972 and the Forest Conservation Act 1980, which made environmental protection and recognition of the rights of tribal communities as mutually irreconcilable objectives.

Enactment of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 was a watershed in the hard-fought and prolonged struggle of Adivasis and other forest dwellers of India. For the first time in the history of the country, the state formally acknowledged the injustice done to forest dwelling communities due to non-recognition of their rights during the consolidation of state forests. The new forest rights law attempts to right this historic wrong and empowers right holding communities and Gram Sabhas to “protect, conserve, regenerate or manage” their community forest resources for sustainable use.

The Government of Orissa has taken several proactive steps for proper implementation of the Forest Rights Act. To date, the State has issued more than 15 circulars to streamline and facilitate proper implementation of the Act and has particularly stressed the recognition of Community Forest Rights. For various reasons, however, recognition of Community Forests Rights has been slow in comparison to individual rights.

In this backdrop, a State Level Workshop on Forest Rights Act with a specific focus on the recognition of community forest rights was organized by Vasundhara at DRTC, Bhubaneswar from 1st to 3rd September 2009. Over 300 participants actively participated in the workshop. Apart from the representatives of communities and civil society organizations, the participants included a number of eminent persons, intellectuals, students and academicians. Besides Shri Bijay Ranjan Singh Bariha, Hon’ble Minister, SC & ST Development, Shri Ashok Kumar Tripathy, Principal Secretary, SC & ST Development Department, Shri Biswajit Mishra, Addl. Secretary, SC & ST Development Department, Shri Rajkishore Chaudhury, Director cum Addl. Secretary SC & ST Development Department, Dr. A.B. Ota, Director, SC & ST Research and Training Institute, Shri S.K. Sinha, Conservator of Forests, Kendu Leaf Wing of State Forest Department, Shri Triloochan Sahoo, Senior Research Officer, SC & ST Research and Training Institute, Shri Jagdananda, State Information Commissioner, Prof. Radha Mohan and Hon’ble Member of Rajya Sabha Shri Pyari Mohan Mohapatra also graced the occasion with their presence.

This document summarizes the key recommendations which emerged from the workshop deliberations.

Key Recommendations

Need for emphasis on recognition of Community Forest Rights

- I. Under the present FRA rights recognition process, the main focus has been on recognition of individual rights, while claims for community rights, especially *rights over Minor Forest Produce, water bodies, grazing areas, nistari areas, habitat rights of particularly vulnerable tribal groups (PTGs) and the "right to protect, regenerate or conserve or manage any community forest resource"* (CFR), are yet to get proper attention. Proactive steps should be taken urgently to facilitate the claiming, verification and recognition of community forest rights. This has also been emphasized in the Chief Secretary's circular 6061/SSD, dated 4.2.09.

Confusion between diversion for Development Facilities & Community Forest Rights

2. Applications for diversion of forest land for development facilities under Sec 3(2) of the Act are often being confused / equated with claims for Community Forest Rights. The Ministry of Tribal Affairs, Government of India, has already issued separate procedural guidelines (No. 23011/15/2008-SG.II, dated 18.5.2009) for forest land diversion under section 3(2). Claims for Community Forest Resource Rights under section 3(I)(b),(c), (d),(e), (i) and (k) must be dealt with and recorded separately. The distinction between the two must be communicated to all implementing authorities.

Recognition of Community Based Protection & Conservation initiatives

3. The State of Orissa is home to thousands of self-initiated & traditional forest protection and conservation initiatives including sacred groves. Sec 3(I)(i) & Sec 5 of the Act recognize and empower such community based initiatives & secure their statutory right to protect, conserve, regenerate & manage their CFRs for sustainable use. The ongoing parallel Joint Forest Management (JFM) program based on the State Forest Department's (SFD) JFM circular (No. IF-Affn. 17/2008-17454/F&E, dated 22.10.2008) is generating a lot of confusion at the community level and hindering the CFR claim making process. Against this backdrop, the following are recommended:
 - a) In view of the statutory Community Forest Resource (CFR) Rights under section 3(I)(i) and powers vested in the Gram Sabha under section 5 of the FRA, JFM based on an administrative order needs to be re-visited. The difference between statutory CFR rights conferred under the FRA and the lack of any rights under JFM has already been alluded to in point no 13 of the 'Frequently asked Questions' (FAQ) letter issued by the ST & SC Department on 21.11.08 but requires further clarification.
 - b) In villages / cluster of villages where community based forest protection and management already exists, or where communities want to initiate the same, recognition of their rights over clearly demarcated CFRs must be given priority under Sec 3(I)(i). Gram Sabhas of such villages should be encouraged to form 'Forest Protection & Management Committees' under Sec 5 FRA and Section 4(1)(e) of the Forest Rights Rules, 2007.
 - c) Institutional mechanisms should be developed to channelize funding allocated for JFM, or through NREGA to the Gram Sabhas managing their CFRs.
 - d) The externally aided projects like Orissa Forestry Sector Development Project (JBIC), Orissa Tribal Empowerment and Livelihood Project (IFAD), Western Orissa Rural livelihood Project (DFID), etc., as well as central and state funded forestry schemes need to be revisited and appropriate changes made in their participatory forest management components to make them compatible with the Forest Rights Act. They should also integrate the rights recognition process in their implementation.
 - e) The Forest Department should be requested to stop discouraging communities from claiming their CFR rights on the grounds that funding support is only available for non-statutory JFM.

Rights over MFPs

4. Sec 3(1)(c) recognizes the “right of ownership, access to collect, use and dispose of minor forest produce (including bamboo and Kendu leaf) which has been traditionally collected within or outside village boundaries”. However, more than one & a half years after the Act came into force, not only has there been poor recognition of rights over MFPs but also, no steps have been taken to amend/repeal laws and regulations governing nationalized MFPs like Kendu Leaf and Bamboo to make them compatible with the FRA. Against this backdrop, the following interventions are recommended:
 - a) All State laws, rules and regulations related to MFPs should be reviewed and amended or repealed to make them compatible with FRA, 2006 in a time bound manner.
 - b) Primary collectors should be supported to develop their collective collection, processing and marketing institutions. Where cooperatives or other organizations of primary collectors already exist, they must be permitted to undertake collection, processing and/or marketing of Kendu leaf and bamboo.
 - c) No royalty should be charged on MFPs over which communities acquire ownership rights.
 - d) Gram Sabhas should be authorized to issue transit permits for transporting MFPs to the market

Rights of PTGs

5. Section 3(1)(e) of the FRA secures the rights of Primitive Tribal Groups (PTG) including community tenures of habitat and habitation. Recognition of PTG rights under the Act is lagging far behind in part due to lack of clarity among implementing agencies & civil society actors about the concepts of habitat and community tenures. In view of this, the following interventions are recommended:
 - a) Proactive role should be played by the ST and SC Development Department to facilitate recognition of PTGs rights by the implementing authorities
 - b) Special arrangements should be made to facilitate the PTGs collective claims to their larger ‘habitat’ in accordance with their diverse traditional, customary & cultural practices.
 - c) Special attention should be given to nomadic tribes like Mankidia and Hill Khadias for recognition of their rights to seasonal use of landscape as per Sec 2(a)
 - d) Micro Project officers and staff must be assigned the responsibility of facilitating the claiming of rights by PTGs and provided necessary orientation and training for the purpose.
 - e) The ST/SC department should consider engaging the services of people knowledgeable about different PTGs or those who have spent substantial time working with PTGs to facilitate the process of recognition of PTG rights.

Conversion of Forest / Un-surveyed Villages into Revenue Villages

6. Despite Sec 3(1)(h) of the Act and the ST & SC Department circular (No.40373/SSD, dated 21.II.08), no steps have been taken for the conversion of forest and un-surveyed villages and old habitations on forest land into revenue villages. In most of such villages/habitations, FRCs are yet to be constituted as required by the law. Clear instructions should be given to field officials to facilitate election of FRCs in all such villages/habitations even if they fall outside Panchayat boundaries and to expedite the process of their conversion into revenue villages.

FRA implementation in Protected Areas & Tiger Reserves

7. Despite the FRA being applicable to all categories of forest land [Sec 3(2)(d)], the rights recognition process in most of the State’s Protected Areas (PAs) is being severely hampered by a mis-interpretation

regarding the applicability of FRA in PAs by concerned implementing authorities. The situation in Tiger Reserves/Critical Tiger Habitats is particularly bad. In Chandka Wildlife Sanctuary & Simlipal Tiger Reserve, relocation plans have reportedly been finalized without completion of the rights recognition process under the FRA in clear violation of the law. In view of this situation, the following steps are recommended:

- a) Clear instructions must be issued to the implementing authorities that the process of FRC formation, receipt and verification of claims and Recognition of Rights inside the Protected Areas, including Tiger Reserves, must be completed.
- b) Eviction or re-location of villagers from protected areas including Tiger Reserves must be stopped as it is illegal under sections 4(2) and 4(5) of the FRA as well as under Sec 38(v)(4&5) of the Wildlife (Protection) Amendment Act 2006.
- c) Forest & wildlife authorities refusing to implement the above legal requirements should be asked to cooperate to avoid penal action under Section 7 of the FRA.
- d) The process of recognition of Community Forest Rights should be given priority to enable communities to collect process and dispose minor forest produce collected by them.
- e) The state government should ask line departments to formulate and implement developmental facilities approved by Gram Sabhas under section 3(2) of Forest Rights Act in the villages/habitations located inside Sanctuaries and National Parks, including those subsequently notified as critical tiger habitats.
- f) The State Wildlife wing should be asked to up load all updated information related to identification of Critical Wildlife Habitats and Critical Tiger Habitats on it's web site.

Empowerment of Gram Sabhas

8. Under the Forest Rights Act, the Gram Sabha is the authority to initiate the process for determining rights of forest communities by receiving, consolidating and verifying the claims. The authority vested in the Gram Sabha by the Act must be respected by the implementing agencies while facilitating the process. Due to the hurried manner in which Gram Sabhas were convened and FRCs formed when implementation of the FRA was begun, in many parts of the State the FRCs remain non-functional (or are yet to be constituted) and are not able to perform their required functions. In view of this situation, the following steps are recommended:

- a) Government should prepare a comprehensive blue print for skill and capacity enhancement of the Gram Sabhas and FRC members in a time bound period.
- b) Wherever claims are not being made to the FRCs, or FRCs are yet to be constituted, steps should be taken to facilitate reconstitution of FRCs after ensuring that Gram Sabha members are aware of the provisions of the Act and Rules and the FRC's role.
- c) The Chief Secretary's circular issued on 4th February 2009 (No. 606I/SSD has clearly stated that 'no individual officer has been given the powers under the Act to overrule or object to the decisions of the appropriate authority'. This needs to be strictly enforced and those violating this provision should be penalized under section 7 of the Act.

Rights of Other Traditional Forest Dwellers (OTFDs)

9. The majority of OTFD claims are not being processed at the SDLC & DLC level even after being duly approved by the concerned Gram Sabhas. Oral & physical evidence permitted by the Rules is not being accepted and instead, documentary evidence of 75 years of occupation is being demanded. This is when

even the State Government doesn't have proper records for many tribal areas for that period. Non-consideration of genuine claims of OTFDs will deprive a large number of equally impoverished forest dependent people of their legitimate rights besides creating conflict and discord within villages. Immediate steps should be taken to accord equal priority to the processing of OTFD claims. In addition, claims of OTFDs in occupation of forest land prior to 1980 which are found ineligible under the FRA, should be settled in accordance with MoEF's 1990 guidelines.

Disputed Lands

10. There are innumerable cases where lands categorized as 'forest land' (e.g. patra jungle, choto jungle, bada jungle, pahad kisan etc.) in earlier settlements (SABIK) were changed into other revenue categories in subsequent settlements (HAL) with a clear remark in the records stating the earlier status. However, during the ongoing verification process under FRA, claims on such lands are not being entertained citing the current non-forest status of such lands by ignoring their settlement history. Non-consideration of this fact would deprive a huge number of people of their genuine forest rights. It is strongly recommended that necessary clarification be provided to the concerned authorities & the verification teams for processing claims for such lands.

There are also large hilly tribal areas in the state which were declared 'deemed' forests without any survey or settlement due to having more than 10 degree slope. The tribals inhabiting these areas claim these to be their ancestral lands disputing the forest department claims that these are state forests. It needs to be clarified to implementing authorities that recognition of rights on such disputed lands comes under Section 3(1)(f) and does not need to be restricted to a maximum of 4 hectares applicable to claims under Section 3(1)(a) (see Sec 4(6)).

Rights of illegally evicted &/or displaced claimants

11. There are many cases of forest communities having been illegally evicted or displaced from their land for developmental and/or conservation programmes such as compensatory or other afforestation and creation of Protected Areas. Such cases are not being considered during verification by concerned authorities as the claimants are not currently in possession of such lands. Section 3(1)(m), and where applicable, Sec 4(8) of the FRA should be used for dealing with such cases. The former provides the right to in-situ rehabilitation including alternative land for illegally evicted or displaced people while the latter permits restoration of land acquired but not used within five years of acquisition. This has also been stressed in the FAQ (serial no.20) circular issued by the ST & SC Department on 21.11.08 regarding implementation of FRA. Implementation authorities should also be informed about the circular no F.No.II-9/1998-FC (pt), dated 30.7.2009 issued by Ministry of Environment & Forest (MoEF) clarifying that no diversion of forest land shall be permitted till the process of recognition of rights under the FRA has been completed and local Gram Sabhas give their written consent to such diversion.

Forcible plantation in claimed areas

12. There are a large number of cases of forcible plantations (including for JFM) being undertaken on cultivated lands being claimed under the FRA. Such plantations must be stopped immediately until the rights recognition process has been completed as such evictions are illegal under Sec 4(5) of the FRA.

Awareness building & Information Dissemination

13. The State government has issued a number of progressive circulars for proper implementation of FRA in the State. However such information & circulars are mostly in English and have not reached Gram Sabhas and even other line departments involved in the process of recognizing rights. Such circulars should be made available in the local language combined with the development of audio-visual aids & field guidelines/ manual/ handbook which should be widely circulated and made available to all gram

sabhas. Updated information on claims and government directions should also be made available on the concerned government web sites.

Right to Appeal

14. The majority of claimants are not being able to exercise their 'right to appeal' for want of information about rejected claims from concerned SDLCs & DLCs. Availability of such information to the rejected claimants, including the reasons for rejection, must be ensured through strict enforcement of the Chief secretary's circular no 606I/SSD dated 4.2.09.

Anomalies in Field Verification

15. The field verification process by technical teams is being adversely affected due to lack of coordination between the concerned line departments. In many cases, the Forest Dept personnel are not participating in the verification process. The State should instruct the Forest dept to perform their functions prescribed by the FR Rules. It must also be made clear to the technical verification teams that they do not have any authority to modify or reject claims approved by FRCs/Gram Sabhas and their role is only that of assisting FRCs/Gram Sabhas to prepare maps for the recommended claims.

Capacity Building

16. Till today, the majority of Gram Sabha and FRC members, field personnel as well as officials responsible for implementation are poorly informed about the provisions of the FRA and Rules because of which the most forest dependent people are not being able to claim the diversity of rights to be recognised under the FRA. Urgent steps need to be taken for skill & capacity building of the Implementing Agencies, especially the members of Gram Sabhas, FRCs, SDLCs, DLCs, verification teams and representatives of SFD, ITDAs, PTG Micro-Projects and PRIs.

Involvement of Civil Society

17. Efforts should be made to utilize the skills and expertise of Civil Society Organizations, People's Networks, academics, researchers and knowledgeable individuals through involving them in the entire process. Considerable useful material has been developed by NGOs which may be utilized in the process.

Resources for FRA implementation

18. Implementing agencies at the SDLC and DLC level cite lack of funds affecting the verification and recognition process. Funds available under Article 275 of the Constitution should be sought to support the rights recognition process. The government should create an enabling environment for FRA implementation through ensuring adequate human resources, budgetary allocation and infrastructural facilities.

Bringing Convergence

19. Development & improvement of recognized CFRs & individual lands should be facilitated with the funds available for NREGA and exploring other sources like CAMPA funds for bringing in greater convergence for sustainable development of natural resources and livelihood security.

Reconstitution of SLMC

20. State government had constituted State level Monitoring Committee on 1st February 2008 as per the provisions laid down in the Forest Rights Act, 2006 and Rule made therein. As per the Rule 9(g) of Forest Rights Rule, 2007, State government would nominate 3 members from the Tribal Advisory Council (TAC) for the said committee. Due to the dissolution of Tribal Advisory Council prior to the State Legislative Assembly Election till date nobody has been nominated for the said committee from TAC. State government should take immediate step to reconstitute the SLMC by nominating 3 members from TAC.

