

# Manthan

## Report National Committee on Forest Rights Act.

December 2010.



A Joint Committee of Ministry of Environment and  
Forests and Ministry of Tribal Affairs,  
Government of India

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## ANNEXURES

## **Abbreviations**

AP	:	Andhra Pradesh
CAMPA	:	Compensatory Afforestation Fund Management and Planning Authority
CFR or CFRt	:	Community Forest Rights
CFRe	:	Community Forest Resource
CFM	:	Community Forest Management
CSOs	:	Civil Society Organizations
CTH	:	Critical Tiger Habitats
CWLH	:	Critical Wildlife Habitats
DC	:	District Collector
DFO	:	Divisional/District Forest Officer
DLC	:	District Level Committee
FD	:	Forest Department
FDST	:	Forest Dwelling Scheduled Tribes
FR	:	Forest Rights
FRA	:	Forest Rights Act
FRC	:	Forest Rights Committee
FSI	:	Forest Survey of India
GIS	:	Geographical Information System
GOI	:	Government of India
GPS	:	Global Positioning System
GS	:	Gram Sabha
ICFRE	:	Indian Council of Forestry Research & Education
IFA	:	Indian Forest Act
IFR	:	Individual Forest Rights
IT	:	Information Technology
JBIC	:	Japan Bank for International Cooperation
JFMC	:	Joint Forest Management Committee
JPC	:	Joint Parliamentary Committee
MFPs	:	Minor Forest Produce
MoEF	:	Ministry of Environment & Forests
MoTA	:	Ministry of Tribal Affairs
MP	:	Madhya Pradesh
NGOs	:	Non Governmental Organizations
NIC	:	National Informatics Centre
NREGA	:	National Rural Employment Guarantee Act

NRSA/NRSC	:	National Remote Sensing Agency/ Centre
NTCA	:	National Tiger Conservation Authority
NTFPs	:	Non Timber Forest Products
OTFD	:	Other traditional forest dwellers
PAs	:	Protected Areas
PCCF	:	Principal Chief Conservator of Forests
PESA	:	Panchayats (Extension to Scheduled Areas) Act
PF	:	Protected Forest
PMO	:	Prime Minister's Office
POSCO	:	Pohang Iron and Steel Company
PRI	:	Panchayati Raj Institutions
PTGs	:	Particularly Vulnerable Tribal Groups
RF	:	Reserved Forest
RTI	:	Right to Information
SC	:	Scheduled Caste
SDLC	:	Sub-Divisional Level Committee
SDO	:	Sub Divisional Officer
SLMC	:	State Level Monitoring Committee
SMS	:	Short Message Service
ST	:	Scheduled Tribes
S/W	:	Software
TOR	:	Terms of Reference
TRTI	:	Tribal Research and Training Institute
UP	:	Uttar Pradesh
VPs	:	Van Panchayats
VSS	:	Van Samrakshan Samiti
WLPA	:	Wildlife Protection Act.

## FOREWORD

The Ministry of Environment and Forests and the Ministry of Tribal Affairs constituted a Joint Committee in April 2010 to review the implementation of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 popularly known as Forests Rights Act (FRA) in the country with a specific TOR outlined for the purpose. The Committee members were selected from a wide spectrum of background and expertise consisting of retired civil servants, forest officers, tribal department officers and representatives of Civil Society Organizations and NGOs.

The Committee functioned in the most democratic and transparent manner possible and the strategy adopted included specific field visits, free and frank internal interactions on the email discussion group, and open discussions with stakeholders including villagers, right holders, civil society groups, academics, and government departments. The field visit reports, workshop outputs, and outcomes of committee meetings were placed from time to time on the website, specifically created for the purpose with the active support of ICFRE, Dehradun. The responses of stakeholders to the material placed on the website were also considered while finalizing the report.

The analysis and recommendations made in this report are fundamentally intended to improve the implementation of the FRA for the benefit of the forest dwelling STs and OTFDs and also for the sustenance of the resource base on which they depend for their life and livelihood and in no way should be seen or interpreted as intended to demean any particular agency or department.

The time limit given for submission of the report was 15<sup>th</sup> of December 2010. Considering the enormity of the assigned task as a whole, the need to cover the variety of aspects intertwined in the implementation process, and the sensitivity of the subject both from the point of view of forest rights and resource conservation needed to sustain the same, the study has been a great learning experience for the Committee itself.

The members have contributed their best to complete the task assigned to the Committee. For this we are obliged to each of the members. Thanks are due to all those who participated in the process of review taken up by the Committee. We convey our thanks specially to the village level stakeholders who were forthright in their inputs given to the Committee. We are thankful to the State governments who supported our visits and made valuable data available. The Committee owes special thanks to the ICFRE for providing the logistics support for meetings of the Committee in Delhi, helping to develop the website and also for the financial support for the endeavour. We would like to make a special mention of gratitude towards Shri Rakesh Kumar Dogra, Member Secretary, who took great pains in coordinating the affairs of the Committee with a sportsman's spirit and always with a positive approach that is typical of him.

We also thank Shri Jairam Ramesh, Hon. Minister of Environment and Forests for taking the initiative to constitute this Committee and the concerned officers of MoEF and MoTA for the overall support to its functioning.

Dr. N C Saxena, Chairperson  
Dr. Devendra Pandey Co-Chairperson

Dated 14<sup>th</sup> December 2010.

## Executive Summary

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, popularly known as the Forests Rights Act (FRA), was enacted in 2007 through the Ministry of Tribal Affairs to correct the 'historic injustice done to forest-dwelling communities'. These communities were cultivating /occupying forest land and using forest produce since ages but had no tenurial security. Broadly speaking, this Act recognizes and vests individual forest-dwellers with forest rights to live in and cultivate forest land that was occupied before 13 Dec 2005 and grants community forest rights to manage, protect, regenerate the forest under section 3(1)(i) and to own and dispose minor forest products from forests where they had traditional access. Many states and Union Territories (UTs) which have such forest dwelling communities started implementing FRA immediately after the notification of the FRA Rules on 1<sup>st</sup> January 2008, generally through their Departments of Tribal /Social Welfare. The Union Ministry of Tribal affairs has been regularly monitoring the progress of implementation, issuing clarifications and updating the latest figures on its website every month.

The implementation of this Act has thrown up a number of issues, ranging from concerns about how committees have been constituted and about high rates of claim rejections to how exactly forest governance would take place after community forest rights are recognized. In April 2010, the Ministry of Environment and Forests and the Ministry of Tribal Affairs jointly constituted a 20 member committee to look at the various issues relating to the implementation of the FRA and sustainable forest management. The key TOR of the Committee include:

- \* study in detail the implementation of the Forest Rights Act 2006 including factors that are aiding and impeding its implementation,
- \* recommend necessary policy changes in the future management of the forestry sector in India which may be necessary as a consequence of implementation of the Act,
- \* identify the role of various agencies (official and others) in facilitating forest-dwellers carrying out their roles regarding conservation and management of forests,
- \* define a new role for the Forest Department vis a vis the Gram Sabha for forest conservation and regeneration, and
- \* identify opportunities for and recommend measures to ensure convergence of various beneficiary oriented programmes for the forest rights holders taken up by various line departments in the states.

The committee deliberated on the issues of the TOR in 6 sittings, and through continuous internal discussions over e-mail. Sub-groups of the committee conducted intensive field visits and public consultations covering 17 states of the country and gathered first hand information by interacting with tribal communities, other traditional forest dwellers, civil society organizations, NGOs, State government officials, academics, and local leaders. Further, in order to maintain transparency of the committee activities, a publicly accessible website (<http://fracommittee.icfre.org>) was created where minutes of meetings, field trip reports, and other documents were posted.

The overall finding of the Committee is that, with notable exceptions, the implementation of the FRA has been poor, and therefore its potential to achieve livelihood security and changes in forest governance along with strengthening of forest conservation, has hardly been achieved. Specific findings and recommendations are summarised below under the following themes:

- Implementation of FRA: Process and institutions
- Implementation of FRA: Individual Forest Rights
- Implementation of FRA: Community Forest Rights
- Implementation of FRA: Implementation of Development Projects
- Implementation for Special Groups
- Protected Areas and Critical Wildlife Habitats
- Future Structure of Forest Governance
- Enhancing Livelihoods through NTFPs
- Convergence of Development Programmes for STs and OTFDs

**A. Implementation of FRA: Process and Institutions (Chapters 2 and 5)**

1. Some of the states (e.g. Andhra Pradesh, Madhya Pradesh) considered the implementation of the FRA 2006 as an opportunity to 'distribute' forest land and secure the individual rights of forest-dwellers, particularly tribals. These state governments set a deadline so that distribution is completed well before the *scheduled assembly elections of the State*. Even at the national level, the PMO set a target-oriented review mechanism which caused unnecessary rush, distortions in implementation, pushing states to worry only about showing increase in number of claims processed, rather than on the quality of the process. *In a large number of cases the vesting of forest land has taken place even without measuring the same on the ground*. It is to be noted that no deadline for implementation has been provided in the Act.

2. On the other hand, in eleven States the implementation process has not yet started. In most of the northeastern states (Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland and Sikkim) the state governments felt that the FRA was not relevant to their situation or were not clear on how it applies in Schedule 6 areas; most of them are currently re-examining their position. Whereas in states of Bihar, Uttarakhand, Jharkhand, Himachal Pradesh and Goa, the Act is clearly relevant but the states have been very slow in implementation. In Tamil Nadu because of restrictive orders by the High Court on a petition filed, the progress has been slow.

3. State governments constituted State level monitoring committee (SLMC), District Level Committees (DLC) and Sub-Divisional Level Committees (SDLC) generally as provided in the Rules of FRA for monitoring and implementation of the Act. But there been serious flaws in many states about the constitution of the Forest Rights Committee (FRC) at the grassroots level which has the crucial role in assisting the Gram Sabha (GS) in determining the claims from individuals by receiving, consolidating and verifying them on the ground. In most states, GSs have been recognized at the panchayat level, instead of the revenue village or as defined under PESA. Panchayats usually consist of more than one revenue village and several habitations/ hamlets. With this size, convening GS to reach a quorum in its meetings, and forming FRCs to function effectively has been extremely difficult. In addition, FRCs in some of the States have not been formed in a fair manner; e.g., women and STs/OTFDs have not been adequately represented whereas government officials have been included, which is in violation of the Act/Rules. SDLCs and DLCs, even if constituted, have only partially discharged their responsibilities, with little attempt to pro-actively help people with claims and evidences, and on the contrary often issuing rejection letters without adequate grounds. *This has been one of the biggest reasons for the seriously inadequate implementation of the FRA in most parts of India*. There have been inadequacies at the SLMC also. Monitoring in some States has been very

poor, due to infrequent monitoring meetings of the SLMC and absence of necessary clarification and guidelines to the implementing agencies down the line, and the non-involvement of members of the civil society. Several SLMCs or state nodal agencies have issued illegitimate deadlines, or guidelines and directives that have caused distortions such as not measuring the land before issuing titles, or giving predominant weightage to satellite imagery when assessing claims.

4. There has been inadequate preparedness and lack of trained staff for implementation of FRA at the grassroots. Land survey, demarcation of boundary and settlement of land rights either for revenue or forest land is a laborious, complex and time consuming activity. In the instant case the State governments focused only on achieving the target in a time bound manner and the creation of adequate human resources, equipment and building capacity for this gigantic task was not done. In most of the States/UT the task has been assigned to Revenue Dept and partly to Forest Dept as an additional responsibility because the nodal Tribal Dept was weak in infrastructure and lacked experience in dealing with such settlements. Some tasks (such as measurement or claim preparation) have been either outsourced or completed by engaging staff on contract basis. This has adversely affected the quality and accuracy of the output in many states resulting in wrongful rejections and also in a few cases wrong acceptance of a number of claims.

5. Application of spatial technologies (including remote sensing (RS), global positions systems (GPS) and geographic information systems (GIS)) have the potential to help in rapid delineation of boundaries, immutable positional information, and objective determination of the physical status of claimed lands, provided skills are built, transparency is ensured and safeguards are followed. Several states have utilized GPS technology for plot delineation.

Only one state (Maharashtra) has used the full suite of technologies(RS+GIS+GPS) for all three purposes in a relatively transparent manner. But the SLMC stopped this process half way because of the 'slow progress' and *now title deeds are granted without land measurement*, which is a very serious concern. Gujarat state has recently attempted to use this approach also, but its approach is poorly designed, lacks proper ground verification and transparency. Mandating satellite image-based evidence violates the Act and denies due process to claimants.

6. Against the tide of poor implementation, there are a number of cases of innovative, pro-active moves by civil society organizations, communities, and officials, that have helped in making claims and getting rights vested. These include awareness programmes and distribution of simple material in local languages, *suo moto* provision of documents by some block and district-level officials to gram sabhas, help in filing claims and finding evidences, advocacy to get the government machinery moving, and so on.

7. The FRA stipulates that forest-dwelling STs and OTFDs are not to be evicted or removed from forest land under their occupation till the process of recognition and verification of their rights is complete. During field trips, the committee members found that this provision of the Act has been violated, and Forest Officials have summarily evicted such occupants in some places. At the same time there have been several cases of forest clearance and fresh encroachments after the cutoff date of the Act in a bid to make claims under FRA. Both such cases, obviously, have to be dealt with sternly as per the law. Further, there have been some cases of relocation from protected areas including Tiger Reserves without having completed the procedures under the FRA. Relocation in such circumstances is a gross violation of the FRA.

#### 8. **Recommendations**

(a) Given the adverse impacts of artificial deadlines and targets, the Ministry of Tribal Affairs (MoTA) should issue a circular/ direction to all the States and UTs that no such deadline exists as on today, and should give this circular widest publicity. Though the Act does not and should not provide any deadline for completion of the process, states should expedite recognition of rights within an appropriate time frame which is to be decided in consultation with the forest dwellers and civil society, so that governments do not slacken off on implementation.

(b) All state governments should recognize the Gram Sabha at the individual settlement (hamlet or revenue village) level, or PESA Gram Sabha where applicable, to enable much more effective processing of the FRA.

(c) MoTA should issue directions that, wherever FRC have been incorrectly formed, i.e., at Panchayat level or without adequate representation of different sections of the community or without following a democratic process, *these FRCs are to be reconstituted through open elections at level of PESA or revenue village-level Gram Sabhas*, with clear instructions so that officials do not usurp powers and functions of the FRCs. However, where there has been satisfactory processing of claims and vesting of rights despite faulty FRC formation, this should not be undone. The reconstituted FRCs should only review where there has been improper rejection or acceptance, or denial of the possibility of making claims, etc. and properly process new claims.

(d) MoTA should issue a clarification that OTFDs as defined under the FRA are all those who can prove 75 years of residence in the area (not necessarily on the plot being claimed), and dependence on the forest land as of December 2005. MoTA should also clarify what kinds of evidences may be used as proof of 75 years of residence and how these are to be made available to the villagers. Finally, MoTA should clarify that no disqualifications on the basis of possession of additional revenue land or jobs, or location of residence on revenue land, etc. are permissible under the FRA.

(e) A special set of guidelines need to be worked out for the proper use of spatial technology in the delineation, location, and status verification of claims filed, so as to ensure reliability, objectivity and transparency. Best practices identified and techniques developed in Maharashtra should be incorporated; financial support, equipment and training should be provided at all levels, especially the FRCs, and field verifications done with involvement of claimants. This activity should be part of the work of the proposed National Forest Rights Council (see below).

(f) State governments should review their SLMCs, DLCs, and SDLs, including the problems identified in this report regarding their composition, functioning, public interface, and transparency, and issue directions for necessary correctives in each of these institutions.

(g) There is an urgent need for involvement of civil society organizations with concerns for human rights as well as conservation, networks and forums at all levels of implementation, as advisors and watchdogs. The state-level Monitoring Committee also needs to include key persons from such groups.

(h) MoTA should clarify the procedure to be followed for ensuring that rights certificates issued under the FRA (both individual and community rights) are entered in the record of rights, land settlement and forest settlement records of each state. Specifically, it should (in consultation with the Ministry of Finance) issue instructions to ensure that the lands with settlement and cultivation rights (u/s 3(1)(a)) may be treated on par with fully private lands for the purpose of receiving financial support, including bank loans. It should also clarify whether these (3(1)(a)) lands are to be converted into revenue lands or not.

(i) MoTA and MoEF need to work out a set of instructions for ensuring that evictions do not take place in violation of the FRA (section 4(5)), and at the same time ensuring that fresh encroachments do not take place.

(j) MoTA needs to considerably enhance its role as the nodal agency, by more closely monitoring progress, gathering more robust and disaggregated data on implementation, commissioning independent studies, issuing clarificatory circulars including those suggested in this report, directing states to take action on officials who are obstructing or violating the FRA, taking action on violations such as relocation/displacement of people without the FRA process having been completed or without Gram Sabha consent, and other aspects of poor or improper implementation.

(k) MoEF needs to move urgently towards the governance reforms suggested in this report, ensure that its circular regarding development projects on forest land get legal backing in FRA/FCA, halt all relocations from protected areas that are illegal, take action or direct action to be taken on officials obstructing or violating the FRA, ensure that the FRA process is respected in all afforestation/plantation programmes, encourage the CWH declaration with due process, and move towards reforming the MFP/NTFP collection and trade regimes as suggested in this report.

(l) GOI should establish a National Forest Rights Council which can regularly and systematically monitor the FRA implementation, guide states to take necessary action, and hold or authorize the holding of public consultations and independent assessments.

### **B. Implementation of FRA: Individual Rights (Chapter 3)**

9. Most states have concentrated almost entirely on implementing the provisions for individual forest rights (IFRs). As per the statistics available on the MoTA website, against a total of 30.05 lakh claims filed by 31 October 2010 in the country, about 29 lakh (~98 %) are IFR claims. About 83% of these claims have been disposed of, and 35% (~10 lakh) claims have been approved, with titles issued for most of them. The overall progress is clearly significant. But some states (such as Jharkhand) have lagged behind in terms of both getting a plausible number of claims and in processing the received claims. The number of claims processed is very low in Gujarat, Jharkhand and Tamil Nadu.

10. By and large, the IFR claims that have been accepted are legitimate ones. There are, however, some cases of fraudulent claims or post-2005 encroachments reported from Maharashtra and a couple of other states.

11. There are, however, major errors of omission. Even in states where implementation began more than two years ago, many pockets have not yet been covered, and many potential claimants have not managed to submit their claims. Some states have left non-scheduled areas out of implementation, or focused only on STs, or only on a pre-existing list of encroachers prepared by the FD.

12. The biggest problem is with the many cases of faulty rejections. Rejections are being done without assigning reasons, or based on wrong interpretation of the 'OTFD' definition and the 'dependence' clause, or simply for lack of evidence or 'absence of GPS survey' (lacunae which only require the claim to be referred back to the lower-level body), or because the land is wrongly considered as 'not forest land', or because only forest offence receipts are considered as adequate evidence.

13. In an overwhelming number of cases, the rejections are not being communicated to the claimants and their right to appeal is not being explained to them and its exercise facilitated.

14. Similarly, in a few states areas earmarked for mining or plantations the claims of the tribal communities cultivating land in these areas (individual/community) are not being accepted without assigning any reason. The rights of the communities can't be denied in the name of the development or afforestation works

15. Section 3(1)(m) of the FRA, regarding the rights of persons illegally displaced or evicted by development projects without proper compensation, has not been implemented at all.

#### **16. Recommendations**

(a) All states need to address afresh the problem of omissions: areas where FRA implementation is not happening, settlements, groups or individuals that are being left out, and so on.

(b) Title deeds of land for individual possession should be given only after the physical measurement has been accurately done on the ground and demarcated with permanent boundary marks in the presence of all stakeholders (claimant and the bordering claimants as well as field forest and revenue officials in charge of the area and selected responsible members of FRC) to avoid future land disputes.

(c) Survey and mapping of the forest land where IFR are to be exercised is crucial to the whole process of IFR. It is essential that a short orientation/ training is given to all stakeholders involved with FRA implementation with knowledge about different methods used in preparing the map such as GPS/PDA and imageries of satellites. It should only be after some members of the FRC or others in the village are made familiar with it; the claimants must also mandatorily be involved at the stage of field verification.

(d) The problem of wrongful rejections needs to be thoroughly addressed. States should hold public hearings for grievance redressal at all taluka levels, so as to proactively identify problems and areas of poor implementation.

Any claims rejected on the basis of missing documents or other procedural shortcomings should be not be treated as rejected and should be remanded to the Gram Sabha for reconsideration and re-submission, as done in Orissa. Claims that have been wrongly rejected at the SDLC or DLC level on other grounds mentioned above should be re-opened and re-examined at the SDLC or DLC level. Special attention must be given to the claims of members of minority or marginalized sections of communities. The circular issued by MoTA on 4 March 2010 needs to be modified to facilitate this re-examination.

(e) The Ministry of Environment and Forests should issue necessary clarification that the claims filed by individuals under FRA in the protected areas are eligible for consideration notwithstanding the declaration of the Critical Wildlife Habitat. These newly recognized right holders will have similar status to the existing settlements in CWH.

(f) MoTA should clarify how the special case of both STs and OTFDs displaced without compensation by development projects is to be handled, in terms of proving residence and illegal displacement.

#### **C. Implementation of FRA: Community Rights under section 3(1)**

17. The progress of implementation of the Community Forest Rights (CFRt) under FRA is abysmally low. There seems a great confusion between CFRt under Section 3(1) which includes right to collect and dispose NTFP, fuelwood, grazing, fishing, right to manage and protect forests etc, and development rights under Section 3(2) and almost no information is available on the extent of area over which CFRt have been claimed or vested. As per the MoTA website on 31 October 2010,

in the 14 states that have provided disaggregated data for community claims, a total of 50,981 CFRt claims have been received, 6,971 have been accepted over a total area of 20,254 ha. However, majority of these claims are development rights under section 3(2), not under the community rights granted under section 3(1). Thus, the community claims actually submitted u/s sec 3(1) are likely to be far less than 50,000 across the entire country, which shows that this part of FRA implementation has been largely neglected.

18. There is a lack of baseline information on the existence of rights (recorded or unrecorded), and existence of customary practices relating to management, use, and protection, in most places. This makes difficult for any robust comparative assessment of the situation. Whether the FRA has led, or will lead, to an improved livelihood security for communities, or to more sustainable management and conservation of forests, is therefore likely to be assessed largely based on oral history or accounts of those who have long-term ground experience.

19. Among the forest-dwelling communities there are certain groups that have very special characteristics who are particularly vulnerable, and for whom the process of claiming rights is difficult. The FRA has made special provision for the rights of such 'primitive tribal groups and pre-agricultural groups' in Section 3(1)e and mentions about "*rights including community tenures of habitat and habitation*" for these communities. These include Particularly Vulnerable Tribal Groups (PTGs) and Nomadic pastoral communities. There are no national level data on the status of FRA implementation specifically with regard to these groups. The various processes of the FRA have hardly reached them and the progress of implementation is very little. Lack of understanding and lack of awareness at almost all levels seems to be the key reason. Orissa is the only state that has taken some pro-active steps on PTG and issued a number of circulars focusing their rights, and entrusted the responsibility on the micro-project officers & project administrators of ITDAs but neither 'habitat right' nor CFRt in any case has been finalized.

20. In majority of sites in India, the CFRt process has not even got off the ground, due to lack of awareness, amongst communities, civil society organizations, or relevant officials. The main reason is that state governments have not adequately publicized the CFRt provisions or even internalized their importance themselves. Officials are invariably treating development rights (sec.3(2)) as CFRt, and communicating the same to villagers. Most communities are not even aware of the ground-breaking CFRt provisions in the FRA. In addition, the forms are flawed, as they do not mention some of the sub-sections. Where claims have been encouraged, they are for tiny areas, such as graveyards or threshing grounds.

21. There is also a widespread assumption amongst officials (especially forest department) CFRt need not be applied for, since people are already benefiting from existing arrangements such as nistar rights, JFM arrangements, etc. In some cases, CFRt claims are either not accepted because 'land is under JFM' or only land under JFM is being permitted for CFRt claims.

22. Given these preconceptions about or lack of interest in the CFRt provisions, communities (even where aware and active) are having a hard time submitting claims. Forest records, maps and working plans are almost invariably not available to the FRC; lands that are being used by communities are routinely taken up for afforestation programmes under various projects (such as JBIC project in Orissa); communities are being denied CFRt claims on lands because they are 'demarcated for mining'. In some places CFRt claims have been rejected for procedural reasons or just kept pending.

23. Nevertheless, there is confusion about how pre-existing legally recognized rights such as those under Van Panchayats in Uttarakhand or the Chhota Nagpur

Tenancy Act in Jharkhand will be treated under the FRA. While section 3(1)(j) recognizes all such rights, communities are not sure whether in practice, after applying for recognition under FRA, they will have the autonomy they already had or are campaigning to have restored.

24. Where claims have been accepted, there are two major lacunae in the titles given: often titles are being issued in the name of a group of individuals rather than just the Gram Sabha, and lack of clarity as to how these titles are to be entered in the record or rights and other government land records.

25. Finally, several riders or conditions not provided for in the FRA are being attached to CFRt titles that limit the ability of communities to use the forests. This is part of the larger question as to what the relationship between the Gram Sabha and the FD will be in the post-claim scenario (addressed separately below).

26. However, in the areas where civil society groups and officials are pro-active the claims have started coming up, in some districts in dozens of villages covering several tens of thousands of hectares (especially Gujarat, Maharashtra, and Orissa).

## **27. Recommendations**

(a) Given the serious inadequacies in implementation of CFRt at all levels, there is a need for a 2<sup>nd</sup> phase implementation of FRA in all states with primary focus on CFRt. Such a course of action is already indicated in a letter of 20 July 2010 of MoTA. It is important for MoTA and all state nodal agencies to go beyond this by issuing clarifications and instructions on various issues. Both MoTA and MoEF need to take the lack of implementation of CFRt with the seriousness it deserves.

(b) The Committee is of the view that CFRt given under Section 3(1)(i) to “protect, regenerate or conserve or manage” should extend to entire area falling within the community forest resource (CFRe) as defined in Section 2(a) that are in the day-to-day regular use or management or protection of the community. If necessary, this should be clarified by MoTA to states, or an amendment to Section 3(1)(i) should be carried out to make it clear. Additionally CFR boundaries need to be as per the definition of community forest resource, and not constrained by JFM or other externally introduced boundaries.

(c) A massive exercise in creating awareness about CFRt, amongst communities, officials and civil society groups, is needed. This must be in local languages and should involve various media including radio, television/cable, and print media. Particular attention is needed to CFRe and habitat rights, and to the needs of special disadvantaged groups such as PTGs, nomads, shifting cultivators, and women.

(d) A simple, ‘how-to’ guide on CFRt needs to be produced by MoTA, which can be adapted by state nodal agencies as appropriate, and issued in large numbers to communities and relevant officials. This guidebook has to include all relevant clarifications on CFRt for processing and facilitation of claims.

(e) State governments should constitute technical support groups for clusters of villages (e.g. those set up in Orissa for FRA, or in many states for watershed development programmes) consisting of Civil Society Organizations and officials, which have a history of working with communities, to enable communities to carry out boundary demarcation and mapping of CFRt. These groups can also help to resolve any inter-village or other boundary disputes that may arise. GPS could be used for demarcating the boundary if necessary.

(f) CFRt titles should be issued in the name of the Gram Sabha, while respecting specific rights to specific families or user groups of forest-dwellers as claimed and vested in the CFR area.

(g) GS committees or institutions set up under the FRA need to have clear powers and authority, combined with defined responsibilities and duties, to carry out their role as specified in the Preamble, Section 3(1)i (where CFR<sub>e</sub> is claimed) and Section 5. This would require appropriate Rules under FRA, or an amendment if the Rules cannot provide such empowerment.

(h) For PTGs and other pre-agriculture groups it is essential that FRA / MoTA should elaborate the definition of 'habitat' and 'habitation' especially on the kind and extent of the area it should extend and what precisely the right means. The FRA also needs to be amended to explicitly mandate the traditional governance institutions of PTGs to carry out all the procedures of FRA that are given to Gram Sabhas, *even* in states where panchayat raj institutions exist.

(i) Given the lack of capacity to deal with the formal procedures of the external world by PTGs, MoTA and state governments should to *suo moto* identify all of them, collect all relevant records pertaining to their customary rights and boundaries, contact their traditional institutions, and actively facilitate the process of obtaining rights, by involving them and helping them build capacity to handle this as also the post-rights phase, using PTG languages. This would also require special training and orientation programmes for government officials working in PTG areas on the special needs of these groups and the provisions of the FRA.

(j) Once the PTG obtains the right to 'habitat', 'habitation', and other CFR<sub>t</sub> and IFR, it will have a particularly challenging task ahead. This is especially so where the PTG habitat is now inhabited by or used by several other communities, government agencies, and private actors, and where the PTG itself has entered into wider market, political, and social relations. Learning and building capacity, at a pace suited to tribal way of life, and leading to clear articulation of what it means to be a PTG in the current context will be essential.

#### **E) FRA and Development Projects**

(28) A considerable part of India's forests and forest land are being diverted for 'development projects' such as mines, power plants, irrigation, dams, roads, etc. Such forest diversion often leads to displacement of people and adversely affects the livelihoods of forest-dependent communities. Until recently, all such forest diversions were undertaken without any consultation with local communities. In July 2009, however, the MoEF issued an order as a sequel to FRA 2006, specifying that all proposals for forest diversion under the Forest Conservation Act (FCA) 1980 needed to ensure that the implementation of the FRA had been completed in the affected area, and that the proposals had been placed before the concerned Gram Sabhas and their consent to diversion and compensation if any had been obtained. But this order has not been properly integrated and implemented in the FCA process, and not been written specifically into either the FRA or FCA.

Recommendation: FCA rules should be amended immediately to incorporate all the requirements laid down in the July 2009 order of MOEF.

#### **F) Implementation for special groups and situations**

**(29) Forest Villages:** In most parts of India, rights as per FRA have not been recognized in forest villages, and conversion of forest villages to revenue village status has not taken place at all.

Recommendations:

- a) The process of conversion of these forest villages into revenue villages should be processed at the earliest under sec 3(1)(h).

- b) MoTA needs to issue a categorical instruction that conversion of villages to revenue villages is different from and must precede the recognition of individual land claims.

### **30. Nomads and pastoralists**

#### **Findings**

1. There are no national level data on the status of FRA implementation specifically with regard to Nomads and pastoralist.
2. The field reports available from states are highly discouraging on the issue of Nomads' and Pastoralist claims on FRA.

#### **Recommendations**

1. The first and foremost task in context of implementation of FRA is to identify and list, state-wise, the various tribes and communities of nomadic pastoralists.
2. The rights of nomads need to be recognized as community rights.
3. States should make possible the constitution of FRCs from amongst the nomadic communities themselves, and/or their representation in resident village FRCs where the nomads have customary grazing access, to enable them to make claims.

### **31. Shifting Cultivators**

Findings : As of now, in all states where shifting cultivation is being practiced customarily no rights are being conferred specially to continue shifting cultivation. There is confusion as to how the community ownership and the cyclically fallow lands will be treated.

#### **Recommendations**

The committee recommends that practitioners of shifting cultivation be enabled to claim CFR rights (as explained in Chapter 4) and practice this customary agricultural practice. MoTA needs to issue a clarification that currently fallow lands which are part of the shifting cultivation cycle will be included in the community cultivation rights under 3(1)(a) and permitted to be brought under cultivation in the future as part of the shifting cultivation cycle.

#### **Implementation of FRA in PAs (Chapter 7)**

32. As per the provisions of FRA forest dwelling communities are eligible to forest rights even in the protected areas (PAs). But no consolidated picture of the status of FRA implementation in PAs is available at the national level. No state is maintaining such data or analyses separately, nor are MoEF or MoTA asking for them. There is, however, a clear trend of initially denying the rights under FRA within PAs at the ground level in some states. The MoTA, MoEF, and the relevant state government have however clarified that such a denial is wrong. In many states it has been wrongly believed, or conveyed, that tiger reserves are exempted from the FRA. It has also been wrongly conveyed that FRA does not apply if rights of people have been previously settled under the WLPA, even if people might still be residing within or depending on the resources of the PA, and also that the FRA does not apply to villages where resettlement is part of an ongoing process that began before the FRA was promulgated. There are also several examples where official agencies have not accepted, or have rejected, claims, stating that villagers have in any case to be relocated, so why claim or recognize rights?

33. The FRA has specific provision under section 4(2) for creation of Critical Wildlife Habitats (CWHs) within National Parks and Sanctuaries on the basis of

scientific and objective criteria to keep such areas as *inviolable* for the purposes of wildlife conservation. Such areas are to be finally notified by the Union Ministry of Environment and Forests after open process of consultation by an Expert Committee. But FRA does not provide any rules related to the declaration of CWHs. The MoEF has issued guidelines which outline the procedures that need to be followed for establishing CWHs and also for declaring a Critical Tiger Habitat (CTH). Although some states have processed the proposals wrongly without involving the community but so far no CWH has been established under the FRA. There is also confusion in the states between CTH and CWH, especially since CTHs have already been established in most Tiger Reserves under the WLPA.

#### **34. Recommendations**

(a) Though MoEF/MoTA have issued directive to states during September 2010 that forest rights need to be recognized first in national parks and sanctuaries before undertaking any process for resettlement and that there is no provision in the FRA to defer the process of vesting of forest rights till critical wildlife habitats are determined and notified, these directives need to be followed up by states issuing directions to their district and sub-divisional committees and other relevant departmental officers and staff.

(b) All notifications or steps relating to Tiger Reserves, Critical Tiger Habitats, and Critical Wildlife Habitats that have been undertaken in violation of the FRA (and in some cases even in violation of the WLPA) subsequent to 1.1.2008 need to be reviewed, and fresh process started that follows the due procedures under FRA, WLPA, and MoEF's guidelines relating to CWH.

(c) MoTA and MoEF/NTCA should also issue clarifications that Tiger Reserves are not exempted from the processes of the FRA. It should also be clarified that and even if relocation programmes in a particular PA have been going on prior to the promulgation of FRA such PA is not exempted from FRA process for families and villages that remain inside it.

(d) A consortium of Civil Society Organizations and research institutions have proposed some guidelines to MoEF related to CWH which addresses key issues like the definition of some important terms, criteria and processes related to the declaration of CWHs and CTHs; prescribed time frames for the processes and consultation and involvement of local communities; processes for co-existence, co-management, and relocation/resettlement. It is recommended that these be urgently considered for adoption by MoEF and states.

(e) Care is needed to avoid or minimize fragmentation or other serious ecological damage in the case of development facilities (under Section 3(2) that will be extended to resident populations within protected areas.

#### **E: Future Structure of Forest Governance (Chapter 8 and 9)**

35. As per the provisions of the FRA sizeable area of the country's forests is likely to fall under the category of the Community Forest Resource where forest dwelling communities will exercise the community forest rights under the Act. Such forests if managed, protected and regenerated by the communities would impact the governance of forests in these areas so far done by the State Forest Departments. There are already many examples in the country where local communities have been formally recognized and empowered to govern and manage the forests of their villages, or where they have self-initiated community-based governance systems. These include some areas of Chhota Nagpur region of Jharkhand, several thousand Van Panchayats in Uttarakhand, a large area in the north east, and several thousand community forest protection initiatives in Orissa, Maharashtra, and other states. Potential CFR areas are also likely to overlap with Joint Forest Management (JFM)

areas and areas managed by eco-development committees. There is therefore an urgent need to think about the trajectory of forest governance as a whole and the location of community-managed systems within this and their relationship with the FDs and other agencies.

36. Joint Forest Management (JFM) programme has been another initiative by the Government of India for involving the forest dwelling communities in the management of forests since 1990 and has been implemented by most of the states in the country. Until March 2006 JFM committees have formed involving more than 100,000 villages and covering more than 22 million ha of forests across the country. The JFM programmes have generated many positive outcomes in different locations. It has improved protection, and increased the availability of firewood and NTFPs in many places. Besides sharing of usufruct it has given a share in the timber proceeds to local communities in some cases significantly adding to their incomes. But there are also cases where even promised share of forest products is not given. Further, JFM is not supported by law and being run as a programme under executive orders. As a result, there is limited tenurial security for the local communities and can be rescinded any time. Recently, the Ministry of Environment and Forests has begun discussions with the Ministry of Panchayati Raj and the state governments on the future of JFM. Some of the JFM areas overlap with areas where community rights are being claimed under the FRA, while others may never overlap.

37. Though FRA provides a statutory procedure for recognizing community forest resources and community forest rights and the FR Rules provide a statutory basis for protection of CFRs by a Gram Sabha-based committee where rights are recognized, there are insufficient details available on the aspects of community-based forest governance. There is some confusion as to whether the community has rights to manage the entire community forest resource (CFR) as defined in section 2(a) of the FRA or only those areas within the CFR that had been traditionally protected as provided under section 3(1)(i) of the Act. Further, rights, powers, and responsibilities given to local communities are not accompanied by clarity as to how those responsibilities will be discharged, and what happens when they are not discharged.

38. The committee deliberated on the various areas of confusion and conflict with the previous laws and procedures at village, middle and national levels when the governance and management of CFR is vested with the community. These included as to what will be the balance of power between Forest Department and communities, what powers will be delegated to the communities, what will happen to existing JFM committees, eco-development committees, what will be the institutional set up and funding mechanism for management/ protection of the CFR etc. The committee then made broad recommendations of community based forest governance mentioned in the following paragraphs which will require further clarification as well state-specific adaptation.

### **39. Recommendations**

(a) Four major situations arise when the provisions of CFR are implemented. In situation A where community forest resource (CFRe) claims have been accepted, and where section 5 of the FRA is deemed to be applicable as a result of other rights claimed under section 3, including section 3(1)(i), in situation B where neither CFRe claims have been accepted nor section 5 is applicable but JFM committees are in existence, in situation C where system of community forest management already exists and CFR claims are not made/accepted and in situation D where neither FRA rights, nor JFM nor pre-existing community management systems are in place, but there is still substantial use of forests by local communities.

(b) Where management claims are accepted under FRA, the management committee formed under Rule 4(e), to be named as Community Forest Resource

Management Committees (CFRMC) should carry out functions on behalf of the Gram Sabha. If JFMCs exist in these villages their functions and resources (forest area, funds) should be transferred to the corresponding CFRMCs.

(c) GS will be primarily responsible for ensuring sustainable use, conservation and protection, for which it will be suitably empowered. GS shall have powers to make rules regarding use, harvesting, protection, regeneration, etc and shall generate revenue and receive and spend grants for forest related activities but will not be permitted to make profit. CFRMC office-bearers will be vested with powers to prevent forest offences and penalize offenders/ violators as given to Van Panchayat office bearers in Uttarakhand.

(d) Timber rights will be limited only to domestic needs, unless specifically recognized under sections 3(1)(j) or (l) of the FRA. Over and above this, any timber-sharing arrangements that were prevailing under the JFM programme will continue with the permission of Gram Sabha.

(e) FD will be responsible for providing Protection and Technical support to the Gram Sabhas and shall be empowered to carry out Forest Monitoring, i.e., the extent of compliance with sustainable use and conservation regulations in the community-managed areas. It will also be responsible for taking action on any violations and will continue to exercise additional powers to implement regulatory provisions of the Wild Life Act and other state-level and Central Acts.

(f) State and national level Forest Governance Councils should be constituted to be chaired by the respective ministers and will include FD officials, representatives of forest committees, and representatives from PRIs, civil society and academia. These councils will provide direction to overall forest governance in the state, including by overseeing monitoring, state/national planning, and regulation. The Council should also suggest the setting up of appropriate district level committees with public representation for monitoring and guiding forestry activities at the district, sub-district, and village levels.

(g) In respect of PAs where community forest rights have been claimed and vested, communities will become a rightful part of protection and management system. This would entail a joint or co-management institution of equitable decision-making involving the forest department and GS committees. For every district where such community based or co-managed PAs exist, an additional Honorary Wildlife Warden will be appointed from one of the GS committees falling within or adjacent to a PA.

(h) Amendments may be needed to the Wildlife Protection Act 1972 to provide for the community-based, and joint management institutions mentioned above, to provide for the current 'settlement of rights' process by the process of recognition of rights mandated under the FRA wherever applicable, and to otherwise harmonize it with the provisions of the FRA while retaining its focus on conservation.

(i) There is an urgent need for change in the mind set of forest officials so that they have greater interaction with forest dwellers ensuring their all-round economic and social development, involving them at all stages of planning and implementation of forestry programmes run by the Department, and supporting their own planning and implementation of community-based forestry programmes. Forest Officials should be more adaptive, participatory and transparent in planning processes, based on robust research that is open to independent expertise and knowledge including from local communities.

(j) NTFP will play the most important role in the economic wellbeing of the forest dwelling communities. In order to ensure that the communities are able to derive full benefits on a sustained basis, the government should adopt market friendly policies,

facilitate private trade, provide price support and act as a watchdog to ensure community benefits and ecological sustainability, rather than eliminate the trade. It should encourage local bulking, storage and processing, and bring large buyers in touch with the gatherers, so as to reduce the number of layers of intermediaries. The proposed policy change towards liberalisation and de-regulation of NTFP trade from time to time needs to be strengthened.

(k) Investments to improve the productivity of forest lands under forest rights should be increased by using Tribal Department funds so that sustainable exercise of forest rights can be ensured through sustainability of forest resources.

## **F. Convergence of Development Programmes (Chapter 10)**

40. Forest dwelling communities have remained vulnerable not only because they are poor, assetless and illiterate compared to the general population but also because of their inability to negotiate being inside the forest areas and suffering from geographical disadvantage. In addition, the general apathy of the local administration, including the Tribal Development Department who had the chief mandate to develop the tribal and tribal areas, towards such interior villages in general with any developmental schemes and programmes further increased their sufferings. They occasionally respond with anger and assertion because of persistent problems of land alienation, indebtedness, government monopoly over NTFPs, involuntary displacement due to development projects and lack of proper rehabilitation etc. Migration is common to almost all tribes, but it is the highest in Maharashtra, Gujarat and Jharkahnd.

41. A strategy for the development of ST was introduced in the Fifth Plan more than three decades ago by earmarking funds under Tribal Sub- Plan (TSP) to channelise the flow of outlays and benefits from all the sectors but it has not implemented uniformly effectively in all States/UTs and Central Ministries/Departments. In addition, Special Central Assistance is provided by the Ministry of Tribal Affairs to the 22 TSP States in the form of 100 per cent grant to fill the critical gaps especially in family-based income activities for BPL tribals. Further, under Article 275(1) of the Constitution grants from the Consolidated Fund of India are also extended annually to various state governments having Scheduled Areas for the purpose of promoting their welfare. But these assistance have not made much headway, firstly because the state perception for planning has been deficient both in micro and macro level and secondly the implementation of TSP has been mostly with untrained, inefficient, insensitive and often untrustworthy hands. Apart from poor utilisation of funds tribals have also suffered because of the poor quality of governance.

42. Some states or districts have initiated processes by which relevant government schemes are oriented to benefiting those who have got rights under FRA. However, in general, this aspects needs considerable work and initiative.

## **43. Recommendations**

(a) For over all development of the forest dwelling communities convergence of various developmental schemes operating in areas of education, training, health, employment etc. to achieve higher "happiness index" is essential. The forest lands granted under FRA should be developed so that such lands are utilised to the optimum level of production on sustained basis along with creation of basic infrastructure (road, electricity, public and veterinary related hospitals, schools, water harvesting structures etc) for a decent way of life. The monitoring system should be put in place such that both at the district as well as State level all proposed services to the right holders are delivered speedily and smoothly. Officers with right aptitude should be posted on a long term basis with proper training and members of civil

society should be inducted in the monitoring committees at all levels and also at the implementation level.

(b) The vocational training should be provided on priority basis to the right holders and their family members. The emphasis should be given to such trades which may create employment opportunities in and around their habitation. However, if any right holders or his family members want to get training in such trade which can get them any better employment outside their habitation, the facilities should also be created for such training. Some of such trades can be computer training, food and vegetable preservation, jewellery, tailoring, electrical repair, motor winding, mushroom cultivation, cooking, carpet making, vehicle repair, sericulture, handicrafts, fish rearing, fabrication, welding, driving, building works masons making etc. The fund for training should be provided by the Ministry of Tribal Affairs, Government of India to various State Governments of priority basis.

(c) Every attempt should be made to avoid delay in transfer of benefits to the right holders or their family members under various schemes of development. For meeting this end, the attempt by Maharashtra TRTI of integrating the data base of all forest right holders on GIS platform by giving a thirteen digit code to all claimants could be studied and used with local level modifications, as required.

(d) All development, educational, health and other inputs must be ecologically and culturally sensitive, and must be such that they create self-sufficiency and self-governance rather than continued dependence on outsiders. This is also likely to involve a review and modifications of existing schemes and programmes for such areas and communities. Focus should be on options like renewable decentralised energy, organic farming, small-scale industry, integrated (traditional and modern) health and educational facilities, and so on.

(e) MoTA needs to considerably enhance its role as the nodal agency, by more closely monitoring progress, gathering more robust and disaggregated data on implementation, commissioning independent studies, issuing clarificatory circulars including those suggested in this report, directing states to take action on officials who are obstructing or violating the FRA, taking action on violations such as relocation/displacement of people without the FRA process having been completed or without Gram Sabha consent, and other aspects of poor or improper implementation.

(f) MoEF needs to move urgently towards the governance reforms suggested in this report, ensure that its circular regarding development projects on forest land get legal backing in FRA/FCA, halt all relocations from protected areas that are illegal, take action or direct action to be taken on officials obstructing or violating the FRA, ensure that the FRA process is respected in all afforestation/plantation programmes, encourage the CWH declaration with due process, and move towards reforming the MFP/NFTP collection and trade regimes as suggested in this report.

(l) GOI should establish a National Forest Rights Council which can regularly and systematically monitor the FRA implementation, guide states to take necessary action, and hold or authorize the holding of public consultations and independent assessments.

## Chapter 1. Introduction

### 1.1 Background to FRA

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 or Forests Rights Act (FRA) was published in the Gazette of India on 2<sup>nd</sup> Jan 2007, after passing in the Parliament and approval of the President of India. The enactment of FRA is a historic event, since for the first time the state formally admitted that for long, rights have been denied to forest people and the new law attempts not only to correct the 'Historic Injustice' but also gives prime importance to the role of forest communities' in forest governance and management. This also marked a watershed in the hard-fought and prolonged struggle of *adivasis* and other Forest Dwellers for recognition of community rights over forest resources.

The draft Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Rules, 2007 were published, as required by sub-section (1) of section 14 of the Act under the notification of the Government of India<sup>1</sup> in June, 2007 in the Gazette of India, Part-II, Section 3, sub-section (i) of the same date, inviting objections and suggestions from all persons likely to be affected thereby, before the expiry of the period of forty-five days. The objections and suggestions received from the public in respect of the said draft rules were duly considered by the Central Government and the rules were notified as Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Rules, 2007, on 1<sup>st</sup> January 2008.

Though the roots of the FRA lie in the historical injustice done to forest-dwellers (see 1.2 below), its more recent trigger was in May 2002 when Forest Departments launched large scale eviction drives generating a lot of opposition. By this time, all the mainstream political parties started talking about forest rights. Before 2004 general election both the Congress and BJP promised in the election manifestos that legislation for the tribal rights in the forest areas will be enacted. After 2004 election when UPA came into power this issue was included in the common minimum programme. Consequently in January 2005 the PMO decided that the Ministry of Tribal Affairs (MoTA) would draft a Bill with help of a Technical Support Group. This Group presented a draft in March 2005, and on 13 December 2005 the government tabled it in Parliament. A lot of debate took place on this issue and a Joint Parliamentary Committee (JPC) was formed with 30 members from all parties<sup>2</sup>. It had consultation with various organization and individuals to make it a comprehensive legislation.

The JPC came up with inclusive definition of forest dweller that included both forest-dwelling ST and other traditional forest dwellers (OTFD), since it was felt that the classification of Scheduled Tribes category of forest dwellers and non-scheduled tribes had come into being after independence and also realizing that if rights are only given to ST then a big section of other forest dwellers will be left out posing a threat to their livelihood. Thus, the other forest dwellers were included into the legislation to ensure social and communal balance. Its draft was put to Parliament in May 2006, after which further changes were brought in by the government and the Act passed in December 2006.

During this entire process, from the time the first Bill draft became public, there was considerable and often sharply divided debate over it. A section of

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<sup>1</sup> MoTA G.S.R 437(E) dated 19<sup>th</sup> June 2007.

<sup>2</sup> Report of the Joint Committee on the Scheduled Tribes (Recognition of Forest Rights) Bill, 2005, Lok Sabha Secretariat, New Delhi

conservationists took a position that such a law would destroy India's forests; while a section of human and adivasi groups wanted it to be even stronger than the various versions being presented. Within the government, the Ministries of Tribal Affairs and Environment and Forests appeared to take divergent views, with the PMO having to step in to resolve differences. In the process of the repeated changes that took place in the draft Bill, influenced by widely divergent views on various sides, the final text of the Act in places lacks clarity of concept and process, and is not always clear about its relationship with other laws on forests/wildlife. Some of these issues are brought out in this report.

## **1.2 Understanding Historical Injustice and Indian Forests**

India has a long history of forest and conservation legislations. But understandably these were tools in the hands of pre-colonial rulers and the colonial machinery, which had enacted these laws to make sure that the forests and the wildlife including its richest assets always belonged to the rulers and not to the communities that always lived with them. This also ensured that there were constant and bitter battles fought between the local forest dwelling communities and the ruling classes such as in the western Himalaya, for the rights and independence over the natural resources.

These battles continued even after independence as these communities, who fought for their rights over forests, were either looked upon as encroachers in forests lands or as people who should be brought into and accommodated in the mainstream society from their 'primitive' existence. This was not just a negation of forest dwellers and their inalienable rights, but a constitutional insult on people who had rights over forests. It's also well known that living with forest ecosystem with and without shifting cultivation has been a way of life of 'primitive' and other tribes and has been part of the evolutionary process of human being. These tribal communities had their own system of keeping land records and doing land regulation. Even now also in many areas especially the Northeast there are no formal land record systems and the local communities have their own system of regulating the use of land in their areas

It is for the first time that any forest related law has accepted that historical injustices were inflicted on the forest people since colonial days. However, what were these historical injustices has not been detailed in the Act.

- There is broad agreement that substantial historical injustices to the forest dwelling communities had started with the process of reservation of forests, which alienated these communities from their traditional rights and customs.
- The extraction of forest resources by British was regulated by enacting series of laws viz. the first law in 1865, second law in 1878 and third in 1927 that is known as 'Indian Forest Act' (IFA) which provided backing for massive commercial extraction and conversion, and resulted in the alienation of forest-dwelling people (*"An Act to consolidate the law relating to forests, the transit of forest-produce and the duty leviable on timber and other forest-produce."*)
- The management of Indian forested landscape began primarily with a motive of commercial exploitation of timber, to feed both the British industrial development and the expansion of colonial rule in. This resulted in large scale destruction of forests right from Himalayas to Central India and Western Ghats for expansion of railways and other uses since the middle of the 19<sup>th</sup> century. .
- Some parts of India however witnessed more progressive steps by the colonial government, primarily in response to local agitation and a few forward-thinking individuals within the government. Van Panchayats in Kumaon, tribal reservations continuing the right to customary practices and

access to forests in Andhra Pradesh, Tamil Nadu, and other states, the Chhotta Nagpur Tenancy Act in central India, careful recording of nistar rights in some parts of central India, and maintaining tribal ownership of forests in parts of north-east India, are examples of this. These, however, were exceptions to the general trend of colonial take-over of forests, a trend that continued well after Independence (and in some cases became worse, e.g. with the take-over of Van Panchayats, the non-renewal of tribal reservations in many states, etc.). Post-Independence, too, there have been many progressive steps by exceptional officials, but the system as a whole continues to be top-down, exclusionary, and alienating.

- After independence, the non-implementation of land reform in the lands acquired from the erstwhile princely states and landlords, resulted in further injustice to the people. These lands (including forests) were transferred to FD to select lands appropriate for management by them and lands appropriate for people's use. But such identification remained top-down and incomplete, and lands which were occupied by or forests lands that were used by forest-dwelling communities were not transferred to them for secure occupation and/or use.
- The communities expected, through widespread peoples' movement that all their rights such as nistar rights, community rights and other customary rights recorded in pre-British records such as Wajib-ul-urz, as also the customary rights, that were never recorded, will be given back to them. In many parts of India such as Orissa, customary rights were wholesale converted even into illegal activities by the simple transformation of the legal status of land, with very inadequate settlement procedures if any.
- Even after the land reform laws came into force, the commons, village forests, scrub forest, other categories of grasslands and forests continued to be subjected to the forest settlement process This is within the overall context of the failure of land reforms in general, which is at least partly the reason for continuing considerable dependence of communities on forests.
- The working of most government departments has remained non-transparent and non-participatory, with vital information and processes not made available to the communities. There has been an issue of lack of governance in these areas and more often, the forest department bore the brunt, being the only agency of the government present there.
- With Wild Life Protection Act 1972 and the creation of protected areas (PAs), (a) without a consultation process with resident and user communities, (b) ignoring their rights and their own knowledge and conservation practices, (c) without a comprehensive settlement process that could recognize and vest customary rights and create a fair process of changing them where required, and (d) with forcible or artificially induced displacement in many cases, this further created a wedge between communities and the FD. The local communities in many places turned enemy of the wildlife.
- Large scale deforestation and degradation took place after the 1960s with the introduction of contract system in the forestry sector. This further alienated communities, and also led to movements like Chipko and Appiko.
- Total control of MFPs remained with the FD after independence and started generating considerable revenue and exploitation of the communities on the other hand continued by giving them paltry wages.
- Large scale industrialization and appropriation of forest land to industries went unchecked and people were displaced from their homelands. Though

the Forest Conservation Act slowed this down for a period after 1980, the pace has stepped up again since the 1990s. The Forest Department has mostly been bull-dozed into accepting such diversion. At no stage in the decision-making process regarding diversion, have communities living there been consulted

- The practice of Taungya, equivalent to the bonded labour in its distorted manifestations, continued even after independence till 1980s.
- Meanwhile, as a result of both the above-mentioned policies and programmes, as also an outcome of changing governance, cultural, economic and social situations, patterns of sustainability and institutions of management amongst forest-dwelling communities have eroded. People too, in many parts of India, are responsible for forest degradation, many a times out of compulsion and desperation.
- The Forest Policy 1988, the programmes of Joint Forest Management and Eco-development, and individual innovations by many forest officials have attempted to change the above trends. But they have not managed to alter the fundamental problems of top-down governance, of alienation and dispossession of forest-dwelling communities, and of meeting the growing needs of such communities while ensuring sustainability and conservation. Hence the need for legislation that creates the conditions for such a change, moving away from the historical injustice outlined above, and responding to current conditions.
- The intention of legislation to undo a historical injustice, has unfortunately been often understood and publicized as an Act passed to distribute forest land to tribal and other traditional forest dwellers who encroached forest land on or before 13-12-2005. Many politicians, bureaucrats as well as some NGOs consider the Act as an opportunity to provide, at the fastest pace possible, forest lands to the poor tribals while the conservationists and foresters see it as the ultimate blow to the protection and conservation of forests and wildlife. Both views ignore the intent and letter of the law to provide tenurial security to communities, while also empowering and making them responsible for conservation.

### **1.3 Act and Rules, implementation process**

As the name itself suggests, The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006, commonly known as Forest Rights Act (FRA), aims at recognition of 'forest rights' of forest dwelling Scheduled Tribes and other traditional forest dwellers on forests and forest lands. This recognition process has to follow the path of preference of claim, enquiry and verification, and recording of the same in the appropriate record of rights so that the rights become known to one and all and also become enforceable by the right holders. This process has to be steered extremely carefully so that the Act is not just seen as recognizing forest rights of those who are eligible under the Act, but is also recognized as strict enough to keep out those who may attempt to use it for getting benefits that are not admissible to them under this Act.

The FRA goes much beyond the 'recognition' of forest rights. The Act provides not only for the recognition of 13 types of forest rights (individual as well as community rights) but also prescribes duties for and empowers the forest right holders, Gram Sabhas, and local level institutions in regard to protection of wildlife, forests, bio-diversity, habitat and cultural and natural heritage. These two aspects need to be blended and are required to be put firmly in place so that the rights, duties, and powers mentioned in the Act mutually support and sustain each other.

The task is difficult since right from the days, prior to birth of the Act, it was hailed as an Act to grant *pattas* of forest land. This perception unfortunately continues even today not just among masses but also amongst some of the implementers and policy makers. The Act is also widely seen as one of change of forest governance, but is unfortunately not being understood as such.

#### **1.4 Constitution of the Committee**

Ministry of Environment & Forests had constituted a sub-committee<sup>3</sup> on 3<sup>rd</sup> February 2010 to study the implementation for Forest Rights Act and suggest necessary policy changes in the future management of forestry sector in the country as a consequence of implementation of FRA, under the Chairmanship of Dr. Devendra Pandey with ten members. However, there was considerable opposition (including from its two nominated non-governmental members), to the Term of Reference and composition of this Committee, and to the fact that MoTA was not part of its formation.

Subsequently in a meeting held on 10<sup>th</sup> February 2010 with high level representatives within Ministry of Environment and Forests and the Secretary, MOTA, it was decided that MoEF, jointly with MOTA, would constitute a high level committee of experts to look at the issue of implementation, sustainable forest management and the protection/settlement of the rights of forest dwellers in details.

Therefore, in order to study and assess the impacts of the scheduled tribes and other traditional forest dwellers (Recognition of forest rights) Act, 2006 with regards to the Sustainable Management of Forest Resources, the Ministry of Environment and Forests in consultation with the Ministry of Tribal Affairs, notified the Constitution and Terms of Reference as "The Committee to study and assess the impacts of the scheduled tribes and other traditional forest dwellers (Recognition of Forest Rights) Act, 2006 with regards to the Sustainable Management of Forest Resources."<sup>4</sup> The additional terms of reference of the committee included

1. The committee shall identify the role of stake holders and beneficiaries in the conservation, restoration and regeneration of forests. It shall also prescribe measures and guidelines to involve these stake holders in forest, restoration and regeneration.
2. The committee shall identify opportunities for and recommend measures to ensure convergence of various beneficiary oriented programmes for the forest rights holders taken up by various line departments in the states.
3. The committee shall define a new role for the Forest Department vis a vis the Gram Panchayat for forest conservation and regeneration.

The Ministry of Environment & Forests subsequently decided to reconstitute the committee as a joint committee of Ministry of Environment & Forests and Ministry of Tribal Affairs under the Chairmanship of Dr. N.C. Saxena and Co-chairpersonship of Dr. Devendra Pandey, with a total of nineteen members<sup>5</sup>. The committee also had *ex-officio* representatives from Ministry of Environment and Forests, Ministry of Tribal Affairs, Ministry of Panchayati Raj, Govt. of India. The terms of reference of the committee were considerably broadened to define future role of the forest departments and forest governance (see 1.4 below). The order of the reconstituted committee is given in Annexure (1). Further, the Committee during its first meeting on 3<sup>rd</sup> May, 2010 decided to co-opt Ms. Roma as the specialist member of the

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<sup>3</sup> Government of India, MoEF, Ref. No. 12-1/2006-FP dated 3.2.2010.

<sup>4</sup> Government of India, MoEF, Ref. No. 12-1/2006-FP dated 11<sup>th</sup> Feb, 2010

<sup>5</sup> Government of India, MoEF, Ref. No. 12-1/2006-FP dated 16<sup>th</sup> April, 2010

committee on request of some of the members, which was subsequently endorsed by MoEF.<sup>6</sup>

The committee was given time of six months from the date of constitution of 16<sup>th</sup> April 2010 to submit its final report.

Subsequently, by a specific request from the chairman of the committee<sup>7</sup> on 30.09.2010 requesting extension of three months to the committee, the Ministry of Environment & Forests, Government of India granted time till 15<sup>th</sup> December, 2010 to submit the final report of the committee<sup>8</sup>.

The MoEF requested ICFRE to host the committee and provide all the logistic support including the expenditure for the committee's work.

The complete list along with contact addresses of the members of the committee is given in Annexure-(2) of the report.

### **1.5 Main objectives of the Committee**

Two key objectives of the committee were to study in detail the implementation of FRA, and suggest future directions for forest governance, including questions of role of FD, convergence of various programmes, etc. The revised terms of reference of the reconstituted committee are as follows.

1. The Committee shall study in detail the implementation of the Forest Rights Act, 2006 including factors that are aiding and impeding its implementation.
2. The committee shall recommend necessary policy changes in the future management of the forestry sector in India which may be necessary as a consequence of implementation of Forest Rights Act.
3. The committee shall identify the role of various agencies (official and others) in facilitating forest-dwellers in carrying out their roles regarding conservation and management of forests as envisaged in the Act.
4. The committee shall identify opportunities for and recommend measures to ensure convergence of various beneficiary oriented programmes for the forest rights holders taken up by various line departments in the states.
5. The Committee shall, wherever possible, hold public consultations on all relevant issues soliciting the inputs of the concerned stakeholders.
6. The Committee shall extend full support to the Ministry for Tribal Affairs in their efforts to enforce and implement the Forest Rights Act.
7. The Committee shall define a new role for the Forest Department vis-à-vis the Gram Sabha for forest conservation and regeneration.
8. Any other matter which the Committee feels is ancillary or incidental to the purpose of its establishment.

### **1.6 Methodology**

#### **1.6.1 General approach**

From the outset the Committee decided to make its exercise as participatory and open as possible.

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<sup>6</sup> Government of India, MoEF, Ref. No. 12-1/2006-FP dated 11.6.2010.

<sup>7</sup> Ref No22-1/2006/Edu.-ICFRE(II) dated 30.09.2010

<sup>8</sup> Government of India, MoEF, Ref. No. 12-1/2006-FP dated

The first meeting of the committee on 3<sup>rd</sup> May, 2010 started with a detailed brainstorming on the topical issues pertaining to the implementation of FRA in various parts of the country as per the available information and experiences of the members of the committee. The key issues identified were also summarized in the minutes of the meeting. It was during this meeting that the committee decided on the methodology to be adopted for the purpose of the committee's work and identified specific theme-areas and the subgroups of each theme. The states/regions of the country were also allocated to the subgroups based upon the experience and personal preference of the committee members and these sub-groups were responsible for all the information required for the committee's work from the areas allocated to them. The meeting also deliberated on the requirement of budget and modalities for expenditure/reimbursement of travel expenses of the committee members.

The committee adopted the following methods for eliciting information on the TORs.

- a. Public consultations in various states
- b. Field visits to various states to get first hand information
- c. Meetings with the key State Government officials
- d. Meetings with the FRCs, SDLCs, DLCs and SLMC members
- e. State level information from nodal agencies and MoTA
- f. Secondary information from available reports
- g. Public inputs through open announcements in various languages
- h. Targeted requests to identified individuals and organizations

In the first month itself, detailed letters were addressed to all the state governments about the committee's constitution, and inviting inputs from them relating to the terms of reference, as also the steps taken by the state governments towards implementation of FRA.

Subsequently, specific templates were developed for eliciting information on a number of issues pertaining to the thematic areas. These templates were also circulated to the state governments to elicit their response and were also used by the members of the committee during the state visits.

An email discussion group was established ([fracommittee@yahoogroups.com](mailto:fracommittee@yahoogroups.com)) as the platform for free, unfettered, transparent and continuous exchange of information and views amongst the committee members. This rendered opportunity to exchange views on the work of the committee beyond the meetings at New Delhi, and the large volume of emails exchanged on it bear testimony to its usefulness. A number of files of common interest, information, the representations, inputs to the committee were made available to the members through this platform to form opinion on the thematic areas. This also served an important medium of expressing both differences of opinion, as also convergence of ideas and alternative views for consensus building.

The visits to particular states were decided in the work-plan of the committee each month after due consultation with the members and with the approval of the chair, in a more democratic approach. The choice of the locales for field visit was left to the visiting teams, but efforts were made to cover a broad spectrum of issues by visiting representative areas, areas that were in the news, and areas where special requests came from the ground.

Announcements regarding each consultation and field visit, and appeals to make inputs to these, were circulated through press, the Committee website, email groups and listserves, and through the individual contacts of the members. On request, the MoEF also addressed the state governments about the constitution of the committee.

A total of six full meetings of the committee were held at New Delhi as per the table given below.

SI. No.	Meeting	Date	No. of Participants
1	1 <sup>st</sup> Meeting	3 <sup>rd</sup> May, 2010	16
2	2 <sup>nd</sup> Meeting	7 <sup>th</sup> June, 2010	19
3	3 <sup>rd</sup> Meeting	9 <sup>th</sup> August, 2010	20
4	4 <sup>th</sup> Meeting	14 <sup>th</sup> September, 2010	14
5	5 <sup>th</sup> Meeting	13 <sup>th</sup> October, 2010	16
6	6 <sup>th</sup> Meeting	16 <sup>th</sup> November, 2010	15

### 1.6.2 States visited

In all 17 states were covered by the committee members with the visits and consultations (a full list of states of visit and consultation, is given in Annexure (3); reports from each of these visits are available at the Committee website). The information pertaining to the remaining states, where available, was also used to substantiate and discuss various issues.

### 1.6.3 Public consultations and workshops

In all the Committee held 24 sets of public consultations in the 17 states it visited. Details are given in Annexure (4). A large number of people participated in these consultations, with numbers per consultation varying from about 50 to about 10,000. The maximum participation was from members of forest-dwelling communities, including mass grassroots networks and organizations in all states (individual state reports of the Committee provide more details).

Participation in public consultations was solicited in advance through a mix of methods: word of mouth through local networks, media releases, announcements on listserves and civil society forums, targeted invitations, outreach through official agencies, and so on. At several sites, local civil society organizations or official agencies were instrumental in facilitating the consultations. The Committee was careful not to portray these consultations as 'public hearings' in the parlance of Environmental Protection Act. This was both because such hearings have various legal and administrative requirements, and also because they tend to get very politicized. In practice, the public consultation can best be done when the field visits are taken in few areas in districts, with the purpose of eliciting information from various rights holders and stakeholders. Therefore for the purpose of FRA committee deliberations, we purposely used the term **public consultation** instead. The members also made sure to liaise with district authorities for smooth organizing of the consultations.

The consultations were usually structured such that the Committee provided information on the FRA and the Committee's mandate, then requested brief submissions from representatives of each local community, civil society organization, and official agency present. Most consultations were held in local languages, with translation where necessary.

In addition to the public consultations, a series of thematic workshops was also planned by the Committee. However lack of time and resources constrained this. A national workshop was organised on Habitat Rights of Particularly Vulnerable Tribal Groups (PTGs), along with the Vidarbha Livelihoods Forum.

#### **1.6.4 Field visits**

Apart from the public consultations, the field visits to get first hand information were the mainstay of information for the Committee. A total of 22 field visits to well over hundred sites were undertaken (details with dates and areas visited are provided in Annexure (5)).

The visits provided an opportunity to observe the situation on the ground, discuss and hear the local functionaries of the concerned departments, review the processes of implementation, the functioning of the institutions under FRA viz FRCs, Gram Sabhas, SDLCs and DLCs (including the bottlenecks, impediments, and opportunities that they faced), and learn about best and worst practices, apart from much needed interaction with the local communities and beneficiaries of the Act and a number of civil society organizations. Typically in each state visit, a few days were kept exclusively for field visits.

#### **1.6.5 Meetings with the key State Government officials**

Every state visit invariably included one or more meetings with the state government officials. Twenty three such meetings were held by the committee, in the 17 states it visited. These were at senior levels such as Chief Secretary, Principal Secretaries of Tribal Affairs/Welfare or Social Welfare, Forests, Revenue, and Panchayat, and other senior officers like PCCFs, Nodal officer of state for FRA, and others. At the field level, several more meetings were held with District Collectors, DFOs, Tribal Welfare Officers, and the field staff of Revenue, Forests, Tribal Affairs/Welfare or Social Welfare, Panchayat, and Survey Departments. Not only the information collected during the field visits and consultations was shared, but also the information and perspectives of the state government in implementation of the Act, various bottlenecks and the efforts taken, and any state specific issues were discussed. (Please see Annexure 6 for details of meetings)

#### **1.6.6 Submissions**

The Committee received several thousand submissions, oral and written, in various languages. Most of these were during consultations and visits, but several were also received by mail. The former were, in most cases handed over to district or state authorities, for consideration and processing, but before this, as far as possible, they were read to glean key issues and findings. These were then reflected in consultation/visit reports, and have formed an important information base for this report. Written submissions that have been used in this report have, where relevant, been cited.

#### **1.6.7 Website**

A dedicated website has been hosted for the committee on the ICFRE server (<http://fracommittee.icfre.org>) The website has not only details of committee constitution, the TORs, the members contact addresses and phone numbers, but also provided platform for sharing information in the public domain. As per the decision taken in the committee meetings, all the minutes of the meetings and all the trip reports (along with photographs) submitted by the members and important communications of the committee was placed in the public domain. Apart from this, important clarifications were also made available for public use. An appeal was made through the website to provide inputs to the committee and as a result a number of inputs/suggestions were received. The report of the committee will also be made

available on the website and will, along with other outputs, remain accessible to the public.

### **1.6.8 Benefits of process followed**

While the primary mandate of the Committee was to produce a report of its findings, the *process* it used to achieve this mandate itself has had significant positive impacts, many of them unintended. These include the following:

- A number of emergent issues were brought to the notice of MoTA (see for instance Clarification of Terms, Chapter 2), without waiting for the completion of the report.
- In several states, especially those where little progress in implementation had taken place or where part of the process was stuck due to lack of clarity, the Committee's visit catalyzed the thinking and implementation process in the state government.
- The Committee's visit and inputs provided official agencies and civil society organizations an opportunity to review the implementation processes, and decide on modifications or improvements; this happened for instance with regard to reviewing undue rejections (Madhya Pradesh, Uttar Pradesh), to begin Community Forest Rights (CFR or CFRt) processes where only Individual Forest Rights (IFR) had been implemented, or to correct distortions such as CFR claims/titles being considered only in the name of the JFMC (e.g. Udaipur in Rajasthan and Mayurbhanj in Orissa).
- Information collected and disseminated by Committee members during their state visits, provided an opportunity for sharing of good practices across the states; e.g. the example of a District Collector in Gadchiroli, Maharashtra, proactively distributing documents as evidence to villages, was given to several DCs or senior state officials the Committee met; examples of communities that had carried out a fully democratic process and obtained CFR titles, were shared with many other communities.
- By providing a public, official forum where the Committee lent its ears to voices across the country, and where state official agencies also had to be present to listen, it provided a boost to the confidence levels of such people to take their cause further (e.g. in Gujarat where for many villagers this was the first opportunity to present their full issues in detail to the entire range of relevant officials).
- At many consultations and visits, the Committee was able to help with conflict resolution, facilitate a discussion and resolution to pending issues, and take part in clarification of concepts.
- The consultation and visits also helped in spreading awareness of the FRA, esp. at community and local official/NGO level and through the media.
- Some of its processes stimulated fresh thinking (e.g. on PTGs at field site in Bhamragarh, Maharashtra, as also at national level through the National Workshop mentioned above).
- Some of its field visits brought out issues of violation of the FRA that forced the government to acknowledge and initiate processes of enquiry and action (e.g. the visit to Jagatsinghpur in Orissa showing that the FRA was being violated by the proposed POSCO project, after which the MoEF set up a committee to do a full investigation).

### **1.6.9 Constraints faced in the process, and limitations of the report**

The Committee faced several constraints and limitations, which are also reflected in its process and reports, including this final report. These include the following:

- Limitation of time to take up a task so complex and enormous at country scale was the foremost. Six months time was grossly inadequate for the task, especially given that for all members, this was a voluntary involvement in addition to their normal jobs and commitments. Half of the initial period of the Committee's term also coincided with the monsoons, rendering field visits difficult. A slight extension period was sought to complete the report.
- Due to the above, some key states could not be visited or consultations held in them; and some sub-themes such as development rights (Section 3(2) of the FRA) could not be dealt with in detail. Also, it was not possible to address and respond individually to the thousands of submissions that the Committee was given at its consultations and visits; as far as possible these were passed on to district or state agencies, with a request to consider them seriously.
- The Committee had limited budget of Rs 20 lakh at its disposal, hence the activities in pursuance of objectives were restricted accordingly.
- There was a general lack of response from the states on the written request of the Committee for inputs, with almost no state sending the information. But they were quite forthcoming in providing information when visited.
- Lack of adequate monitoring reports or evaluation reports of the programme done by independent agencies, hampered a deeper understanding on some issues or from some states.
- Lack of adequate data on implementation, including on claims segregated according to type of right or type of community, and the extent of area under community claims, hampered analysis on these issues.
- The committee did not follow any statistical design to elicit information on the lines of a scientific enquiry. It does not claim that the information collected, therefore, is fully representative of the reality across the country. However, the range and depth of information collected and observations made, enable it to draw a number of conclusions as presented in this report.
- Very scanty inputs were received from MoEF and MoTA, despite requests. This denied the Committee a chance to understand the thinking within these ministries, with regard to its key Terms.
- Though quite a bit of the consultations and field visit deliberations, and submissions received, were in local languages, it has not been possible to provide back the consultation/visit reports, and this report itself, in those languages. It is hoped that at least a summary of this report can be translated into some key languages for dissemination
- It is possible that the Committee raised expectations amongst local communities and other participants of the consultations/visits, which it may not be within the power or mandate of the Committee to meet. We hope that our consultation/visit reports and discussions relating to these with district/state authorities, and this report being submitted to

MoTA and MoEF, will help address some of the major problems facing people in getting the FRA implemented, and thereby help in meeting some of these expectations.

- Lack of time has also meant that this report has not been fine-tuned to the extent desirable, leaving possible inconsistencies (but hopefully no contradictions) in style, format, and substance.

#### **1.6.10 Acknowledgements**

The Committee's work would not have been possible without the enthusiastic and meaningful support and participation of thousands of people. We are thankful to the following:

- The thousands of local community members who came for consultations, hosted field visits, and provided oral or written submissions;
- Several hundred civil society organizations who helped organize or participated in consultations and field visits, provided oral or written submissions, commented on the Committee's reports, and provided crucial information when sought;
- State government agencies and officials who provided generous hospitality, facilitated consultations and field visits, and provided information sought by the Committee;
- The Member-Secretary's team at ICFRE that smilingly undertook an onerous task;
- Members of the organizations to which the Committee members belong, for providing anonymous back-up support or tolerating periods of absence during which undue workload may have fallen on them.

#### **1.7 Report Structure**

The report of the committee is presented in 12 chapters covering all the TOR's of the committee. First chapter deals with the context, background to FRA, the historical injustice, the constitution of the committee and setting up of the TOR,s, the processes adopted by the committee including methodology, depicting the enormity of the task and the constraints. It also gives the benefits of the entire process of committee's working. Chapter 2 outlines the detailed processes and Institutions studied by the committee with reference to FRA. Chapter 3 deals with the Individual Forest Rights whereas Chapter 4 deals with the Community Forest Rights and Chapter 5 with the Developmental Projects and Rights. The implementation of FRA with reference to special groups is covered in Chapter 6 and with reference to PAs and CWLH in Chapter 7. Therefore, the first TOR is covered with Chapters 2, 3, 4, 5, 6 and 7. The second TOR of the committee is dealt in details in Chapter 8, to be linked with specific details contained in the chapter 2, 4 and 7. The third TOR of the committee has been covered in details in the chapter 2 for processes and institutions and 4 on Community forest Rights, chapter 7 with reference to PA's and also in chapter 8. There are specific recommendations on role of MoEF, MoTA in Chapter 10. The fourth TOR of the committee is covered in chapters 9 and 10. The fifth TOR is essentially of the nature of the guideline to the committee to hold public consultations and the details of the consultations done by the committee have been outlined in the Chapter 1. The sixth TOR is again of the nature of guideline for the committee and the processes adopted by the committee have led to a number of benefits in the implementation of FRA (Please see chapter 1). A number of notes submitted and clarifications requested by the committee, were essentially to assist MOTA in implementation of the Act in line with TOR-6. The seventh TOR of the committee is dealt in Chapter 8 on Forest Governance, which also needs to be read with the

relevant treatments in the specific chapters on Community Forest Rights and PA.s. Although, there is considerable overlap in the TOR's assigned to the committee, yet the report covers all these TORs as noted above in sufficient details.

## Chapter 2. Process and Institutions of the FRA<sup>9</sup>

### 2.1 Introduction

The FRA lays out a series of procedures, and creates or authorizes institutions at various levels, to carry out implementation.

- At the grassroots level, gram sabha is the authority to initiate the process of determination of rights which include receiving, consolidating and verifying claims. A Forest Rights Committee (FRC) at Gram Sabha (GS) level is constituted and authorized by the gram sabha to assist the gram sabha in its functions to collate, verify, and approve claims to rights.
- A Sub-Divisional Level Committee (SDLC) examines the GS resolutions and maps related to these claims to pass on to the next level. The SDLC provides necessary support to the gram sabha and FRC to support the process for determination of rights.
- A District Level Committee (DLC) examines the claims it receives, and accepts or rejects them. The DLC is also required to ensure that necessary support is provided to gram sabhas to carry out its functions.
- A State Level Monitoring Committee assesses whether the FRA's implementation is taking place as it should. The nodal agency in the state is the Tribal Department, and the state appoints a nodal officer.
- At the national level, the Ministry of Tribal Affairs is the nodal agency.

The FRA and its Rules lay out the composition, functions, and processes of these institutions, and the relations amongst them.

### 2.2 Status of implementation

While almost all states have set up one or more of the institutions mandated by the FRA, some have hardly moved in actual implementation. This includes Bihar, Uttarakhand, Jharkhand, Himachal Pradesh, Goa, Arunachal Pradesh, Manipur, Mizoram, Meghalaya, Nagaland, Sikkim. This is either because the relevant institutions have not been set up (*e.g.* FRCs in large parts of Uttarakhand), or the institutions have hardly started functioning (*e.g.* in many North-eastern states). In several north-eastern states, the state government felt that the FRA was not relevant for their people, or were not clear on how it applies in Schedule 6 areas; most of them are currently re-examining their position. In large parts of central/eastern Indian states like Chhattisgarh, the ongoing situation relating to Naxalism, state police action, and state-sponsored conflict has severely limited the implementation of the FRA. In Gujarat, implementation has taken place only in the Schedule V areas, leaving out several regions which have OTFD populations. In Tamil Nadu, a High Court order on issuing title deeds has restrained an already slow pace of implementation, though interestingly similar orders in the Andhra Pradesh and Orissa have been vacated due to pro-active government interventions. In A&N Islands, the Administration has said there are no OTFDs, and the STs are already protected under the A&N Islands Protection of Aboriginal Tribes (Regulation), 1956, though both these are not necessarily valid arguments, as we show below.

According to the October 2010 update of MoTA, the status of implementation vis-à-vis the setting up of institutions and carrying out of basic processes such as creating awareness and carrying out training programmes, was as follows:

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<sup>9</sup> This chapter has used the various Committee visit and consultation reports, as also other sources listed in the References. Inputs have also been received from Y. Giri Rao, Manish Chandi, and Pankaj Sekhsaria.

State / UT	Setting up of institutions	Carrying out awareness/training prog.	Comments
Andaman and Nicobar	Yes	Yes	SLMC under formation; very limited awareness / training
Andhra Pradesh	Yes	Yes	
Arunachal Pradesh	Yes	No	Doubts regarding applicability
Assam	Yes	Yes	
Bihar	Yes	Yes	Very limited FRC formation
Chhattisgarh	Yes	Yes	
Dadra & Nagar Haveli	Yes	Yes	No FRCs formed
Daman and Diu	Yes	Yes	No FRCs formed
Goa	No	Yes	Institutions under constitution; Awareness/training very limited
Gujarat	Yes	Yes	
Haryana	No	No	Government says no FDSTs/OTFDs
Himachal Pradesh	Yes	Yes	Very limited FRC formation
Jharkhand	Yes	Yes	SLMC hardly met
Karnataka	Yes	Yes	SLMC hardly met
Kerala	Yes	Yes	
Lakshadweep	No	No	Administration says no forests, no FDSTs/OTFDs
Madhya Pradesh	Yes	Yes	
Maharashtra	Yes	Yes	
Manipur			No information
Meghalaya	Yes	No	No information on FRC formation
Mizoram	Yes	No	Assembly decided only in December 2009 to apply FRA
Nagaland	No	No	Under consideration whether FRA is applicable
Orissa	Yes	Yes	
Pondicherry	No	No	Administration says no FDSTs and no forest land
Rajasthan	Yes	Yes	
Sikkim	Yes	No	No information on progress
Tamil Nadu	Yes	Yes	Limited FRC formation and awareness
Tripura	Yes	Yes	
Uttarakhand	Yes	No	Very limited FRC formation
West Bengal	Yes	Yes	

It should be noted that the above table does not reflect the efficacy of the institutions and processes reported by states. Indications of this are available in the specific findings below.

## **2.3 Specific findings**

### **2.3.1 Forest Rights Committee and Gram Sabha**

*1. Recognition of Gram Sabhas:* Given the crucial role of the Gram Sabha (GS) in the determination of rights and in the post-claims process of managing and protecting forests, its recognition as per the provisions of the Act is vital. Yet this is an aspect that has received very little attention from either MoTA or state governments (other than a couple of them). In most states, GSs are being recognized at the panchayat level, rather than at the level of revenue villages or hamlets within them. The FRA specifies (Section 2g) that the GS is “a village assembly which shall consist of all adult members of a village and in case of State having no Panchayats, Padas, Tolas and other traditional village institutions and elected village committees”, and further (Section 2p) that ‘village’ should be at any of four levels:

- i. Villages as defined in the Panchayats (Extension to Scheduled Areas) Act (Section 4b of which says a village shall ordinarily consist of a habitation or group of habitations or a hamlet or group of hamlets comprising a community and managing its affairs in accordance with traditions and customs)
- ii. Villages defined by law relating to Panchayats (i.e. revenue villages).
- iii. Forest villages, old habitations and settlements and unsurveyed villages, whether notified or not.
- iv. Traditional village institutions, in States with no gram panchayats (e.g. in some North-eastern States).

In most states, GSs are being recognized at the Gram Panchayat level, which often includes more than one revenue village, and several hamlets. West Bengal in a state level order even replaced Gram Sabhas with Gram Sansads<sup>10</sup>, the assembly of people at the Panchayat level, consisting often of more than one village; as an example, 11 far-flung villages in Buxa Tiger Reserve are contained within one panchayat (Jha 2010). Similar steps have been taken in most states. This has made the task of convening GS and reaching quorum in its meetings, forming FRCs that can function effectively and be representative, and providing a voice to the most forest-dependent sections of society, extremely difficult and in some places even impossible.

Some states have issued clarifications that the GS should be at the sub-village level (e.g. in Orissa, at the *palli sabha*, and Kerala, at tribal ward sabhas). In some it has been done partially, e.g. in Rajasthan and Gujarat, for Scheduled Areas (see Committee reports for these states). In Chamrajnagar district of Karnataka the Divisional Commissioner specified that GS for the FRA would be at the individual village level, different from the panchayat GS; and in a part of the Nilgiris district GS were formed for clusters of hamlets called “Special Tribal Gram Sabhas” (Thakaekara 2009). But even in many such situations, there remain conceptual or implementation problems, such as the clubbing of several hamlets into one *palli sabha* in many parts of Orissa, or formation of FRCs at panchayat level in many of Rajasthan’s Scheduled Areas.

**In general, though, such inappropriate or impractical recognition of GS has**

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<sup>10</sup> The average number of villages per gram sansad in West Bengal is 11.7

**been one** of the biggest reasons for the seriously inadequate implementation of the FRA in most parts of India. This issue was brought to the notice of the Secretary MoTA, by the Committee, but there has been no response.

*2. FRC formation and functioning:* In many states FRCs were formed very early in the process (early 2008), and where state governments or civil society organizations have been pro-active, have functioned well. Some states or district officials have even facilitated FRC formation in forest villages or nomadic pastoralist settlements (e.g. in parts of Uttar Pradesh), or 'remote' hamlets. Some states (e.g. Madhya Pradesh and Maharashtra) have facilitated due process of verification of claims in a number of settlements. However, the Committee's widespread observation is that FRCs have had serious problems of many kinds, e.g.

- in many areas, FRCs have not been formed at all (as noted in the table above)
- inadequate representation of STs/OTFDs/PTGs (e.g. Baiga PTGs not represented in FRCs in Chhattisgarh), violating FRA's provisions laying down composition of FRC);
- poor representation of women in most states
- government officials in some states are in the FRCs, e.g. in West Bengal the state passed an order that forest, revenue, panchayat or rural development officials could be 'permanent invitees' in the FRCs;
- it has often been difficult to attain the two-thirds quorum required for the GS (e.g. 120 villages studied in Madhya Pradesh and Chhattisgarh had not met their quorum requirements because notice for a GS meeting was given only a day in advance, Samarthan 2010);
- there is frequently a lack of due process to verify claims (linked also to the inadequate functioning of the SDLG, see below);
- at many sites, existing committees (e.g. JFMCs) have been converted into FRCs, without going through the GS (this happened in Kodagu district of Karnataka, and Erode and Coimbatore districts of Tamil Nadu, till protests forced the administration to start a process of reconstituting FRCs through the GS, see Thakaekara 2009);
- FRCs have at many places been formed by undemocratic processes, e.g. by govt officials or teachers rather than election by GS, often without even asking those put in as members (Committee detailed report on Orissa);
- almost everywhere, there has been inadequate assistance by government agencies in facilitating the FRC tasks including funds for its work, building capacity, and verification;

*3. Over-riding or bypassing of GS/FRCs by government officials or political parties:* At several sites well-mobilised GSs and strong FRCs have been able to function independently. However, the dominant trend appears to be towards influence and domination by government officials in deciding on claims. In Bastar, Chhattisgarh, and in Dumka district, Jharkhand, the entire process appears to have been run by the bureaucracy, with no or minimal involvement of FRCs; in many villages the Committee visited, the FRC chair had simply signed onto what was filled in by the patwari or other officials (Committee reports on Chhattisgarh and Jharkhand visits). The Chhattisgarh government apparently even issued instructions that claimants give claims to the panchayat secretary instead of FRCs (CSD 2010). The Maharashtra government issued orders in March 2008 (not withdrawn to date) specifying that the gram sevak would be a member of the FRC. In Sonbhadra (UP), the process was

driven by the bureaucracy and completed at the tahsildar's office. In many parts of Madhya Pradesh, FRCs and GSs were involved only on paper, with the forest ground level staff leading the process through selective facilitation of claims, unilateral decision, and so on (Committee Madhya Pradesh visit report). In several instances, claims have been sent by FRCs directly to official agencies without passing them through GS, or there have been fraudulent GS resolutions for passing or rejecting claims. In Thane district, a civil society group found several cases of fraudulent GS resolutions rejecting all or most claims, which had been prepared by Gram Panchayat Secy or Sarpanch without any GS meeting or process; when villagers challenged this with the help of the group, genuine GS meetings were held and claims passed and sent to the SDO (Communication from Milind Thatte, 2010). In some cases, political parties too have subverted the process, e.g. in Nasik (Maharashtra), getting the claims prepared and then submitting them directly to the tahsil office.

*4. Lack of clarity on who to give claims:* With very inadequate awareness of the process given to FRCs and GSs, there are widespread instances of the claims being given by the GS or the FRC to panchayat secretary or other officials, and little information on what has subsequently happened to the claims. At many places the Committee received complaints that claims have been lost, sometimes en masse (e.g. in Phulwari ki Nal Sanctuary, Rajasthan), with officials to whom villagers said they were given denying that they had received them. Villagers too have often not asked for, or received, any kind of receipt for the claim forms they have given in.

### **2.3.2 SDLC and DLC**

*1. Lack of pro-activeness vis-à-vis FRCs and GS:* In many states there has been an effort by state nodal agencies, DLCs and SDLCs to provide awareness about the FRA through distribution of material or specific programmes. Some states have even done so in local languages (e.g. Maharashtra translated the Act and Rules into 8 tribal languages/dialects). Some district collectors have been exceptionally pro-active in spreading awareness, or in helping disprivileged groups like forest villages and pastoralists to make claims (e.g. the District Collector of Bahraich in Uttar Pradesh helped push the conversion of a forest village Dafedaar Gaudi into revenue status, one of the first in India). However, in general, awareness levels remain low, especially about particular aspects of the FRA (e.g. CFR, see Chapter 4), and especially because there is very inadequate information in local languages. **More seriously, in very few instances have the SDLCs pro-actively provided documents and evidence to FRCs and GSs, though this is required by the FRA.** This has happened only in exceptional cases, e.g. former Gadchiroli DC's initiative to collect and provide documents to villages, placing of several relevant documents onto the Maharashtra TRTI website, or Orissa govt circular requiring such action. Some SDOs have gone out of their way to help in the claims process; for instance the SDO Vaijapur (Aurangabad district, Maharashtra) brought his entire office (staff and equipment) to camp for several days to prepare caste certificates for 18000 people, having realized that their absence was a major constraint to making claims. In the early part of the claims process in Dediapada and other talukas of Narmada district, Gujarat, a DFO was very helpful in providing forest and other documents for evidence. In contrast, many SDLCs or DLCs have even actively discouraged or prevented claims; in Jagatsinghpur district of Orissa, for instance, this was done with claimants who had occupation and dependence on forest land required by the POSCO steel company, and in fact the Committee was even falsely told by the District Collector that there are no eligible claimants there (Committee report on Jagatsinghpur/POSCO visit).

*2. Inadequacies in verification process:* Verification of claims, which is crucial as a basis for issuing titles, has suffered from serious faults, including:

- absence of officers during verification when requested by FRCs
- lack of coordination between revenue and forest officials
- verification without claimants being present
- problems in using spatial technology such as GPS (see Chapter 2)

3. *Predominance to forest officials and obstructions by them:* Though the FRA provides for multi-stakeholder verification and decision-making at various levels, in many places the opinions of forest staff/officers appear to have over-riden all else. Examples of this include:

- decisions often left by SDLC or DLC to forest staff/officers, reflecting a lack of confidence in the full committee decision-making process, and lack of interest and capacity in Tribal Department officers to handle matters of forest rights
- stipulation that PORs or other forest offence documents are necessary evidence, e.g. in Bhamragarh, Maharashtra
- refusal to give documents for use as evidence by claimants, e.g. to pastoral communities in Medak district, Andhra Pradesh
- the use of pre-determined lists available with the FD (e.g. pre-1980 'encroachers'; 1993 Madhya Pradesh; 1978 Maharashtra) as criteria for acceptance of claims, without appreciating the fact that the eligibility criteria in FRA are different from previous processes/laws
- activities that obstruct claims from being made or processed, e.g. plantations or fellings on lands which have claims or potential claims (e.g. in Bokaro district, Jharkhand, see Committee Jharkhand visit report)

4. *Illegitimate rejections:* In many areas, SDLCs have rejected claims, though they are not empowered to do so. In a widespread violation of the FRA, rejections have taken place without giving applicants a reasonable opportunity to be heard. Rejection has also happened on illegitimate grounds or for reasons the claimants are not responsible for, e.g. lack of caste certificate in Bhamragarh (Maharashtra) and Panchmahals (Gujarat) where residents of many villages have simply not been issued such certificates, citing the Naxalite presence or ongoing dispute on their tribal/caste status; or 'not eligible' because 'a Christian' in Udaipur district (Rajasthan). Also widespread is the practice of rejecting claims without giving reasons, and informing the claimant very late, thereby denying her/him an opportunity to appeal. (Committee Bhamragarh visit report; Committee Udaipur visit report; Committee Gujarat visit report; pl. also see more information on this in Chapter 3 on IFRs)

5. *Inappropriate compositions:* In many areas, SDLCs or DLCs do not have membership of PRI institutions or of PTGs where relevant, as required by the FRA. Where they are inducted as members, they are often kept out of the proceedings, e.g. some SDLCs in Kondhamal district, Orissa (Committee detailed report on Orissa). In some states like Tamil Nadu, SDLCs or DLCs have more than one forest officer.

6. *No or delayed communication of decisions or reasons thereof to claimants,* giving no chance for appeal, as in Chhattisgarh and Gujarat. Where appeals have been made, there are long delays in dealing with them (some of over 2 years), and no information meanwhile given to the claimants on status of the appeal.

7. *Inadequate dedicated and trained staff, and short tenures:* Given the lack of manpower available to carry out the complex and many tasks needed under the FRA, in some states (e.g. Maharashtra till August 2010, and Orissa) tribal subplan or

other relevant funds from GOI have been used to hire technical support groups or people to help GS/FRCs with the process, or for verification. In some cases (e.g. Sundergarh, Koraput, Malkangiri districts of Orissa), Collectors or other officials have sought NGO help in sensitization, facilitating evidence gathering, and monitoring. In some states like Maharashtra, Master Trainers for training FRCs and ground-level government functionaries were selected from civil society organizations. However, in general, it has been a serious shortcoming that the tribal or social welfare departments have inadequate staff to deal with the FRA processes, and no dedicated staff has been provided. These departments are used to giving scholarships and grants to beneficiaries, but have no experience of dealing with programmes that require inter-departmental coordination. Most nodal officers were thus quite happy collecting statistical information (often from FD) on FRA, but took no initiative in verifying the figures, arranging for a supervision infrastructure, or assessing the quality of performance of districts. SDLCs and DLCs are comprised of officials who have a number of other functions and tasks already, resulting very commonly in either hasty decisions being taken on claims, or long delays in dealing with them. In some cases single officers have been given multiple responsibilities on a scale impossible for them to do justice to, e.g. in Maharashtra a curator of the Tribal Museum of Pune was appointed in 2008 as member-secretary of 8 SDLCs (this was rectified only in 2010). Also in many places, transfer of officers has led to reconstitution of SDLCs or DLCs with no continuity, and no fresh capacity building efforts to help the new committees.

### **2.3.3 SLMC and state nodal agency**

The role of the SLMC and of the state nodal agency in monitoring and pushing the implementation of the FRA is crucial. In a few states like Orissa, the SLMC or nodal agency under active Principal Secretary of tribal department, has been quite proactive, regularly issuing clarificatory and guidance circulars, involving civil society organizations, and doing fortnightly videoconferencing with all districts to assess progress. In Madhya Pradesh the government issued instructions to all SDLCs to pro-actively list villages with potential rights, and provide them documents that would facilitate claims. In Andhra Pradesh the state assisted FRCs through the appointment of 'social mobilisers' chosen by the villagers themselves from amongst educated youth in their panchayats, and commissioned civil society groups to help special groups such as the Chenchu PTG to make customary use maps for claiming CFR. Nodal agencies or officers in a few states, like Maharashtra, have also shown pro-activeness, including in the concept of "FRA-Plus" providing guidance to or seeking the inputs of other departments and civil society in helping with post-title benefits to rightsholders. However, in most states, the SLMCs and nodal agencies/officers (or state governments as a whole) have displayed the following problems:

- they are mostly inactive, or not pro-active in carrying out its functions, not meeting regularly, and not doing ground level monitoring
- they rarely if ever pull up or penalize errant officials, even where civil society complaints have been repeatedly filed (e.g. some districts of Orissa), or petitions have been filed by claimants/gram sabhas under section 7 and 8 (e.g. some areas of Gujarat).
- very few of them involve civil society in aspects like monitoring or in seeking technical inputs.
- many of them do not have PRI members though required by law (e.g. in Maharashtra, the SLMC got a ST member only in August 2010)
- no action has been taken by most of them, on violations of FRA such as illegal evictions and relocation

- little action has been taken by most of them, on misuse of FRA for fresh encroachments
- some have issued illegitimate deadlines causing rushed and distorted processes on the ground, e.g. Maharashtra (May 2010), Chhattisgarh (December 2009); others have issued illegitimate restrictions, e.g. Himachal Pradesh applying the FRA only to Schedule V areas (Saxena 2010), or Kerala applying the FRA only to FDSTs after declaring (falsely) that there are no OTFDs in the state (Sathyapalan et al 2010). The Maharashtra deadline was brought to the Committee's notice at a public consultation, and the Committee accordingly took it up with MoTA (see Annexure 7). As far as is known, MoTA did not act on this.
- some have issued misleading interpretations, e.g. in the case of Kinnaur in Himachal Pradesh the Tribal and Forest Departments directed that only claims of those residing inside forests will be entertained, and not of those residing on revenue lands adjacent to forests; this contradicts the 2008 clarification issued by MoTA, specifying that the term 'primarily residing in' includes those in adjacent areas (Committee Himachal Pradesh visit report); moreover the Himachal Pradesh Forest Department has directed that people who were income tax payers, businessmen or government employees (regular or on contract), could not be eligible under the FRA, which has effectively put a stop to all acceptance of claims since November 2009 (Saxena 2010).
- most north-eastern states have only recently started the process, or not started it at all, due to confusion regarding its applicability (see Box 1 below).
- not much progress has also been made in areas like Andaman and Nicobar Islands, partly because it is felt that the tribes are already protected under special regulations, but also because virtually no awareness has been spread on the possible benefits of applying the FRA in not only PTG situations but also for the other FDSTs/OTFDs.
- in several states, claim forms and formats have unnecessary and illegal requirements (e.g. the Rajasthan *kulak* and the Uttarakhand claim form had pages for endorsement by various officials, which the FRA does not require the claimant to submit; see Committee Udaipur and Uttarakhand visit reports), or illegal / improper restrictions (e.g. Orissa CFR format used in Simlipal, see Committee Simlipal visit report). Only after considerable civil society protest have some of these been withdrawn or clarified.
- they have done almost no thinking and taken any action on the post-title scenario, especially with regard to CFRs; in fact some states are even ignoring requests or demands from communities that have received titles, for help in ensuring conservation and sustainable use, or dealing with external threats like mining (e.g. Badrama in Orissa).
- except Orissa, no state has attempted process evaluation of the programme, although the Act has been under implementation for more than two years.

### Box 1

#### FRA in 6<sup>th</sup> Schedule and other north-eastern states

In most states of north-east India, implementation of the FRA has hardly progressed. Given below are the reasons received or given by MoTA:

In Manipur, while “reasons why no action has been initiated for implementation of the Act are not available” from the state, MoTA states that “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”.

The 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 FRA per se “may not be applicable”. However, the state government has constituted a committee to examine this, as per Article 371(A) of the Constitution of India.

Meghalaya has remarked that “substantial portion of forest land is owned by clans, community or individuals. Implementation of the Act has, therefore, limited scope.”

In Mizoram, under Article 371 (G) of the Constitution, the State Legislative Assembly resolved to adopt the FRA, on 29<sup>th</sup> October 2009. The Act was notified on 3 March 2010; so far only the higher level institutions have been set up.

In the Sixth Schedule areas of Assam, the Act has not implemented till now. The Government of Assam has asked for legal clarifications from MoTA on legal aspects of constitutions of committees etc in this regard.

In Arunachal Pradesh, the government states that “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 all 6<sup>th</sup> Schedule states, the Governor and/or the President (with variations between States) can direct that a Central enactment shall not apply, or shall apply with modifications or exceptions. The Union of India rules are also applicable to Reserved Forests areas within 6<sup>th</sup> Schedule areas.

In some states there is a fear amongst people or the government that the FRA will interfere with existing rights, or create new conflicts. In Arunachal Pradesh for instance, communities fear that their shifting cultivation rights, currently spread over large areas, will be curtailed to 4 hectares each. This is a legitimate fear given that such curtailment is illegitimately taking place in Tripura (see Committee Tripura trip report).

MoTA has reportedly been in touch with some individual states to clarify doubts, but it is not clear what specific position it has taken or advise it has given. A reading of the FRA's provisions, along with the individual powers that most north-eastern states (or parts of these states where 6<sup>th</sup> Schedule applies), suggests that the fear of undermining existing rights is unfounded if the FRA is implemented in its true spirit and letter, and that rather, the FRA could further strengthen customary or traditional rights. An additional factor that needs consideration is that land records do not exist or are very inadequate in several north-eastern states.

## **2.3.4 National level agencies**

### **1. MoTA**

As the nodal agency at the centre, MoTA has the most crucial role in the FRA's implementation. It has occasionally pushed states (through letters or meetings) to expedite implementation, issued a few circulars to clarify or guide states (including a very useful one on the interpretation of 'residing in', and some important ones in 2010), and collated a monthly report on the status of implementation across the country. Its website attempts to monitor implementation by putting information on claims, in some cases even individual claims and their status. In general, however, it suffers from the following problems:

- a lack of pro-activeness, with only occasional clarificatory or directive circulars being issued and occasional workshops and state visits being organised. Several critical issues that have emerged and been pointed out by civil society organizations or states (including those discussed in Chapter 2) have been ignored, and there is no regular, systematic attempt to meet with and visit states to promote implementation.
- designing of faulty claim forms, e.g. Form B does not mention a number of rights including 3(1)i
- inadequate monitoring, with faulty data gathering (e.g. little disaggregation into different kinds of rights) and little analysis of the reasons for tardy implementation; no guidance has been given to states on robust information collection and analysis methods.
- in particular, no information collection and analysis on claims and area under CFR, therefore not able to put meaningful pressure on states to make progress on these.
- illegitimate and confusing deadlines, e.g. advising states "to ensure completion of the work relating to vesting of forest rights by end of December, 2009" (MoTA press release, 30 November 2009)
- taking no action or not directing states to take action on officials obstructing or violating the FRA, or not acting upon major violations of the law like diversion of forest land for projects without recognition of forest rights, relocation of forest dwellers from tiger reserves, conditional titles etc.
- issuing confusing, regressive or illegal circulars, e.g. the one on rejections, dt. 4 March 2010, which stated that once rejected, claims cannot be re-opened except in cases of "unduly large" rejection levels, and the one on development rights under Section 3(2), dt. 18 May 2009, asking the user agency to submit plans for compensatory afforestation ("twice the number of trees to be felled"), even though the FRA (under Section 4(7)) specifically exempts development rights from such provisions that are otherwise mandatory under the Forest Conservation Act.
- no regularly updated information and analysis on the claims in the FRA monitoring website (<http://www.forestrights.nic.in/>). No information regarding state governments' processes, initiatives, and circulars/orders.
- no involvement of professional organizations in evaluation or assessment of the implementation, so that corrective action can be taken in time.

### **2. MoEF**

MoEF has shown some interest in the implementation of the FRA in a couple of its actions, such as the 30 July 2009 circular requiring FRA completion and GS consent

in the diversion of forest land, and the 21 June 2010 instruction to states that the FRA has to be complied with before any displacement from protected areas is carried out. In general, however, MoEF's treatment of the FRA needs improvements in many ways, including:

- It should not promote or fund afforestation and plantations on common (including forest) lands without consultation with the people, denying them the chance of making claims or of being vested with rights to lands they have customarily used; indeed the FRA is not even mentioned in many new schemes or plans, e.g. related to CAMPA
- While granting clearances to projects on forest lands, it should consider claims made under FRA in line with its own July 2009 circular (see examples in Chapter 5)
- While funding and promoting relocation of communities from tiger reserves, it should ensure due process under both FRA and WLPA.
- Should ensure directions to dissuade unilateral actions by forest officials that undertake evictions in violation of Section 4(5).

In many of these and other ways, MoEF needs to be more sensitive to the requirements of the provisions of FRA. These have been pointed out to the MoEF by civil society organizations, but corrective action has been very belated (e.g. the circular on implementing the FRA in protected areas) or absent.

Both MoTA and MoEF have done little thinking and issued no guidance to states on the processes needed after giving titles, e.g. for management of community forest resources, for interface with relevant govt agencies, for overlap with other laws and institutions, for convergence of schemes, and so on. The TORs given to this Committee now include these aspects, but they should have been the subject of a committee or other process much earlier in the life of the FRA's implementation.

### **3. GOI**

FRA is one of the government's flagship programmes, therefore, the government as a whole, including the PMO or the Planning Commission, are expected to show more commitment to its implementation. Indeed it has at times caused confusion or created situations where implementation has been distorted. An example of this is the letter of the Ministry of Panchayati Raj to all state governments in mid-February 2008, asking that all panchayats call gram sabha meetings on 28 February 2008 (i.e. in about ten days after the letter!).

The PMO's target oriented review mechanism has also caused distortions in implementation, pushing states to worry only about showing increase in number of claims processed, rather than on the quality of the process.

While the central government has appointed MoTA to be the nodal ministry, it has not mandated or enabled the regular and coherent coordination between MoTA and other key ministries, such as MoEF, Min. of Panchayat Raj, and Min. of Rural Development, all of which have crucial roles to play in the FRA.

#### **2.3.5 Civil society involvement**

At all levels of the process, a crucial role has been played by civil society organizations (CSOs) of various kinds. Particularly pro-active have been community-based groups who have a fair understanding of forest rights issues and have the skills and capacity to mobilize the community or negotiate with government. At a national level, campaign forums or groups like Campaign for Survival and Dignity and National Forum of Forest Peoples and Forest Workers have kept up the pressure and provided critical inputs from the time of drafting the Bills to the stage of

implementation. At state and local levels, dozens of organizations and forums have helped in spreading awareness, facilitating claims, resolving disputes amongst claimants, and initiating thinking on post-title processes. Some of these are mentioned in this report, but there are many more to whom credit must be given for some of the more innovative, positive aspects of implementation.

Such a role, however, has not been uniform. At many sites the Committee also found that civil society organizations who were unaware of various provisions of the Act, or had serious misunderstandings about its purpose and scope. Some of these had even managed to spread misinformation or mislead communities, e.g. in making CFRt claims only for JFM bounded areas. At least a part of the reason that the implementation has focused so heavily on IFRs and neglected CFRs, is because of the way the FRA was portrayed and promoted as a land-recognition law by several groups. Many organizations with a good base amongst communities, even if working on natural resource issues, were not working on the FRA (due mostly to lack of capacity or understanding). Some were found to be outrightly hostile to the FRA, either because of their understanding of its conservation implications or because of their fear that it could curtail people's existing rights or create new conflicts (e.g. between eligible and non-eligible residents of the same community). Some conservation groups have even filed petitions in the Supreme Court, challenging the constitutional validity of the FRA on grounds that betray a narrow view of conservation. Unfortunately a number of associations of retired forest officers too have filed petitions against the FRA, in various state high courts.

Some state governments have encouraged and sponsored civil society involvement, especially in facilitating Gram Sabhas and FRCs (see for instance the example of Andhra Pradesh commissioning CSO help for the Chenchu PTG, in Chapter 4). In Orissa the nodal agency has issued several instructions to all District Collectors to involve the local civil societies, peoples' forum and their networks in facilitating the process of FRA implementation. Besides this State Nodal Agency has been taking help from civil society groups in identifying the implementation related issues and addressing it through issuing clarificatory circulars time to time. In Maharashtra, CSOs have been involved by the nodal agency in training and orientation programmes, including as Master Trainers. In many parts of the Nilgiris, CSO inputs have been positively absorbed by the administration in reviewing and reworking faulty FRA processes.

Many CSOs facilitated or took part in the Committee's consultations and visits, or made separate written submissions. Their involvement has been crucial for the Committee's work. Unfortunately many who had promised to send evidence of the kinds of problems they spoke about at public consultations, e.g. regarding fresh encroachments or illegal evictions, did not do so despite reminders.

### **2.3.6 Women's involvement**

The FRA requires women's involvement in all the institutions set up or recognized for its implementation. In general, this has been very poorly achieved. In most states, FRCs have had inadequate or no representation of women, GSs have been convened without the "full and unrestricted participation of women" (Section 2g), and SDLCs, DLCs and SLMCs have not necessarily ensured that at least one of the PRI members is a woman (Section 6(8)). These failures are a part of the reason why the implementation of the FRA has not necessarily paid the attention to women it should have, e.g. in ensuring that land titles are in the name of both spouses (Section 4(4)), or in looking into the special needs of women vis-à-vis the forest commons.

### **2.3.7 Evictions, illegal relocation, and fresh encroachments**

#### *i. Evictions in violation of Section 4(5)*

Section 4(5) of the FRA states: "Save as otherwise provided, no member of FDST or OTFD shall be evicted or removed from forest land under his occupation till the recognition and verification procedure is complete". There have been reports of evictions in violation of this provision, before and during the tenure of the Committee. Several cases were reported to the Committee; some were investigated or evidence sought to the extent possible. Some situations and examples include:

- Where the Forest Department has issued eviction notices to persons who have filed claims under the FRA and whose claims are pending, not rejected. One example is from Thane District in Maharashtra, attached as Annexure 8. The Forest Department's notice makes no reference to the ongoing FRA process.
- Where the Forest Departments have summarily evicted people, or destroyed cultivation, or demolished houses of persons who have filed claims (or who are clearly eligible to file claims but have not done so due to flaws in the claims process). One example is Rajaji National Park, where the *dera* of one Van Gujjar (Mehdi Hassan) was demolished by the Forest Department the day after the FRA committee's visit to the site on 31 May 2010 (see complaint received from the FRC President in Annexure 9). Another example from Rainipati village, Betul district (MP) is given in Annexure 10. In both these cases, no notice was given, nor was there consultation with the DLC as to whether the FRA process has been completed, whether a particular claimant has been found to illegitimate, etc.
- Where the Forest Departments have effectively prevented cultivation by legitimate FRA claimants (STs cultivating since pre-2005), by digging pits in their lands for undertaking forest plantation. One example from Bokaro District in Jharkhand is attached as Annexure 11.

There is little evidence that such illegal actions have been dealt with seriously by either state governments or by MoEF and MoTA.

#### *ii. Illegal relocation*

Several cases of relocation from protected areas without having completed the procedures under the FRA were reported to or found by the Committee. This includes relocation from the tiger reserves of Tadoba Andhari (Maharashtra), Simlipal (Orissa), Sariska and Ranthambhor (Rajasthan), Udanti (Chhattisgarh) and others. Many more villages are slated for relocation from these or other protected areas, with little indication that the authorities are ready to respect the due process laid down in law.

It also appears that the National Tiger Conservation Authority (NTCA) and MoEF are continuing to support (monetarily and otherwise) such relocation, without checking on whether legal requirements and guidelines relating to the notification of tiger reserves and critical tiger habitats, and of carrying out relocation, have been met. These requirements (more or less the same in the FRA and the WLPA) include:

- The recognition and vesting of rights process is to be completed as per Section 6 of the FRA
- Agencies of the state government have to conclude that the activities or presence of right holders is causing irreversible damage
- The state government has to conclude that other reasonable options, such as coexistence, are not available.

In response to a RTI application by a civil society organization, the NTCA stated that it did not have this information and that it should be sought from state governments;

RTI applications to state governments such as Chhattisgarh reveal that these requirements have simply not been met (Gupta Bhaya and Kothari 2010). Relocation in such circumstances is a gross violation of the FRA.

### *iii. False claims and post-2005 encroachments*

The FRA is clearly meant for those who have occupied land before 13 December 2005, as per Section 4(3). There are several reports of fresh clearing of forest, after this date, in a bid to make claims under the FRA. There are also reports of false claims in still standing forest areas. Complaints of these kinds were made to the Committee in a number of consultations and field visits, e.g. in Assam, Gujarat, Maharashtra and Rajasthan. Some written submissions also pointed to this (e.g. Aaranyak et al 2010), though only one (from Yaval forest division of Jalgaon district, Maharashtra, by Satpura Bachao Kruti Samiti) gave specific details or evidence of the site, area, and other details of the encroachment. Some other documented examples include:

1. Where false FRA claims are being over standing forest, but they are not necessarily resulting in immediate deforestation, e.g. cases documented by the TRTI, Maharashtra; one example is given in Annexure 12.
2. Where fresh encroachment (post-December 13, 2005) has been carried out, e.g. in Maharashtra, given in Annexure 13.

It should be noted that though large-scale fresh encroachment has been reported from many areas, often this has origins in political movements of land occupation that pre-date the FRA by several years, e.g. encroachment in the Kawal Sanctuary of Andhra Pradesh as part of the CPM's *bhoo porotom* drive (reported by the state government to be over about 400 hectares, see MoEF 2008; various media reports however gave a much smaller figure). Another example is large-scale clearance of forests in the Sonitpur district of Assam, part of the political move to create a Bodo tribal majority; though the FRA was not a cause for these, it did make it difficult to deal with the problem (Bose 2009).

The situation is also complicated by the fact that some of what is reported as fresh encroachments may have been attempts to reclaim cultivated lands taken over by the government for plantations in the last few years, or are lands that are part of shifting cultivation cycles, currently under regeneration (such examples were reported from Gujarat and West Bengal in the early period after the FRA was promulgated).

Post-2005 encroachments are, nevertheless, a serious problem in several parts of India that have not been dealt with seriously.

## **2.4 Recommendations**

An urgent overall need is for MoTA to carry out a full review of the process and institutions in all states, building on the work of this Committee, and carry out or direct necessary correctives. More specific recommendations are as follows.

### **Gram Sabha and FRCs**

1. Constitution or reconstitution of GS at hamlet/revenue village level (see below, 5.1)
2. Immediate constitution of FRCs where not yet formed
3. Reconstitution of FRCs where wrongly formed, through open elections; however where there has been satisfactory processing of claims and vesting of rights despite faulty FRC formation, not to undo this since the objective of the FRA has been met; only to review where there has been improper rejections or acceptance, or denial of the possibility of making claims, etc.

4. Ensuring representation and participation of resource dependent and vulnerable groups such as PTGs, nomadic/pastoralist communities, shifting cultivators, MFP gatherers, and women, in the GS and FRCs.
4. Clear instructions about officials not usurping powers and functions of FRC and GS.
5. Public display of FRC composition, status of claims, and GS resolution on claims
6. Funding and other support to FRCs to carry out their task.

#### **SDLC and DLC**

1. Reconstitution where composition or process is wrong, ensuring representation of PRI/PTG/ST etc
2. Mandatory responsibility to pro-actively provide information regarding the forest rights and procedure of making claims, evidence/documents/information to GS/FRC
3. Provision of GS/FRC through facilitators or technical support groups to GS, adequately funded, and suo muto action in case important rights are left out of the claim and recognition process (e.g. rights of PTGs, nomadic/pastoralist communities, displaced communities/people).
4. Appointment of officials dedicated full-time to FRA implementation, at subdivisional and district levels
5. Widespread campaign to inform GS that claims, once passed through GS, must come straight to SDLC (without, with no role of intermediaries) and creating a mechanism to ensure that.
6. Re-examination of rejections done on improper grounds
7. Information to all claimants regarding rejections, giving another opportunity for appeals
8. Ensuring that titles are issued only after providing information on claims to the claimants and providing reasonable opportunity to appeal.
9. Instructions that rejections cannot happen at the SDLC level
10. No rejections on the basis of spatial technologies or existing records, without actual ground verification and opportunity to claimant to show occupation/dependence.
11. Regular public consultations and hearings, at various locations accessible to maximum number of forest-dwelling communities, both to communicate status of implementation and to hear grievances
12. Incorporation of recognized rights in relevant government records and sharing copies of the same with the claimants and gram sabhas.
13. Action on errant, improper or illegal behaviour by officials, and against corruption
14. Minutes of meetings and regular updates on status of implementation, to be put into public domain (web, and hard copies at SDO/tehsildar/forest offices)
15. Commissioning independent studies and monitoring of the implementation status.
16. Creation of technical advisory teams, with civil society members, to help SDLC and DLC in their tasks.
17. The DLC to should have the power to review cases if there are appeals presenting new evidence or showing improper application of the FRA; this may require an amendment of the FRA.

## **SLMC and state-level**

1. Strengthening of relevant nodal agencies and departments (Tribal/Social Welfare), through more manpower and training
2. Immediate action on another round of public awareness, using various media, in local languages; and another round of training programmes for all relevant officials/community members... engaging credible CSOs especially on CFRt
3. Production of guidance material in local languages, including on CFRt, how to fill the claim forms, etc.
3. Regular meetings, fortnightly or monthly videoconference monitoring, establishment of committees/panels for ground level assessments and public hearings/consultations
4. Data collection at disaggregated level, ongoing analysis of results, dissemination of these results in public forums including in a periodic report
5. Action on errant and illegal behaviour by officials, and against corruption; creation of a mechanism to respond, suo moto or based on petitions filed under Sections 7/8, on violations of FRA.
6. Formulating list of villages inside or adjacent to forests (see below related action by MoEF), and pro-actively facilitating their CFRt claims
7. Activation of the process in north-eastern states that have so far hesitated due to confusion regarding the FRA's applicability (see Box 2 below).
8. Activation of the process in areas like Andaman and Nicobar Islands, where special facilitation would be needed for (i) the PTGs (see Chapter 6); (ii) the Nicobarese as STs (in particular involving their customary institutions and resource tenure systems through village and clan/*tuhet* elders); and (iii) for the Karens and Ranchis as potential OTFDs.
9. State Tribal Advisory Councils to set up mechanism for regular oversight of implementation process, and to provide inputs to SLMC/DLC, ensuring that OTFDs too are brought under the purview of this mechanism
10. Section 8 needs to be amended to extend the right of giving notice, to OTFDs also.

### **Box 2**

#### **FRA implementation in Schedule 6 and other north-eastern states**

The confusion and hesitation regarding the applicability of the FRA to Schedule 6 and other north-eastern states (see Box 1 above) needs to be cleared by the states with inputs from MoTA. In particular, the following needs to be pointed out:

- (i) The FRA in its Sections 3(1)j and 3(1)l, clearly allows for existing rights to be recognized, including through any state laws relating to Autonomous District or Regional Councils (such as set up under Schedule 6).
- (ii) If any modifications to the FRA are required to suit particular ecological, cultural, or other conditions of an area, the Constitution provides for this in the case of Schedule 6 states (Assam, Meghalaya, Mizoram, Tripura), and for Nagaland under Article 371(A).
- (iii) Shifting cultivation rights can be claimed under Sections 3(1)j or 3(1)l, or under Section 3(1)(e) in the case of PTGs, and would therefore not be restricted to 4 hectares (which limit is only for Section 3(1)a)
- (iv) Under section 2(p)(iv), the "gram sabha" in most such areas will be the traditional

village institution.

Widespread awareness programmes and public discussions (including with the autonomous councils) are needed on the above aspects. These would help considerably in promoting the application of the FRA in north-eastern states, while fully respecting its enormous diversity of situations, its peculiar land and forest tenure arrangements, and so on. Such implementation must only be as considered appropriate by the local communities, after fully understanding the implications of the FRA.

## **National level**

### **1. MoTA**

- i. Directions to states to strengthen nodal agencies and departments (Tribal/Social Welfare)
- ii. Issuing of circulars and directions on a range of issues brought up by this report, including process/institutional recommendations made in this chapter, the formation/constitution of gram sabhas, withdrawal of illegal deadlines, issuing of titles without conditions that violate the FRA, special procedures and steps for groups like nomadic and pastoral communities, PTGs, shifting cultivators, etc.
- iii. Clarifying or amending its circular of 4 March 2010 regarding rejections (by specifying that rejected claims can be re-opened on appeal backed by sufficient grounds of impropriety, and that remand rather than rejection should be first option for SDLC/DLC). This new circular should also list all the wrongful ways of rejecting claims that have come to light across the country (including those recorded in this report) and direct states to take corrective action to ensure they are not repeated.
- iv. Withdrawing the requirement of compensatory afforestation for development rights (Sec. 3(2)) in its circular of 18 May, 2009
- v. Formulation of robust data collection and monitoring formats, and insistence that states provide information according to these; commissioning of independent studies to find out status of implementation; regular analytical reports on implementation, including progress in creating awareness and training, progress in getting and processing claims, etc.
- vi. Commissioning CSOs/institutions to prepare simple awareness material, in various languages and dialects, including clarificatory circulars, and guide on CFRts
- vii. Taking action or directing states to take action against officials who are shown, by due process, to be obstructing or violating the FRA process
- viii. Collating and disseminating 'best practice' cases, to enable states to learn from and employ similar practices
- ix. Monthly videoconferencing with SLMCs to monitor progress (not only on quantitative but also qualitative parameters), provide guidance, etc.
- x. Facilitating dialogue between states and civil society on improving implementation of the FRA, especially provisions relating to CFRt.

### **2. MoEF**

- i. Taking firm steps to move towards a new governance regime of forests, as suggested in this report
- ii. Reviewing all activities and projects relating to forest commons, including plantation and afforestation under CAMPA, externally aided projects, climate change projects, GIM, etc, to ensure that FRA processes are respected and ensured, and GS consent has been obtained

- iii. Strict compliance with the requirements of FRA completion and GS consent (as per its July 2009 circular) before approving the diversion of forest lands under the Forest Conservation Act
- iv. Halting illegal relocation from PAs, ordering that all tiger reserve or CTH notifications (subsequent to 1.1.2008, please see chapter 7, section 7.4.4) that have been issued in violation of the laws be withdrawn, and ensuring that due processes under FRA and WLPA are followed in renotifying these and in any further relocation
- v. Ensuring that processes of identifying and declaring CWH/CTH follow due process, and taking on board the detailed guidance given on this by CSOs (annexed to Chapter 7)
- vi. Taking action or directing states to take action against officials who are shown, by due enquiry, to be obstructing or violating the FRA process
- vii. Taking action or direction states to take action in the case of officials responsible for evictions in violation of Section 4(5), and to withdraw pre-FRA encroachment and petty offence cases
- vii. Taking action or directing states to take action against those responsible for cases of fresh post-2005 encroachments
- viii. Urgently updating national level information on villages inside and adjacent to forests, through FSI, and providing this to states to pro-actively facilitate CFRt claims
- ix. Reviewing the present state-wise policies relating to production, access, and marketing of MFPs/NTFPs, and taking new policy initiatives as suggested in this report.

### **3. Government of India**

The Government of India should allocate more resources to states for implementation of the FRA (including for awareness programmes/material, hiring of support staff, holding public consultations, commissioning independent studies, supporting FRCs, etc). It needs to accord the same importance and attention to the FRA as it has provided to the NREGA. The Planning Commission should include FRA as core intervention in the forestry and livelihood sector in the upcoming 12<sup>th</sup> 5-Year Plan and should provide for necessary resource support for its implementation.

For this, it should establish a National Forest Rights Council (similar to NREGA Council):

- which is comprised of a balance of officials and non-officials (especially those experienced with forest rights issues), headed by the Minister of Tribal Affairs, and containing the Commissioners of ST and SC;
- whose key functions include independently and regularly assessing and monitoring implementation status, advising GOI and states on implementation, carrying out or authorizing periodic public consultations and hearings, etc.; and
- which is vested with relevant powers to access state and central government records, and carry out independent investigations.

This Council should be provided adequate funds to carry out its functions.

### **Civil society involvement**

There is a clear need for much greater involvement of civil society organizations, networks and forums at all levels of implementation. This could be institutionalized, as also facilitated in informal ways, for each level of institutions set up or recognized under the FRA. This is not to replace or weaken the essential roles and mandates of

these institutions, but to facilitate them, or to act as a monitor and watchdog that can raise alerts and do advocacy on the misuse of or obstruction to the FRA.

Civil society also has the responsibility, however, of upgrading its own knowledge and understanding of the FRA, so that its activities regarding awareness, facilitation, and advocacy are on a sound footing. It should also build much greater capacity to systematically document ongoing processes, and carry out advocacy based on sound information. Training and orientation programmes should be run by and for such organizations at local and state levels, for these purposes.

### **Women's involvement**

SLMCs should undertake an urgent review of all FRCs, SDLCs, and DLCs and ensure that women's representation is achieved as per the FRA. MoTA should also consider a circular reminding states of this statutory requirement, and specifying aspects to pay special attention to, such as joint (husband-wife) titles, claims to CFRt, and post-claims involvement of women in GS committees or other forums.

MoTA and state agencies could also sponsor studies specifically on this issue, building on the very few that have so far been carried out (e.g. on women's entitlements in Vishakhapatnam, Andhra Pradesh; see Kumar undated).

### **2.5 Clarification of terms, concepts, and processes**

A number of terms, concepts, and processes of the FRA remain unclear or subject to varying interpretations. The Committee has not been able to analyse and make recommendations on all of these, but some crucial ones are given below (several others come up in individual chapters that follow).

#### **2.5.1 Gram sabhas**

As pointed out above, the formation or recognition of Gram Sabhas at panchayat level has created many of the problems that plague the FRA's implementation. The Committee has sent a letter to MoTA on the need to clarify to states that Gram Sabhas should be formed or recognized at hamlet or revenue village level, which is given in Annexure 14 (on which unfortunately no action has been taken).

#### **2.5.2 OTFDs**

Another major problem affecting the implementation of the FRA has been the unnecessarily and improperly restrictive interpretations of the definition of OTFDs. This is one of the reasons for en masse rejection of OTFD claims. The Committee has reviewed carefully the FRA (see Box 3 on OTFDs below), and recommends that MoTA issue a circular to all states to the effect that:

MoTA to issue an immediate clarification to all states explaining the above and insisting on proper application of this interpretation to all potential OTFD cases. Specifically, the MoTA should clarify in one single circular that, in the case of OTFDs:

- a) the requirement "for at least three generations prior to December 2005" applies to the residency clause only, and relates to the recognition of a non-Scheduled Tribe person as an OTFD under the Act; this requirement does not relate to the parcel of land for which a claim is being made, or to the forest on which other rights are being claimed. The claimant need not have occupied the land, or been using the forest, for 75 years.
- b) (citing the MoTA circular of 09.06.2008), the requirement "primarily residing in" includes those whose habitation may be outside forest lands but who are dependent on forest lands for bona fide livelihood purposes,

- c) the requirement that land to which claim is being made should have been occupied before the 13<sup>th</sup> day of December 2005 applies equally to STFDs and OTFDs.
- d) the two-stage process of verification as followed in Maharashtra must be followed in other states.

### **Box 3: Recognition and eligibility of OTFDs**

#### **Recognition as OTFD**

Section 2(o) of the FRA defines OTFDs as follows:

*(o) "other traditional forest dweller" means any member or community who has for at least three generations prior to the 13th day of December, 2005 primarily resided in and who depend on the forest or forests land for bona fide livelihood needs.*

It is important to note that the qualifier "for at least three generations prior..." attaches only to the "primarily resided in" clause (past tense), not on the "dependence" question, since the wording is "who depend on" (present tense).

Furthermore, Regarding what constitutes "primarily resided in", the MoTA in its circular of 09.06.2008 has already clarified the interpretation of the phrase "primarily resided in and who depend on" includes persons "who are not necessarily residing inside the forest but are depending on the forest for their bona fide livelihood needs" or "who are working on patches of land in such areas irrespective of whether their dwelling houses are outside the forest or forest land".

It follows then that for a non-Scheduled Tribe person to be considered an OTFD under this Act, s/he must only demonstrate a) s/he resided in the vicinity of the forest or forest lands for at least 75 years prior to December 2005 and b) that s/he was dependent on the forest as of 13 December 2005 for her/his 'bona fide livelihoods needs as defined in Rule 2(b) of the FRA Rules. Rule 2(b) implies that a person either living in or cultivating a parcel of forest land OR a person collecting firewood, grazing, non-timber forest products, or fish, etc. from forest lands qualifies as a bona-fide user. A person who meets the above definition constitutes an OTFD regardless of whether s/he files any individual claim for land under sec.3(1)(a) or not.

#### **Eligibility of claim to particular parcel of land**

When it comes to recognizing specific rights given under section 3, the FRA specifies in section 4(3) that the recognition and vesting

*"shall be subject to the condition that such Scheduled Tribes or tribal communities or other traditional forest dwellers had occupied forest land before the 13th day of December, 2005".*

Nowhere in this section or subsection is a distinction made between STFDs and OTFDs. For both of them, occupancy before 13 Dec 2005 is the only criterion. There is no requirement that the occupation by OTFDs had happened more than 75 years ago. In other words, once a person has proved to be an OTFD as per section 2(o), for that person to get (for instance) self-cultivation rights under section 3(1)(a), it is necessary that the person was engaged in that activity before December 13, 2005, that is all.

#### **Eligibility of claim to forest resources**

As in the case of eligibility for claim to forest land for cultivation/occupation (Section 3(1)a), for other claims under Section 3(1) also, OTFDs would be equivalent to STFDs.

### **2.5.3 Legal status of vested lands**

It is not clear whether the legal status of lands vested under Section 3(1)a, i.e. individual cultivation or occupation rights, remains forest land or becomes revenue land. MoTA should clarify that Sec. 3(1)a lands, once vested in the name of the claimant, should be converted into revenue land. This would enable the right-holder to access government schemes, loans, etc, more easily than if it remained forest land.

Recording of rightsThe FRA provides for rights to be included in a record of rights (Rule 8f-h and 15(6)), but does not provide specifics on how and where. MoTA in coordination with the land records agency of the GOI, should evolve a clear mechanism for states to do this, with entries in the Revenue Department's Record of Rights.

### **2.6 USE OF SPATIAL TECHNOLOGY**

Use of remote sensing imagery combined with geographical information system (GIS) and global positioning system (GPS) have become very handy for demarcating land boundary, preparing maps and determining area essential for land management. Besides high speed of execution of survey and demarcation, this technology is objective and fairly accurate. High resolution (1 to 2 m) remote imagery gives detailed picture of land features showing even individual trees, field bunds etc and therefore has become very useful in updating revenue maps showing smaller parcels of lands in the recent past. High resolution satellite imageries are available since 1999 (Ikonos) Quickbird (2003) and Indian satellite (Cartosat I May 2005).

In determining the area in forests particularly under FRA, high resolution remote imageries have very important role to play specially in disputed areas where evidences are not sufficient to establish whether the forest lands under possession/cultivation of ST/OTFD are prior to cut off date (13 Dec 2005) or not. Interpretation /visualization without specialized training of a high resolution satellite data of the disputed area around cutoff date gives the clear picture and resolves the dispute as the land-use and boundaries of the land parcel can be mapped in an objective and transparent way. The satellite imagery is useful even for assessing the exact area under the occupation. By geo-referencing the imagery with GPS the ground features are tallied on the imagery and then marked accurately on the imagery. The area of each parcel of land under cultivation/ possession of individual ST/OTFD is measured on the computer. In specific cases where the land under the possession of the tribal/OTFD has remained under the tree cover because of raising horticultural crops, differentiation with adjoining forests on the basis of the imagery poses a problem. In such situations use of remote imagery without ground verification is not a verifiable method.

Availability and procurement of the remote imagery of appropriate period is most critical for application of this technology. The imageries have to be procured from the Department of Space which costs money and cause some time delays (a month or so). Often there has been tendency to use readily and almost freely downloadable Google earth images. The resolution and period of the images uploaded on Google earth are location specific and not uniform for all the places across the country/world. These images are good for general purpose viewing unless 'by chance' they meet the required criteria of any specific locality. For example for FRA implementation images of some area could be of high resolution and close to cut off date for claiming the forest right. Viewing and understanding such high resolution images do not require any special skill and if reasonably good size of images are shown even to the illiterate tribals/OTFD, they can easily understand it.

Various states have used Remote Sensing-GIS-GPS technologies in the implementation of the Act to different extents. Some states like Andhra Pradesh, Gujarat, Karnataka, Madhya Pradesh, Maharashtra, Uttar Pradesh and Rajasthan have used GPS systems for measurement of forest lands under claim. Andhra Pradesh, Gujarat, Karnataka and Madhya Pradesh have used Google earth images in conjunction with PDA/ GPS outputs while Maharashtra has used two series of Cartosat-1 images of the relevant periods (of around December 2005 and December 2007) as well as google earth images with GPS outputs superimposed on them by using a software (TRTI-VGIS) developed by the Tribal Research and Training Institute (TRTI), Pune for assisting decision making. Details pertaining to various states will be mentioned later in this chapter. This chapter will also consider as to how the use of geo-informatics has been and will be helpful in the implementation of the Act especially from the point of view of enabling it to meet the basic requirements mentioned below:

- Implementation of the Act should be done through a credible, robust and transparent system.
- Recognition of Forest Rights must be objective, fair and speedy.
- The implementation process should operate simultaneously as a working tool to empower the villagers to survey, conduct enquiry as quasi judicial authority, arrive at impartial conclusions at various levels of Authority, and adjudicate without fear and favour.
- Process of Recognition of Forest Rights should prepare ground for moving the forest right holders, Gram Sabha, and village level institutions towards empowerment for participatory process based management of forest rights and protection of resources.

**PROBLEMS/ ISSUES IN THE IMPLEMENTATION PROCESS THAT NEED QUICK AND TRANSPARENT SOLUTIONS:**

There are several issues regarding physical and legal status of land under FR claim, and transparency and objectivity in recognition of Rights that confront those involved in processing the claims right from FRC upwards. These primarily include:

- Difficulty in measuring quickly the ‘forest land’ under FR claim in rural and far flung Tribal areas.
- FRCs, though mandated to prepare map as per 11(2) (ii), do not possess the required technical expertise for the same.
- The procedure adopted by the Land Records Department being time taking and expensive.
- In many cases the evidence of cultivation on or before 13-12-2005 in the land claimed is not available.
- Detection of cases in which claimants have encroached after 13-12-2005.
- Identifying genuine claims and disallowing exaggerated ones.
- Detection of double/multiple claims made on the same forest land.
- Identifying claims on non forest lands including those covering roads, water bodies etc.
- Identifying forest lands occupied since long by claimants but not recorded as such by the Forest Department is absolutely necessary.
- Empowering FRCs and GSs to process the cases without fear or favour.
- Making the SDLCs and DLCs confident and fast in taking decisions.

- Tracking of claims.
- Making information quickly available to all the concerned departments/ authorities.
- \Transparency.

The traditional modes of treatment like actual physical verification in each case, paper-based record keeping, physical (plane-table or theodolite) survey etc. in view of the above issues and problems have limitations especially because of the sheer size and spread of claimant populations, variety of forest rights, current capability of Committees at various levels, hunger for land, politicization of village level institutions, growing individualistic interests at the expense of community feelings, and growing mistrust in the government system. It may be interesting to note how the technological interventions have attempted and could strive to address the above issues.

### **Strengths of the geoinformatics System :**

1. Satellite imagery can be used both to accept as well as reject claims.
2. There are cases where there are no documentary evidences of cultivation/ occupation with the claimants or with FD. Satellite image provides an objective evidence of cultivation/forest cover etc. on the relevant date.
3. Areas under cultivation claim but actually having tree growth on a past date (2005 December) are easily detected.
3. Satellite images reveal the location / land use change scenario in maximum cases.
4. Fresh breaking of forest land/ vegetation removal (after 2005 December) gets easily detected.
5. The system helps in determining the eligibility of the individual Claimants claiming cultivation rights (S-3(1)(a)) as per the definition given in the Act.
6. It raises queries in many contested cases and thereby makes Committees enquire further so that quality of decision making is better.

### **STATE'S EXPERIENCES:**

#### **1. Maharashtra:**

Considering simultaneously the expected responsibilities and existing capabilities at various levels, a successful implementation required, first of all, changed mindsets at all levels. While at the village level the need for the authorities was to be able to be unbiased, fearless and work as 'adjudicating' agencies, the higher levels required to be transparent, believer of processing done by village level institutions, and free from the target oriented mindset. This was to be achieved by capacity building inputs coupled with institutionalization of an objective and transparent approach towards the task. An objective and transparent approach was also required to ensure the establishment of faith of people in the intention behind the Act in particular and in governance in general by exhibiting beyond doubt that only rightful claimants under the Act were benefited in the process and ineligible ones were stopped from illegally over drafting on the resources meant for those who had suffered 'historical injustice'.

### **OBJECTIVES BEHIND USE OF GEOINFORMATICS IN MAHARASHTRA:**

- To support the FRCs in the task of measuring the forest land under forest rights' claims at low cost and higher pace.
- To support correct decision making through an objective and transparent geoinformatics based process.

- To verify claims based on the evidence available from the Satellite data (of years 2005-06 and 2007-08) pertaining to forest land.
- To identify ineligible claims on Forest land.
- To empower the DLCs and make them confident in decision making.
- To have online account of Forest land measured and lands on which forest rights are finally recognized under the Act.
- To monitor the progress of processing of claims at various Committee levels.
- To utilize the spatial database created for further use in developmental schemes.

**ACTIONS TAKEN:**

The following actions were taken to institutionalize the use of geoinformatics in the implementation of the Forest Rights Act in the State:

- Creation of a static web site by TRTI for Forest Rights Act for dissemination of information and instructions to the field staff.
- Development of dynamic web site (by NIC) to manage information regarding Claimants / land measurement/ Verification process / Final Decision regarding Claims.
- Creation of the *gps* village code (5 digits ) using the census data of 2001 and generating 13 -digit claimant ID).

- A 13 digit Alpha Numeric ID is allotted to every claimant
- First two- District code
- Next two- Taluka code
- Next five- Village code
- Next four- Initials of the claimant's name
- For example, for Vishnu Nawal Pandu of Dhawalipada village, Nawapur Tahsil, Nandurbar District, the code is **0106dha01VNPO**

- Hardware and Softwares procured and used:

<p><b><u>Hardware-</u></b></p> <ul style="list-style-type: none"> <li>- GPS Devices with MapSource S/W from Garmin</li> <li>- One Server and 130 clients</li> </ul>
<p><b><u>Proprietary software-</u></b></p> <ul style="list-style-type: none"> <li>-ArcMap for georeferencing</li> <li>-Visual studio 2005 (vb.net)</li> </ul>
<p><b><u>Open Source Software-</u></b></p> <ul style="list-style-type: none"> <li>- Linux, PostgreSQL, PHP , Apache</li> <li>- Mapwin GIS library</li> <li>- Google Earth</li> </ul>

### **QUICK ORIENTATION AND CAPACITY BUILDING:**

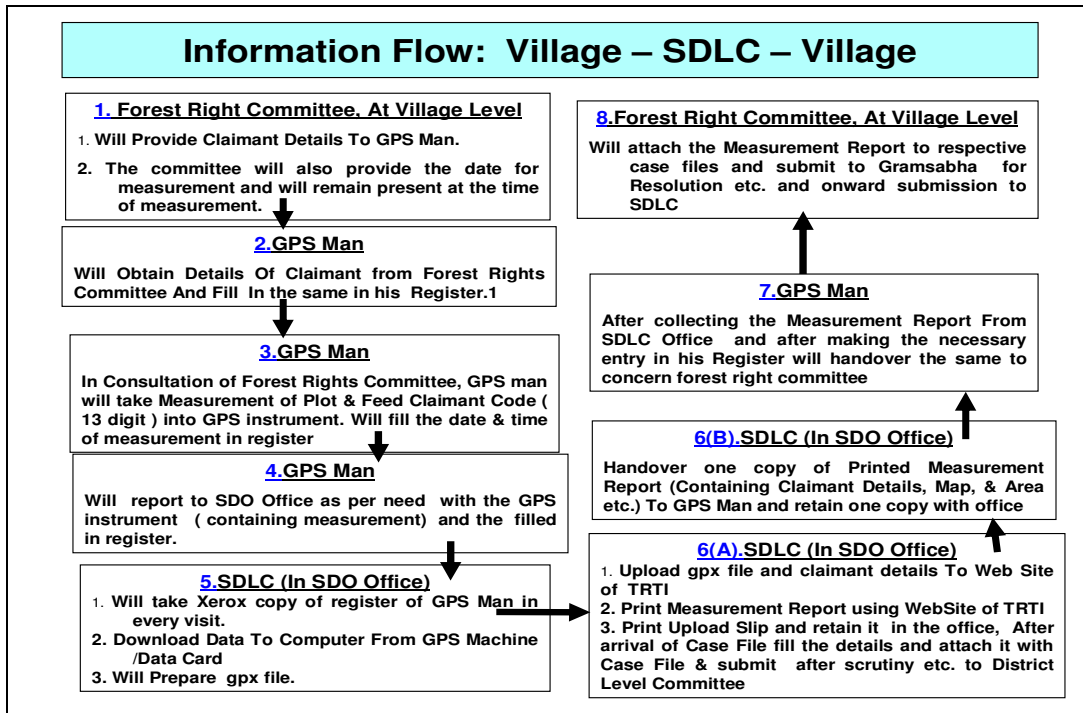
The issue of orienting and building capacity of the major stakeholders has been addressed by using technology intervention. Web based systems have been able to reach larger target groups that varied immensely from the point of view of their background and existed in far flung areas. Repeated trainings were imparted on GPS and handling of TRTI-VGIS software. This was especially relevant for the following viz. The Nodal Agency, NIC, NRSA/NRSC, authorities appointed under the Act, District Collector office Staff, SDO Office Staff, and GPS men (Forest/DILR/Revenue Dept.).

• <b>Total number of trainings organized for all (41 trainings on Geoinformatics)</b>	<b>4,519</b>
• Number of <b>Government personnel</b> trained (Revenue, Forest, Tribal, RDD, NIC, GPS/GIS operators etc.)	<b>9,146</b>
• Number of <b>NGOs'</b> representatives trained	<b>370</b>
• Master Trainers trained for FRCs	<b>1,342</b>
• Master Trainers on GPS handling/ TRTI-VGIS system	<b>278/496</b>
• Village level functionaries trained	<b>99,695</b>

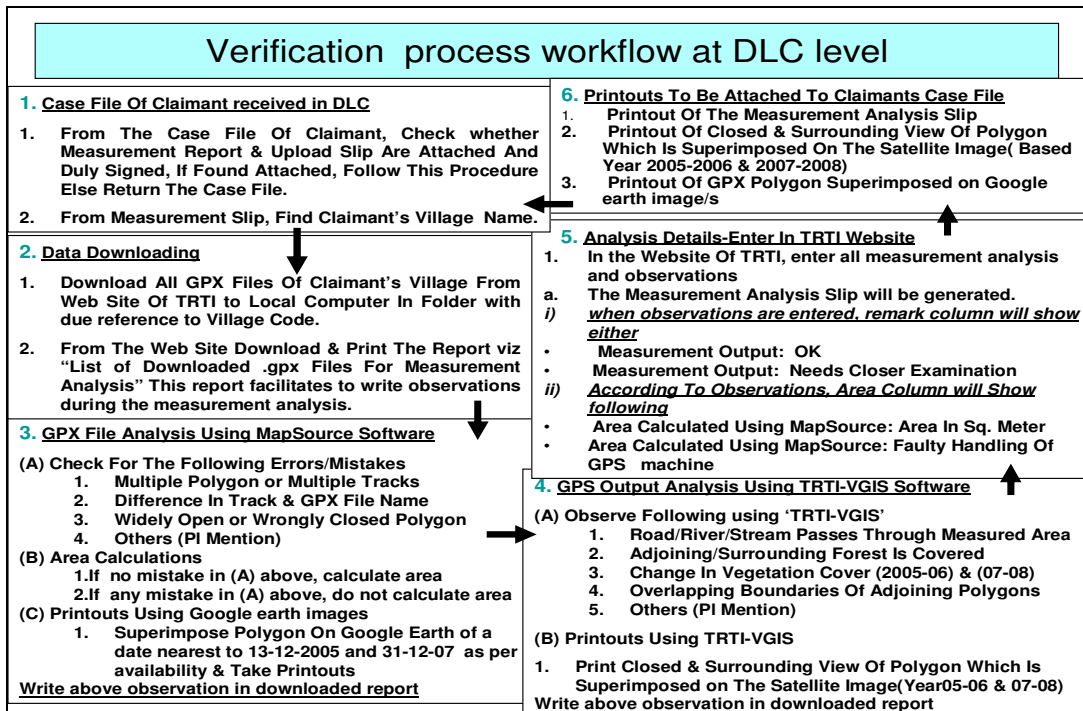
### **SPECIFIC ASPECTS OF THE TECHNOLOGICAL INTERVENTION:**

- Web based **online system of capturing and utilizing** GPS measurements linked to 13 digit alpha numeric ID made functional.
- A **GIS based open source information system 'TRTI-VGIS'** developed at **TRTI, Pune** installed at all District Level Committees for utilizing available CARTOSAT-1 Satellite data of 2005-06 and 2007-08 with superimposed online available GPS measurement polygons as evidence.
- Net based **SMS alert system** for Collectors **established** at TRTI, Pune.
- Software for **integrating state level FR database** developed: to help identify the resource base for sustaining forest rights.

**CONCEPT OPERATIONALIZATION -THE INFORMATION FLOW (Level-1):**



**CONCEPT OPERATIONALIZATION -THE INFORMATION FLOW (Level-2):**



### **TRTI-VGIS SOFTWARE – STEPS AND OUTPUTS:**

- In the software, 'district' is selected. Next step is to upload gpx file by clicking 'add GPX file'. The desired file is selected on the basis of 13 digit code. The file automatically gets converted into shape file.
- The satellite images are inserted by clicking 'add satellite image'- automatically.
- The GPS polygon (as a shape file) is seen simultaneously on satellite images of 2005-06 and 2007-08 placed side by side on the computer screen.
- Brightness for the individual year's images is adjusted for analysis.
- Area can be calculated by using the cursor.
- In case there is change in vegetation, the extent of area cleared after the first image's date can also be digitally depicted and measured.
- The software also allows the options like 'close view of the area', 'surrounding view of the area', and viewing 'all gpx measurements of the village' at a time.
- Output is saved: This action automatically prints and saves on the image the name of the District, 13 digit codes of the claimant, scale, and satellite image's month.
- Output can be opened in 'picture' format and the contrast, brightness etc. can again be adjusted to get the best view for comparison and analysis.
- The software can be used to view the area polygon on the available google image also and the output can be used simultaneously to support decision making. For this one has to select the option of 'go to' 'mapsource' and view the polygon in google earth.

### **RESULTS ACHIEVED:**

- A transparent and evidence-based objective scrutiny as well as monitoring system is in place. The forest land on which forest right is claimed is fixed both in terms of location and reasonably accurate extent.
- The decision making authorities (Committees) become fearless and confident of their decisions. (This is important because wrong decisions allowing use of forest land for non-forestry purposes amount to violation of FR Act as well as Forest Conservation Act 1980).
- Quick and fair decision in granting forest rights to eligible claimants.
- Ineligible claims easy to reject.
- Forest land saved from new encroachers.
- Knowing the fact of use of this technology, new offenders/encroachers are discouraged.
- Double claims on the same forest land detected immediately.
- Reduction in conflicts.
- Inter departmental coordination on Act's implementation is relatively smooth (Revenue, Forest and Tribal Development)

## **CHALLENGES FACED IN THE ADOPTION OF GEOINFORMATICS TECHNOLOGY:**

As it happens in any new venture, the adoption of geoinformatics in the implementation of Forest Rights Act had to face various challenges. They were:

- To convince Stakeholders to use GIS technology for the implementation of the Act.
- To involve the existing limited resources (especially the Human resources existing in different departments/institutions) in using GIS technology for the purpose for the first time in the country.
- To build the capacity of personnel with different levels of qualification & intelligence in the use of the GIS technology.
- To develop & deploy Software solution in a short time frame.
- To carry out changes in Software requirements quickly as per emerging needs.

## **SOME MAJOR SPIN OFFS:**

- IT and IT related management benefits are visible to the rural and tribal populations.
- Impetus received by Departments like Forest in use of IT and GIS based systems.
- The claimant ID: a potential link for connecting forest right holders with developmental/ employment schemes.
- The existing resources as also the spatial database created in this process can be used in area developmental schemes.
- Online data base is utilized to bring Forest Management and forest rights' sustainability issues on GIS frame work.
- The potential of the system becoming evident, tackling Forest protection and Natural Resource Management on GIS framework is seen as a possibility.
- The concept of Forest rights PLUS is taking shape.

## **THE FOREST RIGHTS PLUS:**

With the kind of information and data base generated during the implementation process adopting geoinformatics and web based monitoring system, an opportunity paradigm clearly is visible at the horizon. It can be depicted as under:

The concept and action taken details are uploaded on the website of the Tribal Research and Training Institute. The software for operationalizing the concept is also prepared and it allows the integration of all data base pertaining to the forest right holder. It can be used to ensure transparent flow of resources for development and also capture the convergence initiatives for the beneficiaries.

## **LIMITATION:**

Recently the measurement by GPS of forest lands under forest rights claim has been discontinued as per State Level Monitoring Committee's decision taken in April 2010. As of now only about 50% cases of forest lands under claim have been measured by GPS. Thus forest rights are being 'recognized' on forest land now without GPS measurement of the concerned parcel of land. This has led to total collapse of the system of verification of cases by use of geoinformatics. This may not

only lead to some faulty decisions in violation of the Forest Rights Act and Forest Conservation Act but it has also kept the details of genuine cases outside the purview of Forest Rights Act PLUS.

## **2. Rajasthan:**

In Udaipur zone, where most of the tribal population of the State is located, forest department played a proactive role in determination of forest rights. The use of GPS was made to plot the area in which forest right was to be given. After the application was given by the applicant to Gram Shabha and the First Rights Committee visited the site, the maps were made and became an integral part of the document. This has been done to ensure

- A- The location of the land where rights have been given is fixed so that
  - i- Area does not increase in future (otherwise the tendency is to encroach as much as possible).
  - ii- The right holder does not shift to other areas in the forest block having similar shape.

B- Prior to use of GPS most of the applicants were claiming maximum area permissible under the Act i.e. (4 Ha), the GPS was used to determine actual area where forest right was to be recognized.

C- In due course, the areas where right has been given to the Tribals/ Forest dwellers can be clearly marked in the block map of the Forest Department.

## **3. Gujarat:**

The latest intervention is that of approving only those claims verified with the help of satellite imagery, setting aside all other types of evidence permissible under the Act and overlooking the limitations of such imagery for verifying small plots of land and the fact, that due to the widespread practice of cultivating tree covered lands in the area, such cultivated lands will not appear as non-forested patches in satellite imagery.

The Gujarat government has decided to verify claims with the help of satellite imagery, whose accuracy for establishing or denying a claim is highly questionable. Such imagery can only be used with thorough ground truthing with respect to each plot, which is absent. Moreover, such imagery cannot in fact verify the existence of any right under the Act, as even individual land rights may include land under occupation but planted with trees, land lying fallow, or lands where crops are being grown under tree cover. Claims on such lands would be and are being denied on the basis of satellite imagery.

## **4. Kerala:**

The experience of Kerala government employing "total station survey" is quite good. Their survey department (each district has is under District Collector) has been involved in carrying out this and they have employed trained manpower. Even the forest department is also using it, I was told. Took time initially, but the surveyed sketches being supplied with the title deeds is a very good case.. Please refer to Kerala report from our website for details and also a pic of the instrument as well as the detailed survey sketches.

## **5. Andhra Pradesh:**

We were informed during our field visit to Andhra that the GPS surveys were outsourced to some private agencies which seem to have employed novices to undertake these field surveys. In several cases, we heard that the more difficult to approach sites were not visited by the surveyors with GPS. Overall the level of

confidence of the local communities in the GPS survey was minimal. Several things are at play here; i. the kind of technology that is being used, ii. the competence of the people using this technology iii. the sincerity and commitment of the staff carrying out the survey iv. the process which is followed when the survey is conducted, in terms of informing and involving the claimant, the FRC and the concerned local government officers. GPS survey map outputs also left a lot to be desired in terms of the detail and ability for us to locate the land especially in relation to neighbouring plots.

#### **6. Madhya Pradesh:**

Madhya Pradesh Forest Department has a very well organized computerized information system on forest land management. It utilized the PDAs procured for the Forest Department's work to support the FR Act implementation by taking up the task of measurement of forest lands under claim. In fact it was the pioneer in the use of PDAs for measurement of forest lands claimed mostly under Forest Right. A unique code was allotted to each claimant's case and the photo of the claimant was also taken by the PDA. The accuracy of the measurements did become a concern in some areas. Later, however, the FD tried to increase the utility of its exercise of measuring the land by PDAs by superimposing the PDAs' outputs on the google earth images and view the land use/vegetation cover details etc. A severe limitation was however faced because of the fact the the google earth images of various areas did not necessarily correspond to the relevant dates.

#### **7. Uttar Pradesh:**

In Uttar Pradesh, some PDAs and GPS instruments are being used to measure the forest lands on which forest rights have already been recognized. The Titles already given to the Forest Right Holders had approximate areas mentioned on them as per the claim and a note indicating the provisional character of extent of the area is put on each Title document. The confusions that followed are best revealed in the *Sonbhadra* District case where a DFO was suspended for overwriting/ tampering of area figures. Satellite imagery, however, is not being used in Uttar Pradesh.

#### **Consolidated Complaints from various States about the above technology being adopted:**

1. The area under titles, based presumably on GPS measurements, are less than what has been claimed. This, though, is not universal (for instance in Bhamragarh, Maharashtra they were reported to be as much as claimed, by all those we asked).
2. The old table survey methods were much more accurate (this was a comment from a couple of district administration officials in different sites). (Though in many areas such as in Sikkim, Kaimur region in UP, Bihar and various other places Cadastral surveys of Forest areas boundaries have reportedly not been done.)
3. It is a rejection instrument. (The factual position is that ineligible applications are more, for many reasons, and are getting rejected, hence this feeling.)
4. In some areas FRC's have opposed the control of FD in measurement of the land.
5. There is no official notification from MoTA to use GPS in measurement of land. Why GPS is being used?
6. For consistency and uniformity all over the country very detailed survey needed to be done with a time bound program otherwise the issue will not have permanent solution.
7. For the allocation of land for mining or industry, the boundaries are well demarcated but in most of the FR claim cases, e.g. given to the tribal people in *visakha* district (AP) there are many anomalies which only will increase the confusion and more forest land will be cleared.

### **Limitations/ handicaps of the system as revealed during consultations:**

1. GPS system is often not working well.
2. Depending on the kind of GPS used and the skill of the user, there is a possibility of a wide margin of error, leading to faulty measurement of the land.
3. The instrument is often handled and measurements done only by the field verification team (very often it has been reported that this was only the forest staff), without involving the claimant.
4. Smaller areas' measurements may show significant errors depending on the accuracy of the GPS/PDA machines.
5. Cultivation under a closed canopy cannot be detected in Satellite image.

### **Methods that can be used to avoid the dangers of misuse of technology and for generating authentic and transparent information for sustainability:**

1. It should be made clear that Satellite imagery is "one" of the evidences (This has been specifically mentioned in the circulars issued by TRTI in Maharashtra).
2. Spot verification should be a must wherever the Satellite imagery throws up a query. (Though when the issue about land use pertains to 2005 situation, today's spot verification does have limitations, so it should be supported by local level enquiries.)
3. The changed land use of areas with very high monetary value of forest land and where stakes are very high with a variety of players (like in districts adjoining big cities like Mumbai) must be cross verified carefully with this system coupled with local enquiries.
4. The Quasi-judicial authority of the Committees must take a view based on all evidences including the output of geoinformatics.
5. Appropriate and adequate training to the personnel (including the willing FRC members) handling the technology is a must.
6. A very large number of GPS outputs in Maharashtra have shown that the measurement is technically correct but ineligible areas have been measured. (e.g. under part or complete vegetation cover, areas without any cultivation, areas under roads/ rivers etc.). This is under local pressure or with connivance. This has also led to wastage of huge time and money. The GPS measurement person should be empowered to be avoid such cases.
7. FRC and claimant must be present at the time of measurement as is required under the Act. To quote an example, Maharashtra format of "Measurement Report" output ensures this through their signatures as required on the document before it becomes apart of the claimant's file.
8. For area accuracy, one may have to use what is called a total station digital survey instrument which captures the contours, the trees etc...but the people using it have to be trained and the FD, the revenue / tribal welfare department people must be present.
9. The database be created by using this system and used for further development of the FR holders as well as resource base. The areas finally found under individual as well as community Forest Rights can even now be mapped and uploaded on the system of FR Act plus as is being attempted in Maharashtra. This can be used for not only managing the demand-supply scenario in respect of various Forest Rights but can also be used effectively for institutionalizing the convergence approach for area as well as forest right holder's inclusive development.

### **Chapter 3. Implementation of FRA: Individual Forest Rights**

In this chapter, we present an assessment of the implementation of the individual forest rights (IFRs) that have been provided for in the Forest Rights Act. We begin by summarising the meaning, scope and nature of IFRs granted under the Act, followed by a summary of information available from the MoTA, and then a detailed presentation of observations on and analysis of the state of implementation based on our own field visits, submissions received and related materials.

#### **3.1 Nature of IFRs granted under Act**

##### **3.1.1 Provisions on IFRs under Sec 3(1) of FRA**

Section 3 of the FRA describes the forest rights of forest dwellers that are to be recognized. Among these, section 3(1)(a) is the section that corresponds to individual rights, viz.,

‘right to hold and live in the forest land under the individual and common occupation for habitation or for self cultivation for livelihood by a member or members of a forest dwelling Scheduled Tribe or other traditional Forest Dwellers’.<sup>11</sup>

It should be noted that rights in some of the other sections may also be made as individuals. In particular, 3(1)(f) gives rights over disputed lands, 3(1)(g) gives rights to conversion of pattas or leases, etc., 3(1)(j) recognizes rights given under any other laws, and 3(1)(m) gives right to in-situ rehabilitation of illegally evicted persons. All of these cases are also included here where they pertain to individual claims. Claims made under other sections are discussed in subsequent chapters.

Clearly, these rights are the rights of forest dwellers, both forest-dwelling Scheduled Tribes (STFDs) and other traditional forest-dwellers (OTFDs) as defined in section 2 of the Act. Subsequent sections lay down further conditions under which IFRs would be recognized and their nature and extent. Specifically:

- a. section 4(3) stipulates that the forest land should have been occupied before Dec 13, 2005;
- b. section 4(4) stipulates that these rights would be inheritable but not alienable;
- c. section 4(6) further stipulates that the land claimed under 3(1)(a) should also have been under occupation of the claimant on 1 January 2008 (the date the FRA came into effect) and ‘shall be restricted to the area under actual occupation and shall in no case exceed an area of four hectares’.

The FRA Rules then describe the process to be followed for filing, determination and verification of IFR claims (and other claims), the forms to be used, the evidence that may be used to support the claim, and the rights to appeal in case of rejection. It is noteworthy that the IFR provisions in FRA are highly gender sensitive, as they provide for both claims and titles to be issued in the joint name of husband and wife where the claimant is married.

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<sup>11</sup> In theory, this also allows community rights to be claimed for habitation and self-cultivation. But in practice, almost all claims for habitation and self-cultivation have been submitted as individual claims. So we are treating IFRs synonymous with rights claimed under sec. 3(1)(a).

In spite of such careful definitions, it is inevitable that some ambiguities have emerged. Most of these ambiguities, viz., the definition of forest dweller in general (in terms of 'residing in and dependent on forest land'), the definition of OTFD, and the process by which occupation before Dec 13, 2005 may be determined, have been discussed in the previous chapter. Other ambiguities that have emerged are discussed at the appropriate point in this chapter.

### **3.2 Progress in granting IFRs: National summary and state-wise breakup**

From any perspective, it is clear that, in implementing the FRA, most state governments have focused almost their entire attention on IFRs. We present here a brief summary of the statistics on IFR claims as available with the MoTA.

#### **3.2.1 National Status: IFRs claimed and at various stages of process**

The MoTA provides monthly updates regarding the implementation of FRA in the states. As per the MoTA website, as of 30<sup>th</sup> October 2010, the total number of IFR claims submitted across all states was more than **29 lakhs** (29,53,243 is the reported figure). In terms of claims processed, accepted/rejected, under appeal, and area over which IFRs have been recognized, an exact all-India figure is not available (because some states have not given this breakup). Nevertheless, broadly speaking, at least 83% IFR claims have been disposed of, at least **35%** (~10 lakh) IFR claims have been approved, and titles have been distributed in most (~97%) cases. From the states that have reported clearly the extent of land for which titles for IFRs have been distributed, it appears that the average area per title claim is **0.9 hectares**.<sup>12</sup> We must note here again the disappointingly inadequate and aggregated data available in the reporting system set up by MoTA. Nevertheless, one may say that overall, a very substantial number of IFR claims have been received and processed.

#### **3.2.2 Analysis of State-wise statistics**

The states that have given some amount of disaggregated data are listed in Table 3.1 below.

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<sup>12</sup> This belies the wild concerns voiced in certain quarters that the 4 ha limit would be interpreted as a uniform 4 ha/per claimant land grant programme.

**Table 3.1. Status of IFR claims in major states (as of 30 Oct 2010)**

State	IFR claims received at the GS level	IFR claims approved by DLC for titling	Claims rejected	Title Deeds distributed
Andhra Pradesh	3,22,955	1,74,244 (54%)	1,50,000 (46%) (approx.)	1,65,108 (51%)
Assam	1,10,019	72,787 (66%)	Not avail.	29,885 (27%)
Chhattisgarh	4,87,332	Not avail.	2,70,000 (55%) (approx.)	2,14,668 (44%)
Gujarat	1,82,568	18,745 (10%)	15,000 (8%) (approx.)	18,745 (10%)
Jharkhand	29,097	6,781 (23%)	4,100 (14%) (approx.)	6,022 (21%)
Karnataka	1,60,101	6,295 (4%)	1,42,017 (89%)	6,279 (4%)
Kerala	36,038	18,582 (52%)	1500 (4%) (approx.)	12,971 (36%)
Madhya Pradesh	4,00,733	1,25,000 (31%) (approx.)	2,55,000 (64%) (approx.)	1,03,258 (26%)
Maharashtra	3,35,701	1,04,344 (31%)	2,20,523 (66%)	1,04,344 (31%)
Orissa	4,08,560	2,38,279 (58%)	98,822 (24%)	2,31,312 (57%)
Rajasthan	60,019	30,038 (50%)	30,270 (50%)	30,038 (50%)
Tamil Nadu	21,781	3,163 (15%)	Not avail.	NIL (0%)
Tripura	1,75,215	1,18,700 (68%) (approx.)	56,600 (32%) (approx.)	1,17,404 (67%)
Uttar Pradesh	91,089	10,084 (11%)	67,700 (63%) (approx.)	10,084 (11%)
West Bengal	1,29,357	29,740 (23%) (approx.)	79,500 (61%) (approx.)	26,612 (21%)

Note: The information in this table is for those states where information on individual claims has been provided separately from community claims. A certain amount of guesswork is involved in the figures in 'rejected' column, because the statistics provided by most states did not separate rejected IFRs from rejected CFRs. Also, the difference between 'received' and 'accepted' is not necessarily 'rejected', because it also includes those that are pending.

Keeping in mind these severe limitations in the data, we offer the following tentative observations:

- 1) There is no way of estimating how many 'potential claimants' are present in the population in each state. Consequently, it is hard to estimate whether the IFR claims process has reached most of the claimants or not. Nevertheless, it is hard to believe that in a state like Jharkhand, which has a large forest area and a large tribal population, the number of claimants could be only around 30,000. Clearly, in Jharkhand and possibly in Rajasthan and Tamil Nadu, the process has not proceeded adequately.

- 2) The fraction of claims processed shows enormous variation. While Andhra Pradesh, Chhattisgarh, Rajasthan and Tripura show 100% of received claims as processed (accepted or rejected), and Karnataka, Madhya Pradesh and Maharashtra are also above 90%, some states are abysmally low (below 40%: Gujarat, Jharkhand and Tamil Nadu). Given that the implementation was supposed to begin in January 2008, the implementation process has clearly been disappointingly slow in these latter states.
- 3) The process of titling the approved claims has proceeded relatively well, with the number of titled claims be close to the number of approved claims in most states. The only exceptions are Assam, where titling has been delayed for some reason and Tamil Nadu, where titling is delayed because of a Madras High Court stay order on this final step.<sup>13</sup>
- 4) Again, it is not possible to make very reliable judgements about the quality of the implementation process from the percentage of claims rejected. But it is noteworthy that the percentage of rejection is peculiarly high in Karnataka (89%) and also quite high in Chhattisgarh (55%), Madhya Pradesh, Uttar Pradesh and West Bengal. This bears greater attention and will be discussed in the next section in conjunction with data from the field visits.

### **3.3 Committee's observations: Overall**

As described in chapter 1, the Committee visited a large number of states and sought to get more details on the manner of implementation of the IFR provisions, the quality of the process, possible innovative practices, and reasons for shortfalls or lacunae if any. **Broadly, the committee found that the progress on claiming, verifying and deciding on IFRs has been substantial, and it appears that majority of the accepted claims are genuine ones. But there are significant shortcomings in the level of outreach to potential claimants and several lacunae in the manner of rejections.** We first outline some positive features observed, and then discuss in detail the nature of shortcomings. We restrict ourselves to state where FRA implementation has been taken up (the issue of some states not having proceeded with implementation at all has already been discussed in the previous chapter).

### **3.4 Innovative Practices**

Some states have made significant efforts towards implementation of the IFR provisions, and also introduced some innovations or useful strategies to do so.

- Madhya Pradesh is one of the states to take up FRA implementation in a mission mode, and has devoted substantial resources (about Rs 11 crores from the State budget and Rs 5.5 crores central assistance) and attention to the exercise. The use of PDA-based and GPS-enabled survey methods and creation of computerized databases of the beneficiaries are some of the novel features of their approach (see MP state field visit report for details).
- Orissa stands out in terms of its efforts to ensure a systematic process, including a series of circulars and the creation of a 'frequently asked questions' (FAQ) document.
- Tripura has also widely publicized the scope of IFR. The government has carried out cadastral survey of forest tracts under occupation. The land certificate carries plot no and mentions of its entry into the record of rights (*khatian* book).

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<sup>13</sup> Though it is instructive to note that pro-active government action has managed to vacate similar orders of the Andhra Pradesh and Orissa High Courts.

- Maharashtra followed a rigorous process of GPS surveys for *all claims submitted* and careful verification (including the use of satellite imagery—see previous chapter), although unfortunately this process has been discontinued as of July 2010.
- While in general, claimants' access to government records has been very poor, in Maharashtra, the District Collector of Kolhapur has helped Dhangar and other OTFD claimants to dig up adequate evidence of 3 generations of residence in the reas, and so far 540 people in 7 talukas have got titles (Laxmikant Deshmukh, Collector Kolhapur, personal communication, 2010).

### **3.5 Shortcomings and lacunae in implementation**

We present here a summary of the various shortcomings and lacunae observed in terms of the outcome of implementing the IFR provisions on the basis of our visits to different states. (Many more details are available in each state report). The reasons immediately given or observed for the same are also given here. Larger issues causing these problems are discussed in the following section.

#### **3.5.1 Omissions**

Although the number of claims received is very large (29 lakhs), there are many cases of omission of prima facie eligible claimants from the process itself.<sup>14</sup> This has happened in a variety of ways:

1. There are many pockets, especially remote areas of Madhya Pradesh, Chhattisgarh, Jharkhand, etc. where information regarding the FRA has not reached at all, or claim forms have not been distributed. This is also true for non-scheduled districts of Gujarat or Himachal, where FRA process has not been taken up at all so far. While in some cases (e.g., Jharkhand) state-level authorities claimed that the non-implementation was due to the threat of Maoist attacks, this reason was not cited by the district administration nor seen as realistic by villagers.
2. There were other places where awareness existed (because perhaps civil society groups had worked there) but the process was not being started, and no forms were being distributed (e.g., several forest villages in North Bengal).
3. There were many instances of villagers not knowing much about the FRA even though the process was ongoing in that village.
4. In some states (e.g., Madhya Pradesh) the administration admitted to following a pre-existing '1993 encroachers list' prepared by the Forest Department. This resulted in excluding other claimants who may not be in the list for various reasons.
5. There are many reports of claims submitted by individuals to the FRC (for which we saw acknowledgements) not showing up in the list of claims officially received and processed. Pradhans sitting on claims (Dumka district, Jharkhand) or claims lost (Harda and Alirajpur districts, MP) are some examples.
6. In a number of places, it was reported that non-STs were simply told not to apply, since they were not eligible. (e.g., some districts of Orissa, or forest settlements in Tamil Nadu). There is a clear misconception amongst certain

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<sup>14</sup> Again, we are focusing here on states which have taken up FRA implementation, not states like Arunachal which have not.

officers that the FRA is meant only for STs, and this is has been officially publicised, as we found in Jagatsinghpur district, Orissa.

7. In Orissa, there were cases of claims not being accepted because the claimants were women.

### **3.5.2 Delays in processing**

There are many cases of delays in processing, with delays of even more than a year and sometimes up to two years (e.g., IFR claims from Forest Villages in North Bengal). Reasons vary, including lack of training for FRCs, SDLC meetings not convened, field verification not done, lack of adequate staff (leading to a veterinary doctor doing the work of a block-level tribal welfare officer in Dumka district), etc.

### **3.5.3 Errors of commission: Wrongful rejections**

Incorrect rejection of IFR claims is a major issue in almost all states. This has happened at various levels and for various reasons.

#### **a) At the Gram Sabha and FRC level:**

1. In Thane district in Maharashtra, it was found that the Gram Sabhas in 76 villages had supposedly passed resolutions (in a standardized typed format, often without signatures, dates, etc.) rejecting all IFR claims *en masse*. While most resolutions did not mention the reason, others gave the reason as “GPS measurements not taken” (Maharashtra had, till recently, mandated a process whereby field measurements were to be appended to the claims), although this is not a requirement under the Act and not a reason to reject (as against postpone) the claim.
2. In Chhattisgarh, it was found that rejections by the Gram Sabha were based on reports filed by officials. Most rejections have been at the level of gram sabha, based squarely on the report of patwari or forest guard, a process that is wrong and which, e.g., led to at least 100 wrongful rejections in just one village (Kusmi village, Bastar district).
3. Cross-border claims have been rejected: When people living in one area submit claims for land that lies in a different administrative jurisdiction, it creates confusion. As long as the claims are within the same state, there has been some room for resolution (although this has been slow—as in the case of claims crossing district boundaries in Madhya Pradesh). However, when the claimants live in one state but have claims on land across the state border, the issue has not been resolved.<sup>15</sup>
4. Many other rejections supposedly happening at the Gram Sabha or FRC level were in fact decisions taken at the block or sub-division level but being reported as GS-level decisions. E.g., in Jharkhand the Block Development Officers were rejecting applications (not even in SDLC meetings) but showing them as rejected at the lower level. In UP the SDLC rejected claims but put the blame on the FRC.

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<sup>15</sup> VASUNDHARA, a group working in Orissa, reported three such instances: 1) in Sundergarh claims in bordering villages are made on forest land across the border in Jharkhand, 2) in Mayurbhanj where the seasonal access of the Mankadia communities goes into the forest areas of Jharkhand and West-Bengal, 3) in Nuapada where the habitat of the Chuktia Bhunjia PTG community spreads across the forests of Orissa and Chhatisgarh.

**b) At the SDLC and DLC level:**

1. A large number of claims have been rejected without any indication of the reason for rejection. This is true across a number of states, including Madhya Pradesh, Andhra Pradesh, Uttar Pradesh, and Chhattisgarh. This is in clear violation of the rules.
2. When reasons are given, the major type of wrongful rejection is incorrect interpretation of the Act, in the form of:
  - a. **Because the person is a non-ST** and is not able to prove that the said plot is being cultivated for 75 years prior to 2005—an issue in all states (see chapter 2 for detailed discussion on this interpretation).
  - b. **Because the person owns other revenue land**, or owns more revenue land and less encroached land, or has some other job or a government pension, and so is not wholly dependent on the ‘encroached’ land (e.g., Jharkhand), or because the claimant is living in a house which is not on forest land and hence does not meet the ‘residing in’ clause.
  - c. **Because the land is not considered forest land**, although it is forest land as per the FRA. There are several variants of this problem. In Jharkhand, claims on cultivation in ‘chhote jhaad ka jungle’ outside notified PF boundaries in Jharkhand have been rejected. In Orissa, lands which were at one point classified as forest land but today are classified as revenue lands, were being considered ineligible for IFR claims by the DLCs even though the state government has issued a circular indicating that they should be considered eligible (e.g., Kuchinada sub-division of Sambalpur district). More ambiguous cases are of land that has always been classified as revenue land but has forest on it, such as ‘pahad kisam’ land in Orissa or revenue lands where ‘tauzie fines’ are being paid in Assam.
3. Other cases of wrongful rejection occur when
  - a. Only evidence in the form of fines paid for forest offences (or similar documents) is insisted upon (and no state has proactively put the forest offence registers of past 30 years in the public domain),
  - b. Evidence from satellite imagery is made mandatory (a condition that violates the Rules), and the process of making satellite imagery available and interpreting has flaws (as civil society organizations have clearly demonstrated in Gujarat),
  - c. Land is said to be ‘disputed’ or ‘set aside for other purposes (such as resettlement of refugees—in Madhya Pradesh)’, neither of which is a valid reason in the law.
  - d. Cultivation is interpreted as ‘plough-based cultivation’, so cultivation that does not use ploughing or cultivation of certain crops (such as upland corn in Dumka district) was rejected as not being evidence of cultivation.

4. In an overwhelming number of rejection cases, the rejection is either not communicated to the claimant, or it is communicated but the claimants are not informed of their right to appeal. This is found across all states.

Many of these shortcomings and lacunae overlap, creating enormous difficulties for forest-dwellers in certain pockets. An example from Chhattisgarh based on a survey carried out by Adiwasi Samta Manch is given in the box below.

**Box: FRA Survey in 52 villages in Pandariya tehshil of Kabirdham district of Chhattisgarh**

A survey done in Sept.2010 by Adiwasi Samta Manch of 52 villages, where mostly Baiga (a Primitive tribe Group) and Gonds lived, the following facts came into light:

In all around 4000 community members had applied in 2007 and 2008 but pattas were provided to 1500 only. Even in these cases measurement /marking of land has not been done. Though stone poles have been given but have not been erected.

Around 50% of the forest dwellers had filled claim forms in 2007 but till date they have not received pattas. The rest 50% did not apply due to the non availability of claim forms.

In a few Panchayats the filled claim forms are still with the village Panchayat Sachiv who has not forwarded these to the SDLC.

In 3 Panchayats the Sachivs are misleading the community members saying that there is no order from above for filling the form and sending it.

The Beat guard in many cases asks for money for putting his signature in the claim forms.

Pattas have been given for much less land than what was applied in the claim forms. In most cases though people have possession of over 4-5 acres but on an average Sachiv and forest karamchari have filled in 1-2 acres and in many cases even below 1 acre.

### **3.5.4 Evictions and encroachments**

In some states, including Madhya Pradesh, Jharkhand, Chhattisgarh, Uttar Pradesh, Assam and Orissa, evictions are being reported while IFR claims are still being processed. The committee has investigated the issue of eviction in the course of its field visits to various states, and found some cases where summary evictions, house demolitions and prevention of cultivation had taken place in villages where the FRA process was ongoing. The summary evictions result in denial of the right to submit claims and vitiate the FRA process. This issue has been discussed in detail in chapter 2. At the same time, strong action should be taken to prevent fresh encroachment, and the Act should not be seen as an excuse to bring in new forest lands under cultivation.

### **3.5.5 Omissions in Protected Areas**

As mentioned in chapter 2, except for Karnataka, Kerala, and some PAs in Orissa, by and large state governments have not implemented the FRA in settlements in and around Protected Areas. There has been widespread resistance from amongst the conservation groups and forest officials to allow IFR claims in the PAs in states like Assam, Orissa, Uttarakhand, with active protests by conservation groups in Assam. The second problem is of hastily notified Critical Tiger Habitats (CTHs). In most tiger

reserves, villagers living within such notified CTHs are being asked to undergo relocation without any recognition of rights. The states of Maharashtra, Tamil Nadu, Orissa, Chhattisgarh, Rajasthan, Arunachal Pradesh, Andhra Pradesh, and West Bengal report such practices of relocation. The denial of rights in and near protected areas has also occurred to the “denotified tribes” living in and near them. These issues have been discussed in more detail in chapter 7.

### **3.5.6 Problems of project-displaced persons:**

A crucial aspect of IFR is the settlement of rights of illegally displaced persons (section 3(1)(m)). We found few instances of such communities or individuals being identified and their concerns being addressed specifically. In Madhya Pradesh, several such groups (such as those displaced by Tawa dam) met with our team and said that they were not being allowed file claims because they did not meet the normal definition of forest-dweller (in case of non-tribals, this would mean demonstrating 75 years of residence in the particular area they are currently residing in, which they cannot do precisely because they have been displaced in the last 50 years).

### **3.5.7 Reverse problem: Wrongful acceptance**

On the other hand wrong, there is also some evidence that claimants filing completely false claims or claims for land that has been encroached after Dec 2005 are still getting their claims sanctioned. This was reported from Maharashtra, where a robust verification system is in place and has trapped many false or ineligible claims (see chapter 2), but in some cases the verification system was not used and claims got approved. This is also reported from Assam, where forest dwellers in Golaghat, informed the committee that fresh encroachers, with business interests in forest lands, had managed to manipulate provisions of the Act and get land certificate. On the whole, however, we were presented with limited evidence, even by the Forest Departments, of false or bogus claims.

### **3.5.8 Errors in operationalising accepted claims**

Once the claims have been approved, there are several issues that need to be addressed, where again loopholes have appeared or lacunae have been found.

#### ***a) Area mismatch:***

A number of claimants from many different states (Andhra Pradesh, Chhattisgarh, Assam, Madhya Pradesh, Rajasthan, UP, Orissa, Gujarat) reported that the area for which they had received certificates was smaller than what they they had applied for or was in their possession. These complaints could not be verified in all cases, but there was sufficient prima facie evidence to suggest that they were true in many cases (Sonbhadra, UP; Paderu, Andhra Pradesh; Udaipur, Rajasthan). In some cases in Orissa, the area granted was a tenth of the area claimed, with no explanations being given for the reduction. In some cases, contrary to the provisions of Act for recognizing rights to land under occupation, officials have insisted on surveying only land under cultivation. This has resulted in the exclusion of land left fallow or used for supplementary livelihood activities.

#### ***b) Location or shape mismatch:***

Some claimants reported that the plots as shown in the certificate were different and not located at all where their actual cultivation plots were. E.g., in the villages of Kermeli and Pethiapali (Kermeli Gram Panchayat, Nuapada block) claimants reported that the land for which they received certificates was not theirs but occupied

by someone else. And in spite of appeals submitted by the FRCs and assurances given by the authorities, re-surveys had not yet taken place.

**c) Incomplete certificates:**

There are reports from Orissa of certificates not having the name of the spouse, and also of certificates not being accompanied by maps at all.

The first two issues (wrong area, wrong location or shape), and also that of missing maps, are related to faulty and non-transparent procedures adopted and inadequate attention given to the issue of surveying by the authorities in processing claims. The Maharashtra procedure of measuring all claimed areas by GPS at the time of submission of the claim itself appears to be the best procedure, provided it is accompanied by training for FRC members to use GPS instruments, and more importantly, public demonstration of the accuracy and transparency of this method to villagers. In MP, the GPS-enabled PDAs were used but not everywhere, and only for lands for which claims were approved, which is in a way too late to ensure accuracy. In many other places, such as Jharkhand, surveying was not being carried out in spite of the financial resources being available, because either it was not a clear priority given to the 'ameens' (the government surveyors under the Revenue department) or there were inadequate staff and outsourcing was not done properly. In States like Tamil Nadu, Kerala, West Bengal and Tripura, the survey of the land and the demarcation of its boundaries is being done at the time of decision making by the District Level Committee. The statutory authorities viz. Gram Sabha and Forest Rights Committees are not involved in the process of demarcation and survey leading to manipulation of land areas and loss of rights.

**d) Certificates not the same as private land titles:**

A major issue that came up in **every state** we visited was whether the certificates issued (where IFR claims were accepted) were the same as or equivalent to titles granted to private land owners elsewhere. In some cases, authorities argued that they were 'for all practical purposes' identical, and that banks had been issued instructions by the government that they were to treat them as equivalent. But this is neither legally correct, nor the same things as 'being identical to revenue land'. Firstly, since the rights granted under the FRA to cultivated land are inalienable, the banks cannot take these lands as security for any loan. Second, the fact of the matter is that **no mutation of revenue land records is taking place, the plots are not being given new revenue survey numbers, nor being entered into the record of rights.**

### **3.6 Analysis of shortcomings**

As we said in the beginning, the number of claims processed is very large, and by and large the accepted claims appear to be legitimate ones. **The problem lies mostly in wrongful rejections and omissions.** One may argue that, in any exercise of the size and complexity that the issue of the rights of forest-dwellers, and even just the issue of individual habitation and cultivation, there are bound to be difficulties, shortfall, and some errors of omission and commission. And the incompetence, recalcitrance or even dishonesty of individual officers can perhaps never be totally controlled for. While this is true, the problem of wrongful rejection and omission is much larger and persistent across states and over time (almost three years after implementation began) than would be acceptable. A perusal of the shortcomings listed above and discussions with officials and civil society groups

indicate that the problems are not simply sporadic, or tied to individuals.<sup>16</sup> There are **systemic** issues, both at the implementation level and the policy level. Many of these have been already covered in chapter 2. We discuss a few more that become apparent from the above observations.

### 3.6.1 Issues at the implementation level

It is clear, as detailed in chapter 2, that the capacity of the Tribal Welfare (or equivalent) departments to implement the FRA is very limited. And instead of building that capacity, the tendency has been to rely on the Revenue and Forest Departments to actually help out in the matter. This has led to the insertion of various conditions and screening processes that are not required or even permitted under the Act. Most important, it has led to a much greater role being played by the Forest Department, often as a matter of implementation policy, such as

- asking forest guards to take up FRA work instead of tribal welfare officers,
- depending on 1993 encroachers lists created by the FD,
- insisting on forest offence fines as proof,
- depending on FD interpretation of what is forest land
- effectively allowing FD officials veto power in SDLC and DLC decisions,
- insisting that satellite imagery be one of two proofs and be the deciding proof,
- not putting FD records regarding past encroachment offences, and past forest settlements in the public domain.

It is also clear that not all states have taken the implementation of the FRA equally seriously, or attempted to set up a rigorous process that benefits both legitimate forest dwellers as well as the larger public interest. The tilt has been towards bureaucratizing and controlling the process. Conditions have been introduced into the process in states like Himachal Pradesh, Chattisgarh, Madhya Pradesh that are not supported by the FRA, and are a barrier to fair implementation of the FRA.<sup>17</sup>

Perhaps the biggest lacuna is the **absence of a proactive and accessible process of grievance monitoring and redressal**. In particular, as pointed in our reports on Chhattisgarh, Madhya Pradesh, Jharkhand and many other states, even where (such as in MP) a number of orders and procedures have been put in place, no attempt has been made to hold public meetings in different locations and to seek out and resolve problems that occur in the first round or at local levels. All the observations that this committee made could have come to light and could have been rectified if the states themselves had set up an effective monitoring mechanism, sent its SLMC to visit various parts of the state and to report and resolve issues.

The monitoring mechanism set up by MoTA is also highly inadequate, as noted in section 3.2 above—the type of data provided by the states are quite inadequate and incomplete, and there appears to be no monitoring at all as to the quality of the process. Similarly, MoTA has not made enough efforts to promote inter-state learning

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<sup>16</sup> Another way of looking at the situation is that the easy cases have been processed, but the really challenging and important ones are still pending. The claims of persons in remote areas, of persons displaced by development projects and not given compensation, groups that have been organized by activists and have therefore resisted FD domination in the past, cases where the records are very ambiguous and poorly maintained: most of these situations remain unresolved.

<sup>17</sup> E.g., forms are required to be signed by the patwari, forest ranger, and gram pradhan in UP and Rajasthan.

and identify and encourage adoption of elements that would improve implementation, such as using the satellite image based verification system pioneered in Maharashtra.

### **3.6.2 Issues at the policy level**

While a large fraction of the problem lies in poor implementation, there are issues and ambiguities that need to be resolved at the policy level too.

#### ***a) The OTFD issue:***

Although already discussed in chapter 2, we must reiterate that the misinterpretation of the definition of OTFDs is probably **the single biggest source of wrongful rejections and omissions** across all states. MoTA has clarified the issue of 'residing in and dependent on forest lands', but not really noted and clarified the OTFD definition problem.

Another issue, now formally raised by the Chief Minister of Tripura, is whether the requirement of 75 years of residence for the non-STs is too rigorous and unfair. The committee has received memoranda from groups in many states, including Uttarakhand, Jharkhand, Assam and Himachal Pradesh, that the 75-year residence requirement should be reduced.

#### ***b) The 'dependence' issue:***

Although MoTA did issue clarification regarding the 'residing in and dependent on' issue, ambiguity on the question of dependence is persisting, leading to rejection of cases where claimants have some revenue land or are residing on revenue land and cultivating forest land.

#### ***c) Special problems faced by project-displaced forest dwellers***

The OTFD issue becomes particularly acute where the person is attempting to claim rights under section 3(1)(m), which is meant to address the injustice faced by persons evicted for development projects without compensation. In these cases, how the person is expected to prove 75 years of residence and where, is something that needs to be sorted out urgently. Equally important would be the procedure for determining whether the person had in fact been displaced by the said project, and whether the person had received compensation or not.

#### ***d) Reopening of cases of faulty rejection***

MoTA, in its circular dated 4 March, 2010 clarified that that rejection cases cannot be reopened. This is highly problematic, as it defies principles of natural justice, particularly when the rejections are based on a misinterpretation of the law. It also does not acknowledge that instead of rejecting claims in the first instance, esp. where the problem was incomplete evidence, the DLC could and should have remanded the claims to the SDLCs and/or the Gram Sabhas, and given them a chance to include the evidence. This practice has been successfully followed in Orissa.

#### ***e) Shifting cultivation and IFRs:***

In many states (e.g., Arunachal Pradesh), communities believe that the FRA will seriously undermine the individual rights of the forest dwellers to carry out jhum (shifting) cultivation. Since in a shifting cultivation system, at any given time only a part of the land is under cultivation and the rest is in various stages of recovery or regrowth but is to be cultivated again after some years, a permanent demarcation of the currently cultivated areas as the only land to which cultivation rights are granted will completely curtail their traditional livelihoods. The absence of a policy that is

sensitive to the needs of shifting cultivators is the main reason for the non-adoption of the FRA in places like Arunachal Pradesh.

**f) Surveying, mapping, and conversion to revenue lands**

Rule 8(f) of the FRA stipulates that the DLC must “issue directions for incorporation of the forest rights in the relevant government records including record of rights”. The Act is silent on whether this means that the land will be converted to revenue land, deleting it from the area of RF or PF or other forest land, and making it completely identical to other private lands, except for the condition of non-alienation. MoTA has also not issued clear guidelines in this regard. (Madhya Pradesh has recently raised this matter with MoTA). This has made the IFR certificates inaccurate and prone to misuse if boundaries are not properly marked and GPS-based boundaries are not recorded a priori. Furthermore, unless clarifications are issued at the central and state level as to how exactly ‘incorporation in the relevant government records and record of rights’ is to be done, a long-term solution will not emerge.

**3.7 Recommendations**

The above observations and analysis leads us to a number of recommendations to improve the process.

- 1) States should put in much more effort to spread awareness and understanding about the Act in remote areas, amongst weaker sections, in local dialects, and through a positive and unbiased approach. Identification of areas where FRA implementation, including IFR implementation, has been weak is necessary for such targeted interventions.
- 2) States should make strong efforts to iron out all ambiguities and misinterpretations of the FRA and the IFR provisions in particular amongst the relevant officers at all levels.
- 3) States should issue instructions to SDLCs not to reject any claims on the basis of missing documents or other procedural shortcomings, but rather to remand such claims to the Gram Sabha for reconsideration and re-submission, as done in Orissa.
- 4) States should proactively re-open cases of faulty rejection done on the basis of the prevailing misinterpretations and other problems identified above. They should also make special efforts to communicate rejections to claimants and make them fully aware of (and facilitate their exercise of) the right to appeal.
- 5) States should hold public hearings for grievance redressal at all taluka levels, so as to proactively identify problems and areas of poor implementation. In the case of rejections of the claims of minority or marginalized sections of communities, the SDLC and DLC should give special attention to such instances, and help the claimants to overcome the disadvantages or lack of access that they may suffer from.
- 6) In view of recent circulars by MOEF and MoTA on implementation of FRA in Protected Areas, the process for implementation of FRA in these areas should be given priority.
- 7) MoTA needs to withdraw or modify its circular of 4 March 2010 regarding reopening of wrongful rejection cases.
- 8) MoTA also should apply its mind to and issue necessary clarification on the other policy-level issues highlighted in the previous section, viz., the OTFD issue, the dependence issue, the special problem of project-displaced

persons, shifting cultivation, and the matter of incorporating the titles given into the record of rights and other land records.

- 9) A specific clarification that is required is regarding timber rights: whether the rights to standing timber on lands to which cultivation and/or habitation rights are granted under sec 3(1)(a) also accrue to the rights-holder. The Government may recommend that the timber rights will go with the land.
- 10) Title deeds of land for individual possession should be issued only after the physical measurement has been accurately done on the ground and the boundaries demarcated with permanent boundary marks in the presence of all stakeholders (claimant and the bordering claimants as well as field forest and revenue officials in charge of the area and selected responsible members of FRC) to avoid future land disputes.

## **Chapter 4. Implementation of FRA: Community Forest Rights<sup>18</sup>**

Forest-dwelling communities have traditionally accessed forests in various ways. In the case of resident communities, this could include:

1. Day to day access, use, management, and/or protection, mostly in areas in proximity to the settlement.
2. Regular seasonal access, use and management, in areas further away, e.g. for grazing, NTFP collection.
3. Occasional access and use, in times of crisis, or for particular social occasions.

In the case of nomadic or mobile communities, such as many pastoral herders, the first two kinds of access merge or overlap.

The analysis and recommendations below are based on the understanding that the FRA provides for various kinds of rights for different situations above.

### **4.1 FRA provisions on CFRs (Sec 3(1))**

The FRA provides for the following kinds of Community Forest Rights (CFRt), in Section 3(1):

- (a) community rights such as nistar, by whatever name called, including those used in erstwhile Princely States, Zamindari or such intermediary regimes;
- (b) right of ownership, access to collect, use, and dispose of minor forest produce which has been traditionally collected within or outside village boundaries;
- (c) 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;
- (d) rights including community tenures of habitat and habitation for primitive tribal groups and pre-agricultural communities;
- (e) rights in or over disputed lands under any nomenclature in any State where claims are disputed;
- (f) 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;
- (g) right to protect, regenerate or conserve or manage any community forest resource which they have been traditionally protecting and conserving for sustainable use;
- (h) 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;
- (i) right of access to biodiversity and community right to intellectual property and traditional knowledge related to biodiversity and cultural diversity;
- (j) 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

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<sup>18</sup> Other than the reports of consultations and field visits of the Committee, this chapter has used a number of sources mentioned in the References. Inputs to the chapter have also been received from Nikhil Roshan, Tushar Dash, and Y. Giri Rao.

mentioned in clauses (a) to (k) but excluding the traditional right of hunting or trapping or extracting a part of the body of any species of wild animal;

(k) right to in situ rehabilitation including alternative land in cases where the Scheduled Tribes and other traditional forest dwellers have been illegally evicted or displaced from forest land of any description without receiving their legal entitlement to rehabilitation prior to the 13th day of December, 2005.

Of the above, 3(1)h and m are dealt with elsewhere in this report.

In fact though the FRA has often been portrayed as an Act to provide for land titles, the CFRt provisions are far more numerous, and it can be argued, much more important from the point of view of the collective access over forest resources, community living, and the ability and power to conserve forests.

Amongst the CFRt given in Section 3(1), one is with regard to Community Forest Resource (CFRe), which is defined in Section 2(a) as “customary common forest land within the traditional or customary boundaries of the village or seasonal use of landscape in the 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”. Given the fact that it provides for overall management and protection rights to forest areas, with implications for governance of forests, we have distinguished it from CFRt in general. In the discussion below, CFRt refers to all rights including CFRe; where relevant, CFRe have been referred to explicitly.

It is important to note that the FRA *suo moto* recognizes these rights under Section 4(1), and only lays down a procedure so that the rights can be vested and recorded.

Additionally, CFRt need to be viewed in the context of the empowerment and duties of Gram Sabhas and forest-rights holders that are envisaged in Section 5, which states: “The holders of any forest right, Gram Sabha and village level institutions in areas where there are holders of any forest right under this Act are empowered to- (a) protect the wild life, forest and biodiversity; (b) ensure that adjoining catchments area, water sources and other ecological sensitive areas are adequately protected; (c) ensure that the habitat of forest dwelling Scheduled Tribes and other traditional forest dwellers is preserved from any form of destructive practices affecting their cultural and natural heritage; (d) ensure that the decisions taken in the Gram Sabha to regulate access to community forest resources and stop any activity which adversely affects the wild animals, forest and the biodiversity are complied with.” This too has implications for governance of forests, discussed in Chapter 8.

It is the Committee’s view that the right given under Section 3(1)(i) to “protect, regenerate or conserve or manage” a community forest resource (CFRe) should extend to the entire area falling within the CFRe (as defined in Section 2(a)) that are in the day-to-day regular use or management or protection of the community, once the right is claimed. If necessary, this should be clarified by MoTA to states, or an amendment to Section 3(1)(i) should be carried out to make it clear.

Additionally, even in other areas to which any kind of rights are granted, the relevant Gram Sabha needs to be empowered to carry out the functions envisaged under Section 5. The recommendations below flow from this understanding.

#### **4.2 Official status of implementation**

The national and state-level picture of implementation of CFRt is extremely incomplete. Data and analyses is missing from most states, there is almost no disaggregation into the various kinds of CFRt, there is confusion between CFRt under Section 3(1) and development rights under Section 3(2), and almost no

information on the extent of area over which CFRt (especially CFRe) have been claimed or vested. The following data need to be seen within this context.

a. **National level status:** CFRts claimed and at various stages of process

As per the MoTA website, as of October the overall status of CFRt was as follows:

Total CFRt claims (from 14 states for which information is available): 50981

Total CFRt claims accepted or titled (from 8 states for which information is available):  
6971 (of which 3847 titled)

Total area over which CFRt titles given (for the 5 states from which information is available): 20,254 ha.

b. **State-level status**

Of the various states that have reported on implementation of CFRt, Assam appears to have the highest rate of acceptance of claims (3018 out of 4838), and Andhra Pradesh the highest rate of titles given (2100 of 6903 claims). Other states with a relatively large number of claims include Chhattisgarh, Gujarat, Madhya Pradesh, Maharashtra, and West Bengal, but in all these cases, acceptance or titling is very low. Orissa has accepted/titled about 30% of claims made, but it has also rejected twice as many as accepted (it is difficult to compare this with other states as it is the only state to report on rejections of CFRt). Another criterion for comparison could be the average area over which CFRt have been granted, but again, most states do not have such data. Maharashtra has the highest amount of area given per claim, at 44.8 ha; Rajasthan has 9.2 ha, Chhattisgarh 7 ha, and West Bengal a mere 0.47 ha.

All the above figures have a number of caveats:

1. For most states and at the national level, there is no disaggregation of the kinds of CFRt being claimed, i.e. it is simply not known how many claims have been made/accepted/rejected at various levels, of each subsection of Section 3 that provides for community rights.
2. Nor is there comprehensive information on the area (hectareage) that has been claimed and accepted/rejected, other than for 3-4 states. The figures given above are only indicative of what may be total area under such claims.
3. The data are further complicated by the confusion between Section 3(1) and Section 3(2); several states appear to be reporting the latter for the former; this is particularly so for states like West Bengal, which is most likely the reason for the very small area given per title (see also below on this).
4. Other than in the case of Orissa, it is not clear if the claims not accepted have been rejected or are pending approval/rejection.
5. Finally, there is a lack of baseline information on the existence of rights (recorded or unrecorded), and existence of customary practices relating to management, use, and protection, in most places. This makes difficult any robust comparative assessment of the situation prior to and after the FRA's promulgation. Whether the FRA has led, or will lead, to an improved livelihood security for communities, or to more sustainable management and conservation of forests, is therefore likely to be assessed largely based on oral history or accounts of those who have long-term ground experience. Such information can also be quite reliable and should by no means be discounted (indeed community testimonies can be very powerful in assessing results). But it is a missed opportunity to not have had in place also a series of baseline assessments of a formal nature, to afford comparisons of a formal scientific kind.

All these caveats point to the fact that the actual number of claims submitted under section 3(1) is much smaller than 50,000. Furthermore, the number of unique villages that have submitted claims under section 3(1) is even smaller, since several villages have submitted multiple claims. And the majority of the claims titled are for minor use areas, such as graveyards, threshing grounds, ponds, etc. and not to the area of forest that is under day-to-day use, nor the even larger area under seasonal use.

**This number of claims and claimed area is abysmally small and not at all a reflection of the areas to which communities are likely to have legitimate community claims under section 3(1) of the FRA.** This conclusion can be easily drawn if one looks at the following data:

- a) the number of villages in the country that have some forest area in them is estimated by the Forest Survey of India to be over 170,000, and the forest area to be 32 million ha.
- b) the number of JFM committees is supposed to be over 100,000 and the area under their protection over 22 million ha.
- c) the number of self-initiated community forest management groups in Orissa is estimated to be 12,000, and at least several hundreds in Gujarat.

From this, **the Committee concludes that the progress on implementation of the CFRt provisions has been extremely slow, and this is the single biggest lacuna in the implementation of the FRA.** And from all the the associated observations in the field, and submission received, the Committee concludes that this is because **the CFRt provisions of the FRA are generally very poorly implemented.**

Wherever proactive efforts have been made, however, claims for several tens of thousands of hectares have been filed (especially in Orissa, Maharashtra and Gujarat). **Therefore, Committee would like to stress that the current status of CFRt claims is not indicative of the *potential* of such claims. If the various shortcomings in implementation described below are removed, the claims could spread to several million hectares in the next few years.**

### **4.3 Manner of implementation and lacunae**

Through the Committee's field visits, consultations and submissions received, the Committee has come across several major lacunae in implementation of the CFRt provisions. We describe them in this section. It is important to read and understand the key problematic issues described below in conjunction with the innovative and positive efforts that have been made in dealing with some of them (Section 4.4).

#### **4.3.1 Overall set of problems**

The Committee has observed the following broad trends:

1. The number of applications received for CFRt is very low, and acceptance abysmally lower, compared to the potential if judged by the number of villages that are living within or adjacent to forests.
2. Where CFRt claims have been claimed or accepted, the extent is often much less than actually used or managed by the community. There are widespread and diverse hurdles in the entire process, some of which are generic to the FRA as a whole (as laid out in Chapter 2), some of which are specific to CFRt.
3. There is little thinking on the status, management, and conservation of areas with CFRt, and specifically CFRe, including issues of relationship of the Gram Sabha with existing agencies managing these areas, and of the complementarities and contradictions with other laws operating in such areas.

These are elaborated in sections below.

### 4.3.2 Inadequate or incorrect awareness, information, and forms

The process of claiming CFRt has been bedeviled by a number of problems relating to lack of or inadequate information, incorrect and misleading information, problems with the claim forms, and so on. For example:

- In a very large number of places, possibly the majority of sites in India, the CFRt process has not even got off the ground, due to lack of awareness regarding the FRA in general or CFRt in particular, amongst communities, civil society organizations, or relevant officials. Interestingly this is the case even where there is knowledge and initiation of the process related to IFRs (for instance in large parts of Chhattisgarh). At several places (e.g. Bhamragarh in Maharashtra, or Bharmour in Himachal Pradesh) communities said they were only informed about IFRs and not about CFRt (Committee report on Bhamragarh, Maharashtra; Saxena 2010). Part of the reason for this is the fact that the FRA has largely been portrayed as a legislation to provide individual land rights, especially during its promulgation and in its first phase of implementation. The first set of advertisements issued by several state governments portrayed the FRA as a land-giving or titling legislation, and the initial publicity drives by several civil society organizations were dominated by the promise of recognizing individual land rights.
- In several states the claim forms for CFRt were not distributed in the first phase of implementation at all. This was reported, for instance, in a study of CFRt in parts of Gujarat and Orissa, where the forms had to be printed and distributed by civil society organizations (Jathar 2010).
- Even where CFRt forms have been distributed, the implementing officials often continue to confuse them with claims under section 3(2) (development rights). E.g., tribal welfare officials interviewed by the Committee members visiting Madhya Pradesh did not know the distinction between these sections.
- Particularly badly left out of the process are nomadic pastoralists and PTGs, many of whom have not been made aware of the FRA or of the fact that they can claim CFRt for many of their crucial livelihood activities (see Chapter 6).
- Even where there is knowledge about the fact that CFRt can be claimed, at many sites (e.g. Madhya Pradesh and Chhattisgarh, see Samarthan and Adiwasi Samta Manch studies), communities or relevant officials are not clear on how to determine and verify such rights, and so have not started the process. In Mayurbhanj district of Orissa, officials were not clear on who can apply for such rights in the case of villages that have a mixed population of eligible claimants and non-eligible people; at other places they were not clear on whether the claims should be made by individuals or by the whole village (see Committee report on Orissa consultation). There is also confusion on how to determine the boundaries of CFRt (especially in the case of the claim to CFRe); or on whether CFRt can be claimed over more than 4 hectares (even though the FRA is clear that this limit is only for rights claimed under Section 3(1)a. The process has also got stuck in places where more than one village has a claim on the same forest area, and no process has been put in place to reconcile such overlapping claims (though the FRA has provided for such a procedure).
- Where claims have been submitted, they have tended to focus not on forest produce or forest use rights, but rights to access and use certain small locations within the forest, such as graveyards (Madhya Pradesh), threshing grounds (Jharkhand), ponds, and so on.
- Amongst the various kinds of CFRt, the right to manage/protect CFRe (Section 3(1)i) is one of those with the least awareness. One reason for this is that this sub-

section is not specifically mentioned in Claim Form B that is attached with the Rules; this inexplicable and unexplained omission has caused many communities to not claim this right even when they have claimed other CFRt.

- Another kind of CFRt that has hardly been claimed is that of “community right to intellectual property and traditional knowledge related to biodiversity and cultural diversity” (Section 3(1)k). In any case, there is no clarity on what this would mean operationally. How does a community or a person ensure, for instance, that such knowledge is protected against biopiracy and misuse? What would be the obligations of the state towards people/communities with such rights? (This is, incidentally, an issue that has not been resolved in the case of the older Biological Diversity Act 2003, which has a similar clause for protecting traditional knowledge).
- At many sites CFRt claims have not been made because communities are either unsure of what kind of evidence needs to be provided to support their claims, or feel they would not be able to get the evidence required (the latter is especially so with regard to OTFDs).
- It is not clear to people whether, if they have already gone through the process of claiming IFRs, they can re-start a process to claim CFRt. Though the FRA has set no time limit for the completion of procedures, some states have done so (e.g. Maharashtra set a limit of June 2010, an issue that the Committee took up with MoTA). Or, relevant officials are telling people that the time period is over. Also in some states there is a graduated process, with IFRs being dealt with first and CFRt claims not being processed till later. In Kerala CFRt claims over NTFP were only dealt with in the 2<sup>nd</sup> phase of implementation (Sathyapalan et al 2010). These factors have also dissuaded CFRt claimants.
- At many sites, misleading information on CFRt has been provided by officials or civil society organizations, to communities (not necessarily deliberately, since in many cases such officials or NGOs have themselves misunderstood the FRA’s provisions). Amongst the most common of these is that CFRt relate only to development facilities listed under Section 3(2). For instance, in the case of Uttara Kannada district of Karnataka, and Lakhimpur and Sonitpur districts of Assam, many of the approved claims listed under CFRt are actually for developmental facilities under Section 3(2) (MoTA website)
- Indeed at many of its consultations and field visits, when the Committee asked about CFRt, we were told (both by communities and by officials) about claims being made for development facilities. In a study of 31 villages in Gujarat, Maharashtra and Madhya Pradesh, it was found that of the so-called CFRt claims filed, 22 were actually for development facilities under Section 3(2), while only 11 were for nistar rights, and only one for intellectual rights to traditional knowledge (Thatte 2010). The same study reported that: “the Tehsildar of Dhadgaon (Dist. Nandurbar, Maharashtra) informed this writer that his office had received 12,180 individual (land) claims and 12 community claims. All community claims were promoted by health department since it needed land for setting up Primary Health Centres.”
- In Chhattisgarh there is an overwhelming inclination to approve infrastructure (buildings or a place for it) as community rights rather than forest uses. The number of claims approved for infrastructure like school building, community building, health infrastructure etc has been high in the studied villages as compared to the needs of the people like land for collection of NTFP, markets, pasture land, etc. (Samarthan 2010)
- Also widespread in some states is the belief that CFRt need not be applied for, since people are already benefiting from existing arrangements such as nistar rights, JFM/CFM agreements, Van Panchayat agreements, etc. Senior forest officials of

Uttarakhand told the Committee that Van Panchayats already enjoyed full access and rights, including that of management, so there was no need for CFRt to be claimed (however this was countered by Van Panchayat representatives; see box on Van Panchayats; see also Uttarakhand consultation reports). This was also very clearly asserted by forest officials in Madhya Pradesh, who said that, 'between JFM, MFP federations, and legally recognized nistaar rights, the livelihood needs of the communities were completely met, so where was the need for them to apply for CFRt. In Medak district, Andhra Pradesh, pastoralists were told by the Forest Dept that there was no need to make claims since they already enjoyed grazing access (Anthra 2010). In Himachal Pradesh, people have taken their existing community rights for granted, and not been encouraged to file CFRt claims (Saxena 2010).

- Communities have also been told that CFRt cannot be claimed in protected areas (initially in several states no rights were allowed to be claimed in PAs, as reported elsewhere in this report).
- Finally, in many areas communities have been told that only STs can claim these rights or that they will be given preference (for instance in Nayagarh district of Orissa, over 200 villages of OTFDs that have claimed CFRt, having already protected the forests under self-initiated processes, have so far not been given titles; district officials are saying they will first deal with the ST claims, and have in fact issued CFRt titles to 2 villages that are predominantly ST; see Committee detailed report on Orissa).

#### *Van Panchayats (VPs)*

Van Panchayats are legally notified areas in parts of Uttarakhand, under the management of local communities. They were the outcome of people's struggle in the Kumaon region when the colonial government wanted to annex the forest belonging to the communities. The culture of forest management existed even before this, with institutions known as "Lath Panchayats". The British dismantled these, and wanted to bring new exploitative practices by taking forest land and resources under their control. But they faced strong resistance from local communities, as a result of which, in 1925 autonomous VPs were formed, and rules were framed accordingly in 1931, under the Scheduled Districts Act 1874. Communities continued to be in control of VPs till 1976, when new rules were framed putting VPs under the Indian Forest Act 1927. In 2001 and 2005 further changes in the rules strengthened the role of the FD, and attempted to bring VPs under the JFM programme. By now there are over 12,000 VPs in the state, covering 12-13% of its forest area.

Currently, VPs have much greater FD involvement; for instance the Secretary is the local Forester or Deputy Ranger. This also brings the finances of VPs under the FD's control. At a public consultation held by the Committee at Haldwani, strong views came from VP heads and members, and several NGOs, that either the VPs should go back to being governed under the pre-1976 rules, or they should be brought under the FRA as CFRt. It is important however that when doing this, open consultations must happen at the village level; this is especially so for the over 6000 VPs formed under government diktat in the early 2000s without much consultation or democratic process. It is also important to inform villages that they have the option of claiming not only the area under VPs (which is often limited to revenue lands or small forest lands), but also larger forest areas over which they have customary access.

#### **4.3.3 Obstructions to and distortions in making claims**

At many places where communities have attempted to make CFRt claims, they have encountered various kinds of obstructions even at the stage of preparing or submitting claims. These include:

- Refusal to give relevant records, such as maps, to assist in making claims (e.g. in Medak district, Andhra Pradesh (Anthra 2010)
- Refusal to accept claims because the land being claimed is located in “Joint Forest Management Protected” areas. (Anthra 2010).
- Discouraging pastoralist communities to claim their rights or delaying the process of recognition. (Ramdas and Madhusudan undated)
- Continuing official landuse of areas under CFRt claims, e.g. plantations under CAMPA and JBIC projects in Orissa (see Orissa consultation report)
- Deliberate delays or hurdles in processing claims in PAs, areas demarcated for plantations, mining, etc.
- In some states there are scrub or grassland or forest areas that are not legally classified as forests, and state governments are either denying the extension of FRA to such areas or are unsure of what to do. In Orissa, for instance, *pahar kism* lands are revenue lands, but may actually have scrub vegetation under use by communities; similarly in Jharkhand *jungle jhadi* lands that are outside notified forest lands are being denied to claimants; so far the state government has taken the view that such areas cannot be claimed as CFRt under the FRA (see Committee reports on Orissa and Jharkhand visits and consultations).
- There are many areas where customary rights are in areas that are now within municipal city limits. Several such sites are still used by nomadic or seasonally migrant pastoral (and other) communities. Such communities have no way of making their claims, since the relevant institutions under FRA do not exist in towns/cities. According to MoTA (in its clarificatory circular of 4 March 2010), rights cannot be claimed or given in urban areas, since SDLCs and DLCs cannot be formed. This however tantamounts to continuing the historical injustice such communities have faced, rather than coming up with a more creative resolution to this.
- Shifting cultivators in most states are facing enormous hurdles getting their claims accepted as CFRt. For instance in Juang pirha area and Kalahandi shifting cultivation is still not recognized (Committee detailed report on Orissa consultation). (This is discussed in more detail in Chapter 6)
- A Maharashtra-specific issue is of ‘dalli’ lands, areas given on lease during the British times, for a mix of cultivation (including shifting), grazing, and other commons; in most cases only the cultivation rights are being accepted in the claims, leaving out the non-cultivated commons, or the areas currently under fallow (Committee report on Maharashtra consultation).
- In Jharkhand, many communities are not claiming CFRt as they feel that the Chhota Nagpur Tenancy Act already provides for more rights than under FRA (e.g. some timber harvest rights). It appears they have not been told of, or have not understood, that such rights will continue under Section 3(1)j, and that the FRA will give further rights and powers over and above these (Committee report on Jharkhand visit).

At many places where communities have proceeded to discuss and process claims, there have been distortions in the kinds of claims, e.g.:

- In places communities have claimed CFRt in the name of some individuals (e.g. at Jharsugoda district in Orissa, only in the name of JFM/VSS members, or in parts of Jharkhand only in the name of some individuals, or at places in Madhya Pradesh only in the name of FRC members), not specifying that these are on behalf of the whole community (see Committee reports on these states). This may have

been out of ignorance or by mistake, or because the claim form asks for names, but in places could also have been an attempt by a few to corner larger benefits.

- At other places CFRt have been claimed by a particular institution of the community, and it is not necessarily clear that this has been done on behalf of the entire community. For instance in Udaipur district (Rajasthan), CFRt claims have been made in the name of forest protection committees, under the influence of civil society organizations under the assumption this would represent the whole community, an assumption that is not necessarily valid (see Committee report on Rajasthan (Udaipur) consultation).
- Communities have been told, or have presumed, that the extent of their claims are according to pre-decided boundaries, especially those related to the area within which official schemes such as Joint Forest Management or Community Forest Management are run. This has been common, for instance, in Mayurbhanj district of Orissa, where the Committee was given a list of villages whose CFRt boundaries had been fixed and mapped as per JFM records, perhaps with the intention of helping out the community in its claims but with the result of constraining them from claiming the areas that they have customarily been managing/using (see Committee report on Orissa visit). Restricting the CFRt claims to JFM boundaries was found to be common in Andhra Pradesh also (see Committee report on Andhra Pradesh visit). In Uttarakhand, communities were under the impression that if at all they could claim CFRs, it would be restricted to the Van Panchayat boundaries and not extend to Reserve Forests that are adjacent (and which have customarily been used) (see Committee report on Uttarakhand/Haldwani consultation).
- In some states the government has a fixed format for claiming CFRt (mostly prepared by the forest department), which goes beyond the format provided in the Rules, or even violates the FRA. In Simlipal Tiger Reserve (Orissa), for instance, the Committee was shown a format for CFRt claims that said communities could not claim firewood and nistar rights (though this is provided for in Section 3(1)), did not mention the right to manage and protect forests (CFRe, as per Section 3(1)i), did not specify that the claim should mention the size/area of the forest in which rights are applicable, and stated that collection and sale would be as per the Orissa MFP Rules 2002. This format has apparently been widely used in Orissa, till it was objected to by civil society organizations and withdrawn; it was however still in use in Mayurbhanj till the Committee pointed this out to the District Collector who immediately ordered its withdrawal (see Committee reports on Orissa consultation and Simlipal visit).
- At several sites the Gram Sabha has not been allowed to, or facilitated to, play the role of determining CFRt, this function being hijacked by official agencies such as the Technical Support Group under FRA, in conjunction with village institutions such as JFMCs/VSSs. This has happened for instance in Mayurbhanj district of Orissa.

#### **4.3.4 Problems of representation of actual forest dependent communities**

The problems plaguing the formation and composition of FRCs, and the functioning of gram sabhas, SDLCs, or DLCs (as reported in Chapter 2), have a significant bearing on CFRt claims also. For instance:

- At several places those genuinely and predominantly dependent on forests have not been represented on the FRCs, or have not been able to get their claims accepted in the gram sabha as they are in a small minority or lack adequate influence (this is especially where the gram sabha is at the panchayat level, covering several villages and hamlets). This could be one reason for a number of FRCs or gram sabhas not forwarding CFRt claims.

- Nomadic grazier communities for whom CFRt are the most crucial provisions, have not been able to make claims in most areas, because there is no system of facilitating their claims across the very many gram sabhas they would cover on their migratory paths (see Chapter 6).
- PTGs have had similar problems, as also lack of representation in the FRA's various institutions (including in gram sabhas, SDLCs and DLCs, though this is mandated in the Rules, sections 5, 6 and 7) (see Chapter 6).
- OTFDs in most places are facing problems obtaining evidence of 3 generations residence/dependence, including in the case of *taungiya* villages (e.g. in Uttarakhand, see consultation reports). A crucial issue here is the need to clarify that OTFDs need not have had occupation or dependence on the areas being claimed for CFRt; 75 years residence in or adjacent to such areas should be enough. (see Chapter 2)

#### **4.3.5 Delays in dealing with CFRt claims and improper rejections**

CFRt claims are facing enormous delays or significant rejection rates, which is evident from the national and state figures of acceptance or titling, given in section 2 above.

At several sites the Committee was told that the SDLCs or DLCs were first dealing with IFRs and would only then get into processing CFRt. Many officials stated lack of staff as one reason for this, though it is not clear why they cannot deal with CFRs which are always going to be much less in number than IFRs. Other reasons would include the ones given above, regarding various kinds of confusion or lack of understanding on CFRt, or regarding improper criteria used for accepting or rejecting claims. CFRt claims in Raigad, Maharashtra, have reportedly been rejected due to absence of caste certificates (Committee Maharashtra consultation report) At many places CFRt are being rejected without giving any reason, or without clear justification, denying claimants the possibility of appealing or of rectifying mistakes or omissions in the claims if any.

One major reason for the poor encouragement and acceptance of CFRt claims is that these will give ownership and control over NTFP (MFP) to rights-holders. Such produce forms about half of the total revenue of the Forest Department today (Mahapatra et al 2010). With the exception of a few states and sites, the Department has consistently been resistant to providing full (or even substantial) ownership or revenue rights to communities, especially with regard to the major earners like *tendu patta* and bamboo. This resistance has included active subversion, for over a decade, of the PESA provision of MFP ownership to STs. Interestingly even in the case of villages that have been able to obtain CFRt rights, there is obstruction in their moves to market NTFP, e.g. bamboo in Mendha-Lekha village of Maharashtra, reported elsewhere in this chapter.

In relation to this, MoTA has issued a clarification in July 2010, that MFP claims (individual and community) should be "just processed, not re-examined for quick acceptance". Though a missing comma after 're-examined' makes the language unclear, the intent of MoTA is very clear from the following paragraph, in which it quotes (a) Section 6(1) regarding the authority of the Gram Sabha to initiate the process of determining rights, Section 3(1)c regarding MFP rights, and the ownership rights over MFP given under PESA.

#### **4.3.6 Confusion and distortion regarding the kind of titles to be given**

CFRt claims have in some places been held up or delayed because official agencies or communities are not clear on a number of aspects of the titles to be given. This includes:

- For situations like shifting cultivation, should the title be for the entire area within which the cultivation is being carried out, or for a particular plot that is under cultivation at the time of verification of claims? In a number of states, *jhum* (shifting cultivation) rights are being treated as IFRs, with verification teams recommending acceptance of only the plot of land on which there is current cultivation, ignoring the rest of the landscape which is also part of the *jhum* cycle.
- In whose name should the title be? The title form given in the Rules starts with “name of the holder of CFRt” and then mentions the “village/gram sabha”. At a number of consultations and discussions with state government officials the Committee was asked whether the title should be in the name of some/all individuals of the village/GS, or the village/GS as a whole, or a particular section of the village/GS (e.g. a hamlet most dependent on the forest). In Jharkhand, the title is in the name of the Gram Pradhan, which tantamounts to privatizing (at least on paper) a common resource. The sample of titles available or reported to the Committee suggests that all these different kinds of titles are being used, with no harmonization.
- This question is especially relevant in situations where the village/GS has a mix of STs/OTFDs as eligible under the FRA, and other people who are not eligible. Should the latter be entitled to the CFRt by default, if the title is given to the whole village/GS?
- How should boundaries be determined? At several places (as noted above in the case of JFM and Van Panchayats), officials and communities were confused about whether the boundaries needed to be restricted to some existing official demarcation, or be open to the larger/different areas that had been under customary use/management (despite the provisions of the FRA providing for the latter). What about when various village/GS claims are over the same patch of forest (again, officials were often unaware of the provisions mandating a process to resolve such overlapping or conflicting claims)?

#### **4.3.7 Habitat rights to non-PTG forest-dwellers**

Though the explicit mention of habitat rights is in relation to PTGs (Section 3(1)e), other forest-dwellers could also claim such rights by putting the following together:

- Preamble text on ‘forest rights on ancestral lands and their habitat’ for both FDSTs and OTFDs;
- Definition of ‘habitat’, as “area comprising the customary habitat and such other habitats in reserved forests and protected forests of primitive tribal groups and pre-agricultural communities and other forest dwelling Scheduled Tribes”
- Sections 3(1)j and (3(1)l, referring to existing rights.

This would be particularly relevant for FDSTs who have till the recent past lived, or continue to live, in accordance with customs and traditions relating to particular territories, such as for instance the Soligas of Karnataka. Various issues relating to such rights for PTGs, discussed in Chapter 6, would be relevant in such situations also.

Thus far, however, no attempt has been made to discuss ‘habitat’ rights with non-PTG forest-dwellers.

#### **4.4 Good implementation, examples and factors**

While the predominant scenario of CFRts is that of poor implementation, the Committee did come across or were sent information on a number of positive processes and results. These point to the possibility of much better implementation in

future, if the key lessons can be learnt from these examples, for wider use. Some instances are given below.

#### **4.4.1 Claims process**

After an initial hesitation and delay that was virtually universal, CFRt claims processes have begun in right earnest in several states.

At some sites communities (with help from civil society groups) have undertaken a comprehensive process of preparing the claims, including discussion in the entire village, detailed mapping and collection of evidence, and initiation of planning processes in anticipation of getting the CFRt. This is the case, for instance, with a number of villages in Gadchiroli district in Maharashtra, several community forest sites in Orissa, dozens of villages in Narmada and Dangs districts of Gujarat, and pastoral rangelands in Chittur and Medak districts of Andhra Pradesh (Lata 2010; Anthra 2010; Committee detailed Orissa consultation report; Committee Gujarat visit report). These include not only the rights of use but also the right to manage and protect CFRt. At Badrama Sanctuary (Orissa), virtually the whole area is claimed under CFRt; the same situation exists with Biligiri Rangaswamy Temple Sanctuary (Karnataka), where several Soliga adivasi hamlets have claimed CFRt (including CFRt) claims based on detailed documentation including mapping (Tushar Dash, Vasundhara, personal communication; C. Madegowda, Soliga Adivasi Sangha, personal communication). In Nagarjunsagar Srisailem Tiger Reserve (Andhra Pradesh), participatory mapping to claim CFRt has included detailed observations based on traditional knowledge and cultural practices, and the claims would cover virtually all of the tiger reserve (Sivaramakrishnan, SAKTI, personal communication). Villages around Nagarhole National Park (Karnataka), including some that have been evicted from the Park, are claiming rights over very substantial parts of the Park and surrounds, and also planning to make a 'social fence' around the Park to protect the forest (Thakaekara 2009).

This preparatory phase has often included several villages coordinating their claims process to avoid overlap or conflicts. Traditional knowledge of the forest, including customary boundaries, has been crucial to this process. For instance, a study of Gujarat and Orissa reported that: "Sankali and Dabka villages in Shoolpaneshwar WLS held meetings with those who have overlapping forest areas, while the Tentulipadar village inside Karlapat WLS simply informed the other stake holders by sending notices and inviting their objections if any. Akhupadar, Bada Toulubi villages in Ranpur block of Orissa held meetings to demarcate boundaries. These villages have been already protecting their forests together, and decided to continue with the same practice of sharing responsibilities and benefits. All the villages visited during this study had already settled their boundary disputes, for which it took many meetings within the villages and with others for them to reach the final demarcation of their respective boundaries." (Jathar 2010)

The potential of CFRt (including CFRt) being claimed over a very large part of India's forests, contrary to the impression one would get if one were to look only at the claims accepted so far, is indicated by some examples. In a few blocks of Gadchiroli and Gondia districts of Maharashtra, over 70 villages have claimed CFRt over a total of about 50,000 ha. In Orissa, hundreds of villages have claimed or are in the process of claiming CFRt over the forests they have been managing under self-initiated processes. 16 villages of Khadia and Mankidias of Mayurbhanj district have got titles to about 6500 hectares; in Kalahandi district 113 forest protecting groups have got about 6000 hectares (Y. Giri Rao, Personal communication). 24 villages in Dediapada and Sagbara talukas of Narmada district, Gujarat, have claimed 18500 ha, and have already formed committees under Rule 4e of the FRA, to manage these (Committee Gujarat trip report). About 340 settlements in and around the NSTR in

Andhra Pradesh are preparing claims for CFRt totaling several hundred sq. km. Once the CFRt claims start coming in for Van Panchayats in Uttarakhand, they would cover several thousand sq. km. Much of the Biligiri Rangaswamy Temple Sanctuary in Karnataka has been claimed as CFRt (including CFRe) by the Soliga adivasis living inside it.

A few PTGs have managed to initiate the process of identifying, drawing the boundaries of, and claiming their 'habitat' to correspond to their traditional territories. This includes the Juang in Keonjhar district and Dongria Kondh in Kalahandi district of Orissa, assisted by civil society groups (see below; see also Chapter 6). In the case of pastoral groups, and in particular nomadic graziers, one of the few examples of successful claims (though not yet titled) is of the Van Gujjars in Uttar Pradesh, again with active civil society help and also a responsive state government.

#### **4.4.2 Acceptance of claims and issuing of titles**

At some sites, CFRt claims have been processed and accepted. Amongst the first were community rights to a reservoir (for fish, water) and forest produce obtained by the Chenchu tribe in Nagarjunsagar Srisaillam Tiger Reserve (Andhra Pradesh), and rights to use, manage, and protect a total of 2700 hectares of forests, obtained by two villages (Mendha-Lekha and Marda) in Gadchiroli district (Maharashtra). The title for the latter is comprehensive, containing all that the village had asked for (nistar to forest produce, fisheries, access to biodiversity, traditional knowledge, management and protection), as also an open clause of 'other rights as applicable in the Rules'. This is, however, subject to "government rules" which is left undefined (see Section 5 on the issue of conditional titles).

Official agencies have also been supportive of CFRt claims at some sites. The initiative taken by a former District Collector of Gadchiroli district (Maharashtra), to put together all available records of each village and send them to the relevant FRCs/GS, would have greatly facilitated the claims process. In Orissa the government has organised several workshops on CFRt (including on habitat rights) for officials, civil society groups, and communities. In Udaipur district (Rajasthan) and Mayurbhanj district (Orissa), forest officials have actively helped with the claims, though these are also subject to some of the distortions pointed out in Section 3.5 above.

#### **4.4.3 Civil society groups involvement**

Possibly the biggest external factor in the positive initiatives towards CFRt claims is the involvement of civil society groups or community forums. In most states, they have pro-actively spread awareness, produced and distributed literature in local languages, facilitated communities to discuss, document, map, and find evidence for their CFRt claims, and then worked with or lobbied relevant authorities to accept these. In Vaijapur taluka of Aurangabad district, Maharashtra, the movement Loksamiti has helped 8 villages not only in claiming about 7500 ha of CFRe, but also in resolving conflicts over their use between various castes, between tribals and non-tribals, and between local residents and nomadic graziers. A number of other such examples have been documented in the various consultation and field visit reports of the Committee, and some are mentioned in this report.

Some state governments actively encouraged such involvement. In Andhra Pradesh, for instance, civil society groups were commissioned by the government to help special groups like the Chenchu PTG to make customary use maps for claiming CFRt (Sivaramakrishna 2010).

#### **4.4.4 Government orders/circulars/FAQs**

A few state governments have issued useful circulars or supplementary guidance on CFRt, to clarify confusing terms or provisions, to simplify procedures and evidences, and so on. For example, the Orissa government issued a Frequently Asked Qs. note on CFRt, going into detail on the processes of making claims etc. The Madhya Pradesh government issued instructions to all District Collectors to pro-actively identify potential CFRt claimants, provide relevant documents to communities, and in other ways facilitate CFRt claims. MoTA has issued a couple of circulars encouraging states to pursue CFRt more vigorously, the latest one in July 2010; as also a circular on the need to quickly accept MFP claims (cited above in 3.5).

#### **4.5 Post-titling problems and prospects**

Given that very few CFRt titles have as yet been given, it is a bit premature to come to conclusions about post-title problems. However, some indicative examples have been reported or seen, and further problems or issues can be anticipated based on these.

##### **4.5.1 Area and boundary clarity**

At many sites, there will new or continued confusion on the exercise of rights, and possible conflicts with neighbouring communities, because some titles do not mention the specific area (size) of the forest in which the rights are being recognized, and/or do not provide a clear map with boundaries of its extent. In Orissa several titles issued for CFRt do not contain a map, in Vishakhapatnam the titles do not contain the extent of area covered by the rights, and so on (Committee Andhra Pradesh visit and Orissa consultation reports).

##### **4.5.2 Titles with non-FRA conditions**

Almost all titles that the Committee was shown are conditional, i.e. the rights are subject to the fulfillment of conditions, or are restricted in terms of their geographical operation. This is not a problem if the conditions emanate from the FRA itself, or are based on other Acts that are not in contradiction to the FRA's provisions. However, in many cases the conditions provide over-riding powers to the government. For instance the titles to Mendha-Lekha and Marda Villages of Gadchiroli district, Maharashtra, specify that the rights are "subject to government rules", without specifying what kind of rules. Also in Maharashtra, CFRt titles given to some villages such as Ghati (Kurkheda taluka, Gadchiroli district), specify that grazing rights will not apply to "coupe and plantation areas", and list conditions such as the rights being "only for bonafide livelihood purpose", being subject to "existing rules" and any other "rules that the government will bring", and that the community cannot stop "state government/UT approved/sanctioned works". According to villagers of Ghati, this last condition may be a response to the community's protest against the Forest Department's plans to harvest timber and other forest produce from the area. In Orissa, CFRt titles given in Kalahandi district state that rights can be exercised if holders of rights i) protect wildlife areas and corridors, ii) do not encourage encroachment of forest land in future and iii) take necessary steps to protect forest and wildlife under section 5 of the Act.

Such conditional titles are a violation of the FRA in so far as they deny access to rights provided for under this Act, or impose (or could lead to imposition of) prohibitions or unreasonable restrictions on the exercise of such rights. While it would be entirely appropriate to remind rights-holders of their powers and duties under FRA to ensure protection and conservation, to put these as conditions for the exercise of

rights is violative of the FRA. In several states, communities and civil society organizations have protested against the imposition of these conditions.

### ***Operationalising rights***

In some cases communities have already had problems in operationalising CFRts. For instance, villagers of Mendha-Lekha were stopped while attempting to take bamboo out of their village for sale, with forest officials saying they would not give a transit permit. This raises questions of the interface between the FRA and the Indian Forest Act, and issue dealt with in more detail in Chapter 8. But other than this relationship, the crucial issue is, how can a right to collect, transport and sell minor forest produce (which includes bamboo) be operationalised if another agency has the power to stop transit of this produce? Once again, there may be genuine conservation concerns involved in such an action, but such concerns need to be dealt with through negotiations and discussions rather than unilateral imposition of powers.

At several sites where CFRt (including CFRre) claims are under process, or have been filed, or rights obtained, communities are planning to continue existing conservation practices or initiate new ones. This is the case, for instance, with villages in Orissa, Maharashtra, Rajasthan, Uttarakhand and other states, where thousands of communities are already managing their forests under self-initiated community conservation practices or under JFM/Van Panchayat arrangements (though in the latter case villagers are often in two minds whether to set up the new committees under Rule 4e or continue with their JFM or Van Panchayat institutions) (see Committee reports of consultations and visits in these states; see also Jathar 2010). As examples, a recent study reports that: "Akhupadar, Lakhapada, Basantpur and Bada Toulubi villages from Nayagarh district of Orissa plan to continue with their existing conservation practices; which they may slot in the legal framework suggested under Sec 5 of the act. Their existing practices mainly include patrolling, controlled grazing and fire control. Villages Tentulipadar, Sankali, Dabka and others inside the protected areas (e.g. Karlapat Sanctuary, Orissa) also plan to practice controlled grazing, fire control and patrolling after the rights are granted" (Jathar 2010)

In other cases community attempts to initiate their own planning process for the CFRt they have gained rights to, have faced official hurdles. For instance in Ghati village of Gadchiroli district (Maharashtra), mentioned above in the case of conditional titles, a letter has been issued by the DFO stating that their management needs to confirm to the Working Plan.

### ***CFRt in record of rights***

As in the case of IFRs (see Chapter 3), CFRt have also thus far not been recorded in relevant government records (e.g. forest settlement records). The legal enforceability of the titles given is therefore uncertain. Whether inaction on this front is because of genuine confusion in state governments on what kind of record of rights needs to be maintained, or whether any changes in existing records need to be made at all, or whether it is because of bureaucratic resistance, the result is that the CFRt being given are thus far without the legal security they need. It is possible that the records for CFRre may need to be different from those for other CFRt.

In the process of determination and claim of CFRt, local communities are often employing or building on information regarding community conservation practices, traditional knowledge, and other community practices, which are of great significance to the conservation process. Titles issued on community rights have mostly indicated the broad categories of rights recognized, but apart from the titles there is no mechanism to develop detailed records of the community rights identified and

claimed by the local communities, and the knowledge and practices used to operationalise them.

### ***Relationship with the Forest Department and with other Acts***

There are a number of issues where there is lack of clarity, on the relationship between the GS and the Forest Department, and the relationship between the FRA, IFA and WLPA, in relation to CFRt. These are yet to manifest themselves across most of India, simply because CFRe have hardly become operational as yet. This includes the following:

- Should CFRe be considered a distinct forest category or type, in addition to the ones mandated by the IFA (RF, PF, VF)? This clarity is essential in order to work out the precise legal and institutional relationships between the GS and the forest department, as also for operationalising various laws and procedures relating to forests in general.
- What are the precise powers and responsibilities vested in the GS (and the Committee it sets up under Section 5/Rule 4e), and under which law it would get such powers? For instance, communities get powers similar to that of the FD in the case of Village Forests declared under the IFA, or in the case of Van Panchayats (previously under the Scheduled Districts Act 1874 and now under IFA; see Uttarakhand 2nd consultation report); would the GS also be extended the same in the case of CFRe? Or is this open to interpretation by the GS and the FD...in which case there could on the one hand be innovative locally appropriate arrangements worked out if the GS and the FD manage to have constructive engagement, or on the other there could be confusion and conflicts between the two.
- In areas where the FRA mandates the rights, authority, powers, and duties of the community or GS, should JFMCs or any other committee/agency (such as BMCs), operating in the same forests and which are provided management functions, continue to exist? If so, in what form? If not, what happens to existing arrangements, funds, etc?
- The same question arises with additional complexity, in the case of protected areas that are governed by the WLPA.
- What are the forums and processes of redressal if the GS fails to use its powers to conserve the forest over which it has got CFRe, or carry out other functions that it is empowered to under Section 5 (including wildlife/biodiversity conservation)? Can the FD take action under IFA/WLPA? (See Chapter 8 on this)
- What powers does the GS have over the FD to make it accountable to its responsibilities of conserving forests, or to ensure that the FD takes action against offenders that the GS reports to it?
- In general, what knowledge and institutional (including monitoring) arrangements would be needed to enable conservation and sustainable management? What would be the relationship between community planning of CFRe, and the working plans or management plans that the FD has been making for forests and protected areas?
- What arrangements could be made to ensure that relevant departments facilitate the community in a number of tasks related to the CFRt (other than conservation): regeneration of degraded forest lands, enhancement of productivity (without compromising biodiversity values), watershed management, alternative sources of fuel?
- How will communities access funds for managing the forest; will they have access to what the FD has been getting, will they be able to use tribal welfare or rural

development funds, will they have powers to levy charges relating to the use of their CFRt by outsiders, e.g. for tourism?

### **Forest diversion**

Does the FRA give GSs the power to reject diversion of forest lands over which they have CFRt? This seems clear from the July 2009 circular issued by MoEF, which requires state governments to complete the procedures of recognizing/vesting rights under FRA in the case of any forest lands being proposed for diverting to non-forest use, as also obtain the consent or rejection of the relevant GSs. It also follows from the spirit of the FRA and its Section 5, and the fact that rights given under it are inalienable, combined with the intent of decentralisation moves such as the 73<sup>rd</sup> Constitutional Amendment. However, this needs a clear articulation by MoTA and MoEF (See Chapter 5 for a more detailed discussion on this)

### **Complementary and conflicting laws, policies, institutions**

A number of other laws and policies that are relevant to forests, wildlife, and governance, need to be assessed from the point of their complementarity and contradictions with the CFRt provisions of the FRA.

## **4.6 Recommendations**

*(Note: At all places where 'gram sabhas' or GSs are mentioned below, we mean it in the sense of the individual settlement, whether a revenue village or its hamlet, as laid out in Chapter 2 above)*

The actions and steps laid out below are intimately tied up to the rethinking of forest governance, as laid out in Chapter 8. Specifically, the dominant thinking that with JFM, CFR is not necessary or desirable, is contested and an alternative offered.

### **4.6.1 Fresh round of CFRt claims**

**Overall, given the serious inadequacies in implementation of CFRt at all levels, there is a need for a 2<sup>nd</sup> phase of FRA implementation in all states, in which primary focus is on CFRt.** Such a course of action is indicated also by the 20 July 2010 letter of MoTA to all states. While this belated letter is appreciated, it is important for MoTA and all state nodal agencies to go beyond this by issuing clarifications and instructions along the lines laid out below.

Both MoTA and MoEF need to take the lack of implementation of CFRt with the seriousness it deserves. Policy pronouncements about undoing historical injustice by providing livelihood security, and about the importance of providing communities a stake in forest conservation, are meaningless if the government does not do all it can to facilitate the process of communities claiming and exercising CFRt. This requires an understanding of the structural and other hurdles in implementation, many of which have been pointed out above, and systematic action to address each of these.

Progress with CFRt implementation needs to be monitored as a special exercise (as part of the overall monitoring process by the National Forest Rights Council suggested in Chapter 8, keeping the overall figures of forest-dependent and forest-adjacent villages mentioned above. While we do not advocate a fixed time-bound target approach as this can often distort due process (and in particular the need for communities and officials to absorb and build capacity to achieve the objectives of livelihood security and conservation), the monitoring exercise should be able to periodically point out regions and levels of tardy and good progress, ways of improving on the former including by learning from the latter, and so on.

#### **4.6.2 Pre-claims process**

(i) A massive exercise in creating awareness about CFRt, amongst communities, officials and civil society groups, is needed. This must be in local languages, and involve various media including radio, television/cable, and print media.

(ii) A simple, 'how-to' guide on CFRt needs to be produced by MoTA (or a civil society group commissioned by MoTA), which can be adapted by state nodal agencies as appropriate, and issued in large numbers to communities and relevant officials. This guidebook has to include all relevant clarifications on CFRt (such as those discussed below), and the processes to be followed including pro-active provision of evidence and facilitation of claims.

(iii) Officials at all relevant levels, from panchayat to sub-divisional and district level, need a fresh phase of orientation and training sessions, to sensitise them on CFRt, and inculcate in them the various clarifications and processes needed for proper implementation.

(iv) Orientation sessions are also needed for gram sabha level members, especially FRCs, on the above.

(v) In all of the above, particular attention is needed to CFRt and habitat rights, and to the needs of special disprivileged groups such as PTGs, nomads, shifting cultivators, and women.

(vi) MoTA should issue a clarification, and a focus should be given in the above actions, to the possibilities of non-PTG forest-dwelling communities also claiming 'habitat' rights (see 3.7 above).

(vii) MoTA should also issue a clarification that CFRt can be claimed in municipal areas where nomadic or other users are still accessing these areas; since the normal institutions of FRA would not be operating in such an area, there needs to be a process by which relevant DLCs can accept and process the claims, and appropriate the rights registered within the municipal records.

#### **4.6.3 Claims and titling process**

(i) All relevant departments and officials must be instructed to pro-actively provide documents/evidence (such as forest settlement records, Wazibul-arz, working plans, etc) to FRCs and GSs, and actively facilitate them to make CFRt claims, in all villages inside/adjacent to forests. State nodal agencies should set out specific plans for this, based on available FSI information on forest-adjacent and forest-dependent villages, and SLMCs should periodically monitor whether there is substantial progress in reaching these villages.

(ii) State governments should constitute technical support groups for clusters of villages (e.g. those set up in Orissa for FRA, or in many states for watershed development programmes) consisting of CSOs and officials, which have a history of working with communities, to enable communities to carry out boundary demarcation and mapping of CFRt. These groups can also help to resolve any inter-village or other boundary disputes that may arise. GPS could be used for demarcating the boundary but there may not be application of satellite imagery since no differentiation can be made between forest areas with rights and without rights.

(iii) MoTA and state nodal agencies should issue instructions that CFRt claims (and titles) must be as per customary and community boundaries and records (oral or documented), and not artificially restricted according to JFM or other official programmes, or disallowed in 'previously' earmarked lands for plantations, defence personnel housing, resettlement of refugees or oustees, mining or any other such

purpose, or made conditional to anything other than what is provided for in the FRA itself.

(iv) SDLCs (or technical support groups authorized by them), and civil society organizations, need to help the neediest and most forest-dependent people (including women, pastoralists, nomads, PTGs, and shifting cultivators), to be a central part of the claims process, especially in situations where dominant sections are a hurdle for them. This includes membership of FRCs, access to boundary demarcation exercises, listing of kinds of forest dependence, and so on.

(v) CFRt titles should be in the name of the gram sabha, while respecting specific rights to specific families or user groups of forest-dwellers as claimed and vested in the CFR area. Subgroups such as FRC or VSS should not be given the title on behalf of the gram sabha.

(vi) MoTA needs to work out a process by which it assesses compliance with its recent circulars on CFRt and MFP. This can be linked to the processes of strengthening implementation at various levels, including a central FRA Council, recommended in Chapter 2.

#### **4.6.4 Post-claims/titles process**

The Act mandates the setting up of a GS institution for community forest resource, and empowers the GS to protect and regulate forests wherever its members have been vested with rights. The following steps are crucial for enabling the GS to carry out its functions (further aspects regarding its role in the future governance of forests, are laid out in Chapter 8).

(i) Where requested by the GS, it should be facilitated to set up and/or enable/strengthen, including through necessary capacities, committees or institutions for the management of forests claimed as CFRe under Section 3(1)i, and protection and regulation of forests under Section 5. Such facilitation should however not involve the imposition of externally conceived institutions or rules, such as JFMCs and EDCs. Any existing institution may be restructured or replaced as decided on by the GS. Such committees may vary widely in their set-up and functioning, but must meet minimum norms of equity and representation (as laid out in Chapter 8).

(ii) GS committees or institutions set up under the FRA need to have clear powers and authority, combined with responsibilities and duties, to carry out their role as specified in the Preamble, Section 3(1)i (where CFRe is claimed) and Section 5. This would require appropriate Rules under FRA, or an amendment if the Rules cannot provide such empowerment.

(iii) GS committees/institutions should be facilitated to form advisory federations or associations with other GS committees/institutions, learning from existing federations that already exist in many parts of India for conflict resolution. The role of these federations/associations will be to give advice on inter-village governance and management, so as to help in sustainability and conservation across the landscape, facilitate processing, transit and disposal of forest produce, strengthen individual GSs in carrying out their roles under Sections 3(1)i and 5, facilitate conflict resolution amongst villages, represent communities in dealings with district and state agencies, and carry out community-based research and monitoring. All relevant government departments, and the district administration, should be associated with such federations/associations in achieving their livelihood, governance and conservation objectives.

(iv) Role of the FD in the case of forests brought under community management, protection and regulation has been laid out in Chapter 8. GS should have a say in all

activities related to such forests, including the preparation and implementation of working plans or management plans.

(v) GS committees/institutions will be facilitated to carry out participatory monitoring for ecological, social, and economic outcomes of their activities.

## **Chapter 5. Implementation of Development Projects**

### **5.1 Development projects and forest-dwellers**

A considerable part of India's forests and forest land has been diverted for 'development' and infrastructure projects such as mines, power plants, dams, roads, industries, sports and tourism facilities, and ports. Since 1980, when the Forest Conservation Act centralised the process of allowing (or rejecting) such diversion, about 1.2 million hectares have been given for such purposes<sup>19</sup>; prior to this, from 1951 to 1980, about 4.24 million hectares were diverted.

Given that most forest areas in India have been inhabited or used by people, this scale of forest diversion could only have meant displacement and dispossession at a mass scale. Development projects are said to have caused the physical displacement of about 60 million people (Mathur 2008); a Planning Commission study of a subset of these found that about 40% were adivasis, even though they make up only 8% of the country's population.

Until recently, all such diversion of forests and forest land was undertaken without any consultation with local communities. People have a say only in public hearings if there is an environmental impact assessment procedure involved with the project, and there is nothing in the law or administrative procedures that requires project authorities or the government to take on board the results of such hearings. No public hearing is required, even now, for forest diversion, even though the diversion may seriously affect the lives and livelihoods forest-dwelling and forest-dependent communities. As a consequence such communities continue to be displaced from their forest surrounds, or dispossessed of their forest resources, due to 'development' projects.

Any legislation that aims to undo historical injustice must address this issue. This chapter looks at how the FRA is relevant, what has been done to implement its relevant provisions, and what more needs to be done.

### **5.2 Provisions in Act & Rules (sec 5) and MOEF order**

Section 5 of the FRA both requires and empowers the rights holders, the Gram Sabha and other village-level institutions to "a) protect wild life, forest and biodiversity", and "b) ensure that adjoining catchments area, water sources and other ecological sensitive areas are adequately protected". It also requires and empowers them to "c) ensure that the habitat of forest dwelling Scheduled Tribes and other traditional forest dwellers is preserved from any form of destructive practices affecting their cultural and natural heritage". Habitat here would include that of Particularly Vulnerable Tribal Groups (PTGs).

It follows from the above that , if communities are to discharge this responsibility meaningfully, they must at least have a say in (if not veto power over) any activities in the areas covered by section 5 that might adversely affect forests, biodiversity, wildlife, water sources, catchments, and the natural and cultural heritage of forest dwellers. With these provisions in mind, the MoEF issued in July 2009 an order<sup>20</sup> relating to the diversion of forest lands for non-forestry purposes under the Forest Conservation Act. In this it specified that all proposals for such diversion needed the following:

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<sup>20</sup> Letter no. F. No. 11-9/1998-FC (pt), dt. 30.07.2009 from the Sr.Assistant Inspector General of Forests to all states.

- a. A letter from the State Government certifying that the complete process for identification and settlement of rights under the FRA has been carried out for the entire forest area proposed for diversion, with a record of all consultations and meetings held;
- b. A letter from the State Government certifying that proposals for such diversion (with full details of the project and its implications, in vernacular / local languages) have been placed before each concerned Gram Sabha of forest-dwellers, who are eligible under the FRA;
- c. A letter from each of the concerned Gram Sabhas, indicating that all formalities/processes under the FRA have been carried out, and that they have given their consent to the proposed diversion and the compensatory and ameliorative measures if any, having understood the purposes and details of proposed diversion.
- d. A letter from the State Government certifying that the diversion of forest land for facilities managed by the Government as required under section 3(2) of the FRA have been completed and that the Gram Sabhas have consented to it.
- e. A letter from the State Government certifying that discussions and decisions on such proposals had taken place only when there was a quorum of minimum 50% of members of the Gram Sabha present;
- f. Obtaining the written consent or rejection of the Gram Sabha to the proposal.
- g. A letter from the State Government certifying that the rights of Primitive Tribal Groups and Pre-Agricultural Communities, where applicable, have been specifically safeguarded as per section 3(1)(e) of the FRA.

This landmark order is meant to ensure that the spirit of the FRA in giving forest rights to local communities is not violated the next day by taking them away without consent or consultation in the name of development projects.

### **5.3 Status of implementation (MOE/FAC and state-level)**

The above order is very clear and specific, and requires both that the process of FRA implementation has been completed for the forest area to be diverted, and that the concerned Gram Sabhas have given their consent to the diversion. And it requires that these various documents/letters be enclosed with any proposal for forest diversion submitted by the state governments under the Forest Conservation Act 1980. Nevertheless, to the best of our knowledge, between August 2009 and June 2010, very few proposals (if any at all) for forest diversion that came to the MOEF and that were considered by MOEF's Forest Advisory Committee were actually in compliance with this order. This can be illustrated with the following examples.

#### **(i) POSCO case in Jagatsinghpur, Orissa<sup>21</sup>**

The POSCO project in Jagatsinghpur, Orissa requires 1253 hectares of forest land that is in the jurisdiction of three panchayats (Dhinkia, Nuagaon, and Gadkujang). The Committee's team visited this area in July 2010. The district administration certified that there were no more claims pending, that no claims had come, that there were no eligible claimants, and there was no traditional dependence on the forest lands of the non-ST communities. However, the Committee established that there had been a faulty interpretation of the 'dependence' criterion, but that even if 75-years of dependence was required, there was evidence of such dependence by the

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<sup>21</sup> See detailed report on the Jagatsinghpur visit on the Committee's website. A subsequent committee set up by MoEF has, in a detailed report available on the MoEF website, confirmed the violations of the FRA and FCA by the administration.

non-ST population of some of the villages. Furthermore, the OTFDs had resolved to submit claims under the FRA, but had been unable to do so due to the prevailing situation in the area. The FRA process was thus incomplete. Moreover, the panchayats had passed resolutions refusing consent to the diversion of forest land. The District Collector was aware of these resolutions, but mentioned only the meetings and not the resolutions in the certificate sent to MOEF, thereby violating the conditions laid down in the MOEF order. Interestingly, just recently the administration had sought and obtained consent of one of the panchayats, under the FRA, for setting up a public sector oil facility, yet in the case of POSCO it was certifying that there are no eligible claimants!

It is also worth noting that MoEF itself gave "final approval" to the project on 29 December 2009, in violation of its circular of July 2009 mentioned above. The fact that this clearance was conditional to completion of the FRA procedures in the area, or that a subsequent (8 January 2010) clarification was issued reiterating this condition, does not change the fact that such "final approval" should simply not have been given.

#### (ii) Polavaram dam project

The government of Andhra Pradesh has proposed a major dam project at Polavaram in West Godavari district. The dam will submerge 276 villages, predominantly tribal settlements, over an area of about 100,000 acres that includes forest land. The process of publicizing the FRA and inviting claims has been poorly carried out. Most of the claims filed were rejected on the basis of missing Gram Sabha resolutions, although the Forest Rights Committees claim that approval was included. Members of the Kondareddi PTG live in the submergence zone, and therefore the dam-induced submergence will clearly violate their natural and cultural heritage. However, there has been no publicity given to community forest rights in general and the habitat rights of PTGs in particular; hence no claims have been received. The fact that the government has formed FRCs at the panchayat level, has made implementation of the FRA that much more difficult. There has been no certification of the kind required by the MOEF order either. Yet, the dam has been accorded forest clearance, once again in violation of the July 2009 circular and of the FRA.

#### (iii) Dams in Arunachal Pradesh

The Committee found that in Arunachal Pradesh the implementation of FRA has been avoided while granting clearances to a number of hydro-electric projects. Most communities have not even been made aware of the FRA, one of the reasons for the limited protest against the dams.

The Expert Appraisal Committee of the MOEF on the River Valley & Hydroelectric projects in its July 17, 2010 meeting while discussing the 2700 MW Lower Siang project incorporated the following as one of the TOR:- "Impacts of Catchment Area Treatment (CAT) and Compensatory Afforestation (CA) on existing resource use and rights of local communities, particularly in light of determination of rights under the Scheduled Tribes and other forest dwellers (Recognition of Forest Rights) Act, 2006." However, the resultant EIA could hardly capture the essence of the FRA and came to a simplified conclusion: "POTENTIAL MISUSE OF SCHEDULE TRIBE RECOGNITION OF FOREST RIGHTS ACT 2006: The Schedule Tribe Recognition of Forest Rights Act 2006 was introduced with the intention to help the tribes who are "primarily residing in the forests" for maintaining their livelihood. A right of maximum of 4.0 ha land can be given to them for that purposes. But, most of the people who are residing outside the forests are misusing this Act and exploiting the sources and degrading the natural habitats of wild animals and birds." This observation lacks a larger perspective on the FRA, including the fact that it is not only about IFRs but also about CFRs.

Conversely, MoEF has also rejected forest clearance for the proposed Orissa Mining Corporation and Sterlite company's mining at Niyamgiri, Orissa, based on the report of a Committee it had appointed to look into possible violations of the FRA and other laws. This, however, appears to be one of the few instances where the FRA's violations has been the cause of rejection.

#### **5.4 Analysis**

A number of other examples of development projects being proposed and forest clearances being granted in the last two years (post-FRA) and even in the last one year (post the July 2009 order) are available, e.g. of bauxite mining in Andhra Pradesh, or dams in other parts of north-east India and western Himalaya. These examples, including the case studies above, point to several problems in the forest clearance process.

a) The longstanding procedure followed for forest clearances under the FCA has been that only the views of the forest department and other departments are sought; there has never been any process of consulting the local community. This is a direct result of the longstanding legal position that the forests belong to the state, and that local communities have no right to be part of the decision-making. Intriguingly, even if local people have rights in the forest being diverted, these do not seem to give them any say. Following the FRA, however, the legal position has changed, and communities both have clearer individual and community rights to the forest, as also duties and powers over its protection. Therefore any diversion impinges on such rights and powers. It renders their right and duty to protect the forest and their natural and cultural heritage impossible to carry out. This changed position has not yet been internalized by the local authorities in all departments.

b) The MOEF has tried to lay down a new procedure to ensure compliance with the spirit and intent of the FRA. However, this procedure appears not to have entered the 'standard procedures' being followed for forest diversion under the FCA. This is partly because the FCA itself has not been amended to make it more compatible with the changed legal position. It is also because most communities and even civil society organizations are not aware of the MoEF circular or of the potential of the FRA to empower communities to have a say in forest diversion proposals; the Committee in all its consultations and field visits found very few people who were aware of these.

c) The process of FRA implementation is lackadaisical, as documented in previous chapters, and especially that of building awareness about and enabling the recognition of community forest rights. Officials are therefore quick to assert that there are no rights, no current or historical dependence, or that Gram Sabha meetings have been held and consent given, etc. The pressure from project proponents, both governmental and private, is enormous, making such erroneous certification more likely. A thorough approach to implementation is the only way to safeguard the rights of the forest-dwellers. And any certification must be subject to public scrutiny.

#### **5.5 Recommendations**

1. The apparent discrepancy between the procedure followed under FCA and the implications of the FRA must be removed. **An amendment to the rules of the FCA incorporating all the requirements laid down in the July 2009 order** is urgently required.
2. To remove any ambiguity of interpretation, the Rules of the FRA should be modified to include the requirement that Gram Sabha consent for any diversion of forest land for non-forest purposes is required, including for major developmental projects.

3. Special publicity should be provided about these requirements of claims process completion and Gram Sabha consent in the case of any forest diversion proposal. For a start the MoEF circular needs to be translated into local languages and disseminated widely to communities.
4. To ensure compliance with the orders or stipulations, several steps are required:
  - a. All applications for forest diversion under FCA must be publicized in the local language in the local press of the taluka headquarters, and also communicated in writing to the relevant Gram Sabhas. All relevant information on these proposals, including impact assessments, should be given to the relevant Gram Sabhas in local languages so that they can take an informed decision.
  - b. Any certification of FRA process being complete must be accompanied by resolutions of relevant Gram Sabhas.
  - c. The Gram Sabhas should be given at least 3 months time from the date of intimation and provision of full information in local languages, to hold their meetings and indicate their consent or rejection.
  - d. In the future, any such certification must be done not by the District Collector alone but a district-level forest governance committee (recommended in chapter 8) that will contain representatives of the Gram Sabha-level forest-dweller committees and other elected representatives.
  - e. All forest settlement records must be put in the public domain, preferably on websites, and all project proponents must be asked to peruse these records to build their preliminary understanding of the likely communities affected. As and when FRA rights are claimed and vested, the relevant Record of Rights, and maps showing the areas where such rights are vested, should replace the settlement records.
  - f. The forest diversion process should include compulsory public hearings amongst communities that are likely to be affected, similar to the hearings mandated for environmental clearance of projects. The results of these hearings must be a crucial factor in taking decisions. This requirement should also be included in the proposed amendment to the FCA.
  - g. The Forest Advisory Committee must insist on the documents required as stated in the MoEF July 2009 circular, and should actively seek public inputs to detect cases of fraudulent or non-participatory Gram Sabha resolutions. It should conduct a few randomly timed and randomly chosen field visits to major proposed project sites, before deciding on approval/rejection, to verify the compliance with the stipulations of the July 2009 order.
  - h. An independent enquiry should be commissioned by the MoEF on why its own circular has not been implemented in a number of cases of projects that have since then been approved.
  - i. State Governments should issue detailed guidelines for the conduct of Gram Sabhas related to forest diversions, so that the meaning of Free, Prior, Informed consent is followed in letter and spirit.
  - j. Non-compliance by project authorities and state governments should be considered adequate cause for cancellation/rejection of the project.

## **Chapter 6. Implementation for special groups: PTGs, Nomadic Pastoralists, Shifting Cultivators, and Forest Villages**

A number of forest-dwelling communities have special characteristics and needs that make them particularly vulnerable, and for whom the process of claiming rights is especially difficult. This chapter deals with four such groups:

- Particularly vulnerable tribal groups (PTGs)
- Nomadic pastoral communities
- Shifting cultivation communities
- Forest village communities

At its various consultations and field visits, the Committee attempted to meet with members of these communities, and submissions were invited from organisations working with them.

### **6.1 Particularly Vulnerable Tribal Groups (PTGs)<sup>22</sup>**

#### **1. Introduction to PTGs**

Among scheduled tribes, there are certain communities who have (or had) declining or stagnant population, low level of literacy, pre-agricultural level of technology and are economically 'backward' (in a conventional sense, though their own economic systems may make eminent sense for their ecological conditions). 86 such groups (some counted twice as they spread over more than one state) in 17 States and 1 Union Territory (A&N Islands) began to be identified in the mid-70's as Primitive Tribal Groups (PTGs), subsequently renamed as Particularly Vulnerable Tribal Groups (see list and population of these groups in Annexure 15). As of 2001, PTGs numbered about 25.9 lakhs in population (MoTA 2009).

Given their special status, the Government of India started a 100% centrally aided scheme in 1998-99, for exclusive development of PTGs. Based on the knowledge and experience gathered subsequently, the scheme was revised in 2007-08 and again in 2008-09.

#### **2. PTG provisions in FRA**

Other than all the IFR and CFRt available to STs and OTFDs, there is a special provision for rights of 'primitive tribal groups and pre-agricultural groups' in Section 3(1)e. It provides for:

*"rights including community tenures of habitat and habitation" for PTGs and pre-agricultural communities, where "habitat" is defined in Section 2 (h) as "the area comprising the customary habitat and such other habitats in reserved forests and protected forests of PTGs and pre-agricultural communities"*

#### **3. Current status of claims re. PTGs: IFRs, CFRs, habitat**

There are no national level data on the status of FRA implementation specifically with regard to PTGs. Amongst states, such data appears to be available only for Orissa, which has a separate reporting format has been introduced for monitoring the FRA implementation.

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<sup>22</sup> This chapter draws heavily on the report of the National Consultation on PTGs and FRA, organised by the Committee in association with the Vidarbha Livelihoods Forum; on the report of the Committee's visit to Bhamragarh (Maharashtra); and on other available documents from groups working on or with PTGs. Inputs were also received from Y. Giri Rao, Tushar Dash, Pankaj Sekhsaria and Manish Chandi.

The Government of Orissa in its regular status report is providing details of claim status in PTG areas. However, although the report provides some figure on community claims the nature of rights claimed and approved is not available. Field reports suggest that most of the community claims are for development facilities (a common problem with all states that are reporting on community rights, see chapter on CFRt).

The sporadic news available from various states is not encouraging. For instance, claims for IFRs and/or CFRs made by Sahariya in Rajasthan, Kathodi in Gujarat, Lodha in West Bengal, and Asur, Korwa, Parhaiya and Birjia in Jharkhand, are mostly still pending or rejected. The few that have been given (e.g. in Paschim Midnapur, West Bengal) are of much lesser area than claimed.

#### **4. Key issues with regard to 'habitat' rights**

Available observations or information suggests that there has been hardly any progress with regard to implementation of the FRA in relation to PTGs. Given that these groups are most often very 'remote' from the centres of government administration, and also do not have as much civil society organization presence as elsewhere, various processes of the FRA process have hardly reached them. In states such as West Bengal, Jharkhand, and Uttar Pradesh, there has been absolutely no effort by the state governments to identify and provide them with any facilitation for the FRA.

Orissa is the only state that appears to have taken some pro-active steps on PTGs. Besides the reporting format, the State government has issued a number of circulars specially focusing the rights of PTGs, and entrusted the responsibility on the micro-project officers & project administrators of ITDAs for proper implementation of various provisions of the Act. But even in Orissa, while CFRt including habitat rights have been claimed for a couple of PTGs (see below), largely due to the effort of community groups, the SDLC and DLC have neither facilitated nor positively responded to the claims.

CFRt and in particular 'habitat' right processes have been ongoing amongst the Juang PTG in Keonjhar district, Dongria Kondh PTG in Kalahandi district, Chakulia Bhunjia in Nawapara district, Mankirdia & Khadia in Mayurbhanj district of Orissa, and have recently begun amongst the Madia PTG of Gadchiroli district of Maharashtra. In some cases, such as the Chenchu PTG of Andhra Pradesh, there have been substantial CFRt claim processes including mapping of customary areas, but no explicit work on 'habitat' rights (though this is likely to have started now due to participation in the national workshop on this subject organised by this Committee and the Vidarbha Livelihoods Forum).

Since the issues related to IFR and CFRt are more or the less the same for PTGs as for other groups (dealt with in earlier chapters), we will focus here only on the right to 'habitat' and 'habitation' given in Section 3(1)e. The key issues are the following:

4.1 **Lack of knowledge:** Section 3(1)e appears to have been largely overlooked by all actors in the FRA process, including PTGs themselves, civil society organizations, and government officials. At Bhamragarh, almost none of the officials had noted this provision, and the Maria tribals themselves had not discussed it as a claim to be made. There is hardly any articulation of this right even by people's movements and CSOs that have advocated for the FRA. Members of several PTGs, and CSOs working with them, who participated in the national consultation organised by the Committee and the Vidarbha Livelihoods Forum (October 4, 2010, Nagpur), were for the most part unaware of this as a specific provision, even though they had been mobilizing for FRA implementation

for 2-3 years. Civil society groups working with the Toto PTG in West Bengal, and with the Saharia PTG in Madhya Pradesh, were also unaware of this provision.

**4.2 Lack of clarity on meaning/concept:** Even where people are aware of the specific right provided to PTGs, they are not clear what it means. The FRA defines 'habitat', but in a very broad manner, and does not make clear what all the right would imply.

While a simple resolution to this would be that the 'habitat' should be as identified by the PTG itself, the situation on the ground is rather complex. Would the habitat right claimed under FRA include non-forest land (which would appear to be the case if, in the definition, the words 'customary habitat' and the words 'such other habitats in RFs and PFs' are to be read separately)? If so, are the FRA decision-making institutions empowered to provide rights to such lands? Secondly, most PTGs find themselves in conditions very different from even a few decades back. All such groups barring a few (like the Sentinelese and most of the Jarawas of the Andaman and Nicobar Islands) are now in some way or the other connected to the outside world, to varying degrees. The monetized economy has entered their lives, though in many PTGs it is still a small part. Government schemes have been devised for most of them, and departments with their own idea of what PTG 'development' should be, have entered their lives. Many such areas have land classifications that have taken control away from the PTG, including those notified under various revenue laws, the Indian Forest Act and the Wild Life (Protection) Act. To add to the complexity, customary territories of most PTGs no longer only have these (or closely related) tribes living inside them, but also other settlers, government and private institutions, 'development' projects, and so on.

Defining the boundaries of the habitat claim, and the implications of claiming this right, will have to take into account the above complexities. This will have to spell out, broadly, the powers and responsibilities of the PTG with regard to land uses within the habitat, externally introduced developments, schemes, and so on. Based on such a framework the post-rights process (see below) would also be carried out.

A subsidiary question here could also be whether the FRA should be invoked for PTGs that already have somewhat similar rights under special legislation, such as the Andaman and Nicobar Islands Protection of Aboriginal Tribes Regulation 1956 (ANPATR)? Prima facie the FRA provides greater statutory protection to PTGs, since regulations such as ANPATR are often subject to the powers of government officials; and in any case Section 3(1)j provides for rights under any State law to continue.<sup>23</sup>

**4.3 Non-recognition of traditional governance institutions, and forced imposition of panchayat/GS system:** The Indian Constitution provides for the respect of the customary and traditional governance of STs. Yet, there has been an imposition of the uniform, all-India system of panchayats in almost all areas. Nowhere are the traditional institutions of the PTGs (for instance the *barsa* of the Kolam in Maharashtra, the *perma* of the Madia in Maharashtra, the *pidha* of the Juang in Orissa), or new institutions based on traditional ones (such as the Baiga Maha panchayat in Chhattisgarh), recognized in relation to official processes. To some extent the FRA does provide scope for such institutions, but only where the panchayat system is not active (Section 2g), or in relation to making claims to the FRC (Rule 12). In most states, and for most functions under the FRA, therefore, the Gram Sabha will be the mandated body.

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<sup>23</sup> This is based on ongoing discussions regarding the relevance of the FRA for A&N's tribes, amongst Pankaj Sekhsaria, Manish Chandi, C.R. Bijoy, Madhu Sarin, and several Kalpavriksh members.

- 4.4 **Lack of clarity or capacity regarding the claims process:** Even where PTGs or those working with them have considered making claims for 'habitat' rights, they are not clear on various aspects of the process. Would PTGs be able to understand the complexities of a statutory law, especially for those groups that have been predominantly outside the formal systems? How will customary boundaries be drawn, especially in situations where the PTG is now restricted to a part of their former territory? Is their enough capacity to do mapping using the PTG's own knowledge and ways of depicting landmarks?
- 4.5 **Forced sedentarisation or boundary limitation:** Several PTGs that were nomadic, or shifting cultivators, have been forcibly settled; others have had their traditional access severely curtailed by various kinds of developments in their former territories. The Mankiria & Khadia PTG of Orissa, for instance, (who had been relocated from the Simlipal Wildlife Sanctuary in mid-1990s and settled far away from the Park, have lost their traditional access to ancestral territories/habitat. Though these communities have been critically depending on the forest products like honey, *siali* fiber and arrowroot for their livelihood, the authorities are denying their traditional access by citing WLP 1972 and the Supreme Court's order in Godavarman case. These PTGs have traditionally had access even to areas in Jharkhand and West Bengal. Also in West Bengal, the Toto PTG used to access and manage large areas of forest (for which they have records), which were taken away from them in 1962. In such situations, can the PTG reclaim its former territory, and if so, how?
- 4.6 **Marginalisation by dominant communities:** In some areas the PTGs are a minority, and are marginalized in the FRA process. For instance the Baiga in parts of Chhattisgarh are dominated by the Gond, and the Pahadia in Jharkhand by the Santhal and the Munda tribes, and find it difficult to get their special needs addressed. In parts of Andhra Pradesh they are a minority in each panchayat, and are neglected in the FRA process.
- 4.7 **Marginalisation by internal conflict situation:** Several PTGs have been caught in the cross-fire between 'Naxal' groups and security forces, making the FRA claims process extremely difficult. In Chhattisgarh, the prevailing situation with the state-sponsored Salwa Judum has driven thousands of families out of their villages, creating a situation where any implementation of the FRA is impossible.
- 4.8 **Inter-state issues:** A number of PTGs have traditionally occupied or used territories that are now cut by state boundaries. Making FRA claims, especially for habitat, is rather difficult in such a situation; no-one seems to know how such claims can be made and to whom. There are also peculiar situations such as a PTG being a ST in one state, and not in another; e.g. the Kamar are PTGs in Chhattisgarh, but OBC in Orissa; the Kadar are PTG in Kerala, but not in Tamil Nadu.
- 4.9 **Lack of clarity at the SDLC/DLC level:** The government authorities lack understanding on the rights of PTGs particularly habitat rights. In some cases, authorities have distributed individual titles on forest land disregarding the collective nature of livelihoods and lifestyles. Similarly CFR rights are being issued only to the village or a particular gram sabha. In Keonjhar the SDLC has informed that they will recommend CFR rights to each village but not *pirha* rights to the entire community and the traditional institutions.
- 4.10 **Lack of clarity on post-rights processes:** There has been almost no discussion (within PTGs or those working with/on them) on what should happen once the 'habitat' right is given. This will of course depend on what kind of rights are specified in the title, which in turn could be based on what is claimed. However, there are a number of issues that need to be considered. For instance:

- i. Who will govern the habitat: the traditional governance structure of the PTG, the new ones like panchayats, and/or a mix of these with government departments? What will be the share of powers, responsibilities, and duties in situations where multiple agencies are likely to remain?
- ii. What kind of land/water uses can be envisaged, that helps sustain the PTG identity, economy, and ecology; what happens to those existing land/water uses that are not compatible with these; can Section 5 be read such that the PTG institutions will have authority to stop/change these if destructive of their habitat and culture?
- iii. How will the challenges introduced by the monetary economy and external markets, 'modern' sector occupations, externally-determined educational and health system, and so on, be met; what would be their relation to traditional or customary systems of health, learning, trade and occupations, and so on?
- iv. How will the forests, wetlands, and other ecosystems so vital to the lives and livelihoods of PTGs be sustained; and how can the concerns of wildlife in these be addressed? Where the needs and desires of PTGs themselves are threatening these, how will this be tackled by the tribes?
- v. What should be the role of civil society groups, government agencies, and other 'external' actors to sustain PTGs in the long run?

4.11: ***Non-recognition of PTGs living outside the Micro-Project Areas:*** In Orissa only the PTG habitations coming under the Micro-Project areas (areas marked for special micro-project interventions for development of 13 PTGs) are considered under FRA, but those living outside have been left out. It is not known if PTGs in other states are facing a similar problem.

4.12: ***Lack of clarity on the governance/ ownership issue within the CFRs and Habitat:*** There has been confusion with regard to overlaps between the habitat areas and community forest resources areas in some areas.

4.13 ***Need for developmental or welfare inputs:*** While many PTGs may wish to and can better survive largely on their own, there are also those who have been systematically impoverished or marginalized by dominant society or by inappropriate policies, squeezing of their habitat, displacement or sedentarisation, and introduction of diseases from outside against which they have low immunity.

## 5. Recommendations

Given the above conditions, there is clearly a need for special focus and mechanisms for PTGs to avail of the rights they are entitled to. The direction needs to be towards the letter and spirit of autonomous governance that has been guaranteed to tribal groups under the Constitution, including the 73<sup>rd</sup> Amendment and PESA.

### 5.1 Definition and concept

The definition of 'habitat' as provided in the FRA needs further elaboration. Two aspects are particularly crucial: over what area/territory will the 'habitat' and 'habitation' right extend, and what precisely would the right entail? The following are recommended.

(i) Regarding the first aspect, the definition should specify that the parameters for determining/identifying the customary habitats could be as follows.

- Distinct geographic location, e.g. bounded by rivers, mountain ranges, or other physical feature as traditionally recognized by the tribe
- Socio-cultural or political landscapes (e.g. *patti* of the Madia in Maharashtra, *pirha* of the Juang in Orissa). Traditional rights of the communities over the

habitats include the right to decide on ownership and resource interaction of the communities living in the habitat areas.

- Ecological landscapes, organized around a set of contiguous natural resources and means of livelihood (e.g. area within which resources are collected), usually also linked to the geographic location and boundaries mentioned above.
- Community organizations and institutional system for exercising the traditional rights over habitat and socio-economic interactions (social affairs, land ownership etc)

Taking the above into account, it is crucial to understand that the customary habitat boundaries may, firstly, be fluid (seasonal, evolving), and secondly, may not match precisely with official political or administrative boundaries. They will cut across tahsils, districts, and even states. This presents a particular challenge in the identification and demarcation of 'habitat'.

(ii) It is also important to clarify that PTG habitat can extend across all the kinds/types of forests that are contained in the definition of 'forest' in the FRA. There has been some confusion at the official level that since 'protected areas' are not specifically mentioned in the definition of 'habitat', they are exempted from PTG habitat claims. However, the definition says "*the customary habitat and such other habitats in reserved forests and protected forests*"; this clearly mentions RFs and PFs in addition to 'customary habitat', which would include all such areas that have been customarily or traditionally used by the tribe. There is no justification for exempting protected areas from this.

(iii) It must also be clarified that the PTG habitat can extend to non-forest areas within the customary boundaries as determined above in (i). Since the FRA however does not govern such areas, MoTA in consultation with other relevant ministries, and state governments, needs to evolve mechanisms under other legislation by which the PTG are given rights to such lands similar to what the FRA gives over forests and forest land. Reference can be made to earlier or existing reservations for PTGs, such as the Chenchu Reserve (Andhra Pradesh) notification issued by the Revenue Department in 1942 or the Andaman and Nicobar Islands Protection of Aboriginal Tribes Regulation 1956, mentioned above. In the case of A&N PTGs, their Reserves extend to 5 km of marine area beyond the high tide line.

(iv) Regarding the second aspect, it is important to read Section 3(1)e with Section 5, as also in combination with Constitutional and PESA's provisions for STs in general. Also crucial is India's commitment to the Convention on Biological Diversity (which contains a number of provisions, work programmes, and guidelines that enjoin upon countries respect for indigenous peoples), and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). Even taking into account the caveat that the term 'indigenous peoples' does not apply specifically to any particular community in India, but noting that PTGs in particular come closest to global definitions of such peoples, India is morally bound to the principles of the UNDRIP. Taking the explicit provisions of the FRA, and the constitutional and international obligations, the 'habitat' right would then have to include the PTG's right and ability to govern itself, and do all it needs to do to protect its identity, culture, and environment. Interestingly and ironically a number of 'tribal reserve' notifications or laws dating back to the colonial period provided for such rights or protections, e.g. the Chenchu Reserve notification mentioned above, but they have not necessarily been respected or renewed after Independence.

(v) Any meaningful right therefore already includes, as per the letter and spirit of Section 5 read with other provisions for PTGs:

- the power to be able to determine land uses within the habitat, including the right to of consent or rejection of externally introduced developments (this also follows from the general powers/intent of PESA, and from the Forest Rights Act and its interpretation by the Ministry of Environment and Forests in its July 2009 circular requiring local consent for any diversion of forest lands for non-forest purpose)
- a right to stop or modify, or benefit substantially from, existing externally introduced developments
- a right to determine and influence the direction, scale, and kind of government and private interventions in the area

in so far as any of the above are likely to be a threat to or affect wildlife/forest/biodiversity, cultural/natural heritage, or Gram Sabha decisions on access to CFR.

(vi) These rights and powers are of course also to be seen in relationship to the responsibilities that are enjoined upon all of India's citizens, such as environment protection, social equity, protection of minorities and weaker sections from oppression and discrimination, and so on.

(vii) MoTA should also review the status of those peoples who are PTGs in one state but not in another, and provide them a national PTG status.

This combination of rights and responsibilities has a major bearing on the post-rights process of governance of PTG habitats, dealt with below.

### **5.2 Process of claims**

Given the especially vulnerable situation of PTGs, there is a need for some specially focused and accessible procedures in addition to (or replacing) those prescribed in the FRA or its Rules. The following are recommended.

(i) The FRA needs to explicitly mandate the traditional governance institutions of PTGs to carry out all the procedures that are given to Gram Sabhas, *even* in states where panchayat raj institutions exist. There needs accordingly to be an amendment to the relevant provisions (e.g. Sections 2g, 2p, 5 and 6), or at the very least of the Rules accompanied with clarificatory notes from MoTA. Rule 12(d) does provide a role to the traditional institution, but this is only in the case of submissions to the FRC. Section 2(p)(i), (iii), (iv) do provide scope for the traditional village unit to be the processing institution, but this too does not necessarily coincide with the traditional institution that may cut across villages.

(ii) Given the lack of contact with the outside world, the low levels of literacy, and lack of capacity to deal with the formal procedures of the external world, it is important that we do not wait for PTGs to make the claims under FRA. For many PTGs, this may mean being deprived of the opportunity of claiming these rights, which would only perpetrate the historical injustice the FRA is aiming to redress. It is therefore important for MoTA and state governments to *suo moto* identify all PTGs, collect all relevant records pertaining to their customary rights and boundaries, contact their traditional institutions, and actively facilitate the process of obtaining rights, by involving them and helping them build capacity to handle this as also the post-rights phase, and using local languages.<sup>24</sup> The central government scheme for PTGs can be used as a vehicle to enable this.

(iii) Special training and orientation programmes are needed for government officials working in PTG areas, regarding both the special needs of these groups and the

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<sup>24</sup> Interestingly the draft Rules of the FRA provided for such *suo moto* action.

provisions of the FRA. For each PTG, state governments should also engage local civil society groups, scholars, and others, to help with the process (especially, for instance, for creating awareness about the FRA, locating documents for evidence, participatory mapping, and so on).

(iv) The FRA Rules provide that PTGs be represented in the SDLC and DLC, but do not make this mandatory. The Rules need to provide for mandatory participation of PTGs, where they exist, in all the authorities under the FRA.

(v) In situations where the tribe is simply not in a position to make the claims, it is recommended that the government *suo moto* declare their areas as 'habitat' under the FRA. This would be the case, for instance, for the Sentinelese, Jarawa, Onge, Greater Andamanese, and Shompen tribes of the A&N tribes, where any discussion with the tribe on laws is almost impossible or meaningless, but where the coverage provided by the FRA would enhance the state/UT level protection being given to them against external disruption.

(vi) In the case of PTGs whose customary territory cuts across state boundaries, there needs to be a special mechanism to enable their rights to be obtained.<sup>25</sup>

(vii) MoTA should set up a specially empowered task force (or a central FRA council like the central employment guarantee council for MGNREGA which can involve CSOs/experts and coordinate with the SLMCs) dedicated to ensuring that all the above takes place; this task force should contain not only officials but also anthropologists, other scholars, and civil society members who have worked with PTGs, as also PTG representatives who have already initiated the rights process in their areas. The task force can also set up a helpline for queries and complaints. Similarly the SLMC should be active to involve CSOs/experts to seek knowledge support for implementation of FRA and it should be supported by district level coordination units.

### **5.3 Post-rights process**

Once the PTG obtains the right to 'habitat', 'habitation', and other CFRt and IFR, it will have a particularly challenging task ahead. This is especially so where the PTG habitat is now inhabited by or used by several other communities, government agencies, and private actors, and where the PTG itself has entered into wider market, political, and social relations. The aspirations of the younger generations too need to be considered. These aspects are already under consideration in the few PTGs where discussion has started on the post-rights situation, such as amongst the Juang and Chuktia-Bhunja of Orissa, and the Madia of Maharashtra.

Given all this, the following are recommended.

(i) There is a need for ongoing processes of dialogue and discussion, learning and building capacity, at a pace suited to tribal way of life, and leading to clear articulation of what it means to be a PTG in the current context. If necessary, government agencies or civil society organizations can facilitate such a process, especially by providing information and understanding on wider economic, social, legal, and political processes that are impinging or could impinge on the lives of the PTG.

(ii) The traditional systems of governance need to be strengthened or re-activated, and provided necessary powers and authority under relevant laws. These systems however may require modifications to adhere to the basic principles of equity and justice, for instance by including women in decision-making); they will also require considerable capacity enhancement to deal with the challenges of the modern

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<sup>25</sup> The draft Rules under the FRA provided for SLMCs to coordinate with other states in such situations.

context, where the PTG is integrated into wider society. Once again, government agencies and civil society organizations may be necessary to facilitate the process by which the PTG institutions assume governance over their habitat. Discussion is also necessary on changes in the governance structures in the PTG areas that are required to create supportive institutions to help in exercise of rights.

(iii) Participatory mapping of the biocultural landscape, inventorying of natural resources, documentation or propagation of natural resource related practices of sustainability, and other forms of knowledge generation and propagation would be useful. These however must be culturally sensitive, and fully under the control of the PTG's own institutions.

(iv) The PTG can, if it feels the need, initiate planning through both informal traditional means and formal modern ones, for long-term livelihood/food/water security, conservation and restoration of nature and natural resources, and appropriate developmental/educational/health processes that build on local traditions and do not cause alienation.

(v) Enabling a locally relevant process of livelihood security, development, etc, would require a participatory review of the Central Scheme for PTGs as also of any schemes of the state government being applied in the PTG habitat, followed necessary changes to bring them in line with the cultural, ecological, and economic needs and aspirations of the PTG. It is crucial that standardized 'development' schemes that are applied across the board are not imposed on the PTG habitat; such development must be oriented towards strengthening the identity, livelihoods, and environmental security of the PTG. It should also emphasise and encourage existing local skills even while introducing new ones where necessary. As an example, agricultural development must be in the direction of organic, biologically diverse farming (now shown to be very productive) linked to a local PDS, and not in the direction of chemically intensive, market-dependent cash cropping. This may then also require a creative combination of various laws and relevant schemes under them, e.g. of the FRA with the NREGA, Biodiversity Act, PESA, and others.

(vi) The PTG can make rules for various aspects of its life and its relations to the environment and other communities, based on customary rules and practices, but also to tackle the challenges provided by the new contexts of market, state, modernization, etc. These should integrate into the authority provided to carry out the rights stated above, such as being able to say 'no' to externally introduced developments that they consider detrimental to culture and environment (flowing from Section 5).

(vii) Governmental agencies and civil society organizations will continue to have a major role to play even when the PTG governance institutions take over, for instance in resisting powerful outside forces, guiding the tribe to address ecological unsustainability or internal inequities and injustices (e.g. towards women), or facilitating resolution of disputes between the PTG and other communities resident in or using the area. They can also facilitate exchange programmes where the PTG members can learn from other, successful community-based governance initiatives in India.

(viii) There is a specific need to discuss steps for wildlife conservation in PTG habitat, especially where hunting is widespread or external threats are impacting nature. This is particularly relevant for important wildlife habitats (e.g. protected areas), but also important for the rest of the landscape. Interestingly it is already becoming clear, e.g. from the example of the Dongria Kondh in Orissa (threatened, till recently, by proposed mining), that habitat rights would help stave off a number of external threats such as destructive 'development' projects.

(ix) Meanwhile, it is crucial for governments to desist from proposing or allowing major external interventions in PTG areas, especially activities such as mining, major dams, industries, etc., unless there is a clear and meaningful process of dialogue and decision making with a central role for the PTG. This would include also plantations and other 'forestry' programmes that are on lands that would come under FRA claims (if they have not already), since these would be a violation of Section 4(5) of the FRA. The state level monitoring committees need to report such violations of FRA in the PTG areas and need to take action as per the provisions of the law. ***This stems especially from the Preamble and Section 4 of the FRA, whose language clearly indicates that the Central Government is recognizing existing rights.***

## **6.2 Shifting cultivators**

Shifting cultivation, known by various names such as *jhum* and *podu*, is widely practiced in north-eastern India, and some parts of central and eastern India, and the Western Ghats. According to a current estimate, approximately 0.59 percent of the total geographical area of the country is under shifting cultivation (MoEF 2009).

Shifting cultivation is both a labour intensive and land extensive form of cultivation, but requires little capital. Shifting cultivation is considered by many experts to be ecologically destructive and its practice is looked upon as a major cause of deforestation and soil erosion. It is also held responsible for causing floods in the plains since soil erosion results in sedimentation of river beds. There is also a contrary position. According to this view, shifting cultivation is the only practical way out from the inherent difficulties confronted in preparing a proper seedbed in steep slopes. In interior areas where communications are not developed and where sufficient land suitable for terracing is not available, shifting cultivation is the only system of cultivation which can be operated at the present stage of development. A number of ecological studies also suggest that in its traditional form with long-cycle rotation, shifting cultivation is ecologically sustainable and contains high biological diversity, but that more recent shortening of cycles has led to unsustainability in some areas (Ramakrishnan 1992).

The committee received feedback on the question of shifting cultivation during public consultations in Arunachal, Orissa and Tripura.

### **1. FRA provisions related to shifting cultivation**

Though the FRA does not specifically mention shifting cultivators, the following provisions are important in regard to shifting cultivation practice.

1. Section 3 (1)(e) {rights including community tenures of habitat and habitation for primitive tribal groups and pre-agricultural communities}
2. 3(1)(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} and
3. 3 (1) (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 or extracting a part of the body of any species of wild animal}.

### **Implications**

These provisions imply that FRA can provide recognition and vesting of rights to the customary practice of shifting cultivation. It also meant that FRA does not violate this

customary practice, which is a fear in some states like Arunachal Pradesh. On the other hand FRA strengthens the practice of shifting cultivation with legal backing.

## **2. Findings**

- The public consultations in Arunachal Pradesh highlighted the possibility of contradiction between the IFR provision of 4 hectare of land and the practice of shifting cultivation. However, it was generally agreed that 'the womenfolk stand to lose if the FRA is not implemented as they are not entitled to any traditional ownership rights over ancestral land and landed properties under customary rights and practices of most of the tribes'.
- As of now, in all states where shifting cultivation is being practiced no rights are being conferred specially to continue shifting cultivation.
- There are cases from Kalahandi in Orissa and Dhalai in Tripura where shifting cultivation lands are not considered during the verification process or only that portion/plot is considered which is being cultivated by the claimants at the time of verification leaving all other plots which are seasonally/rotationally used by the community. In one such case in Kalahandi in village Munduguda and Gulpang under Jugsaipatna panchyat, claims on shifting cultivation lands were rejected by the verification team of revenue and forest officials. As per the traditional practice in shifting cultivation one plot is cultivated whereas the other plots are left for regeneration and then a cycle is followed. In the above villages during verification the technical team mapped only the land which was under occupation in that season but denied to map other fallow lands which are left fallow and on which there is a forest growth. The villagers tried to explain the team that the shifting cultivation practice is such that plots left fallow regenerate within the cycle and are then used for cultivation. But the officials were not convinced about the nature of right and left out the fallow lands in the verification process.
- In the state of Tripura plots under shifting cultivation has been subjected to IFR provisions. Accordingly, in some places confusion has arisen amongst the practitioners about the demarcation of their plots. As shifting cultivators the claimants have exercised rights in several plots over a period of time. On the other hand as the individual rights are given mostly in one plot (amounting to maximum 4 hectares) and thus restriction has been imposed on the possibility of practicing shifting cultivation in future.
- No clarification has been issued by MoTA or by state governments, on how to deal with shifting cultivation rights within FRA.

## **3. Recommendations**

- Considering the present status of non-application of FRA in relation to the shifting cultivation primarily due to lack of awareness and resistance of different agencies against this practice, the committee recommends that careful survey and study be conducted to understand shifting cultivation within the scope of FRA.
- The committee recommends that practitioners of shifting cultivation be enabled to claim CFR rights (as explained in Chapter 4) and practice this customary agricultural practice.
- MoTA should issue a clarification on this matter, asking states to recognize shifting cultivation within the provisions given above, and not to restrict it by freezing single plots under Section 3(1)a.

- Where there are issues of ecological degradation due to shortened cycles or other reasons, this should be dealt with separately; the process of recognizing these rights cannot be curtailed for this reason.

### 6.3 Forest Villages

#### 1. Introduction

Forest villages refer to settlements established by the Forest Department for the purposes of labour for afforestation or other forestry works, or to villages that were not recorded as having revenue status and were included when forests were brought under the IFA (see more on forest villages, in the chapter on Convergence). According to MOTA the country has **2474** forest villages (majority of these villages being spread over the states of Assam, Chhattisgarh, Madhya Pradesh and West Bengal), though civil society has expressed doubt over this figure, and certainly this does not include taungya settlements, so the total number of settlements in this category is likely to be significantly larger.

#### 2. FRA provisions for Forest Villages

The following provisions of FRA are important for Forest Villages under FRA:

1. Section 2(f) of the Act states: “Forest villages’ mean ***the settlements which have been established inside the forests by the forest department of any State Government for ‘ forestry operations which were converted into forest villages through the forest reservation process and includes forest settlement villages, fixed demand holdings, all types of taungya settlements, by whatever name called for such villages and includes lands for cultivation and other uses permitted by the government.***”
2. Section 2(p)(iii) defines villages as including forest villages, old habitation or settlements and unsurveyed villages, whether notified as village or not;
3. Section 3(1)(h) mandates the recognition of 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.

#### 3. Current Status

The committee found during its field visits that:

1. In most parts of India, rights as per FRA have not been recognized in forest villages, and **conversion of forest villages to revenue village status has not taken place at all** (with the exception of one in Uttar Pradesh, see below).
2. The subject has also drawn attention of Ministry of Tribal Affairs. In July, 2010 Ministry had communicated with the states in the matter of high rate of rejection of claims of the forest villages and sought a review of the subject and also wanted states attention to the subject.
3. In many states such as UP, Jharkhand, Maharashtra, Uttarakhand the category of Taungiya villages is not inserted into the regional language version of section 2(f). Similarly the provision of 3(1)(h) is translated wrongly regarding the conversion of forest villages into revenue villages. Since the Taungiya villages are not included in sec 2(f) in the translated version these villages were left out in the first phase of implementation.
4. The Committee found that in many states such as UP, Assam, Jharkhand, West Bengal, and Maharashtra, proper surveys of forest villages have not been carried out and these are being denied to get benefits of FRA.

5. In some other states, the FRA process has been extended to Forest Villages as if they were just any other village. So, e.g., in MP, the Committee's field visits showed that the individual settlement and cultivation lands which had recognized by the Forest Department were being given new titles under the FRA. But there was no conversion of the villages into revenue villages—they were still being treated as forest villages.<sup>26</sup> This means continued dependence of these villages on the Forest Department of all infrastructural facilities.<sup>27</sup> This also means that the common lands in these villages that might be used for grazing or other non-forestry purposes were not being recognized as revenue lands—only piecemeal claims were being submitted for the school building or health centre.
6. There is one positive example in Uttar Pradesh where one forest village in district Bahraich has been converted into the revenue village. (See detailed note on Forest Villages, annexure-?).
7. In most places where forest villagers belonging to OTFDs had submitted claims they have been asked to furnish proof of residence of 75 years. Historically the process of formation, establishment and the continuation of forest villages began in the colonial era. Considering that they were set up by the FD, the responsibility of proof of residence should rest on this department.
8. So is the case of Taungiya villagers. They were shifted at the interval of every few years from one forested tract to another. So it would be impossible for them to prove residence in one particular location for 75 years. However, the spirit of the FRA seems to clearly point to the need to recognize and convert these settlements to revenue villages, even if they are not from Scheduled Tribes.
9. We also found inconsistent implementation of the 75 years criterion for OTFDs as well as acceptance of claims by STs. In Madhya Pradesh, the forest village had been re-settled with a new batch of settlers only in the 1950s, but all the present-day descendants of this group of settlers were given titles (even the non-STs). On the other hand, in another FV, non-STs (Gowlis) who came 30 years ago were denied rights, although they had also settled at the behest of the forest department.
10. We also found, in Madhya Pradesh, a certain amount of selectivity towards even ST claims of cultivation in FVs. Claims for lands that were recognized as cultivated by the FD were accepted, whereas those which the FD declared as recent encroachment were rejected, without any due process of verification.
11. In relation to forest villages the provision of sec 3(2), regarding development facilities, is still pending though these rights have been claimed by the forest villages. In district Saharanpur (UP) the claims under section 3(2) are lying with village pradhans as the DLC is not aware what actions could be taken.

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<sup>26</sup> Furthermore, since even the individual parcels were not being converted fully to revenue land and entered in the revenue records (see chapter 3), forest officials questioned the usefulness of giving new pattas, since nothing was changing on the ground.

<sup>27</sup> While the FD assured us that all the facilities were being provided on par with revenue villages, the fact remains that these facilities have to out of funds provided to the FD (typically) the funds provided by MOTA for development of forest villages. This keeps their status and 'client' relationship with the FD unchanged.

12. That the residents of the forest villages have always been considered as 'encroachers' even after claims are under consideration have also been reported from several states.

#### **4. Recommendations**

1. **The process of conversion of these forest villages into revenue villages should be processed at the earliest under sec 3(1)(h). MOTA needs to issue a categorical instruction that conversion of villages to revenue villages is different from and must precede the recognition of individual land claims. The entire set of records pertaining to the village must be handed over to the Survey Settlement or Land Revenue office.**
2. The FRA provision related to forest villages (Section 3(1)(h)) needs to be translated properly, if necessary with description and examples, in regional languages. The Central Government needs to verify these translations to ensure their correctness.
3. A proper survey of forest villages that include Taungiya villages, fixed demand villages, other recorded and unrecorded villages and any forest villages needs to be carried out extensively at the State level.
4. These surveys should be carried out by a formation of a committee at the State level and should not be entirely dependent on the data made available by FD.
5. The FRC of the forest villages should be constituted at the village level and not at the panchayat and gram sansad level.
6. The data of individual and community claims of all types of forest villages should be depicted separately in the website of nodal agency at Central and the State level. The claims of the forest villages are different than those of the other claimants residing in the revenue villages. There should be constant monitoring by the nodal agency regarding updating the data of forest villages.
7. The FD should play a pro-active role in helping the forest villagers with proof of residence, occupation, and dependence. All FD records pertaining to each FV must be placed in the public domain.
8. Forest villages should be entitled for the community rights. The area that has been planted by the Taungiya cultivators should be given as community governance and management rights.
9. More workshops and training programmes to be organized for the officials at the State and district levels to apprise them of various categories of forest villages in detail so that they are able to become aware of the special issues concerning forest villages.
10. No eviction should take place before the recognition of the rights of forest villages as mentioned under sec 4(5) of the Act.

#### **6.4 Nomadic pastoralists**

*(Note: Resident pastoralist communities are also a special focus area for the FRA, but their issues are mostly dealt with in Chapter 4, and some are the same as for nomadic pastoralist communities described below)*

##### **1. Introduction**

The nomadic pastoral communities have a very distinct cultural and social identity, and their traditional symbiotic relationship with forest and pastures since generations have not been properly appreciated and documented. There are number of nomadic

tribes and communities leading a predominantly pastoral existence e.g Van Gujjar, Dhangar, Gaddi, Raika, Rabari, Bhutia, Lambada, Maldhari, Changpa, and others in various part of the country. Their area of habitat/travel ranges across districts as also across state boundaries, hence the range of their forest rights are also of that widespread nature. The traditional practice of nomadism is everywhere under threat especially from the loss of their migration routes due to development and infrastructure projects, changes in cropping patterns in resident host villages, cutting off access in protected areas and JFM areas, changing aspirations in younger generations, and other factors (Vivekanandan 2003).

The members of the committee talked with the following Nomad communities during their tours:-

1. Van Gujjar Community, Uttarakhand, Himachal Pradesh and Uttar Pradesh.
2. Gaddi community, Himachal Pradesh and Uttar Pradesh.
3. Kinnor Community, Himachal Pradesh
4. Raika Community Rajasthan.
5. Bhutia community, Sikkim.
6. Lambada, Yanedi and Yurokular, Andhra Pradesh

Some of the Nomad communities are not included as a scheduled tribe, such as Van Gujjars who are recognised as Scheduled Caste in Uttarakhand and Jammu & Kashmir. They cannot prove that they lived in one place for 75 years in order to get the benefit of FRA because they are still living a wandering life and have no permanent houses. They however share a symbiotic relation with forests.

## **2. FRA provisions for Nomads**

Nomadic groups are specifically covered under the definition of 'community forest resource' in Section 2(a), which includes "seasonal use of landscape in the case of pastoral communities".

Additionally, other than all the IFR and CFRt available to STs and OTFDs, there is a special provision for rights of 'pre-agricultural groups' in Section 3(1)e:

*"rights including community tenures of habitat and habitation" for PTGs and pre-agricultural communities, where "habitat" is defined in Section 2 (h) as "the area comprising the customary habitat and such other habitats in reserved forests and protected forests of PTGs and pre-agricultural communities".*

## **3. Current status under FRA**

There are no national level data on the status of FRA implementation specifically with regard to Nomads. The field reports available from states is highly discouraging. For instance, claims for IFRs and/or CFRs made by Van Gujjars in Uttarakhand and western UP are mostly still pending or rejected. Van Gujjars, Gaddi and Raika Communities told the committee that they were not aware as how to take the benefits of Forest right law, because whenever they go to the concerned officers they are advised to join the committee of revenue villages. The Yayar Community changes their living and household from one place to the other according to seasons as such, they are not aware where to join the forest right committee. The officers have no clear answer for this problem. The Uttarakhand/UP nomad community says that they should be allowed to join forest right committees in both the places i.e. in middle Himalayas for summer and plain areas for winter.

## Findings

1. Their forest rights cannot be restricted to only one district and one state. For instance the Van Gujjars of Shivalik region of UP and Uttarakhand customarily travel as far as upper pastures of Himalayas of Uttarakhand and Himachal hills.
2. The nomads use pastures of various gram sabhas of these districts and states. It will be wrong to presume and look for rights of nomads as individual rights. If the rights of the gram sabhas of lower and upper Himalayas (where nomads or pastoralist community use the pastures) are recognized without reference to the seasonal use by nomads, the latter will again get deprived of their rights.
3. Demarcation of the state boundaries has led to different status to same nomad group in different states. For instance, the Van Gujjars are not ST in UP and Uttarakhand while they are ST in Himachal Pradesh. This has resulted in nomads in several states having to prove the residence of 75 years to qualify as OTFDs.
4. The nomadic tribes who are still living in the forest are issued permits for the grazing of their cattle every year by FD. In several states the committee came across reports of continued harassment to the nomads by the Forest Department, though they can now be rightful claimants under the FRA.
5. Evictions of nomads from Rajaji National Park have also been reported despite the nomads claiming rights under FRA.
6. There has been large scale lack of awareness of the issues of these communities. Neither there is any emphasis to help these communities to file the community rights claim. MOTA has failed in extending help to the nomadic and pastoralist communities in terms of filing their community and individual claims.
7. In many areas especially in the area of national park and sanctuaries many FD staff is creating confusions that FRA is not applicable to nomads and pastoralist.
8. In last five decades due to commercial plantations in many forest areas, the condition of forest has deteriorated a lot leading to lack of edible fodder.
9. The nomadic tribes using wildlife areas have a special relationship with the wildlife too, but their actual or potential role in conservation and protection of wild life given their traditional knowledge has never been acknowledged or encouraged. The FRA provides a new chance to rectify this.
10. The J&K government has prepared an extensive development plan for the nomadic tribes in their state, including involvement of universities, research institution and other educational institutions. Such kind of institutional development is needed for nomadic tribes in various States, linked to their FRA rights. Centre should allocate special funds on this institutional development mechanism.
11. The condition of nomad communities in Himachal Pradesh is quite discouraging. Even Scheduled tribes are not getting any benefit of the forest right law, as this law is not enforced in non scheduled areas of Himachal Pradesh. In Gujarat, since no implementation has taken place in non-Scheduled areas, communities like the Maldharis have not been able to claim FRA rights.

12. Nomadic pastoralist communities have received no title for individual and community rights as yet. Their rights have not been recognized as yet which is a matter of deep concern.

### **Recommendations**

4. The first and foremost task in context of implementation of FRA is to identify and list, state-wise, the various tribes and communities of nomadic pastoralists.
5. The rights of nomads need to be recognized as community rights.
6. States should make possible the constitution of FRCs from amongst the nomadic communities themselves, and/or their representation in resident village FRCs where the nomads have customary grazing access, to enable them to make claims.
7. A committee should be formed comprising of the representatives of nomads to resolve the issue of use of pastures amongst the nomads and resident pastoralists or others. SDLCs or other institutions should help to resolve issues of overlapping rights, including the sharing of pastures between nomadic and resident pastoralists.
8. An anthropological study needs to be carried out to find out the nomadic cycles or patterns of nomads so that their forest rights could be restored according to FRA.
9. Monitoring of nomadic pastoral rights could be done at the district level committees.
10. Special convergence programme should be undertaken for the nomads.
11. All evictions of nomadic pastoralist groups should be stopped until the process of the FRA is complete.
12. MOTA should arrange for training officials about the social structure and economic practices of nomads.
13. The issue of nomadic tribes needs to be taken very seriously by the Central and state governments, and recognition of their forest rights should be given high priority.

## **Chapter 7. Protected Areas and Critical Wildlife Habitats<sup>28</sup>**

*Note: All the FRA processes relevant to any forest land would be applicable to protected areas (PAs) also; this includes all the steps and institutions described in Chapter 2, 3 and 4. Issues that have already been raised in those chapters are therefore only briefly mentioned here in so far as they relate to PAs, with cross-referencing where necessary.*

### **7.1 Relevant provisions**

The FRA is applicable to protected areas, viz. national parks and sanctuaries. Given the special status of such areas, both legally in that they are established under the Wild Life (Protection) Act (WLPA), as also because they are meant especially for the protection and perpetuation of wildlife populations and biological diversity, they require to be given a separate focus. Additionally, the FRA has provisions specific to PAs, regarding the creation of Critical Wildlife Habitats (CWHs).

CWH has been defined in the FRA as, “areas of National Parks and Sanctuaries where it has been specifically and clearly established, case by case, on the basis of scientific and objective criteria, that such areas are required to be kept as inviolate for the purposes of wildlife conservation as may be determined and notified by the Central Government in the Ministry of Environment and Forests after open process of consultation by an Expert Committee, which includes experts from the locality appointed by that Government wherein a representative of the Ministry of Tribal Affairs shall also be included, in determining such areas according to the procedural requirements arising from sub-sections (1) and (2) of section 4.”

Section 4 (2) of the FRA outlines the process to be followed for declaring CWHs. The key provisions include:

- The forest rights of the people need to be first recognized even within PAs
- These rights may be subsequently modified for declaring a CWH
- Forest dwelling people can be relocated and resettled only on a voluntary basis for declaring a CWH and creating an inviolate area for wildlife conservation.
- For the above purpose, the State Government has to (i) establish that the impact of the presence of the holders of rights on wild animals will cause irreversible damage and threaten the existence of the species and its habitat (ii) conclude that other reasonable options such as co-existence are not available (iii) prepare resettlement and alternative packages and communicate these to the affected people (iv) obtain in writing free informed consent of the Gram Sabhas to the proposed resettlement and to the package and (v) ensure that the land allocation and other facilities are complete as committed in the package, before resettlement takes place.

The FRA also provides that CWHs from where such relocation has taken place, “shall not be subsequently diverted by the State Government or the Central Government or any other entity for other uses”.

The Rules do not mention anything related to the declaration of CWHs. However, the MoEF has issued Guidelines which outline the procedures that need to be followed for establishing CWHs. Key elements of these Guidelines are:

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<sup>28</sup> This chapter is based on information gathered by the Committee on its state visits, as also information obtained by the civil society organization Kalpavriksh, using RTI applications, which was collated and provided by Sreetama Gupta Bhaya.

- A description of the process, administrative structures, time lines and data requirements for declaring and establishing a CWH both by the State Governments as well as the Central Government
- Distinct processes described for declaring a Critical Tiger Habitat (CTH) and CWH in Tiger Reserves and other PAs respectively
- Introduction of a minimum spatial criteria of 800 to 1,000 sq.km in the case of Tiger Reserves for CTH/CWH
- Recommendation to use species-area curves specific for each biogeographical area in PAs other than Tiger Reserves
- Recommendation to also consider wildlife corridors outside PAs for declaring as CWHs

The CWH provision in the FRA, combined with the fact that all its other provisions apply to PAs, is an attempt to balance the imperative of livelihood security of forest-dwelling and forest-dependent communities with the equally strong imperative of conservation of wildlife and ecosystems. Indeed, the FRA's provision that CWHs cannot be diverted for any other purpose is currently the strongest pro-conservation legal provision in India.

It is important to note that CWHs have to be declared on the basis of scientific and objective criteria through an open process of consultation by an Expert Committee. The Act also provides for the modification of rights of the rights holders, or their resettlement, for establishing a CWH if their use of the area is causing negative impacts on the resident populations of wildlife or their habitats. The resettlement must be voluntary, ensuring that it is truly being done with the free informed consent of the affected communities.

Though the FRA attempts to balance rights, livelihoods, and conservation in the above manner, there are a number of problems of conceptual clarity, procedures, and implementation. These are given in 7.3 below.

## **7.2 Current status of implementation**

1. There is no consolidated picture of the status of implementation of the FRA within PAs. No state is maintaining such data or analyses separately, nor are MoEF or MoTA asking for them. What is available is gleaned from state level reports on FRA in general, or from civil society reports, or from the visits of the Committee. The key issues relating to implementation status are given below in 7.3.

### **2. Regarding CWH**

- There is no consolidated or comprehensive information on the current status of the process for declaring CWHs. It has been difficult to obtain information related to CWH from both Government of India and the State Governments. Based on documents obtained through RTI and discussions during our field visits we have established that state-level expert committees to propose CWHs have been set up in Andhra Pradesh, Assam, Chhattisgarh, Gujarat, Himachal Pradesh, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Orissa, Rajasthan, Tamil Nadu, and West Bengal. Gujarat has sought clarifications on certain aspects of the CWH process from MoEF, and are awaiting a response. We are not sure of the status in other states.
- It appears that so far only Orissa has proposed sites for declaration to the MoEF. This is for 3 areas: i. Chilika-Nalabana ii. Gahirmatha iii. Chandaka. All three proposals were submitted in 2009.

- The MoEF Guidelines prescribe that the Central Committee will take a decision on the proposals received from the States for declaring CWHs within 30 days of their receipt. Clearly in the case of the CWH proposals sent by Orissa this time line has not been followed.
- In several other states discussions have been initiated about declaring CWHs largely within the State Forest Department and proposals are being prepared. However there is no clear focus on this issue by the states, as was evident during meetings with officials in the Committees' visits.
- So far no CWH has been established under the FRA.
- Gujarat Forest Department has written to MoEF seeking clarifications in 2008 and is still awaiting a response from MoEF. As a result there has been no progress with identifying CWHs in the state.

### **7.3 Key findings and analysis**

#### **7.3.1 Conceptual and definitional issues**

(i) Though the FRA clearly applies to national parks and sanctuaries, it is not clear if it applies to all categories of PAs that are defined in the WLPA. This would appear to be the case if one takes the definition of 'community forest resource' in Section 2a, which mentions "protected areas such as Sanctuaries and National Parks", and if the term 'protected areas' is to be taken by its meaning in the WLPA (Section 24A). This would then include Conservation Reserves and Community Reserves also.

(ii) The fact that Tiger Reserves are not mentioned in the definition of 'forest land' in the FRA (though they are a separate category in the WLPA 2006), has been used by some people to claim that the FRA does not apply in Tiger Reserves. However this ignores the fact that Tiger Reserves are mostly composed of national parks, sanctuaries, and/or RF/PF/other forest areas, over all of which the FRA applies.

(iii) There is confusion at least in some states that discussions and work related to CWH should begin only after the FRA process has been completed, whereas the FRA requires such completion to take place before any rights can be modified or relocation initiated.

(iv) There is confusion in the states between CTH and CWH, especially since CTHs have already been established in most Tiger Reserves under the WLPA, and the MoEF Guidelines for notifying CWHs under FRA also refers to CTHs.

(v) Several terms used in the context of CWH are undefined or vague. For instance 'irreversible damage' (Section 4(2)b), this would be very difficult to objectively determine. If irreversible damage does occur then it would be too late to take conservation action. This term does leave room for a lot of interpretation and has the potential to cause confusion, result in unwanted modification of rights or resettlement of people and equally to cause negative ecological impacts on wildlife and their habitat which can otherwise be avoided. Similarly the Act talks about 'co-existence' (Section 4(2)c) without defining it. This term is also subject to interpretation. How does one define and determine co-existence? And what about its temporal aspect: even if we are able to define and establish co-existence at a particular point of time, there is no guarantee that in the future this situation will continue. Human societies and wildlife ecology are dynamic and the equation and equilibrium between them is very likely to shift over the years. Yet another example is 'inviolable', which commonly gets interpreted to mean 'human-free', leading to the presumption that relocation has to take place from all CWHs. The MoEF Guidelines does not provide guidance on these terms (see also other criticism of the MoEF Guidelines, Annexure 2).

(vi) The MoEF Guidelines on CWH seems to place extra emphasis on tigers as both the species and Tiger Reserves have gained special mention, which is not the case in the FRA. As a result for Tiger Reserves a definite spatial criterion has been established that at least 800 to 1,000 sq.km should be declared as a CTH. In fact currently there are quite a few Tiger Reserves which do not meet this spatial criterion. The Guidelines seem to discount the possibility of declaring a CWH in Tiger Reserves as it only refers to CTH in Tiger Reserves and not CWH. This is not based on the provisions of the FRA (whose provisions for making these areas inviolate are outlined above in 7.1).

(vii) For other PAs the species-area curve has been recommended for determining the spatial extent of the CWH. Given the number of species which will be encountered in any wildlife habitat in India; the difficulties in obtaining reliable data on the occurrence of especially mobile and cryptic species in the wild; the seasonal and inter-annual variations and limited national capacities, this is a very unrealistic suggestion. Moreover the conservation objective is often to ensure the survival and maintenance of viable populations of several wild species and the natural ecological functioning of the entire area over a long period of time. The species-area curve will only determine the occurrence of individuals of a species and not address issues related to viable populations of the various species.

(viii) It seems that in many states, officials are largely thinking of proposing entire PAs as CWHs (under the assumption that if it has been declared a PA, it must be because it is all critical). However, this ignores the prescribed process in the MoEF Guidelines, and the fact that not all PA boundaries have been identified and fixed according to the criteria usable to identify CWHs.

(ix) The Guidelines also goes beyond the FRA in recommending that areas outside PAs especially wildlife corridors should also be declared as CWHs. While this is a progressive and essential recommendation if the due process of democratic and knowledge-based decision-making is ensured, unfortunately it has no legal basis in the FRA.

### **7.3.2 Issues regarding recognition of rights in protected areas**

Observations by the Committee on its state level visits, submissions by various parties, and existing documents indicate:

(i) There is clear trend towards initially denying that the rights under FRA can be claimed within PAs, and in some states this continues to be stated at the ground level even if the MoTA, MoEF, and the relevant state government has clarified that such denial is wrong (see for instance, Committee reports on Assam, Himachal Pradesh, Orissa and Chhattisgarh visits). In many states it has been wrongly believed, or conveyed, that (a) tiger reserves are exempt from the FRA; (ii) the FRA does not apply if rights of people have been previously settled under the WLPA (even if people might still be residing within or depending on the resources of the PA), and (iii) the FRA does not apply to villages where resettlement is part of an ongoing process that began before the FRA was promulgated. There are also several examples where official agencies have not accepted, or have rejected, claims, stating that villagers have in any case to be relocated, so why claim or give rights? This was the case for instance with Simlipal Tiger Reserve (Orissa) till the Committee's visit there; in Satkosia Tiger Reserve (Orissa), even FRCs have not been formed. (for more details, see Chapters 2, 3 and 4).

(ii) This trend is beginning to change as an increasing number of states accept that the FRA is applicable across the entire landscape which falls under the definition of 'forest land' in Section 2(d); this fact has been reinforced by recent circulars from MoEF and MoTA. Rights under Section 3(1)a are now being recognized and

accepted or titled in several protected areas, e.g. Wyanad Sanctuary (Kerala), Biligiri Rangaswamy Temple Sanctuary (Karnataka), Nagarjuna Sagar Srisailam Tiger Reserve (Andhra Pradesh), Karlapat (Orissa), Shoolpaneshwar (Gujarat), Palamau Tiger Reserve (Jharkhand) and others (see Chapters 3 and 4). Some states like Orissa, Gujarat and Kerala were amongst the first in accepting that the FRA applies in PAs also; Kerala has also started sanctioning development facilities under Section 3(2) in some PAs like Wyanad Sanctuary, and Gujarat is planning likewise.

(iii) Even in states where IFRs are now being recognized and titled within PAs, CFRs are yet to be recognized. In the first place active discouragement by officials, lack of confidence amongst communities, and other factors have meant very low level of CFR claims in PAs. But even where claims have been made, they are either pending for a long time or rejected without basis. Villages in the Badrama Wildlife Sanctuary (Orissa) filed community claims in 2008, but these have so far not been processed; the claimants have now issued notice to the SLMC under Sections 7 and 8 of the FRA against the Sambalpur SDLCs and DLC, and have threatened to go to the High Court if no action is taken. In Biligiri Rangaswamy Temple Sanctuary (Karnataka), Soliga adivasi hamlets have claimed CFRs with detailed documentation and maps in early 2010, but so far have not heard back from the government authorities. In Shoolpaneshwar and other protected areas of Gujarat, CFR claims have been pending since 2008/2009, though part of the reason for this could be that the state took a conscious decision to consider CFRs after finishing IFRs.

(iv) Several states have violated and in many cases continue to violate the FRA, by undertaking relocation without having completed the FRA process. This is especially the case with tiger reserves, e.g. in Chhattisgarh, Rajasthan, Orissa, Maharashtra (see Chapter 2 for examples). MoEF and the National Tiger Conservation Authority have continued to provide funds for this, without verifying whether the due procedures required under the FRA (and also the WLPA), and under their guidelines on relocation, are being followed (see Chapter 2 for details). The Government of Gujarat has proposed relocation of Maldharis from Gir National Park / Lion Reserve, where it has not initiated even the first steps of the FRA process.

(v) Evictions in violation of Section 4(5) have also been reported in some instances, such as with Gujjars in Rajaji National Park (Uttarakhand), though officials have labeled these as fresh encroachments. (see Chapters 2/3 for details).

### **7.3.3 Threats to protected areas from FRA**

(i) Fresh encroachment (post December 2005) has been reported from within or adjacent to some protected areas, e.g. Kawal Sanctuary (Andhra Pradesh), Yaval Sanctuary (Maharashtra), Nameri National Park and Sonai Rupai Wildlife Sanctuary (Assam) (see Chapter 2 for details). Where it is taking place, this is a clear misuse of the FRA, since no such new occupations are eligible for recognition.

(ii) The possibility of fragmentation and disturbance when development facilities under Section 3(2) are extended to villages that are inside protected areas, is an area of concern. The Committee did not come across any existing example of this kind, but recognizes the threat potential; additionally a number of organizations and officials did bring this up as an issue warranting attention. There needs to be discussion on the possibilities of consolidation of settlements, with free informed consent, where fragmentation could be a serious problem.

### **7.3.4 Issues regarding implementation of CWH**

(i) The identification and declaration of CWHs need the full range of necessary ecological expertise (including traditional knowledge), and also social science expertise. If the legal provisions are to be properly followed, we will first need a strong research programme which will gather the required scientific data and

contribute to the process of declaring CWHs (building on existing research and information). The time line prescribed for the Central Committee to take decisions is unrealistic. The state committees will need more time if they have to take decisions based on data and in an objective manner.

(ii) Currently there are some monitoring measures for Tiger Reserves and a few other PAs, but most potential CWHs do not have any such measures, which is essential to ensure that the wildlife values for which a CWH is declared are at least maintained over the long term if not actually improved.

(iii) The kind of data that the State Government is required to provide along with its application for declaring a CWH is very unrealistic based on our understanding of currently available information in India. This data requirement should either be revised to be more realistic.

(iv) Most of the ongoing CWH processes are not following the democratic processes laid down in the FRA and the MoEF Guidelines. There has been only cursory consultation, if any at all, with the communities that will be affected by CWH declaration; at most proposed sites Gram Sabhas have not received notices to discuss proposed boundaries (with exceptions such as Badrama in Orissa, see below); at not a single site has the knowledge and opinion of the communities been taken into account, including in areas where they have their own thriving practices of identifying and conserving crucial wildlife areas. Most of the information and processes being used to identify CWHs is not shared with local communities, often not even with independent wildlife scientists. The proposals sent by Orissa to MoEF do not have the letters of consent from the Gram Sabhas that the MoEF Guidelines require.

Even in areas where communities have been demanding involvement and information, the response from the state government has been very inadequate. A case in point is Badrama Wildlife Sanctuary in Orissa. In May 2008 letters were issued to some village FRCs by the Range Forest Officer (RFO), to inform that the village and its surrounding environment is proposed to be included in CWH and they were requested to convene Gram Sabha to discuss the matter. The FRCs of the villages wrote back to the FD and SDLC informing them that the letter has created confusion, both amongst communities and local officials as to whether the process of determination of rights which had just started after March 2008 was to be continued. They also pointed out that the letter is not in accordance with the CWH guidelines which require the authorities to share the complete proposal and information on the CWH, none of which had been enclosed. The FRCs have not yet received a response from the State Government. (Committee's detailed report on Orissa visit).

#### **7.4 Recommendations**

1. State governments need to expedite the FRA process in PAs. On 21 June 2010, responding to a complaint by the Minister of Tribal Affairs, MoEF issued clear instructions to states that no resettlement can be undertaken without completing the FRA process. On 3 September 2010, MoTA cited this letter in its directive to states, and categorically stated that "rights need to be recognized first in national parks and sanctuaries before undertaking any process for resettlement", and that there is "no provision in the FRA to defer the process of vesting of forest rights till critical wildlife habitats are determined and notified". These letters need to be immediately followed up by states issuing directions to their district and sub-divisional committees and other relevant departmental officers and staff; Orissa's Special Secretary for instance has taken such action on 30 September 2010.

2. MoTA and MoEF/NTCA should also issue clarifications on the following:

(i) The FRA would be applicable for all national parks or a sanctuaries. Tiger Reserves are also not exempt from the processes of the FRA.

(ii) The fact that rights may have been earlier settled in a PA under the WLPA, does not exempt that PA from going through the FRA process if there are eligible FDSTs and OTFDs.

(iii) Even if relocation programmes in a particular PA have been going on prior to the FRA being promulgated, this does not exempt the PA from having to go through the FRA process for families and villages that remain inside the PA; the letters mentioned above should be reiterated for such situations.

(iv) The term 'inviolate' does not necessarily mean 'human-free', but rather to mean situations within which restricted uses that do not violate conservation objectives can continue (and, concomitantly, be stopped if they are in violation of these objectives). This would help in the overall protection of a larger area of wildlife habitat, given that in the Indian context, strictly no-use areas would necessarily be few and mostly isolated fragments. A dissenting view by some members of the Committee is that inviolate areas must be free of human uses and are managed exclusively for wildlife. Keeping them compatible use areas is fraught with danger. After such a detailed and exhaustive process of settlement of rights, and subsequent modification to give way for declaration of inviolate areas has taken place, this shared use compatible with conservation doesn't hold good. On the other hand, there is provision of buffers, particularly in the Tiger Reserves, where there is no necessity of creation of inviolate spaces, where such compatible use aligned with conservation needs to be practiced.

3. An amendment of the FRA should be considered, to apply the concept of CWH to areas outside PAs also; along with provisions of due democratic and knowledge-based process, and democratic governance. Where Gram Sabhas want to apply this for areas under their CFRMCs, they should be empowered to do so, thereby enabling them to get extra protection for areas of ecological importance while retaining their governance control.

4. All notifications or steps relating to Tiger Reserves, Critical Tiger Habitats, and Critical Wildlife Habitats that have been undertaken in violation of the FRA (and in some cases even in violation of the WLPA) subsequent to 1.1.2008 need to be reviewed, and fresh process started that follows the due procedures under FRA, WLPA, and MoEF's guidelines relating to CWH (modified as per recommendation below). Such a process must be followed for all proposed CWHs.

5. Urgent action needs to be taken in cases where it is established, through a transparent process involving the relevant Gram Sabhas and SDLCs, that fresh (post December 2005) encroachment has taken place in a PA. This action should be against all those responsible who are encroaching and allowing encroachment. In sensitive areas where such events could recur, special focus on monitoring should be provided alongside strengthening protection mechanisms.

6. In situations where the provision of development facilities under Section 3(2) may cause serious ecological damage, as shown by an ecological assessment, special steps would be necessary to avoid or mitigate such damage. Alternative ways of providing the necessary facilities to which people have rights, such as reliable decentralised energy sources instead of a power line, should be considered. Where applicable CWHs can be established following due process, and the option of voluntary relocation and resettlement can be explored. The caveats regarding ecological and cultural sensitivity contained in Chapter 5 would apply here also.

7. A consortium of CSOs and research institutions have been reviewing the issues related to CWH. They have presented two sets of proposed guidelines to MoEF in September and December 2007, along with a critique of the MoEF Guidelines, which

are still relevant. Some of the key issues that these address are: the definition of some important terms; criteria and processes related to the declaration of CWHs and CTHs; prescribed time frames for the processes and consultation and involvement of local communities; processes for co-existence, co-management, and relocation/resettlement. These guidelines and the critique are placed in Annexure 16 and 17 respectively; it is recommended that they be urgently considered by MoEF and states. Additionally, for the purpose of identifying CWHs, the methodology suggested in Box 7.1 below should be considered.

8. Governance changes towards joint/collaborative or community-based management need to be brought about in PAs, as per the recommendations given in Chapter 8. Necessary amendments to the WLPA should be moved by MoEF, as part of its current review of this Act. This is building on the existing provisions for co-existence in buffer areas of Tiger Reserves.

9. Where communities and civil society organizations working with communities are already undertaking discussions and planning processes for conservation and livelihood strategies within PAs (see examples of Karlapat and Badrama Sanctuaries in Orissa, Biligiri Rangaswamy Temple Sanctuary in Karnataka, Shoolpaneshwar Sanctuary in Gujarat, and others, in Chapter 4), this must be facilitated by the state government and Gol. Similar exercises should be facilitated for each PA as it moves towards joint or co-management.

#### **Box 7.1**

**Key features for identifying CWHs** (or, what the model should ideally be):

- The model will be sufficiently generic for its application to cut across taxa or ecosystems or habitats.
- In the case of highly endangered species and habitats the model can be fine-tuned to address species-specific and/or habitat criteria.
- The criteria will be hierarchical in nature with ecological factors as key inputs balanced against socio-economic costs.
- The criteria will be independent of the PA status of the forests or of the volume of economic benefits or beneficiaries.

**Proposed methodology:**

- Identification of key reference taxa with weighted scores for endemism (with reference to the ecoregion or biogeographic zone), threat status, and degree of ecological surrogacy (keystone /umbrella / flagship species). It is important to ensure that subjectivity in selection/scoring criteria is kept very low and to the minimum. There could be additional criteria that could be used and these can be identified as the process of identifying CWH using this model gains experience and is validated.
- Developing species-habitat matrices for the given landscape. While doing this it is important to define 'habitats' from the perspective of the landscape matrix.
- Assessing habitats for their ecological, socio-economic, and cultural values using a set of heuristic algorithms to be developed. While the algorithms are being developed it is important to link these algorithms to the utility values of these habitats from the human perspective, especially that of local communities.
- Computing irreplaceability scores. This does pose a challenge as we have to carefully choose the optimum from the handful of irreplaceability measures available in ecological literature.

- Identification of CWH using irreplaceability scores. It is important to also think of ways to validate the CWH chosen by the model through the use of independent sets of information.

**Caveats** (or, possible limitations of this exercise)

- Studies on use and efficiency of ecological surrogates (like umbrella species, keystone species and flagship species) have yielded varying results with no agreements. As such, these surrogates should be viewed more as complementary terms in the model, rather than the main drivers.
- It might be extremely difficult to take an objective view of the most conflicting scenarios. For example, a forest patch serving as an important corridor for metapopulations of tiger or elephant may be pitched against the potential livelihood options of forest-dwelling communities. This would then be a matter of negotiation amongst the different rightsholders and stakeholders involved, with wildlife also being represented.
- The term 'wildlife habitat', in its simplest form, refers to an area used by the species in its life-time. But as ecologists argue, this is probably over-simplified and the habitat concept is being increasingly viewed as an interaction term between species demography and landscape. In this sense, CWH as identified in this exercise, may not meet the rigors of ecological definition, though it might be sufficient for legal purposes.

Clearly this is only a brief outline but it lays out the kind of ecological modeling that could be ideally used to identify CWHs based on robust ecological information.

## Chapter 8. Future Structure of Forest Governance<sup>29</sup>

### 8.1 Motivation and scope

We now move from the first objective of the FRA Committee, viz., assessing the implementation of the Act in its various dimensions and making recommendations based on this assessment, to the second major objective, viz., examining the wider question of forest governance in India that has been brought to the forefront by the FRA. Specifically, this chapter responds to three key terms of reference [TORs] given to the committee:

- TOR 2: Recommend necessary policy changes in the future management of forestry sector in India which may be necessary as a consequence of the implementation of the FRA
- TOR 3: Identify the role of various agencies (official and others) in facilitating forest-dwellers carrying out their roles regarding conservation and management of forests
- TOR 7: Define a new role for the Forest Department vis-à-vis the Gram Sabha for forest conservation and regeneration

Admittedly, the field observations presented in the previous chapters indicate that the current status of implementation of the FRA has not dramatically changed the landscape of *forest governance*<sup>30</sup> in the country for all the reasons outlined therein. Therefore, a narrow interpretation of the term 'changes ... which may be necessary as a consequence of the implementation of the FRA' [TOR 2 above] would suggest that nothing much is required to be discussed or changed. However, we believe that our exploration must encompass the entire gamut of forest governance for the following reasons:

- a) The vast majority of India's forests have been historically inhabited and used by a variety of communities. Even our Protected Areas (PAs) contain or are depended on by a few million people. And the issue of the rights of these communities to participate in the management of forest resources they use has been a matter of enormous and longstanding debate as well as conflict.
- b) The low impact of the FRA implementation on forest governance today is a direct result of the abysmal implementation of the provisions for recognizing Community Forest Resources and granting communities management rights to the same. However, if the recommendations made in the previous chapters, especially chapters 2 and 4, are sincerely adopted, we believe that several tens of thousands of village communities will claim these rights and begin to claim ownership over MFPs and manage forests under the FRA, thereby significantly altering the forest governance scenario.
- c) There are many pockets in the country, such as the Chhota Nagpur region of Jharkhand, where communities have legally recognized rights to manage their forests. These rights should be formally recognized under the FRA, but for reasons outlined in chapters 3 and 4, these have not yet been claimed.

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<sup>29</sup> Alternative recommendations to some aspects of Ch. 8,9, and 10, endorsed by 10 members of the Committee, are given as chapter 12.

<sup>30</sup> By using the term 'forest governance' instead of 'forest management', we wish to highlight that the question is not just about silvicultural or techno-economic management of the forest biota for production or even 'ecological' goals (though these are important as they determine the nature of forest output, and therefore discussed in some detail in the next chapter) but of governing the complex relationship between forests, local communities and stakeholders at a larger scale and so involving also questions of rights, participation, conflict resolution and accountability.

The Saxena committee on Niyamgiri has argued that administration is obliged to facilitate the process of claiming and vesting these rights leading to their recognition. Similarly, there are large areas in the north-east and several thousand Van Panchayats in Uttarakhand, where again community forest management is legally recognized. Villages in both these regions as well as those in Chhota Nagpur are, however, facing conflict with the Forest Department due to what they see as encroachment into their terrain of autonomy. These issues need immediate attention.

- d) Apart from the formally recognized community governed or managed forests, there are also thousands of forest areas that are under self-initiated, unrecognized community governance. This includes more than 12,000 community forest areas in Orissa, and several thousand more (including sacred groves) in Uttarakhand, Maharashtra, Nagaland, Rajasthan and other states. Whether or not they apply for rights under the FRA, their efforts need formal government support in a manner that is conducive to their ethos and the diversity of their institutions and customs.
- e) Most important, the Joint Forest Management (JFM) programme that was initiated nation-wide in 1990 supposedly covers more than 22 million hectares across more than 100,000 villages, which is about a third of the country's forested landscape. But JFM has also been the subject of much debate, both in terms of concept and implementation. And it remains a 'programme', not a pillar of a long-term structure of forest governance. Recently, the Ministry of Environment and Forests has begun discussions with the Ministry of Panchayati Raj and the state governments on the future of JFM. Some of the JFM areas overlap with areas where community rights are being claimed under the FRA, while others may never overlap. However, since the goals of forest policy and the structure of forest governance are (or should be) consistent across the landscape and since JFM in particular is a reflection of the interest in moving towards participatory forest management much before the FRA was passed, it is necessary to consider the forest governance question across this much broader JFM-CFR landscape. Moreover, as we write this report, the MOEF has taken several steps that indicate a rethinking of the role of JFM and an interest in strengthening the devolution process. The discussions held between MOEF and the Ministry of Panchayati Raj in June 2010, the revised Green India Mission document submitted to the Prime Minister in Oct 2010, and the letter written by the Minister for Environment and Forests to the Chief Ministers of all states all talk about a 'revamped' or 'restructured' JFM. One hopes that these moves will improve participation and take into account the interest of the poorest, especially women. This chapter therefore addresses itself to this question too.

Thus, the scope of this chapter is **the restructuring of the relationship between rural forest-dependent communities, the forests they use, and the state.** Of course, this is a vast and complex subject, and requires covering a large number of issues. The social, ecological, economic, legal and historical landscape of Indian forests is enormously diverse and complex, requiring many state- and region-specific measures. And the recommendations must cover multiple levels: Acts, Rules, administrative procedures, fiscal measures, programmatic structures, technology<sup>31</sup>, and so on. Given this complexity and diversity, it is impossible for the analysis in this chapter to be comprehensive and detailed, and we will not attempt this.

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<sup>31</sup> Discussed in the next chapter

What we attempt is to provide a perspective on why a significant restructuring of forest governance in the country is required, what principles and understanding should guide our thinking, and the broad direction in which the changes should go. To provide such a perspective, we review briefly the history of forest policy and participatory management, specifically the learning from two decades of JFM, and the direction sought to be given by the FRA. From this review, we seek to explicate the basic logic of a democratic, fair, sustainable and productive forest governance system. We then make specific recommendations for how restructuring may proceed. But it must be remembered that many recommendations are still general in nature, and will require much more detailing and state-specific tailoring to make them feasible.

## **8.2 History of forest policy and participatory management**

All current discussions on forest governance in this country must begin with the British takeover of Indian forests starting in the mid-19<sup>th</sup> century. This process had far-reaching consequences, as it gave a new intensity and orientation to state involvement in the forest sector, with a focus on revenue generation or meeting state needs, the de-emphasizing of local needs and the obliteration (with a few exceptions) of local management systems, and the creation of a nation-wide forest bureaucracy to implement this policy. Within this larger thrust, over time, there also emerged enormous regional variations, as princely states implemented the IFA in their own fashion, leaving large areas without proper settlement of rights (even by IFA standards), other regions got special dispensations (such as Chhota Nagpur Tenancy Act in Jharkhand to quell tribal unrest, and later the Van Panchayat regulation in Uttarakhand in response to protests there, the individual forest privileges granted in the Western Ghats), and the north-east was largely untouched by British Forest policy (with the exception of Assam). Large swaths also got handed over to tea and coffee plantations. The brunt of the policy was felt the hardest in the central Indian tribal belt.

The first three decades after independence did not, unfortunately, lead to any reorientation in this policy and alteration to the structures. Revenue generation, focus on manmade plantations (replacement of sal by teak is a good example, which unfortunately still continues in central India), meeting industrial needs, and diversion for agriculture remained the focus, and bureaucratic control of land expanded. Moreover, insufficient attention was given to the enormous variety of and unsettled nature of rights created by the post-independence merger and restructuring of various princely states and British provinces. The alienation of local communities from forests (especially from forest management) increased, instead of decreasing. And the forest tenure situation became murkier.

The passage of the Wild Life (Protection) Act in 1972 marked the emergence of another objective—wildlife and (later) biodiversity conservation. While laudable in itself, the failure of conservation policy to recognize the presence of local communities and their own conservation practices throughout the landscape, the possible socio-economic impact of an exclusionary approach on these communities, and the potential to recruit them as allies in conservation led to serious alienation of the several million people inhabiting landscapes that were declared as Protected Areas in subsequent years. In the meanwhile, industrial forestry continued in the rest of the landscape.

Following the Chipko agitation in the early 1970s, and the debate it triggered nationwide, we see a greater awareness in state policy towards the impacts of revenue- and industry-oriented forestry. This manifested itself in a series of state-level orders issued between the mid-1970s and mid-1980s suspending green fellings, and the 1980 Forest Conservation Act (FCA) itself that attempted to limit the conversion of

forests to non-forest uses. This idea of forest conservation went beyond the conservation of wildlife into ideas of 'ecological balance' (in which the idea of watershed protection benefits of forests was central). Curiously, however, the key argument of the Chipko movement, viz., that the local community depends on forest use and must therefore have first charge on forest products, *including* timber harvests, was ignored until the new Forest Policy of 1988. Consequently, the passing of the FCA actually resulted in a significant anti-environment backlash in Uttarakhand.

The response to the problem of 'people's needs' came in the form of not laws, but 'programmes', specifically the Social Forestry programme that was initiated in several states in the mid-1980s with substantial funding from the World Bank, the British ODA and the Swedish bilateral agency. These programmes sought to address the supply-side of the forest degradation problem by a) afforesting revenue lands, and b) encouraging farm forestry. The farm forestry component 'succeeded' in getting middle-level farmers into taking up fast-growing softwood crops that had commercial value, but the impact of community woodlots was at best short-lived (on firewood supply) and very often negative (as it took away grazing areas or resource use areas or local species). And the absence of attention to rights and institutions resulted in no long term change in the situation.

The National Forest Policy of 1988 (NFP88) represents a major landmark in the evolution of thinking in the Indian forest sector in several ways. First, it internalized the conservation thinking that had emerged in the preceding decades and set 'ecological balance' as the first objective of forest policy. Second, it recognized the meeting of local needs as the second priority of forest policy, and explicitly de-prioritized revenue generation as an objective. Third, it gave a clear push for participatory forestry, and recommended creating a massive people's movement with the involvement of women for achieving objectives of the policy which included conservation of biological diversity, increasing forest/tree cover, increasing productivity of forests etc. NFP88 also speaks of sharing of revenues (4.2.3) from village & community lands + right in trees usufructs and share in protection duties. Sec 4.6 associates tribals closely with protection, regeneration and development of forests. Sec 4.3 4.2 says that holders of customary rights be motivated to identify with protection and development of forests. In Sec 3.5, MFP production is emphasized for rural population. One of the immediate impacts of this policy was the 1990 circular from MOEF asking states to initiate Joint Forest Management for regenerating degraded forests.

### **8.3 Lessons from JFM and Eco-Development of PAs**

The idea of JFM, mooted nationally in the 1990 circular, picked up on an experiment in Arabari in West Bengal, an experiment initiated by a forester, and suggested that sharing the harvests from regenerated or re-planted forests would be the way to get communities involved in forest protection and regeneration. Similar initiatives were taken by foresters in many places, such as Harda (MP) and Buldhana (Maharashtra). It was welcomed by many, including civil society organizations, and also international donors who were under pressure to be more people-friendly in their funding programmes. JFM was made the condition for grants/loans in the forest sector and gradually all states adopted this model. From 1993 which saw only a few states having such programmes, JFM has grown to a point where, as of March 2006, MOEF reports that all states and at least one union territory have adopted JFM, and there are about 106,482 JFM committees nation-wide protecting about 22.01 million hectare of forests—approximately a third of the land with the forest departments in the country. Although initially the focus of JFM was only 'degraded forests' only, in 2002 MOEF issued a circular suggesting ways of extending the programme to cover dense forests as well, although the extent to which this has happened is not clear.

Positive aspects: The JFM experiment has generated many positive outcomes in different locations. It has improved protection and hence availability of NTFPs in many places. In some locations, such as parts of West Bengal, it has led to regeneration of entire forest use area of the village and increased the availability of firewood and NTFPs {Khare, 2000 #4355; Ravindranath, 2004 #4252}. In some other areas, it has given a share in the timber proceeds to local communities, significantly adding to their incomes. It has also brought foresters closer to the people. More generally, the JFM projects have provided wage labour benefits from their afforestation activities, even if only during the project implementation period. More qualitatively, it has re-activated some discussion on forest management and conservation thinking/mindset at the village level, led to some innovations in silviculture (see Table x.x), and triggered in some places interesting experiments in institutional change. Dalbhum Division in Jharkhand is yet another example of success in a Left Wing extremist area. Finally, perhaps most important, JFM has prompted some re-thinking within forest departments about their role vis-à-vis local communities. {Jeffery, 2001 #334}

Limitations: There are, however, major limitations not only in the implementation of JFM but also the very concept. Several analyses<sup>32</sup> have shown that:

- a) the 'jointness' in JFM is seriously limited in the field, with day-to-day decisions being controlled by the forest official who is usually ex-officio secretary of the committee and also by larger decisions (regarding planting, harvesting, etc.) being controlled by the FD {see refs in footnote 3 and also Verma, 2008 #3637}.
- b) The silvicultural decisions rest with the FDs, and their focus remains on tree planting (often fast-growing exotic species), thereby adversely affecting graziers and not necessarily meeting even firewood or NTFP augmentation goals.
- c) JFM does not really address the problem of forest degradation very well, since in most cases only a fraction of the community's resource use area has been brought under protection, management or regeneration. The poor are able to shift their pressure to another forest which is not under JFM. Thus the project area looks greener but at the cost of a non-project area.
- d) In most cases, full rights even to the promised forest products have not been given (e.g., nationalized NTFPs have been excluded everywhere), and the share in timber is also often not realized in practice.
- e) Being implemented as part of bilateral/multi-lateral projects, JFM has tended to be funding-driven and therefore funding-dependent, with activities dropping dramatically after the project is over. Measures to sustain JFM beyond the project period have not been conceptualised. These relate to: building one-to-one correspondence between user groups and the forest patch through a new forest settlement, legal recognition for JFM groups<sup>33</sup> and linking them with statutory gram sabhas, and integrating the activities of such groups with other income-generating programmes such as watersheds and marketing of NTFPs.
- f) A serious problem is that of elite capture. This problem be-devils all 'participatory' government programmes (such as watershed development), not just JFM. But it is particularly problematic in forest management because there

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<sup>32</sup> Studies covering multiple dimensions include {Kumar, 1999 #962; Sundar, 2001 #1012; Kumar, 2002 #963; Springate-Baginski, 2007 #3623; Lélé, 2005 #2448; Vira, 2005 #3629; Rangachari, 2000 #3624; Saxena, 1997 #1001; Khare, 2000 #4355}.

<sup>33</sup> FRA provides an opportunity, as all JFM areas should be claimed by the community under section 3(1)(i) of the Act, as recommended in section 8.6.1 of the paper.

is often divergence of interests over how to manage commonly held resources, between women, graziers, firewood headloaders, NTFP collectors, and those looking for profits from commercial timber/softwood production. Consequently, elite capture actively hurts these marginalised groups {Correa, 1996 #938; Sarin, 1995 #993; Sundar, 2001 #3643}. Moreover, as long as community participation is seen as a means to a narrowly defined end, viz., increasing tree cover, FDs often find it convenient to allow elite capture, and in fact to actively use the elite to achieve these objectives while bypassing true participation, which is a difficult and messy process.

- g) JFM has often led to the undermining of existing (more autonomous) community forestry institutions, such as Van Panchayats in Uttarakhand and informal community forestry in Orissa {Sarin, 2003 #999}. This is because JFM provides a means to greater control by the FDs in areas where hitherto they had not been able to exercise control.
- h) JFM does not have any support in the law, as it is (even after 20 years) being run as a programme under executive orders (Government Orders or Government Regulations).<sup>34</sup> As a result, there is limited tenurial security for the local communities (as their MoUs are for 5 years and in practice may get rescinded any time without due process) and communities that are interested in managing their forests have no way of forcing the FD to grant them JFM status or to deliver on its commitments in the 'joint' arrangement {Upadhyay, 2003 #5548}. The solution suggested by the MOEF (vide its circular dt.Feb 21, 2000) that the JFMCs may be registered under the Societies Act does not solve the problem.<sup>35</sup>
- i) The creation of Forest Development Agencies has further compounded the problem of lack of autonomy for village-level bodies, as they are called federations of JFMC committees but the President and Secretary are both forest officers, and they simply act as a conduit for channeling central funds.{Ghate, 2008 #3639;Springate-Baginski, 2009 #4148}

A larger issue that both JFM and most of its critics have missed is the problem of cultivation (some of it may be several decades old) by forest-dwellers inside demarcated forest areas. While generally the so called 'encroachment' issue was skirted on the ground, in some locations the elite joined hands with the FD through JFM to 'evict' the 'encroachers' {PUDR, 2001 #985}. In some other places the elite themselves encroached vast areas of forests. Subsequently, the Supreme Court orders and their interpretation by MOEF led to a spate of evictions in 2002 {PUDR, 2002 #5705}, which is the genesis of the FRA. At the same time, the opposite is also true: there are rights already recognized in the law, which again JFM has not taken into consideration, leading to either distortions or conflicts.<sup>36</sup>

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<sup>34</sup> Even in states such as Karnataka where the state forest Act has been amended to allow space for JFM, the rules have not been passed and/or the JFM committees have not actually been recognised under this amended section.

<sup>35</sup> Registration under the Societies Act only ensures that the JFMCs are recognised as a legal entity. But the major issue is that since JFM operates under executive orders, the communities do not have tenure security (because their rights to the land and the products are only given via an MoU, not under any Act) nor the ability to force the opposite party (the FD) to discharge its obligations under the MoU, it is just a civil contract, not an obligation under a specific Act on which a writ petition can be filed if needed.

<sup>36</sup> In Uttara Kannada district of Karnataka, by ignoring the pre-existing *soppinabetta* privileges granted to betelnut cultivators, the JFM programme ended up increasing the disparities in the village as the betelnut cultivators also took benefits from the JFM area while retaining their individual *soppinabettas*. In Madhya Pradesh, the *nistaar* rights have often been

Eco-development in PAs: In parallel, the World Bank supported programme for Eco-Development of Protected Areas was launched. The name is misleading, since while resettling forest-dwellers from inside PAs to outside, it focused on reducing the 'pressure' of PA-fringe or inside communities on the PAs through firewood plantations and formation of SHGs, etc. In some cases, the initiative of local foresters has led to community involvement in eco-tourism and in anti-poaching measures. In a number of cases the project also helped in greater dialogue between the PA authorities and local people. But there was no attempt to create a greater say for PA-resident or PA-fringe communities in PA governance, or give them a right to eco-tourism, or to address their forest product needs and livelihood needs comprehensively. This is also true of the more widespread Ecodevelopment scheme that MoEF has run as part of its PA management budgets.

In short, neither JFM nor Eco-development has sought to change the system of forest governance to make it fundamentally reoriented towards local communities and towards recognizing their *rights* to (and knowledge of) the use and management of forests, in an integrated manner with achieving conservation objectives. Rather, these programmes were largely conceived of and implemented as tools for getting some local participation in pre-defined goals of conventional silviculture or conservation by extending some concessions or offering some wage labour benefits.

The larger problem of improving accountability of the forest managers to the actual users remained. The view that forests are national property often worked to the detriment of the local forest dwellers. Although there are valuable lessons to be learned from the JFM experiment, there has been, for instance, little independent and transparent assessment of JFM by the MOEF or any state, nor a serious engagement with its critics.

Finally, the question of forest conversion to non-forest uses has remained outside the ambit of narrow discussions on forest management. Again, because customary rights have generally not been recognized and the rights given under JFM are not statutory either, there is no question of consulting communities when the rights are taken away as a result of forest conversion. Even the Supreme Court, in the context of the Net Present Value (NPV) payments for forest diversion, refused to accept the recommendation of its own committee on NPV that local communities should receive a significant fraction of this amount, saying that the forest does not belong to local communities but to the state.

#### **8.4 FRA and forest governance**

##### **8.4.1 Positive Contributions**

The FRA has, for the first time in independent India addressed the question of community ownership of MFPs and rights in and management/governance of forests at a legislative level. As summarized in Chapters 2 and 3, although the implementation of the FRA has tended to focus on individual rights to cultivation and settlement, in fact the FRA makes significant contributions towards changing forest governance from being exclusively state-centred to being much more community-centred and democratic.

- At the outset, by settling eligible individual land rights of those who have been historically cultivating or living in forest lands, the FRA tries to break the 'encroacher'-eviction-conflict cycle once and for all. This would in the long run

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granted to communities that are too far away from the forest to be able to contribute to its protection and management, leading to conflicts with those who are closer and are willing to get involved in management.

provide basic land tenure security to forest dwellers, enabling them to then focus on the question of how to manage and protect the uncultivated landscape falling within the community forest resource.

- Most important, the FRA provides a statutory procedure for recognizing community forest resources and community forest rights.
- Equally important, the FR Rules provide a statutory basis for protection of CFRs and other forests where rights are recognized under FRA by a Gram Sabha-based committee.
- The FRA creates room for co-management of protected areas where communities claim CFR.
- Section 5 of the FRA and MOEF guidelines for the FRA give communities a say in the conversion of forests they use into non-forest uses.<sup>37</sup>

#### **8.4.2 Shortcomings**

The question of forest governance and the role of local communities is enormously complicated to begin with. The FRA attempts to address this question along with that of land rights of forest dwellers. The FRA was finalized through much negotiation and last minute changes, and the rules formulation again went through a tortuous process. As a result, there is insufficient detail on some aspects of community-based forest governance.

##### **A) In the context of assigning and managing CFRs**

- There is some confusion as to whether the community has rights to manage the entire community forest resource (as defined in section 2 of the FRA) or only to protect it (with management rights under section 3(1)(i) to those areas only within the CFR that had been traditionally protected). The latter interpretation not only contradicts the Preamble of the Act, but would also undermine the idea of linking use rights to management responsibilities. (see Chapter 4, para ). MoTA should clarify this issue.
- The needs of those who have been customarily dependent on forests as residents of the village and members of the Gram Sabha but will not qualify as forest-dwellers under FRA have not been explicitly considered, though the Rules do provide for a collective determination of forest rights and require that the Gram Sabha share information on such rights with all those who have a stake in the forests claimed.
- As per the FRA, the smallest unit for constituting Gram Sabhas in non-PESA areas is the revenue village. This is often too large and heterogeneous a community (both in terms of forest dependence and social cohesiveness) for forest management. (see Chapter 2, paras 3.1 and 5.1para).
- Pre-existing forest use rights are recognized, but no clear procedure is currently provided for reconciling them with those granted under the FRA, where these pre-existing rights may conflict with new ones or with the goals of sustainable use and conservation, and of fair access.

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<sup>37</sup> This follows from Section 5 which empowers Gram Sabhas and rights-holders to protect forests in which they have rights, regulate uses within it, and also protect adjacent watersheds etc. It also follows from the MOEF order of July 2009 requiring that, where the FRA has been implemented, the written informed consent or rejection of the forest diversion proposal by the Gram Sabha must be included along with the application for clearance under the Forest Conservation Act 1980.

- The danger of elite capture or otherwise undemocratic functioning of the Gram-Sabha based committees set up under Rule 4e remains, as there is no specification as to how the voice of marginalized communities (women, PTGs, STs, and poorer households in general) will be heard in Gram Sabha meetings or in the committee. It is also not clear as to whether the Committee would be elected or constituted for a term, or what other processes would keep the committee accountable to the GS.
  - The instruments and systems through which empowerment and executing responsibilities (outlined under section 5) will happen are not clearly specified.
- B) The issue of regulation: Rights, powers, and responsibilities given to local communities on this scale must be accompanied by clarity about how those responsibilities will be discharged, and what happens when they are not discharged. Specifically, the FRA does not answer the following questions:
- a. Who defines sustainable use and conservation in operational terms<sup>38</sup>? Who ensures that the sustainable use and conservation mandates of the Gram Sabhas are met?
  - b. Who ensures that the requirement of internally democratic and fair governance within the Gram Sabha is met?
  - c. Conversely, if any higher level bodies are involved in the above, how will their accountability to the Gram Sabhas be ensured?
  - d. How will the accountability of existing forest governance institutions towards the Gram Sabha be ensured?
- C) In the PA context: After defining Critical Wildlife Habitat and laying out a procedure for its implementation, the FRA is silent about such CWHs or for that matter the rest of the PA, or other PAs where no CWH is declared but in which communities claim rights, would be managed.

#### **8.4.3 Areas of confusion and conflict with previous laws and procedures**

Since the FRA is not being implemented in a vacuum, there are many questions about what happens to prior laws, structures and arrangements of forest management and governance. These are listed below with a view to generating discussion, but it is not possible for the Committee to provide answers to all of these.<sup>39</sup>

##### ***At the village-level:***

- *What is the status of forest management committees set up earlier such as JFMCs, Eco-Dev committees, VPs, or self-initiated community forest protection institutions?*
- *What is to be the legal category of the forest land being managed by Gram Sabhas?*
- *How to select a management committee and its chairperson who would be authorised to write to government on behalf of the gram sabha? What should be its relation with the village panchayats, especially in a single village panchayat?*

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<sup>38</sup> The term 'sustainable use' is defined in FRA as per the Biological Diversity Act.

<sup>39</sup> This section is partly based on: 'Clarifications needed on provisions of FRA vis a vis other Acts', a submission to the MoEF/MoTA FRA Committee by Vasundhara, Samrakshan Trust, Foundation for Ecological Security, Environment Law and Development Foundation, Kalpavriksh, and WWF-India

- *What rules should govern the constitution, term, composition and functioning of the the new community forest management committee elected by GS?*
- *What is the linkage of the new forest management committees with Panchayati Raj Institutions (PRIs), if any? In PESA areas? Vis-à-vis Biodiversity Management Committees? Etc.*
- *Will villagers alone be able to prevent all kinds of offences in the forest? If not, how will they get additional protection support and from whom? Which offences will be dealt by the Forest Department?*
- *How to distribute benefits between protecting and non-protecting families, or tribals and non-tribals within a village, or locals and nomads?*
- *How to resolve inter-village conflicts, especially between a village that has FRA rights, and a remote village that has collection rights under previous settlements?*
- *What is the balance of power between Forest Department and communities? Who takes action against those who break village consensus, when the village itself cannot?*

**Issues at the middle-level:**

- *What is to be the status, structure, and role of FDAs?*
- *What happens to micro-plans, Working Plans and Management Plans? What changes are required in these operational plans?*
- *What is the status of nationalised and non-nationalised NTFPs? (e.g., tendu patta?)*
- *What will be the status of MFP cooperatives, or LAMPS & their federations? What happens to state laws that have nationalized MFPs?*
- *What would be the status of timber-sharing arrangements made under JFM?*
- *What fiscal powers and roles will the forest management committees have?*
- *In Protected Areas, what rules will govern the exercise of CFRights? What would be the role of GS?*
- *Who would have rights to manage eco-tourism, including in PAs?*
- *Who takes care of forest areas outside community managed areas and for what purpose and how? Do the colonial categories of Reserve Forest and Protected Forest make sense in the new era of conservation and people-oriented sustainable use?*
- *What changes are needed in forest and wildlife governance institutions and mechanisms at state levels?*

**Issues at the national-level**

- *What changes in funding mechanisms, policies regarding use of REDD+ and other climate-related money, CAMPA funds, etc are required?*
- *How does one reconcile the FRA with the Indian Forest Act, National Biodiversity Act, Forest Conservation Act, Wild Life Act, PESA, etc.?*

- *What changes in structure and staffing of existing agencies from local to national-level relating to forest governance are required? What changes in training, orientation, mindsets?*
- *What changes are needed in national decision-making institutions and mechanisms relating to forests and wildlife?*

It is worth noting that many of the village-level and middle-level issues had been flagged in the early 1990s when the JFM-related orders were being framed by the state governments.

#### **8.4.4 Summary: the need for re-thinking forest governance**

The National Forest Policy of 1988 changed goals and priorities of forest management, admitted that the local forest-dependent community is a legitimate stakeholder, and recommended community participation in forest regeneration. Subsequently, there has been a clearer shift in state policy towards recognising that rural communities have the **right to manage and govern** their immediate environment, as seen by the 73<sup>rd</sup> Amendment of 1992, the PESA, and statements made in the National Conservation Strategy, National Environment Policy, and the National Biodiversity Action Plan.

The FRA 2006 takes first national-level legislative step to recognize this right and setting in motion this process of devolution and democratization in the context of forest use and management. The FRA has not addressed all the issues that emerge out of such a restructuring of rights at the local level. These issues need to be addressed urgently. In doing so, the lessons from JFM, community forestry, and eco-development that have emerged in the last two decades must also be integrated. And it is clear that the issues are not limited to the recognition of community rights and setting up of institutions at the community-level, but also involve restructuring institutions and arrangements at higher levels to ensure compatibility with lower level structures, transparency and accountability.

#### **8.5 Conceptual basis for re-thinking about forest governance**

We spell out here what we believe should be the basic goals and principles of a restructured forest governance system where people are dependent on forests. The specific recommendations as regards the working of governance systems are discussed in the next section.

##### **GOALS**

- *In forests that are used by communities, 'ensuring livelihood needs' become the priority with sustainable use and within a conservation framework.*
- *In the face of multiple interests in forest lands, even within local communities, the livelihood needs of the neediest and marginalized must be met first. Access to forests must be fairly distributed.*
- *Democratization of forest governance in areas where rights have been recognized under FRA must be an additional goal, not just a 'means' or 'instrument'.<sup>40</sup>*

*Conservation of wildlife remains an important objective of governance and management.*

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<sup>40</sup> This means that a system which achieves increases in forest cover or even increases in village-level incomes without following a democratic process would not be sustainable in the long run. It also means that people who have rights under FRA have a say in their conversion or alienation.

## **PRINCIPLES & ASSUMPTIONS**

- *In the context of day-to-day forest use, democratization has to include devolution to the community of users. In other cases, where users are distant or occasional, democratization means increased transparency and accountability of bureaucratic structures that may be doing day-to-day forest management on users' behalf.*
- *Democratic decentralization of governance requires operational autonomy for the lower-level entity (such as community) within a transparent regulatory framework.*
- *The area for which management responsibility is given to rights-holders must broadly match their resource use areas, to avoid externalization of pressure onto other (unprotected) forests. Conversely, distant groups cannot be given unabridged rights to the community forests.<sup>41</sup>*
- *Safeguards against elite capture at the local level are necessary.*
- *Monitoring and enforcement of the sustainable use and conservation norms by government, especially in the early stages, will be necessary.*
- *State support for forest protection, conflict resolution, technical know-how (e.g., technical support for multiple-use forestry, rather than timber-oriented forestry), and marketing will still be required by many communities in any decentralized system.*
- *Local forest governance and management must be nested within larger landscapes, enabling sustenance of ecosystem functioning, corridors for movement of wildlife and genetic flow, and other functions and benefits that are external to the community.*
- *Accountability (downward and upward) of all structures (whether at village-level or higher-level) is essential.*
- *Pre-existing systems of community management may be accommodated, but those systems or pre-existing rights that do not meet norms of equity and justice (such as fair access or sustainable use or gender participation) must be modified.*
- *Often a forest patch does not have a well-defined and recognised user-group, and may admit the rights or needs of the entire population of that region or the entire forest area. This type of 'right-regime', which makes forests open-access lands, is not conducive to successful protection, as rights of contiguous villages protecting forests may come in conflict with those of distant villages, not protecting but still having rights to enjoy usufruct. As far as possible traditional or new arrangements to accommodate such rights or needs should be facilitated. Where this does not work, one solution could be to modify old settlement rights with a view to make these amenable to FRA provisions. This is easier said than done, as changing customary or legal rights would be perceived as an unpopular step and may face political hurdles.*

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<sup>41</sup> As has happened with nistaar rights in MP and was the case with Canara Privileges in Karnataka.

- *The precise distribution of control and management between the state and the community/gram sabha should depend on a number of situation-specific factors, such as the ease with which control groups can be formed and can retain cohesiveness. The process of sharing decision making and management of forest lands will then proceed at different paces in different conditions. In the initial stages the community institutions are often at a low level of formation, and therefore the forest officials may be justified in not diluting their basic responsibility of protection. The gram sabha may also look forward to getting support from the Forest Department in booking offenders, negotiating with other villages/departments etc. However, FD should gradually withdraw as the capability of the community improves.*
- *Increasing the organisational capacity of the village so that their management is both equitable and effective is not an easy task. It takes time to mobilise a village community into a coherent and empowered group and local officials must allocate sufficient time and facilitate this as early as possible. Greater transparency within village groups—between the local leadership and the wider group membership—is essential to ensure marginalised groups benefiting from participatory forest management.*
- *While increases in economic returns from forests may be necessary in order to meet enhance the livelihood status of forest-dependent communities and even to get them involved in forest governance, pouring large external funds into community-based forest management right in the beginning without achieving empowerment and active participation of the poorest has proven to be counter-productive and must be avoided.*
- *The shift to community-based management is a slow process, requiring changes in rights, responsibilities, structures, and attitudes, and during this period government must play an active role in ensuring that the interests of the poorest are safeguarded, and no elite capture takes place.*
- *Any national-level framework must allow for regional variations and adaptability within overall goals.*

On the basis of the above goals and principles, we propose a restructured system of forest governance for areas where local communities have traditional access. While emphasizing the needs and rights of local communities, the new system of governance would be nested within larger structures of coordination, regulation and support by government to ensure conservation and sustainability.

### **8.6 Broad contours of community-based forest governance**

We shall now outline the broad contours of how the long-term governance of forests that are under the use of local communities may be carried out. We reiterate that these contours are not meant to be a blue-print, and will definitely require further clarification as well as state-specific adaptation.

At the outset, given the unevenness of the forest governance landscape, it is important to clarify how and where our recommendations apply. We believe that, if the CFR provisions are seriously implemented, the forested landscape accessible to the people will, in a few years from now, be covered by 4 major situations:

Situation A) Where CFR claims have been accepted<sup>42</sup>, and where section 5 of the FRA is deemed to be applicable anyway as a result of other rights claimed under section 3, including section 3(1)(i).

Situation B) non-CFR JFM: Where neither CFR claims have been accepted nor section 5 is deemed to be applicable, even after several years of FRA implementation, but where JFM committees are in existence, indicating some interest in the local population in participatory management. This total area is already 22 million hectares. There may be some overlap with A above, but on the other hand, areas which have been left out of JFM could also get included.

Situation C) Pre-existing Community management systems: Where community management already exists through Van Panchayats in Uttarakhand, Village Councils and other systems in the north-east, Mundari Khuntikattidar systems in Jharkhand, Wilkinson rule areas, Himachal forest cooperatives, and pre-existing informal systems of community management, and where CFR claims are not made despite active facilitation for various reasons, including community preference for their traditional systems.

Situation D) Where neither FRA rights, nor JFM nor pre-existing community management systems are in place, but there is still substantial use of forests by local communities.

Our detailed recommendations for the village-level structures below cover mainly situations A, B & C. Our recommendations on MFPs given in the next chapter as well as state- and national-level issues discussed here apply to all four situations, as the entire forested landscape moves towards greater democratization and greater emphasis on both livelihood security and sustainable use/conservation. Our recommendations for restructuring governance in Protected Areas and Critical Wildlife Habitats (which overlap with situations A, C & D) are given separately in the next section (section 8.7)

### **8.6.1 Village-level structures**

*(Note: the term 'Gram Sabha' throughout this chapter is used in the sense of the village assembly at the individual hamlet or settlement level, for PESA areas, and the revenue village level for non-PESA areas).*

FOR SITUATION A:

- Where management claims are accepted under FRA, the management committee formed under Rule 4(e), to be named as Community Forest Resource Management Committees (CFRMC, or simply MC) should carry out functions on behalf of the Gram Sabha.<sup>43</sup>
- If JFMCs exist in these villages/hamlets, their functions and resources (forest area, funds) should be transferred to the corresponding CFRMCs (after due process of figuring out jurisdiction, management of funds, etc.). If there are other existing arrangements or institutions (such as Biodiversity Management Committees) and if the Gram Sabha so resolves, these can be considered as CFRMCs for the purposes of the FRA, with appropriate changes to meet criteria of equity and representation suggested below.

#### Internal structure

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<sup>42</sup> We assume that, as recommended in Chapter 4, rights in community forest resources will include both protection and management rights.

<sup>43</sup> As recommended in Chapter 4, the Gram Sabhas should be constituted at a scale that makes community management feasible, including where necessary at the hamlet level.

- MC composition: min. 50% women; president should be STFD or OTFD, or where neither are present, a forest-dependent person. MC is an elected or democratically constituted body of Gram Sabha, answerable to it on a regular basis, and should be re-elected or reconstituted every 5 years.

#### Rights, responsibilities and powers

- Gram Sabha is responsible for ensuring fair access to rights holders who have rights under the CF Rights, and provide reasonable access for meeting needs of other members of GS as well as those of external rights holders such as nomads.
- GS is primarily responsible for ensuring sustainable use, conservation and protection, for which it will be suitably empowered and will have access to additional support (see below).
- GS is also responsible for a transparent process (upwards and downwards).
- GS has powers to make rules regarding use, harvesting, protection, regeneration, etc.
- MC office-bearers are vested with powers to prevent forest offences and penalise violators as given to Van Panchayat officer bearers in Uttarakhand.
- MC is authorised to issue transit passes for transport of forest products harvested within its area of jurisdiction as per its GS-approved management plan. These transit passes will be valid for transport within the state boundary.
- Gram Sabha may generate revenue, and receive and spend grants for its forest related activities (MC will do this on GS behalf), but is not permitted to make profits for the personal gain of its members.
- GS has the option of merging MC with the Biodiversity Management committee, or any other existing natural resource-related committee existing in the village.
- If any proposal is submitted to the government for conversion/diversion of any part of the community forest resource to non-forest uses, the free and prior informed consent or rejection of the proposal by the Gram Sabha is required to be obtained in writing by the proponents. Even for areas that fall outside the area managed by the Gram Sabha but in which members of the GS have forest use rights, or for adjoining catchments area, water sources and other ecological sensitive areas, such consultation is mandatory.<sup>44</sup>
- Funds will be managed by the MCs with full transparency, and this provision will be extended to all other community forest governance/management institutions under any of the situations given above including Van Panchayats (currently it has been taken away from VPs).
- Timber rights will be limited only to domestic needs, unless specifically recognized under sections 3(1)(j) or (l) of the FRA. Over and above this, any timber-sharing arrangements that were prevailing under the JFM programme will continue with the permission of Gram Sabha.
- GS should be encouraged to prepare community forest management plans, and facilitation and technical input should be offered by the higher level agency/body (see below). No separate working/management plans to be

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<sup>44</sup> This will require amendment of the Forest Conservation Act or its rules.

prepared by the FD for these areas (but see below about landscape-level coordination).

#### FOR SITUATION B:

Where JFMCs exist today and the gram sabha/community wishes to manage forests directly, it should apply under FRA to get its rights recognised under law. Such areas then switch over to situation A described above. In case the gram sabha or the community is not keen to take over management under FRA, or management claims are not accepted under FRA, the government should take *suo moto* action to place JFMCs under the Gram Sabhas. This will ensure that the members of the JFMCs are democratically elected by the Gram Sabha, who should have the authority to make changes in the membership of the committee. We expect government to learn from the past experience, as discussed in section 8.3, and make JFM more democratic and participatory, giving highest priority to the livelihood needs of the poorest.

#### FOR SITUATION C:

While regional and historic specificity of the pre-existing community forestry arrangements must be allowed, and the level of autonomy for these institutions must be at least the same as given to CFRMCs, if not more, some modifications in their institutional structures may be required where clear deviations from the broad principles laid down earlier are observed. (For instance, Van Panchayats do not explicitly provide for equal forest rights to the landless, and do not provide for adequate representation of women in governance.)

The rights, responsibilities and powers of such institutions will be similar to those of CFRMCs under Situation A, listed above, with appropriate local-level modifications for site-specific conditions.

Such areas can get legal backing (if they do not already have it) as any of the following categories: Village Forests (under an amended IFA which provides VFs autonomy similar to CFRe under FRA), Community Reserves (under an amended WLPA which provides such areas similar autonomy), Biodiversity Heritage Sites (under a suitably amended Biological Diversity Act which provides such sites similar autonomy, and using with appropriate modifications the Guidelines on BHS issued by the National Biodiversity Authority), or various categories in relevant state laws (such as the Village Council status in Nagaland). Some such areas may also not want to get legal backing, in which case the government must provide other forms of recognition and administrative support if requested.

#### **8.6.2 Role and duties of the Forest Department (common for A & C)**

- FD will be responsible for providing Protection support and Technical support to the Gram Sabhas.
- FD will be responsible for and empowered to carry out Forest Monitoring, i.e., the extent of compliance with sustainable use and conservation regulations in the community-managed areas. It will also be responsible for taking action on any violations.
- Offences for which GS can take summary action in community-managed areas, such as unauthorized felling or encroachments, will be specifically identified.
- In areas where communities exercise rights, such as MFP rights under section 3(1)(c), but are not responsible for their management, the FD will be responsible for proactively facilitating the exercise of these rights.
- FD will continue to exercise additional powers to implement regulatory provisions of the Wild Life Act and other state-level Acts.

- To enable such monitoring in a transparent manner, the FD will collect baseline data when management rights are transferred and carry out periodic monitoring, with collaboration of the Gram Sabhas.
- Wherever area under category A & C is large, FDs should create a new Community Forestry wing, replacing both the Social Forestry and the JFM wings. This wing should comprise officers with the technical capability and inclination to work as facilitators and technical support for community-based forest governance. Training and orientation programmes starting from the IFS/SFS/Ranger training institutions to in-service courses, need to include these new components and orientation.

### **8.6.3 State- & National-level structures and processes (common to all A, B, C, & D)**

- State- and National Forest Governance Councils: Forest Rights Councils (similar to NREGA Council) should be constituted at the state- and national-level. These Councils, chaired by the respective ministers, will include FD officials, representatives of forest committees, and representatives from PRIs, civil society and academia. These Councils will provide direction to overall forest governance in the state, including by overseeing monitoring, state/national planning, and regulation. The Council should also suggest the setting up of appropriate district level committees with public representation for monitoring and guiding forestry activities at the district, sub-district, and village levels.

### **8.7 Restructuring governance in Protected Areas and Critical Wildlife Habitats**

In the case of existing or future protected areas (other than Community Reserve, i.e. National Parks, Sanctuaries, Tiger Reserves, and Conservation Reserves), the following changes in governance are required in keeping with the spirit and letter of the FRA, of the principles of decentralization and democratization articulated above, and of India's obligations under international agreements such as the Convention on Biological Diversity. These also flow from the analysis presented in Chapter 7 on PAs and CWHs.

- In all PAs where community forest rights are claimed and vested, communities will become a rightful part of protection and management. This will include Critical Wildlife Habitats (under FRA) and Critical Tiger Habitats (under WLPA) keeping in mind limitations imposed by Section 4(2) of FRA. This would entail a joint or co-management institution of equitable decision-making involving the forest department and GS committees.
- Powers, responsibilities, and functions relating to PAs need to be specified and coordinated between GS committees and the forest department, the precise details of which need to be worked out by a joint task force of MoEF and MoTA.
- In all Protected Areas, local communities (especially those whose rights have been curtailed) must be given first claim of all eco-tourism franchises, a share in the revenues from park fees, and proactive support for building their capacities to run high-quality eco-tourism ventures.
- For every district where such community based or co-managed PAs exist, an additional Honorary Wildlife Warden will be appointed who is from one of the GS committees falling within or adjacent to a PA (this is in addition to or replacing the HWLW already appointed under the WLPA). This HWLW (one

per district) will be a member of the proposed district-level committee. If necessary, an amendment to the WLPA to this effect may be made.

- The proposed district level committees (section 8.6.3 above) will also have a mandate to oversee and ensure conservation objectives in protected areas.
- Such a shift in governance needs to be accompanied by robust processes of dialogue and trust-building, building capacity, and monitoring, to ensure that conservation objectives do not suffer.

### **8.8 Moving forward: Legal, administrative, and fiscal changes required for implementation**

The above recommendations regarding structural changes will require enormous preparation as well as a number of supportive activities. Some of the important ones (in addition to those recommended in relation to specific aspects of the FRA in Chapters 2 to 7) include:

- Individual states must initiate *suo moto* reconciliation of pre-existing forest rights with new CFR arrangements.
- Individual states must also initiate reconciliation/correction of land records to clarify current position, pre-existing rights, and set up procedures for incorporating upcoming changes. These issues have been pending for several decades in most states. In both these cases, MOEF and MoTA can play a proactive role by providing technical support and funds.
- For addressing situation A (as described in 8.6), amendments to FRA or its Rules if necessary may be done to clarify the scope and legal category of the CFRs, the internal structure of the CFRMCs, and the integration with village-level and district-level bodies.
- Amendments are also needed to the WLPA, to provide for the community-based, and joint management institutions mentioned above, to provide for the current 'settlement of rights' process by the process of recognition of rights mandated under the FRA wherever applicable, and to otherwise harmonise it with the provisions of the FRA while retaining its focus on conservation.
- Clarification is needed on the relationship between the FRA and the Biological Diversity Act, in particular about (a) the rights, powers and responsibilities of Gram Sabhas over forests under Section 3(1)i and Section 5, and where relevant habitat under Section 3(1)e, which would cover the biodiversity of these areas; and (b) the relationship of Gram Sabha committees with Biodiversity Management Committees. Any access proposed by State Biodiversity Boards or the National Biodiversity Authority, to biodiversity in such forests, would need to be in accordance with the management and/or protection and regulation provisions set by the Gram Sabhas or their committees. If necessary an amendment may be made in the Biodiversity Act to this effect.
- A significant fraction of government and other funds should be provided for strengthening the monitoring and technical capabilities of local communities and of the FD for community-based forest orientation, through direct training, through R&D on multipurpose forestry, through experimenting with various participatory planning models, etc. Such funding should be under the supervision of state and district committees, and be completely transparent to the public. Funding should be preferentially or equally available to areas under CFRMCs and other community institutions, as compared to state-managed or JFM areas.

## **8.9 Internal changes needed in the forestry<sup>45</sup> set up**

### **8.9.1 The context**

Almost all programmes in forestry are implemented by the Forest Department. All senior positions in this Department are manned by officers belonging to the Indian Forest Service (IFS). Yet no systematic study has been undertaken which would analyse the strengths and weaknesses of the IFS in particular or the forest set up in general. In the past the evaluation studies in the forestry sector have concentrated on looking at the physical side of afforestation - how many trees planted and where - but have generally ignored analysing the administrative structures, governance, and internal culture of the department, which are so essential for long term and sustainable translation of policies into action.

At the outset it must be stated that a number of IFS officers, despite difficult conditions, are achieving outstanding results without expectation of any reward or encouragement, and sacrificing enormously in the bargain. There is need to give wide publicity to the excellent work being done by them, so that they could be the role models for others, especially the new entrants. Perhaps one should institute annual Awards for the best officers at various levels to recognise their contribution to forest/wildlife protection and securing justice for the downtrodden.

At the same time it must be admitted that the forest service in India is passing through a grave crisis of identity and role definition. The service is also losing its credibility today. Forest service baiting has acquired an acrimony as never before and it is condemned not only from without government by the environmentalists, but also from within by the IAS. Some environmentalists or human rights activists have even recommended its liquidation! But it is not only from outside; even from within, though not so publicly, a number of officials have been advocating the need for serious introspection. Surely something has gone wrong seriously for a service that should be known for its discipline and commitment to forest conservation.

A sensitive and responsive forest service is one of the essential ingredients of natural resource management system and one of the best guarantees for effective conservation of forest lands. Within the forest service, the IFS are incharge of all forest development schemes, and at a very young age they are called upon to shoulder leadership responsibilities in the forest divisions. A new dimension has been added to their role due to the recent shift in the Forest Policy through FRA towards community management. While it should always have been the case, today in particular an IFS officer should not only be a competent and skilled technical forester, but he has to be an active spokesman for the marginalised people: the *Adivasis* (tribals), other forest dwellers, and amongst these especially women, if forest management by gram sabhas has to have any meaning. The tasks and challenges which face forest administration are so gigantic, and demand such close cooperation and interaction between the people and the foresters that it is not enough to have officers with relevant knowledge and skills, which need to be continuously updated, but the will to work with the people and perform is essential. In other words, if an IFS officer lacks sensitivity and enthusiasm for collaboration with the forest dwellers, he/she cannot make an effective contribution, and will become a burden on the system. One needs to remove the false notion from the minds of young forest officers that all forest dwellers are encroachers or parasites on 'our' forests! Forests are national wealth that foresters are supposed to manage in collaboration with the local

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<sup>45</sup> Though this section is oriented towards IFS, it applies equally to SFS and other systems...changes in mindset, training, etc, are needed at that level also, and all the way to the forest guard.

forest dwellers. This paradigm shift in outlook can only be achieved by good training modules at the IGNFA and refresher/in-service courses at various institutions.

It thus emerges that to carry out the tasks of governance and instil in the forest administration both vigour and vitality the members of the forest service should possess a high morale and professional competence coupled with a proper value system. The image of the entire department is judged by the values pursued by the IFS officers, and the department cannot afford lowering of standards - both of work and ethics - among its top managers.

It may also be added that the decline in the values of the forest service is not only confined to this service, it is rather widespread and has affected all services, including other all-India services. Over the years the entire bureaucracy has become somewhat insensitive and even hostile to the poorer sections of society. There is overwhelming evidence to suggest that with the decline in camaraderie, old civil service norms, and in peer group pressure, the work-ethos and values of many members of the all-India Services have deteriorated considerably, and they have become more pliable and willing to compromise with the unscrupulous elements. Also, there is greater integration now both socially and in terms of group objectives between the members of the all-India Services and the politicians of that state. Many civil servants are deeply involved in partisan politics: they are preoccupied with it, penetrated by it, and now participate individually and collectively in it. Finally, there is an increasing propensity to side with corporate interests, and be open to various kinds of 'favours', including well paid jobs after retirement.

The present culture promotes two kinds of officers. Some play exceedingly safe lest they get into trouble; and those who brazenly defy all controls meant to ensure probity on the part of civil servants, secure in the knowledge that their friends in high places will bail them out if they ever get into trouble. Neither type is suited to the requirements of the society. Officers who are honest and go by the book, or stick their necks out to expose wrong-doing, get transferred so frequently that they hardly get any opportunity to work in the field and get sidelined within a few years of their career! Enormous political pressure is put on officials to ignore or even justify illegal acts. Therefore improving governance has to cover not only the forestry sector, but the entire gamut of state and district administration, particularly the IAS. Here we confine ourselves to discussing the issues concerning the forest service only.

### **8.9.2 Characteristics of the Forest Service**

Some of their characteristics briefly mentioned in the following paragraphs need review and modification through policy changes and training.

**Rigid hierarchical structure** - The forest service has, by tradition, a rigid hierarchical structure and is sometimes referred to as a paramilitary department to enforce rigid discipline. One of the important objectives of training of the IFS is also to mould the trainees into service discipline, which is sometimes interpreted to suppress expression of even professional opinion. The subordinates generally develop the attitude of simply carrying out orders without taking their own decisions in the execution of work. The word of the superior is the final word. Superiors rarely seek the opinion of the juniors. The head of the organisation makes all the decisions and supervises execution. The middle level organisation is very poor and insignificant as a think tank.

**Internal culture** - The internal culture of the Indian Forest Service has thus continued to be hierarchical and authoritarian. Due to training and traditions of the Service, forest officers become so much accustomed to giving or obeying command that find it difficult to adjust and deliver goods when placed in a system where they may be required to work with equals or may not have subordinates to command.

Thus contrary to the requirements of a flexible organisation needed for undertaking forestry work in collaboration with the people, the department is characterised by rigidity. This is re-enforced due to the strict guidelines that are issued from the state office, leaving very little scope for discretion for field officers.

If this is to change, circulars from HQ should be more in the form of guidelines and not rigid rules. Unless their work culture changes, the IFS are more likely to view peoples' committees as their adjuncts and subordinates, to be used at best for protection of forests or collection of information, rather than for promoting genuine partnership. Until senior officers learn to listen to their juniors they will not be able to listen to villagers. Therefore to undertake peoples' participation the IFS officers would require to change their own attitudes first.

**One-way communication** - There is generally one-way communication between the central office and the subordinate offices. The letters/queries originate from the central office seeking all sorts of information from the subordinate offices. There is no system of the feed-back of problems from the subordinate offices to the central office which generally tends to isolate itself from field realities and problems. Visits of the officers in the central office to the field are also not frequent. A system needs to be developed for closer interaction between central office officers and DFOs. The annual meetings of DFOs may be availed of for discussing field problems and their professional solutions; annual meetings usually concentrate on matters concerning budget, achievement of targets, personnel problems, encroachments etc. It may be worthwhile devoting most of the time in such meetings on discussions of professional matters.

**Centralised planning** - The planning is generally centralised at the national or at the State level. Those responsible for the execution of plans feel that they are not involved in planning and the targets are thrust upon them which cannot always be achieved. The field officers feel that they are only to implement decisions taken at higher levels and cannot take independent decisions. The officers at the lower levels often shirk taking decisions at their level because of the risks involved in implementing their independent decisions.

**Declining cohesiveness** - The forest service was known for its cohesiveness which was its most important characteristic and the biggest strength. Earlier, the forestry professionals in a State were all trained at one college and had the sense of belonging to one service. Now it is becoming a compartmentalised organisation breaking into groups within groups. Strong factional feelings have been created in some States because of seniority tussle between IFS direct recruits and officers promoted to IFS from SFS. Conflicts also arise between the interests of IFS and SFS. 'Son of the soil' factor and discretionary approach to decide about cadre and non-cadre divisions add to such conflicts. SFS Officers and Forest Rangers in a state are no longer bound through common 'Alma Mater.' The result is lack of cohesion and discipline.

**Absence of long-term planning** - In the absence of proper long-term planning, the feeling of adhoc working creeps in. Frequent change of leadership in the organisation and the resultant shift in priorities and approach in handling various issues also gives rise to such a feeling. The field officers often complain of confused policies and lack of clear objectives and directions. They consider their job as mere 'order-execution' with a sense of 'no-participation' in the programme. Many a times, the field level officers do not have sufficient understanding of the policies and programmes which they are required to implement. It is the performance of the field level officers which determines the overall performance of the forest organisation. It will be of great advantage if the senior level officers could devote more time in the field than in the

office for guidance of the field officers and to remain touch with their staff and the public.

**Lack of public contact** - The forestry organisation suffers from its traditional lack of rapport with the local population. Not much public contact was required when the forestry organisation concerned mainly with the management of reserve forests. So far as the public was concerned, forestry organisation acted mainly as the policing and law-enforcing agency and in the discharge of these functions, distanced itself from the people. Traditions and attitudes got transferred to social forestry organisation also even though efforts have been made to improve contacts with the public. Increasing pressure of local population on forests, and decline of local community institutions of governance and management of common lands, has further aggravated the conflicts between forestry organisation and the public.

**Research and planning:** The Forest Department is the repository of enormous amount of research and data, and decades of experience in planning. This is an important basis for current and future planning. However, quite a bit of the research has been oriented towards its previous primary role of commercial forestry, and it is uncommon to find holistic studies on forest ecology and dynamics, or on the complex inter-relationships of ecology, livelihoods, culture, and economics that are part of any forest landscape in India. The research is almost never subjected to peer review. At the same time, the Department's attitude to external or independent research, and to civil society involvement in its activities, is generally negative. Local community knowledge has almost never figured in the research and planning. Most planning is done in-house, opaque to outside expertise or peer review; one result of this is that Working Plans and Management Plans have been severely criticised by independent experts. Plans are also often rigid, with no adaptability built in to respond to lessons from the field, or to manage what are essentially resilient, changing ecosystems. One significant change in this is the review of protected area management plans by the Wildlife Institute of India.

**Wildlife conservation and management:** Finally, in the case of wildlife conservation, all the above problems are manifested, some of them more severely. Once again, there are many exceptional initiatives taken by forest officials at protecting and managing wildlife, and indeed many ecosystems would not have survived without them. But these are despite huge systemic constraints. Though wildlife conservation is a specialised task and many officials are being trained to perform it, there is no coherent policy in states to retain such officials in wildlife positions. Nor is there any particular attention by governments to provide the resources and attention needed for this task. Enormous gaps exist in research and understanding of complex ecosystems, and of wildlife other than some large mammals and birds; this is because much wildlife management has been oriented towards megafauna. Grasslands, marine and coastal ecosystems, and so on are not well understood, with the result that many such areas that are under the Department's control are managed with a 'forest' perspective (a classic manifestation of which is planting of grasslands and deserts with trees, ignoring the impacts of this on locally adapted plant and animal species). Monitoring of wildlife has mostly been restricted to the census of big animals, this too with outdated methods and in a publicly non-transparent manner; a situation that is beginning to change with the new tiger census methodologies and the involvement of NGOs in census operations.

Possibly the biggest failure of wildlife protection and management policies, other than neglect of the complexities of ecosystems, is the alienation of local communities living within or adjacent to protected areas. This has created a situation of conflict and tension within which conservation becomes that much more difficult. Some change has taken place with ecodevelopment activities, but as reviewed above, even this has not changed the basic relationship between wildlife authorities and local

people other than in some exceptional situations due to officials stepping out of the box with some innovative activities.

### **8.9.3 Emerging role of forestry administration**

The beginning of the 1970s marks a watershed in forest administration. Until then the foresters were comparatively free from attention of the activist groups (other than the sporadic protests and submissions made by communities in parts of India), and were allowed to pursue their work rather unhindered. All this changed and for the first time forests, foresters and forest administration became the focus of public attention at a widespread and national level. They came under attack by various activist groups and since they were not equipped to face such a situation they could not articulate their side of the story in any convincing manner. This was also the time when the environmental movement started making its presence felt, and interest in forestry grew. Attempts were made to sensitize forestry cadres to new knowledge and new skills through training programmes, seminars and workshops, in areas like soil conservation, rural development, business management, forest economics, wild life management, tribal development administration, information systems and many others. However, the strong and insular IFS tradition was unable to see beyond the woods, beyond its silviculture and management. They knew how to build road bridges but did not see the need or perhaps lacked the skill to build bridges between the forests they managed and the people who lived there. And thus the situation did not improve much. The Government set up IIFM and persuaded several universities to start forestry courses, in the hope that eventually it may start the process of introducing some dynamism in the forestry sector. Unfortunately, it did not help as there was no system of utilising the services of the new graduates from IIFM etc in the department.

To be fair to the forestry profession, the Government's policies both at the centre and in the states have also contributed to the present depressing scenario. It is not the intention here to trace the causes of forest cover losses since Independence, severe and catastrophic as they have been, and the resulting environmental and ecological stresses it led to except to re-emphasise the fact that there has been no consistent policy for forest management, no clear-cut guidelines. The policy has been swinging between two extremes: anti-people and authoritarianism to populism and short-sighted political gains like pandering to the wishes of the electorate at the cost of national interests, which has played havoc with the forest resources of the country. It has been a world-wide phenomenon that in areas and in countries where Governments have been stable, the forest resources have prospered and in times of unstable Governments, the reverse has happened. Forest management requires adherence to long-term strategies under well thought-out policy declarations and any wide swings of the policy pendulum can cause severe upheaval and damage. And the loss of credibility of the forestry service which is still responsible for managing nearly 70 million ha of forest land in the country has added to the all-round confusion.

So far, forestry organisational management and administration have been guided by tradition. Periodic changes brought about in piecemeals lack long term perspective. As mentioned earlier, the age old classical pattern of organisational set up and more than a century old convictions of foresters are proving obsolete and utterly inadequate to cope with the changed role of foresters and forestry in the society. The cadres of ACFs, Forest Rangers, Foresters and Forest Guards are neglected and consequently disgruntled. The average age of the 'foot soldiers' is alarmingly high, and little has been done to make their service conditions better. There had been expansions at top levels for providing avenues of promotion to the top level officers. In IFS cadre, promotions are taking place even before time, but at lower levels there is prolonged stagnation. The inter-departmental equations have been disturbed to a humiliating stage. On the one hand the jack of all trades approach has adversely

affected the technical performance and on the other unplanned piecemeal expansions have resulted in mis-management of all cadres. Designations, financial and administrative powers, hierarchical ladder etc. do not fit to the role being demanded from the foresters.

**Approach towards 'naxalism'** - Many forested districts in Central and south India are facing the problem of naxalism. The relevant states do not seem to have any coherent policy to deal with the issue, and the Forest Dept is also caught in this confusion. Opinion within the state governments is divided whether to treat the naxalite problem as a purely law and order issue, or as a socio-economic problem arising out of neglect of the genuine problems of the tribals. It is in any case a complex problem, not amenable to quick solutions, but Forest Department must decide their own role, specially because many demands and grievances of the 'naxalites' concern them.

What is more worrying is the attitude of the department towards peaceful organisations, often referred to as activists. These organisations purport to fight against corruption of the local administration and organise the tribals and other poor people for right of access to forest resources. One positive effect of their activities is increased awareness of the local people, which can be harnessed in the implementation of FRA. It is ironic that the department is claiming to create awareness in areas where the population is very subdued and lacks confidence to express itself, but shies away from ready-made groups, because they would like to deal with the department on an equal basis. We need to study this, and devise means to promote FRA with the support of activist groups. This is possible only when there is better understanding between the forest officers with activist organisations.

#### **8.9.4 Suggested changes**

In view of the new developments, the responsibilities of the forester in India today are very much different from those before independence and upto the 1980s, and the duties of the forester of tomorrow are going to change and enlarge substantially. To address the issues above, we suggest some broad strategies:

- greater interaction with forest dwellers and ensuring their all-round economic and social development, facilitating their all-round economic and social development, involving them at all stages of planning and implementation of forestry programmes run by the Department, and supporting their own planning and implementation of community-based forestry programmes,
- increasing emphasis on the conservation of forest resources for environmental conservation and for strengthening the base for sustained agricultural production, and water security,
- increasing role of watershed and landscape approach to forestry requiring integrated land management,
- increasing interaction between agriculture, animal husbandry and forestry,
- greater public awareness about forestry and the demand for peoples participation in forestry programmes,
- greater appreciation of the role of forests in environmental conservation and increasing interaction of the environmentalists in forest management,
- more adaptive, participatory and transparent planning processes, based on robust research that is open to independent expertise and knowledge including from local communities,

- increasing focus on understanding and managing complex ecosystems, helping sustain their resilience and adaptability in the face of multiple challenges including climate change, conserving a range of native biodiversity rather than only individual megafauna species, and helping revive/sustain threatened species of both plants and animals
- The mission definition and training curricula of the Forest Service must be radically changed to incorporate the new missions of community forestry facilitation and environmental conservation.
- The 'jack-of-all trades' approach may be replaced by somewhat greater specialization, given the high level but different skills and training involved in each of community forestry, wildlife management, and traditional silviculture. This requires
  - More specialised training in each of the above, and recruitment of staff with corresponding interests and background
  - More stability in postings in each wing, if not creation of dedicated departments
  - The community forestry wing should recruit preferentially from amongst forest-dwellers and women.
- The insular culture must be replaced by openness to external input and criticism. This requires
  - Periodic external reviews of the department by teams including eminent natural and social scientists
  - Performance-based promotion
- Guidelines for carrying out research must be clearly laid out and transparently enforced, encouraging independent research in all aspects of forestry and wildlife.
- Service conditions need to be made more conducive to achieving long-term goals:
  - Top officials must be given a clear tenure
  - Political meddling in postings and transfers must be drastically curtailed.
- necessity to afforest or regenerate degraded and problematic sites on an increasing scale, with an emphasis on native species, and
- changes in the traditional silvicultural practices to suit peoples' and conservation requirements.

The next chapter deals with the last issue in some detail.

## **Chapter 9. Enhancing Livelihoods through NTFPs<sup>46</sup>**

### **9.1 MFPS<sup>47</sup> in PESA & FRA**

Whereas 70 per cent of India's population lives in rural areas, for tribals this is as high as 92 percent. It is well established that most tribals live in forested regions, and their economy is heavily based on gathering from forests. In all about 100 million people living in and around forests derive at least part of their livelihood from collection and marketing of non-timber forest products. This includes in addition to tribals, dalits, other forest dwellers who have not been officially declared as tribals, women, and other marginalised groups. The NTFPs provide subsistence and farm inputs, such as fuel, food, medicines, fruits, manure, and fodder, and are crucial elements of cultural practices. The collection of NTFPs is a source of cash income, especially during the slack seasons. The issue of rights and access to NTFPs and incomes from NTFPs is of great importance to the sustenance and livelihoods for forest dwellers.

Considering this, the central panchayat law for Schedule V areas called PESA directs the state governments in the following manner:

'while endowing Panchayats in the Scheduled Areas with such powers and authority as may be necessary to enable them to function as institutions of self-government, a State Legislature shall ensure that the Panchayats at the appropriate level and the Gram Sabha are endowed specifically with the powers of ownership of minor forest produce.'

As is well known, however, this provision in the PESA has not been implemented. In fact, an MOEF committee set up to provide guidance on how this ownership was to be transferred documents that the ownership is still very much with the state.<sup>48</sup>

The FRA goes several steps further. Section 3(1)(c) of the Forest Rights Act 2006 defines forest rights as inclusive of 'Right of ownership, access to collect, use and dispose of minor forest produce which have traditionally been collected within or outside village boundaries'. It secures individual or community tenure or both. Therefore individuals, communities and gram sabhas having rights under this particular section of the Act will not only have the rights to use but also rights of ownership over MFPs. Moreover, the FRA contains a clear definition of "minor forest produce" that includes bamboo and cane, thereby changing the categorization of bamboo and cane as "trees" under the Indian Forest Act 1927. However, rights under the FRA are available only in such cases that are formally recognised by the district administration (which are so far unfortunately very few, as discussed in the earlier chapters), whereas no such individual applications are required under PESA for the Schedule V areas.

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<sup>46</sup> We recognize that the FRA has given a definition of MFP in section 2(i) that includes "bamboo, brush wood, stumps, cane, tussar, cocoons, honey, wax, lac, tendu or kendu leaves, medicinal plants and

herbs, roots, tubers and the like". It is not entirely clear whether this includes firewood and grass. For the purposes of this chapter, we include firewood and grass in MFPs and use the term interchangeably with NTFPs, as they are as important for forest-dweller livelihoods as other MFPs. Nevertheless, our main focus is on the marketed MFPs, as they are tied to income generation for the collectors.

<sup>48</sup> Saxena, A. K., 2007, "Report of Committee of Officers on Issues relating to Minor Forest Produce In PESA states", Ministry of Environment and Forests, Government of India, New Delhi.

Although section 4 of PESA prohibits the State Legislatures from passing laws which are inconsistent with PESA, in actual practice states have openly violated the specific PESA provisions. For instance, Andhra Pradesh has given ownership rights to the *Van Suraksha Samitis* (VSS, forest protection committees, which are different from gram sabhas) with respect to all nonwood forest products (NWFPs) for which Girijan Cooperative Corporation (GCC) did not hold the monopoly rights. The NTFP Policy of 2000 in Orissa restricts the *Panchayat's* control over minor forest produce in reserve forests. It says that the *Gram Panchayats* shall not have any control over minor forest produce collected from the reserve forests whereas the PESA, in its spirit, sought to extend ownership of forests to any forest located in the vicinity of the village that the people had been traditionally accessing. In other states too almost all powers have been made subject to rules/ further orders "as may be prescribed by the State Governments".

Despite these limitations, it needs to be stressed that providing ownership in itself is not enough. These legal safeguards may not be able to prevent deterioration in the quantity and quality of the gathered NTFPs, or incomes therefrom. Some of the processes that may cause this are; deforestation, preference for man-made plantations in place of mixed forests, regulatory framework, diversion of NTFPs and forests to industries, nationalization of NTFPs, and exploitation by government agencies and contractors in the marketing of NTFPs.

Therefore in addition to guaranteeing that the two laws are implemented in letter and spirit, one would have to address three inter-related issues for ensuring that forest dwellers' livelihoods are supported and enriched by NTFPs:

1. how to increase NTFP production while maintaining sustainability,
2. how to improve access of the poor to NTFPs, and
3. how to maximize their incomes through marketing.

It is important to stress here that while the discussion below focuses mostly on the trade of NTFP, the non-commercial values of such produce are equally if not more important in the lives of forest-dwelling communities. Nothing said below is meant to undermine such values.

## **9.2 Production**

So far the predominant thrust of forestry has been towards growing timber, which results in the removal of all the material which could serve gathering needs. This calls for a modification of the existing silvicultural practices, not so much to achieve high forest as to restore to the forests an admixture in which a sensible balanced level of vegetation would be available to meet the gathering needs.

Norms for silvicultural practices were developed in times prior to the current scenario of high human and cattle pressures, and must now be adjusted accordingly. If the national objectives have changed to prioritise people's needs, there must be an accompanying change in silvicultural practices and technology. One requires a complete reversal of the old policies, which favoured commercial plantations on forest lands, and trees for consumption and subsistence on non-forest land. In many states the practice of cutting down sal forests to plant teak in forest lands is still continuing, against which there have been regular protests by the forest dwellers.

"Scientific" forestry should therefore mean that environmental functions, wild fruits, nuts, NTFPs, grasses, leaves and twigs become the main intended products from forest lands and timber a by-product from large trees like sal. The reverse has been the policy for the last 100 years. Although after the advent of the new forest policy in 1988 there have been great efforts to involve forest communities in management, more thought should be given to make necessary changes in the technology and

methods which will be suitable to meet the changed objectives. Here technology is not a limiting factor, as silvicultural systems do exist to maximise production of NTFPs, but these are generally not implemented because of old mindsets and lack of suitable direction from the top.

Policy change is also required in terms of the species that are planted in forests. Forestry programmes need to consider seriously how to regenerate trees that produce valuable NTFPs, such as tamarind, mahua, chaar (*Buchanania latifolia*), and medicinal trees like aonla, karanj (*Pongamia pinnata*), etc. This could also be built into various afforestation programmes being taken up extensively with GOI funds or by several bilateral and multilateral agencies. At the moment, forestry species taken up for plantation generally give preference to commercial species. If one could also plant improved varieties of tamarind, mahua, chaar, medicinal trees like aonla, karanj, etc. and ensure that states promoted these in their plantation programmes, then it would help regenerate the forests, while providing support for the forest dwellers' economy in the long run. Although many afforestation programmes lay down a certain percentage of fruit plants, but it is seen that the survival rate of such plants is quite poor.

One reason given for lack of interest in NTFP species is that these require a relatively long period at the seedling stage, compared with fast-growing timber species, such as eucalyptus, which can be planted out after only a few months. They also mature much more slowly. Forestry staff, who have ambitious targets to meet, are not inclined, therefore, to spend time either on growing their seedlings or on planting them.

The natural regeneration of NTFP based species has also suffered because of forest fires. The deliberate forest fires for increasing the output (qualitative as well as quantitative) of Tendu leaves, for augmenting fresh flush of grass growth, for settling inter village scores or the scores with the local forester, for generating employment through creation of labour requirement for fire fighting during summers when no other work is locally available, for hunting or scaring wildlife, and accidental ones jumping from agricultural fields or from forest floors under mahua trees have generally led to destruction of regeneration, thus causing loss of NTFP products.

In spite of the fact that the declining production of NTFP is a very serious problem for forest communities, as well as for maintaining biodiversity, the regeneration of NTFP has attracted very little official attention. This needs to be contrasted with the policy for agriculture where production issues have attracted a vast amount of funding for research and extension. There are other differences too, between the two sets of production regimes, as detailed in Table 1.

**Table 1: Production regimes for agricultural and forest produce: a comparison**

	<b>Agricultural produce</b>	<b>NTFPs</b>
Annual fluctuation in production	Generally within 20 to 50% of the normal	Could be more than 200%
Who is concerned with increasing productivity	Farmers, seed, fertiliser and pesticide industry, agricultural universities and government.	Almost no-one, it is left to nature. On the other hand, government policies reduced diversity and consequently hurt NTFP production.
Government subsidy in procurement and distribution	Food subsidy was Rs 60,000 crores in 2009–10. This generally benefits surplus farmers and urban consumers. In addition, other inputs such as fertilisers, water and power are highly subsidised.	There is no system of minimum support price. Inefficient government corporations do get some budget support to write off their losses, but the scale is miniscule compared to food subsidy, and benefits do not percolate down to producers or gatherers.
Producers' political influence	Four states, Punjab, Haryana, Uttar Pradesh, and Andhra Pradesh, have always exercised a great deal of influence over central government. In general, surplus farmers have a strong pressure lobby in all political parties.	Forest dwellers and tribals are politically least important in Indian politics, and are exploited by bureaucracy, extremists, moneylenders and traders. These groups control local power, and benefit from the schemes meant for tribal welfare. Tribals are confined to the sidelines in the state's political life; while they carry heavy weights in their daily lives, they carry little or no weight in the offices, agencies and Assemblies where, without their active or informed consent, their lives are often shaped.
Regions producing marketed surplus	Agricultural surplus regions, with less poverty and high degree of awareness.	Agriculturally deficit regions with dispersed population, high degree of poverty and little awareness about government schemes.
Insurance against loss in production due to natural calamities, such as drought or floods	Postponement of collection of government dues, and often remission. Debt waiver scheme introduced in 2007.	Despite extreme fluctuation in production, declaration of famine and drought conditions or starting of relief works is not linked to low production of NTFPs, though in many places almost half of forest dwellers' income is derived from forest produce.
Tenure on producing lands	Land under private ownership, with security of access and operation.	NTFPs mainly come from CPRs, including forest lands, where peoples' rights of access are vague and subject to many formal and informal controls.
Controls on movement and storage	No such control on movement within state, and no license required for farmers for storage. Controls on inter-state movement have been lifted in February 2002.	Apart from controls on collection, there are several controls on movement, storage and sale, even within a district. The general impression is that forest products, even occurring on private lands, belong to government and gatherers are only entitled to wages from collection.
Stakes and tenure	Clearly individual	Forests often become open access property leading to over-exploitation.

These changes between the two sets of policies have persisted despite the declaration in the Forest Policy of 1988 that the domestic requirements of fuelwood,

fodder, minor forest produce, and construction timber of tribals should be the first charge on forest produce.

Forests have traditionally been looked upon as a source of revenue and not for meeting the genuine needs of the people. That is why the entire thrust of forestry has been towards the high forest, which calls for felling and ruthless cutting back of all growth, except of the species chosen for dominance. This has the major defect of creating a bias in favour of coppice origin timber plantations which, in the long run, are more amenable to biotic and climatic factors, and secondly, it results in the removal of all the material which could serve gathering needs. The high forest system, which neglects the understorey so vital for the prevention of run-off as well as for biodiversity, has resulted in pure forests being created, but with NTFPs production falling casualty to the process<sup>49</sup>. It is in this context that a major policy change is required.

While some distant forests may continue to produce high value timber as one but not the only output (provided these could be saved from smugglers), most forests should be used for mixtures and multiple use (including conservation) with timber as a by-product. A start could be made by deciding that gathering is a legitimate and genuine expectation of the people and that if they are not allowed to gather, they will treat the forests with hostility. What is now termed as 'biotic interference', i.e. foraging for fuel and fodder, grazing, removal of bamboo and other NTFPs, should be looked upon as a logical and appropriate working of the forests<sup>50</sup>. This calls for a modification of existing silvicultural practices, not so much to achieve high forest as to restore to the forests an admixture in which a sensible balanced level of vegetation would be available to meet gathering needs.

Only over-mature, malformed, dead or dying trees should be removed, with no particular reservation by species. Ground flora and the understorey should be largely left undisturbed, except for the improvement of hygiene of the forest flora through the removal of noxious weeds. Plant manipulation methods, such as the opening of canopy, tending, pruning, lopping, pollarding, and thinning etc. should be so adjusted as to optimise gatherable produce, and increase the productivity of foliage, small stems, fruits, etc. The crop would be representative of all age groups because no attempt would be made to achieve a uniform crop in terms of variety or age. In those areas where teak and sal are the naturally dominant species, they would continue to predominate even without silvicultural intervention to achieve a uniform crop. However, because of the mixture of age and species, the forests would be able to maintain a continuous supply of miscellaneous small timber and fuelwood for use in gathering. Thinning, cleaning, soil and water conservation, enrichment planting, and timing harvests should all be used to facilitate growth of gatherable biomass, and increase and stagger productivity flows. The new approach should be to try and exploit forest architecture to maximise the production of different canopy layers. Commercial working would taper off because clear felling by blocks would be totally abandoned, but there would be some production of timber from the over mature trees that would be felled.

Timber is a product of the dead tree, whereas NTFPs come from living trees allowing the stem to perform its various environmental functions. Moreover, gathering is more labour-intensive than mechanised clear-felling. Local people living in the forests possess the necessary knowledge and skills for sustainable harvesting. Finally,

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<sup>49</sup> It is also because of unsustainable practices like over -removals accentuated by market forces, unrestricted access, destructive harvestings, fires etc.

<sup>50</sup> This would however need better regulation in view of large populations, ever growing prices and market forces.

NTFPs generate recurrent and seasonal as opposed to one-time incomes, making its extraction more attractive to the poor. Thus if access to NTFPs can be assured, standing trees can generate more income and employment than the same areas cleared for timber, whilst also maintaining the land's natural biodiversity.

From the people's point of view, crown-based trees are important for usufruct, but forests still remain largely stem-based. The traditional Indian way of looking at trees has, however, been different. As opposed to trees for timber, Indian villagers for centuries have depended on trees for livelihoods. There has been little felling. Instead, trees have been valued for the intermediate products they provide. To the extent that trees provided subsistence goods with little market value, and trees were abundant, questions of share or ownership did not much arise. Trees were valued for the diversity of their products and the many ways in which they helped to sustain and secure the livelihoods of the people.

The working plan of the forest department needs to be suitably modified to prioritize the plantation of fruit bearing trees and medicinal plants in large numbers. Experience shows that fruit bearing trees have less chance of being illegally felled as they provide direct benefits to the people. Medicinal plants should be promoted in herbal gardens in the vicinity of forest or in the forest area itself. Herbal gardens should be promoted with community effort so that encroached forest land could also be reclaimed. Continuous activity in the base of the forest by the community will aid forest protection.

The proposed changes are explained in brief in the following Table:-

**Table 2: Technical options on non-degraded forests**

	Traditional	suggested options
objective	Reduce people's dependence on forest lands	increase supply of goods desired by people while also sustaining the forest and conservation objectives
production goal	high stem biomass	high crown biomass
client	market & industry	forest dwellers & local people (and wildlife!)
timber	main product	by-product
silviculture	conversion to uniform	selective felling and protection
Species	exotics & commercial	Usufruct and NTFP giving
Production through	planting	mainly natural regeneration <sup>51</sup>
usage through	harvesting	gathering

To ensure that growing space is maximised it is essential that all levels of forest architecture is utilised. This includes shade-tolerant shrubs and herb layers; introduction of herbaceous medicinal plants; management of forest floor to enrich soil and encourage natural regeneration and the production of natural tubers. Often advance closure and deferring the planting activity for 2-3 years on barren lands, while the closed area is treated with soil and moisture conservation inputs allows

<sup>51</sup>Favouring natural regeneration does not mean rejecting plantation, it simply means that the focus shifts to assisting existing plants and emphasizing local diversity.

regeneration of grasses and root stock. Similarly plant manipulation methods such as pruning, lopping, pollarding, ratooning, and weeding can all be used to increasing the production of gatherable NTFPs on a periodic basis while reducing and delaying the production of timber. However, such changes would require budget to be made available for innovative silvicultural practices.

### **9.3 Sustainable use**

Increased production of NTFPs must however be accompanied with greater discipline in its use, as new opportunities for livelihood promotion may also lead to serious threats of unsustainable and irresponsible NTFP harvesting. Such restraint is almost impossible to achieve without the active involvement of the people. For instance, the widespread shift to use of forest sweepings<sup>52</sup> to meet domestic fuel needs has a negative effect on regeneration and nutrient recycling essential for maintaining soil productivity. To restrict the practice of sweeping leaves from the forest floor would need provision for alternate energy devices such as solar cookers and gas plants based on cowdung which do not require cash inputs to run them. The challenge for the government is to devise policies, with the involvement of communities, that strike correct balance between livelihoods of collectors and sustainability of NTFP harvesting.

Enhancing production in the short run, whether through planting or regeneration, will serve a limited purpose if NTFP extraction does not meet sustainability norms. There are several examples of NTFPs having been driven close to extinction by over-extraction or destructive harvesting—e.g., *Ailanthus malabarica* in parts of the Western Ghats, or safed musli (*Chlorophytum borivilianum*) in Madhya Pradesh. The trigger for over-extraction often is high prices. But it must be noted that the tenurial situation has the major influence on whether sustainable use happens or not. That is, all these examples of over-exploitation occur in the context of open-access, which has been the norm for NTFPs and indeed for all local forest use. The controls, if any, were exerted only by the Forest Department, and they were much cruder. For instance, after the levels of collection of *Ailanthus malabarica* began dropping alarmingly, it was taken off the 'auction list'.<sup>53</sup>

The FRA provides at least two mechanisms that would encourage sustainable use. Firstly, it gives MFP rights in a particular area to a particular community or Gram Sabha. So it clearly identifies a user group for a particular resource or patch of forest. Secondly, the FRA gives the community powers to manage and protect the forest resource. It therefore enables the community to plan resource use for the long run, since it has exclusive access to a particular patch and the right to protect for sustainable use, including regulate its own extraction levels or methods.

The Forest Department will have to facilitate this process by helping communities figure out sustainable levels of NTFP harvest. This is going to be a challenge, since the FDs have largely not focused on NTFP management, and the amount of ecological research on sustainability of NTFP harvest is also quite limited. It will be necessary therefore that the FDs adopt a collaborative and adaptive approach, and seek out the help of communities and their traditional knowledge, as well as collaborate with ecologists in this activity. Some broad thumb-rules are perhaps known:

- focus on maximization of crown biomass instead of stem biomass

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<sup>52</sup> This practice is more common in eastern India where leaves are an important source of fuel, especially for parboiling rice.

<sup>53</sup> Which meant tenders for its collection were not released and so there were no official buyers even if collectors were to collect.

- utilize all layers of the forest stand
- natural regeneration instead of planting

Some innovative practices have emerged in certain locations, examples of which are given in the box below.

#### **Participatory Silviculture: Some Examples of NTFP Management**

- In Southwest Bengal, the FPC members have kept some coppice sal forest areas in bushy form so as to ensure constant supply of readily accessible sal leaves for plate making.
- In Jhabua and Harda districts of Madhya Pradesh, and in Haryana, many FPCs maintain their forests for the yield of grass.
- In the *Betta* forest of Uttar Karnataka district, people collect a good amount of leaf litter for their betel-nut plantations.
- In Buldhana in Maharashtra, *anjan* leaves have been sustainably harvested through JFM approach for fodder resource to sustain dairy industry.
- In several parts of Madhya Pradesh, *Wrightia tinctoria* (dudhi) is managed for production of wood useful for toy making.
- In the Biligiri Hills of Karnataka, traditional practices of the Soliga adivasis have sustained the productivity of aonla and other MFP or medicinal plants; in some cases where such practices may have been damaging, groups like ATREE have helped change them to become sustainable.
- The forest shrub, harsingar (*Nyctanthes arbortistis*) is collected from natural forests in large quantities for basket making in many parts of Madhya Pradesh. Earlier, this species was considered as forest weed, hampering natural regeneration of principal tree species, and therefore silviculturally undesirable. The local community considers this as an important NTFP providing income and employment.
- Another climber, *Bauhinia vahlii*, is yet another important NTFP used for leaf plate making in several parts of central India. Foresters considered this leguminous species as an obnoxious weed affecting the growth and development of principal tree species and therefore preferred to eliminate this climber. In some places where communities have *de facto* been managing forests, e.g. in Mendha-Lekha village, Gadchiroli district, Maharashtra, they have opposed such practices prescribed in the working plans.
- Retaining multiple shoots (stump) is a locally agreed silvicultural practice in Dewas district of Madhya Pradesh to provide fuel and small timber to the members of JFM Committees.

We also suggest that outside each forest coupe (even where rights have not been given under FRA) there should be a notice board publicising what rights forest dwellers have as regards collection. The colonial tradition of secrecy must be given up. A simple notice that, "community has collection rights in this forest", may in itself, change their attitude towards forests. Agreements must be entered in writing with the beneficiaries informing them about their entitlement, and copies given to each village.

#### **9.3.1 Suggestions for bamboo**

As already stated, policy relating to bamboo has so far been geared to the needs of industry, and not of artisans. Hence a fundamental change is required both in respect of silvicultural techniques and marketing strategies.

Rather than produce short, dry and thin bamboo, the FD should shift to long, green and thick bamboos, for which there is demand both from artisans as well as the construction industry. The productivity and quality of bamboo has been so far below its potential due to the dense build up of dead leaves and other organic material. The abundance of litter within the clump has suppressed the growth of new shoots and poses additional fire hazards during the dry season. If the stands were routinely cleaned and thinned, the danger of fire would be reduced, productivity would increase several fold, and a regular flow of bamboo stands will be ensured to the bamboo artisans. However, budget for cleaning bamboo clumps and arrangement for its protection by the bamboo artisans must be simultaneous, as bamboo is a highly browsable crop. Artisans living close to forests should be involved in the management of bamboo forests, so that they extract bamboo themselves without damaging the clump.

### **9.3.2 Forest Development Corporations (FDCs)**

There are 26 FDCs in the country employing 19047 permanent employees. The main function of the Forest Development Corporation in many states has been so far to convert 'low' value degraded misc. forests into 'high' value teak and bamboo forests. The total plantation area with the FDCs is 1.24 m ha. In view of the new Forest Policy and the ban on clearfelling, this role needs to be radically changed. Commercial plantations increase hostility between government and the tribals. In many places, people have organised themselves and resist planting of commercial species on forest lands, and have even uprooted seedlings. No long term strategy seems to have been evolved to deal with this issue. The experience of Andhra Pradesh shows that awareness among the tribals is likely to increase in future (as it should), and that they can no longer be taken for granted in the matter of choice of species. Despite the popularity of teak in the Forest Department in A.P., it was difficult to protect teak in natural forests, as it was being smuggled and stolen at a very fast rate. The experience of Maharashtra and Gujarat is that after teak is ten years old, villagers cut it illegally and take it away. Thus planting teak encourages smugglers or indisciplined behaviour. The future of pure teak plantations, which take 60 to 80 years, is therefore bleak in India. One-third of the total growing stock in Chhattisgarh is in one district alone, Bastar, where there should be no shortage of fuelwood and other forest products, and yet it is ironic that tribals nurture a feeling of animosity against the foresters in Bastar, thus suggesting that the real issue is not shortages of fuelwood and fodder, but larger issues of control and objectives of management of forest lands are involved.

Corporations were created so as to attract bank funds, and create additionality of resources for the government. This objective has also not been met. IFS officers do not consider serving the Corporations as of utility to them for their future prospects. The tenure of the chief executive of the Corporation has generally been short.

**Other options** - Forest Development Corporations were created when government policy was to promote commercial plantations on forest lands. The imperatives of the new environment and livelihood oriented forest policy of 1988 and the spirit of FRA and PESA would require drastic changes in the charter of the FDC. Our suggestion is to convert them into exclusive NTFPs, Fodder and Fuelwood Development Corporations, as commercial plantations on forest lands should be discouraged now. They could undertake fuelwood plantations on degraded revenue lands too, specially close to human habitations. FDC could also take over responsibility for nursery development and seed production, especially of grasses and legumes, for which demand is likely to increase in view of increased importance being given to fodder from forest lands. The Corporation could also concentrate on roadside and railway line plantations, for which there is ample land available.

The other suggestion is that FDC should promote high quality timber production on private lands through extension and marketing support. The FDC may also consider attracting private capital (just as many private teak companies are doing) from the urban rich, and invest on teak plantations on private (but not forest) lands. If private companies are able get over the problem of land ceiling, it should be far easier for a government company to do so, without asking for a change in the present ceiling laws. These would be in the nature of captive plantations, but on private lands and within the present legal framework of land laws. Government may even consider giving the FDC suitable bank guarantees in order to facilitate loans from the banks.

#### **9.4 Access**

In addition to deforestation and preference for mono-cultures in place of mixed forests, forest dwellers' access to NTFPs has also been constrained by the regulatory framework, diversion of NTFPs and forests to industries, and nationalization of NTFPs.

##### **9.4.1 Vague Rules and Over-regulation**

The colonial forest policy provided that declaration of an area as forest should not abridge or affect any existing rights or practices of individuals and communities. These rights, of collecting firewood, timber and other products, are fairly extensive, well documented in Forest Settlement Reports and have not been curtailed by the successive state governments. Yet, in actual practice the poor may not be able to derive much benefit for three reasons.

First, as discussed in the next section, government has created new rights of industrialists through long-term agreements to supply forest products at a low price, bypassing tribal rights and privileges. Second, forests "burdened" with people's rights are generally more degraded, and have little to offer. Third, people are far from fully informed about what they can legally collect from forests, and what is prohibited.

Such rights are often contradicted by other laws such as the Bihar Forest Produce (Regulation of Trade) Act, 1984 in Jharkhand which restricts the purchase or transport of specified forest produce. No person other than the Government, or an officer of the Government authorised in writing in this behalf, or an agent in respect of the unit in which the specified forest produce grown or found, is allowed to purchase or transport or import or export such specified forest produce in and from such area.

There is also plethora of rules and regulations, which keep on changing. For instance, the various Acts and Rules that govern the management of NTFP in AP are:

1. AP Abnus Leaves Act, 1956
2. The AP Forest Act, 1967
3. The AP Forest Produce Transit Rules, 1970
4. The AP NTFP (Regulation of Trade) Act, 1971
5. The AP NTFP (Regulation of Trade in Abnus Leaves) Rules, 1970
6. The AP Forest Contract (Disposal of Forest Produce) Rules, 1977
7. The AP Scheduled Areas NTFP (Regulation of Trade) Act, 1979
8. The AP Forest Produce (Storage and Depot) Rules, 1989
9. The AP Scheduled Areas NTFP (Regulation of Trade) Rules, 1990
10. Various Notifications under the above Acts and Rules

It is not possible for tribals or even NGOs to understand the complexity of these laws, and this leads to harassment and corruption. Transit Rules are often changed, and it is difficult for farmers and gatherers to keep themselves up to date about the latest Rules. For instance, eucalyptus and *Acacia auriculaeformis* were free from transit regulations throughout Orissa, but in March 2000 this facility was withdrawn for some districts. No reason was assigned in the government order justifying the new restriction. Similarly when restrictions are removed, harassment of the forest dwellers continues as there is no publicity of the relaxation in Rules<sup>54</sup>.

Laws restricting free movement of NTFPs, even when they are not nationalised, bring uncertainty in market operations, and inhibit gatherers from maximising returns to production. Government controls lead not only to corruption but also imply greater hold of existing players on the market rendering it difficult for new players to enter the market. A limited number of buyers thus operate under monopolistic conditions.

As illustration of complexity of regulations we discuss the procedures that apply to charcoal markets, and supply of bamboo to artisans.

#### **9.4.2 Controls over fuelwood and charcoal markets in Tamil Nadu (FAO 1997)**

In Tamil Nadu, an area of abundance of prosopis (an excellent coppicing shrub with high calorific value), charcoal producers faced several problems. The Tamil Nadu Government authorised in January 1986 Forest Officers to issue a certificate of origin for the transport of charcoal to other states after verifying the genuineness of its origin. However, charcoal producers had difficulties in implementing these orders, and satisfying the issuing authorities about the origin. Charcoal is prepared at the felling sites by small producers who are constantly on the move. They sell it at their sites or cart it to bigger producers who buy it, pool it and grade it for transport to other states. The same thing holds good for wood which bigger producers buy from different sources and convert it into charcoal. The small producers are not able to give any information about survey numbers, much less certificates from the village officers. They also cannot afford the "incidental expenses" incurred in getting a permit.

Charcoal making contributed positively to the general economy of the poor. A sizeable number of agricultural labourers who used to temporarily migrate to Thanjavur district to work on paddy fields to supplement their meagre income from their native places, found enough employment locally. Harvesting of prosopis generally began some time in June-July and went up to August. That was the time when they used to migrate. Besides, September, October and November also provided employment as plantation and sowing operations were carried out before the onset of the rains. Increased employment was a welcome gain in the region.

Over regulation and vagueness about rules hurts traders too. In Jharkhand and Orissa traders need licenses from the Forest Department and Municipalities to trade in fuelwood. This results in constant harassment. It is interesting that licenses have been done away for large industries in India, but not for tiny and cottage industries based on forest raw material.

#### **9.4.3 Procedural hassles for bamboo**

Bamboo is a significant resource for forest dwellers, who use it in making baskets and other household tools. However, silvicultural techniques have been designed to maximise the production of industrial dry bamboo, whereas artisans require green

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<sup>54</sup> Sudden removal of restrictions without preparing the community for responsible management may also lead to deforestation. Almost all roadside trees of babul on Nagpur Gadchiroli road were wiped out within 2 years of freeing the species from Transit rules in Maharashtra.

bamboo. Many states supply subsidised bamboo to industry, but Orissa went far ahead, and gave the industry monopoly rights of collection, amounting to near-surrender of state control over forests. In 1989, several paper mills were assigned the best bamboo areas, under the guise of their being appointed first as 'labour contractors', and then as 'raw material procurers'.

A common problem faced by bamboo workers is that stocking bamboo and selling bamboo products requires permissions from the FD. Freeing the artisans from such constraints can itself leads to widening the base of entrepreneurial activities in the village, as these value added activities can be undertaken in their cottages itself.

The FD has to serve three important bamboo customer groups: paper mills, artisans and non-artisan users which include primarily the construction industry. Paper mills get their subsidized bamboo supply on long terms price (and supply) contracts. Building contractors and other 'legitimate' users have to apply for their requirements to the FD, justify it, and then wait until the application moves through the Forest Department labyrinth before they get an order; and they have to wait quite a while before the bamboo gets issued to them. The FD's bamboo supply to artisans too is organized around similar procedural maze. Although the details vary from state to state, roughly the procedure is as follows. First, artisans have to organize into an artisan co-operative to qualify for bamboo supply from the FD. The Registrar of Co-operatives then has to certify the co-operative as a legitimate one. Thereupon, the co-op can make an application to the CCF for an annual quota of bamboo (Andhra alone has 550 societies with 23,000 members), and the CCF examines the application from each cooperative, issues them an approval, and marks the application to the CF of the relevant circle; the CF takes a count of the number of workers in each member family of the co-op and then allots each co-op a quota. The co-op chairman then approaches the DCF only to be further assigned to a range where their requirements finally get addressed.

Once an annual quota is allotted, the co-op can keep drawing its requirement of green bamboo on a periodic basis upon prior payment; but the hassle involved in getting the annual permit seems so great that it becomes evident why only a contractor-controlled co-operative will suffer it.

The entire procedure of obtaining bamboo from forests is complicated, especially for artisans located outside the district, and can be completed only through involvement of contractors and agents in the whole scheme, which makes sale in the black market a good possibility. One of the ex-CCF of Andhra Pradesh admitted to the author that most bamboo societies in his state were run by contractors and politicians who make their profits through selling bamboo in the open market.

Such procedural hassles are common for most NTFPs, even when growing on private lands (see box). Because of the uncertainties created by law and the fear psychosis in the minds of tribals, sale of most NTFPs by tribals is done without any processing or value addition, even when NTFPs are not nationalized. The producers' access to consumers is limited to the sale made in local villages and weekly markets. Thus, although these products may finally reach a very large market, the market is geographically very limited as far as gatherers are concerned. This is truer for women entrepreneurs.

#### **Bamboo growers in Kerala: bureaucratic hassles**

In Kerala, bamboos come under the purview of Timber Transit Rules. So, transporting bamboo requires transit permits (Form III) issued by the Forest Department. Obtaining transit passes from the Forest Department is a lengthy process as the household has to obtain a possession certificate (which shows the land that is owned by the household is not forest land or other government land) from

the Village Office, which is then submitted to the concerned Forest Range Office along with the application for transit permit. They in turn inform the concerned Forest Station, and the Forester has to inspect the site and record the number of bamboo pieces and the place to be transported. On his recommendation the Range Officer issues transit passes. Normally, the sub-traders obtain these passes on behalf of the household, and in many cases the households are not even aware of these procedures. Since the households have only a vague idea of these legal restrictions and the process of obtaining passes, they often think that it is the duty of the sub-traders to obtain passes. These agents are used to deal with the bureaucracy. It is routine for them to go through the process of bribes and get the transit permits. Though only minimal payment is officially charged for these services, the sub-trader has to spend a great deal for obtaining a Form III pass. Sometimes these procedures create a sense of fear and uncertainty in the minds of the households as they feel that they do an illegal act of cutting and selling bamboos. This adversely affects the tendency of extensively growing bamboos in their homesteads. The farmers also fear that in future the government may impose more strict rules and they will not be able to sell bamboos, if they grow them.

Thus legal restrictions and bureaucratic procedures are the main bottlenecks in the functioning of the bamboo markets in Kerala, which often tends to reduce the share of the farmers. Relaxation or removal of these restrictions will act as a stimulant to the farmers in developing bamboo resources in the homesteads.

Over regulation and vagueness about rules hurts traders too. In Jharkhand and Orissa traders need licenses from the Forest Department and Municipalities to trade in fuelwood. This results in constant harassment. It is interesting that licenses have been done away for large industries in India, but not for tiny and cottage industries based on forest raw material.

#### **9.4.4 Diversion of NTFPs to industries**

NTFPs, described as minor forest products in the past because of no revenue value, were generally used only by the forest dwellers. However, as their economic value increased government created new rights of industrialists through long-term agreements to supply these forest products at a low price. The result of this state-subsidised profitability of forest-based industry has been an explosive growth in industrial capacity, and a non-sustainable use of forest stocks. Sometimes industries, in order to maximise the collection of NTFPs, use methods which are destructive to these plants. An obvious example is extraction of resin from pine trees. In tendu bush areas, all undergrowth is slashed to promote a better growth of tendu leaves. In the process, many fruits, roots and medicinal plants get destroyed. Besides, it causes soil erosion. Where industries hold bamboo leases they utilise even the better quality bamboo for pulp, although according to rules only inferior quality bamboo should be used as pulp, and the better quality should be left for artisans. The extent of subsidy can be judged by the figures of one depot in district Nayagarh, Orissa from where the disposal of bamboo (as observed by the author in 1995) was as follows:-

To industry	33,60,000 pieces (roughly at 15 paise a piece)
Through open auction	27,275 pieces (Rs 10 to 13 a piece)
Sent to other divisions	2,892 pieces
Local sale to cultivators	350 pieces (at Rs 4.30 per piece)
Sale to artisans	nil

Only those who own land and pay cess were entitled to fuelwood and bamboo, that too after a lot of verification from several officials. There is no system by which the landless and artisans can get bamboo even at a price, and thus are forced to resort to illegal harvesting in Orissa. The scheme that the artisans should form a cooperative society for bamboo has remained a non-starter.

#### **9.4.5 Nationalisation**

NTFPs require simple and easily handled processing and packaging technologies and they have a relatively longer shelf life, and so can withstand small variations in market demand. Rather than improve the bargaining power of the poor, Government policies have often acted in favour of traders and created monopolies.

Almost all important NTFPs are nationalised, that is, these can be sold only to government agencies. All the major central Indian states (Madhya Pradesh, Maharashtra, Chhattisgarh, Orissa, Jharkhand, Bengal and Gujarat) have passed laws whereby the most valuable NTFPs are declared to be the property of the state. While the set of NTFPs nationalized differs from state to state somewhat, *tendu* leaves is common to all these lists, and *mahua* and *sal seeds* are also commonly nationalized. What this means in practice is that, while collection is generally permitted by anybody, they must be sold only to the government or its authorized agents. In other words, the government is the monopoly buyer of the produce. To ensure this, strict controls on the movement of these products are then imposed. The table below gives a broad overview of the situation in six of these states.

	Orissa	MP/ Chhattisgarh	Andhra Pradesh	Bihar/ Jharkhand	Maharastra
<b>Nationalized NTFPs (year of nationalization)</b>	Tendu leaf (1961, strengthened in 1973); sal seed (1983, denationalized in 2006, but not clear how this will work); bamboo (1988)	Tendu leaf (1964), harra, gums and sal seed (1975)	Bamboo and tendu leaf. (1970)	Bamboo (1984), tendu leaf (1972–3), sal seed (1977), mahua seed, mahulan leaf and harra	Tendu leaf (1969) and mahulan leaf
<b>'Controlled' NTFPs</b>	69 MFPs	No controlled NTFPs	24 NTFPs	Sabai; all others are completely unregulated	33 MFPs given to gram panchayats and 88 NTFPs auctioned at deputy conservator level
<b>Lease-barred NTFPs (if any)</b>	9 NTFPs: sal leaf ( <i>but lease has been given!</i> ), sal resin, gums, khair, barks, <i>Rauwolfia serpentina</i> , tassar cocoons, cane, sandalwood	No lease-barred NTFPs	No lease-barred NTFPs	No lease-barred NTFPs	No lease-barred NTFPs
<b>Relevant Acts</b>	Orissa Kendu Leaf (Control of Trade) Act, 1961; further modified in 1973; Orissa Forest Produce (Control of Trade) Act, 1981	MP Tendu Patta (Vyapar Viniyaman) Adhinyam, 1964; MP Van Upaj (Vyapar Viniyaman) Adhinyam, 1969	AP Abnus Leaves Act 1956; AP NTFP (Regulation of Trade in Abnus Leaves) Act & Rules, 1970	Bihar Kendu Leaf (Control of Trade) Act, 1972	Maharashtra MFP (Regulation of Trade) Act, 1969 and its 1997 amendment

Source: Lele, S., M. Pattanaik and N. D. Rai, 2010, "NTFPs in India: Rhetoric and reality", in S. A. Laird, R. McLain and R. P. Wynberg (Eds.), Wild Product Governance: Finding Policies that Work for Non-Timber Forest Products, Earthscan, London, pp.85-112.

Note: Lease-barred NTFPs refers to those which are banned from collection completely.

In AP, two regulations, the AP Minor Forest Produce (Regulation of Trade) Act 1971 and the AP Scheduled Areas NTFP (Regulation of Trade) Act declare that trade in NTFPs is a state monopoly, irrespective of ownership status of land where they occur. The Government of Kerala has created monopoly for 120 notified items of non-timber forest products. The Scheduled Tribes and forest dwellers have no right to make any direct sale to outside party. They have to sell it to cooperative societies

which auctions the products gathered by the tribals. A study calculated that the open market price was more than double of the government price. Thus in Kerala government monopoly was not only inefficient but also exploiting the tribals.

The nationalization of the NTFP commodities, done in different states in various years from 1960s to the end of 1970s, presumably with the intention of helping the poor, has affected their interests adversely. Nationalization reduces the number of legal buyers, chokes the free flow of goods, and delays payment to the gatherers, as government agencies find it difficult to make prompt payment. This results in contractors entering from the back door, but they must now operate with higher margins required to cover uncertain and delayed payments by government agencies, as well as to make the police and other authorities ignore their illegal activities. This all reduces tribals' collection and incomes.

Initially, this right was acquired ostensibly to protect the interest of the poor against exploitation by private traders and middlemen. Since the state could generate revenue (royalty) through exercising this monopoly right, it has been steadily extended to cover myriad of NTFPs. On paper the state agencies have worked with multiple objectives - to collect revenue; to protect the interests of the tribals as sellers; and to satisfy the conflicting demands by industry and other end users. In practice, a hierarchy of objectives developed: industry and other large end-users had the first charge on the product at low and subsidized rates; revenue was maximized subject to the first objective which implied that there was no consistent policy to encourage value addition at lower levels; tribal and the interest of the poor was relegated to the third level.

A close scrutiny of the political economy of institutions involved in marketing is essential. The Corporations set up by the state (KFDC in Kerala, GCC in AP, LAMPS in Jharkhand) are confronted with growing liabilities. They have a huge and redundant capital and man-power base. Even on variable cost basis, they need huge mark-ups to break-even. Faced with this situation, they wish to pursue a completely risk-averse policy. In the commodities that the Corporations trade, purchase transactions are first finalized; these selling prices are down-marked to fix the procurement prices for the tribals; because of the middlemen involved, the actual prices received by the tribals could be lower still. More generally, under the current policy of the day, the institutions have opted to extend their role by becoming rentiers. Beginning with bamboo and sal seeds, collection rights of a large number of NTFPs have been given to paper mills, owners of oil extraction plants, and auction bidders (Tamil Nadu and Karnataka). State monopoly has provided room for private monopoly, and is aiding and abetting market imperfections.

#### **Ban on processing by the poor**

According to Orissa's policy up to 2000, processing of hill brooms could be done only by a government parastatal and its traders. Gatherers could collect hill brooms, but could not bind these into a broom, nor could they sell the collected item in the open market. Thus the poor were prevented from both adding value through processing and the right to get the best price for their produce. In one particular case, assurance was given by the Magistrate to a women's cooperative society that it would be allowed to collect and market hill brooms, so that the primary gatherers, who are mostly poor tribal women, might get the benefit of higher prices in the market. The Society started functioning, but without a valid licence. After the Magistrate's transfer, rather than helping them with processing and finding the best price, the state government machinery at the insistence of the TDCC (Tribal Development Co-operative Corporation, a government parastatal and leaseholder) decided to launch prosecution against the women and their organisation. Their stocks were seized, and even after the court order for release, the full stock was not released causing huge financial loss to the women concerned.

## **9.5 Marketing issues**

Low returns to forest gatherers are not only due to policy distortions arising out of public and private monopolies, and to traders' hold over the poor and ignorant forest dwellers. They are the result of the very nature of dispersed and uncertain production combined with fluctuating demand and undeveloped markets. These issues may help to explain why removing government controls in March 2000 in Orissa, or why free trade in a large number of non-nationalised NTFPs in Jharkhand, MP and Chattisgarh did not lead to a rapid increase in gatherers' incomes. Therefore it is worthwhile to analyse the peculiar features of interaction of the forest dwellers with trade, and how this trade is different from marketing of foodgrains in agriculturally surplus regions of India.

In the specific context of NTFP gatherers, there are several factors why they are in a weak bargaining position vis-a-vis the traders, even for those products which are not nationalised. The reasons are located in the nature of the product, its peculiar supply and demand features, and in the interaction between the gatherers and buyers. Each of these is discussed below.

### **9.5.1 Nature of the product**

**Fluctuation in production** – Annual fluctuations of most NTFP commodities in production vary by a margin of three to four hundred percent, leading to wide variation in supply. This is in sharp contrast to agricultural commodities where variation in production in the State rarely exceeds 20 to 50 per cent of the normal.

**Lack of uniformity** - NTFPs are natural products and can therefore never be totally uniform in their characteristics. The size, shape, colour and other physical properties depend upon factors like rainfall, temperature, moisture etc. which varies from year to year and from location to location. This is one of the major disadvantages in marketing as the consumers want steady supply and uniform quality. This is particularly relevant for the industrial user.

**Seasonal collection** - Most NTFPs are collected seasonally, though they may be demanded throughout the year. Selling them locally during flush season creates excess of supply over local demand, thus depressing prices. The short season becomes even a bigger constraint when it coincides with the monsoon in India, as drying of the products and its transportation becomes a serious problem.

**Low volumes** - The NTFPs in the forest are found in a scattered form and the quantity available from far off places often makes collection and transport uneconomic. The low volume of NTFP reduces the bargaining power of the producers resulting in lower returns.

**Fluctuating demand** – The demand for these products fluctuates widely, as much depends on the production of its substitutes and the changing export environment. Sometimes it is to the advantage of primary gatherers, leading to many traders paying a high price, but often a combination of uncertain production and equally uncertain demand works to the disadvantage of the gatherers.

**Competition with synthetic substitutes** - With the development of synthetics for various commodities, many of the traditional NTFPs have lost their market or have to face stiff competition with them, and with domesticated species. For example, compared to the non-edible oils available within the forests, the imported palm fatty is cheaper, having been planted extensively in Malaysia and Indonesia.

**Exports** – Some NTFPs that are primarily exported are highly susceptible to international demand and prices. This may lead to over-harvesting or a price crash

as a result of boom and bust syndrome. Indian shellac and rubber went through this cycle in recent times.

### **9.5.2 Nature of the actors involved**

**Poverty of gatherers** - Most forest extractors are poor, chronically indebted to middlemen or landowners, and are thus not in control over their labour or other terms of exchange. Thus underdeveloped rural credit markets and extreme poverty influence the disposal of NTFPs at a low price.

**Gender dimension** - The above mentioned problems become more acute for women entrepreneurs. Burdened with other roles within the family traditionally assigned to women, their ability to look for far-off markets is restricted. The small size of production further aggravates the problem forcing them into a vicious cycle of a small market, low production and (leading to) small surplus.

**Too many intermediaries** – There is a long and vertical chain between primary gatherers and end-users. There are village level traders who work for market based commission agents or wholesalers, who would then supply to other wholesalers outside the state. For medicinal herbs, the share of the gatherers in the final price in most of the cases is less than 33 per cent, and often as low as 10 per cent. Despite the large number of middlemen, gatherers do not have the choice of many intermediaries. In a competitive and efficient system there should be a choice of several buyers.

**Nature of buyers** - The intermediaries are capable of maintaining a stronghold in the marketing network due to their ability to meet immediate needs of the primary gatherers. They offer quick and timely credit, make quick payment and also have a good network of procurement at the door step of the producers. A combination of factors such as, gatherers' lack of knowledge of market price, poor marketing structure, poverty and impoverishments of the gatherers, ineffective state-agencies also strengthen the middlemen's hold. Furthermore, poor communication and transportation facilities, highly segregated markets and unequal bargaining powers between buyers and sellers makes the situation more profitable for middlemen.

### **9.5.3 Nature of the market and marketing operations**

**Restrictions related to storage, transportation, processing and marketing** - The laws relating to the amount of NTFP that can be stored whether by gatherers or growers vary from item to item. The law also requires registration of growers of specified forest products whose production is in excess of the specified quantity. Similarly, for transporting NTFPs, transit permits issued by the forest department are still required for most products for their movements within and outside the state. Restrictions for primary level value addition may also exist, for instance sal plates made of sal leaves need transit permit. Higher level processing requires permission through registration from the Forest Department. The processor/manufacturer is supposed to submit the prescribed declaration, accounts and returns. The Forest Department is the enforcing authority for these laws. These restrictions and permits mean that the traders are continually reliant upon and affected by the actions of the Forest Department.

**Harvesting** - In order to increase their immediate income, the tribals sometimes tend to collect the produce when it is not ripe fully for marketing or use methods of extraction that are not scientific and have the potential of destroying the trees. The present access rights give the tribals the freedom to collect forest produce, but do not encourage them to develop a long term commitment for developing the forests. Similarly little attention is paid to post harvesting techniques due to which losses in terms of quantity and quality are substantial.

**Grading & storage** - The grading and storage of the produce also need improvement. The gatherers bring produce in a mixed form and then it is graded at the pooling point which results in extra cost. The ungraded goods fetch lower prices. Generally the price applicable for the lowest quality is paid for the mixed product. Storage in thatched roof godowns where goods remain to be transported for a number of days affects the quality of goods. It sometimes becomes infested by insects, or lost to rodents or the moisture content of the product increases resulting in deterioration of quality, particularly during the period of monsoon. Returns on NTFPs such as tamarind, mahua, and aonla can be doubled if stocked in a cold storage for 5-6 months.

**Market information** - Gatherers' information and awareness about buyers, the prevailing market price, and government rules is inadequate. Gatherers hardly know what the consumers want or need. The longer the marketing chain, the less likely that this information will be available to the producer/gatherer. Lack of fit between what the final consumer wants and the actual product results in wastage and low prices.

**Lack of infrastructure facilities** - Due to lack of infrastructure facilities the full potential of the forest is not tapped. As a result the NTFPs are collected from the periphery forests only.

#### **9.5.4 How to improve gatherers' margins?**

**Government should provide support price** - Thus de-nationalisation per se may not remove all market constraints which inhibit a gatherer in realising the full value of his labour. There should be price-based aggressive buying of NTFPs by state agencies, as has been done for wheat and rice.

There should be minimum support prices for NTFPs on the lines of minimum support prices for agricultural produce. Aggressive buying of NTFPs by state agencies alone can break the dominance of the wholesale traders and their linkages with the village level market. The nature of produce and actors involved makes it obvious that without government support there can be no justice to forest gatherers. However, government organisations should compete with private trade, and not ask for monopoly.

While assigning a bigger role to government institutions, which were earlier accused of inefficiency, collusion with traders, and callous attitudes towards forest gatherers, care needs to be taken that there is all round improvement in governance and efficiency of the States' organisations. Collaboration with socially committed private sector/exporters should also be considered.

Price support combined with aggressive buying from government can certainly improve gatherers' incomes<sup>55</sup>, but it becomes difficult to sustain it over a long period. Government corporations make huge losses, and therefore the entire operation requires continuous subsidy from the government. While such subsidies can be justified easily as a part of the poverty alleviation programmes continued subsidies can result in subsidising inefficiency and corruption of government organisations. Trifed, an Indian Government corporation lost about Rs140 million, as it bought tamarind at Rs 7 a kg in 1999-2000, but was not able to dispose it off in time when the market rose.

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<sup>55</sup> The experience of giving higher prices to farmers in India for wheat and rice suggests that they do benefit, but other actors, such as employees of the government parastatals, contractors, and middlemen benefit much more. It also leads to inefficiencies with the result that the subsidy bill keeps on rising.

In addition to government organisations competing with private trade, there are other ways too of developing markets that reduce the dependence of poor gatherers on government parastatals, or improve their performance. A number of measures are discussed below that do not distort the market, but will still help improve the incomes of the forest dwellers.

**Processing and micro-enterprise development** - Some NTFPs require simple and easily handled processing and packaging technologies. They usually have a long shelf life, and can withstand long storage. However, to achieve these advantages, there needs to be local storage, and complete security of tenure over the collected items. In practice, the sale of most NTFPs is done without any processing or value addition, due to a fear that houses would be raided if they store NTFPs. Freeing the artisans from such constraints can itself lead to widening the base of entrepreneurial activities in the village, as these value added activities can very well be undertaken in their own cottages. Pre-processing includes quality grading, storage and preparation of a product for sale to processors or intermediaries. Simple processing activities such as broom making, leaf plate making, tamarind processing, mat and rope making should be encouraged in the household/cottage sector.

Involving NGOs may make processing more efficient and improve market access. In Southwest Bengal, an NGO provided improved sal plate processing technology and marketing support that improved producers' incomes to Rs 11 to 12 for an eight hour day equivalent from Rs 5 to 6 for other communities dependent on middlemen.

Thus support for micro-enterprise development should be a crucial part of the Government NTFP policy. For encouraging micro-enterprises the following inputs are required:

- Social inputs for facilitating and organising women and men gatherers into User Groups/ Cooperatives.
- Working capital through the banks, as credit is a critical input needed for these enterprises.
- Skill upgrading programmes for value addition, packaging, stocking, accounts and other management skills.
- Storage and transport infrastructure.
- Market information and access.

**Industrial processing** - Some products would require setting of small scale units with modern technology for processing, but the general climate for industrial growth in central India is quite bad, with poor infrastructure, high rates for power and its uncertainty, and weak governance being the main factors. Many paper mills and plants for oilseeds have been closed down in the last ten years. They depended too much on state support and subsidies, and did not diversify by shifting a part of their raw material requirement to groundnut, rice husk, and other easily available agricultural products. Thus these governments need to improve the industrial infrastructure that would lead to the revival of industries based on forest based raw materials.

**Promotional Boards** - Several initiatives need to be taken, if the incomes of tribals and forest dwellers are to be improved. A government agency such as the Forest or the Tribal Development Department assisted by civil society should be involved in informing tribals and gatherers about the prices prevailing in different markets, improve marketing practices, and act as a watch-dog. It is better to set up promotional Marketing Boards with responsibility for dissemination of information about markets and prices to the gatherers, and for organising them into self-help groups.

Government should encourage bulk buyers and consumers such as exporters of herbal medicines establish direct links with the villagers. This has happened in a few locations where manufacturers of herbal medicines such as Dabar have bought aonla directly from the producers, but not on a significant scale to boost its production or price. Ayurvedic Drug Manufacturers Associations (ADMA) can provide a good market to the medicinal plant produce gatherers and producers with appropriate state intervention to secure the producers/gatherers from exploitation.

Government should also address issues like creating proper marketing yard, market information system, storage space and minimum processing facilities at the local level. Simple processing activities such as broom making, leaf plate making, tamarind processing, mat and rope making should be encouraged in the household/cottage sector. These are at present not attended to but could go a long way in supporting the NTFP market.

### **9.6 Specific suggestions for tendu leaves**

Given the enormity of scale of operation, tendu has to continue under active State price support. Private trade would not be able to arrange for 2000-5000 crore Rs in just 40 to 50 days that is required during the season every year in central India for the entire operation. Although revenue generation has a higher priority for government (except in MP), the entire operation has several elements of welfare and poverty alleviation too, because of its significance for local employment in the agriculturally slack season. Pluckers are lately getting organised, and part of the explanation for increase in their wages must be the pressure they are able to generate on the political system. Both these objectives – revenue and employment – would suffer under private regime. Further, bringing in private traders would again encourage political patronage and corruption, as was the experience before tendu was nationalised in the seventies.

The present system, however, has a large number of infirmities. The following suggestions would improve benefits to the pluckers.

- States should pass on the enormous profits made in the tendu leaf trade as bonus to the tendu pluckers. Even if 50% of the royalty (surplus) generated from the tendu leaves as of now is shared with the pluckers, it would, on an average lead to an additional income of Rs 1000 to Rs 1500/- per annum per household (HH). A detailed analysis for the Bolangir tendu division shows that sharing of 50% of royalty would increase the total earnings of an average HH from tendu plucking upto Rs 3000/- per annum, more than what most of these HHs earn from agriculture. Considering that almost all the families involved in tendu collection are below the poverty line, this additional income assumes great importance for their livelihood. The importance of this additional direct income (over Rs 200 crores a year) for the rural poor can be understood by the fact that to generate the same amount of income through SGSY investment, an amount of approximately Rs 1000 crores will have to be invested (assuming that all the investments are successful and there are no leakages of funds).
- The collection prices should be hiked so that returns from plucking are at least equivalent to the minimum wages fixed for unskilled agricultural work by the states. Even in Andhra Pradesh, where wages are higher by about 15% than in Orissa, despite Orissa's leaves being superior in quality, a study by IAMR showed that returns from leaf collection were only 55% of the minimum wages, and 87% of what they would get elsewhere in the market. Pluckers in MP get slightly less than in Orissa, but are compensated because the government there does not keep any profit with itself, and the entire profit is ploughed back to the pluckers. In Madhya Pradesh, Chhattisgarh, and

Maharashtra gatherers share in profits through a bonus plan at the end of each season, whereas in Orissa, the gatherers get only wages for collection.

- Village level tendu pluckers' SHGs<sup>56</sup> and cooperatives should be gradually given the responsibility of managing collection centres, and their maintenance etc. At present these are managed by petty contractors, with long experience in this line. Mechanisms for linking quality of tendu leaves with purchase prices should be explored. Possible local institutional arrangements to improve the quality of tendu produced through various arrangements such as contracting out bush cutting and fire prevention to tendu pluckers associations, forest committees etc., linking bonus to *Phad* wise realisation of sales etc. should be explored.
- Uniform pricing of tendu leaves, irrespective of their quality, does not inspire the pluckers to procure leaves of better quality. Therefore payment should be related to the quality of leaves.
- Delayed payments should carry an interest of 15 per cent per annum<sup>57</sup>.
- All records pertaining to names of people employed and their period together with date of payment should be displayed on the district website for anyone to verify.
- The Group Insurance for tendu pluckers as followed in MP should be adopted in other states too.
- Part of the income from tendu plucking can be saved by the pluckers through forming SHGs - this would help them in avoiding credit from moneylenders at a high interest.
- The payments to pluckers should be made weekly with no delay. This will require procedural changes in the way funds flow to the *phad*.

The entire tendu trade is the exclusive responsibility of the Forest Department or its agencies, and there is no internal review of its limitations and failures by other sister departments of government. The Department of Rural Development, which is incharge of poverty alleviation and the Department of Social (or Tribal) Welfare which is supposed to look after the interest of tribals and scheduled castes take no interest in the tendu operation, although millions of the supposedly target group who are the responsibility of these departments can get affected by the poor implementation of the tendu procurement. Had these departments been more vigilant, there would have been pressure on the Forest Department to improve its performance.

It is unfortunate that there are no effective administrative mechanisms in the states for inter-departmental coordination for achieving the broader goal of welfare of the poor. The Indian administrative culture does not encourage one department critically appraising and reviewing schemes of the other department.

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<sup>56</sup> Self-Help Groups - self-selected groups which start savings and credit using group-devised savings and credit modalities, and may move on to take up other joint income generating activities.

<sup>57</sup> visit to Chhattisgarh in May 2010 showed that people, spl women, had collected tendu patta, but no payment had been made, as the phad munshi was not traceable. People's cards describing how much patta they collected were also with the munshi, although such cards should be with the workers. was told that payment had been deliberately delayed so that trucks carrying tendu leaves to central godowns are not attacked by the naxalites, once they know that payment is outstanding.

We suggest that an inter-departmental Study Team/Commission should be set up to look into our suggestions as well as the systems being followed by other States (especially MP). The Commission could also suggest ways to achieve the objective of welfare maximisation for the tendu pluckers. The Commission/ Committee should include members from tendu Union, representatives of tendu pluckers and from NGOs and academic institutions. This independent Commission should study the purchase operations every year and give its assessment on the extent it has furthered peoples' livelihoods and how the operations have improved as compared to previous years' campaign. It should also suggest practical measures to improve transparency and reduce corruption in the purchase operations. Its suggestions should be considered by the Cabinet.

The states have to give primacy to the welfare aspects of tendu production and trade, and relegate revenue objectives to the secondary position. Tendu trade is one opportunity where by making certain easy policy changes, the states can ensure the direct welfare of millions of its poor forest dwellers.

### **9.7 Summing Up**

To conclude, rather than be a monopoly buyer of NTFPs or completely withdraw from the market, government should provide price support. In addition it should adopt market friendly policies, facilitate private trade, and act as a watchdog rather than eliminate the trade. It should encourage local bulking, storage and processing, and bring large buyers in touch with the gatherers, so as to reduce the number of layers of intermediaries.

The proposed policy change towards liberalisation and de-regulation of NTFP trade needs to be strengthened in several ways, as suggested in the previous sections. Clearly *laissez faire* is not going to help the poor in all cases. Where government alone does marketing it is inefficient; and where it is left to private trade, it may still not provide sufficient returns to the gatherer on his labour. Scrapping government controls and *laissez faire* will produce positive results in regions where gatherers and producers are quite vocal and organised, with low levels of poverty and long experience of marketing. An obvious example is freeing farm eucalyptus from controls on harvesting and transport in Gujarat or the Punjab. But farming systems and production conditions vary a great deal from region to region in India, and so does the level of information among the peasantry, their political clout, and infrastructure for marketing. Markets in eastern and central regions, which are subsistence-oriented and where most forests are located, are relatively underdeveloped as compared to markets in the commercialised wheat or cash crop growing regions. Here, in addition to government monopolies there are several other sources of market imperfections which need to be addressed. In such regions denationalisation may be necessary but not sufficient in itself, at least not for all NTFPs.

According to Harriss (1989), markets can perform both functions, allocative and exploitative. To the extent markets facilitate commodity production, and integrate producing regions with consuming regions, they help the producers in obtaining the best possible price. But markets may also play a retrogressive role by coercing producers to sell at a low price through monopsony, interlocked contracts, fraud, credit and withholding of information.

Thus the NTFP issue is more complex than simply lifting of government controls and allowing market forces to have a free go. In addition to open market purchases Government should also improve the marketing infrastructure that makes markets

more competitive. Some of these issues were clarified in a MOEF circular in 1998 (Annexure), but it appears not much action was taken by the states on its recommendations.

## **Chapter 10. Convergence of Development Programmes for Tribals & Forest Dwellers**

### **10.1 Neglect of development for forest dwellers**

It is well established that the central region of India, despite being resource rich, inhabits the poorest people who have not benefited from social and economic development to the same extent as people in other regions have. India's record of economic growth has been quite impressive in the last two decades, but high growth notwithstanding, a large number of marginalised and disadvantaged people have either not gained from development, or in many cases have actually been harmed from displacement that growth entails. As data on forest dwellers is not separately collected we will use the data for tribals, as most forest dwellers happen to be Adivasis, also called tribals or simply STs .

From the viewpoint of policy, it is important to understand that tribal communities are vulnerable not only because they are poor, assetless and illiterate compared to the general population; often their distinct vulnerability arises from their inability to negotiate and cope with the consequences of their forced integration with the mainstream economy, society, cultural and political system, from which they were historically protected as the result of their relative isolation. Post-independence, the requirements of planned development brought with them the spectre of dams, mines, industries and roads on tribal lands. With these came the concomitant processes of displacement, both literal and metaphorical — as tribal institutions and practices were forced into uneasy existence with or gave way to market or formal state institutions (most significantly, in the legal sphere), tribal peoples' found themselves at a profound disadvantage with respect to the influx of better-equipped outsiders into tribal areas. The repercussions for the already fragile socio-economic livelihood base of the tribals were devastating — ranging from loss of livelihoods, land alienation on a vast scale, to hereditary bondage.

As tribal people in India perilously, sometimes hopelessly, grapple with these tragic consequences, the small clutch of bureaucratic programmes have done little to assist the precipitous pauperisation, exploitation and disintegration of tribal communities. Tribal people respond occasionally with anger and assertion, but often also in anomie and despair, because the following persistent problems have by and large remained unattended to:

- Land alienation
- Indebtedness
- Relation with forests, and government monopoly over NTFPs
- Ineffective implementation of Panchayats (Extension to the Scheduled Areas) Act of 1996 (PESA, 1996) for Schedule V areas
- Involuntary displacement due to development projects and lack of proper rehabilitation
- Shifting Cultivation, such as jhum and podu
- Poor utilisation of government funds, and
- Poor delivery of government programmes

These problems need urgent attention. It is unfortunate that MoTA does not put any pressure on the concerned Ministries to ensure that basic justice and development reaches them. We have discussed MoTA's role in the last chapter. Here we describe some of the critical issues where MoTA needs to do convergence between various development departments. Similarly the departments dealing with tribal issues at the

state level take a very narrow view of their responsibilities; none of the eight problems given in the bullets above engage their attention. As discussed in the last chapter, **one needs a systemic change in the way MoTA and state tribal departments function; their approach must change from implementation of simply departmental schemes to knowledge based advocacy with the concerned Ministries/departments.**

We begin by describing the status of tribals on the important socio-economic indicators.

### 10.1.1 Poverty

Poor implementation of existing schemes in the tribal regions has meant that not only poverty continues at an exceptionally high levels in these regions, but the decline in poverty has been much slower here than in the entire country, as shown below.

**Table 1: Rural Population Living Below Poverty Line (1993-94, 1999-2000, and 2004-05) (in per cent)**

Category	1993-94	1999-00	2004-05
Total	37.27	27.09	28.30
STs	51.94	45.86	47.30
<b>GAP</b>	<b>14.67</b>	<b>18.77</b>	<b>19.00</b>

Thus the gap has been steadily rising, with the result that between 1993-94 and 2004-05 the share of the tribals amongst the poor in the country increased from 14.8 to 18.5 per cent. Lagging of scheduled tribes reflects the fact that geographical seclusion has limited their access to new self and high wage employment opportunities, and as labour supply has remained abundant in the remote villages with negligible out-migration, agricultural wages for this group did not grow to the same extent that they did for the scheduled castes.

### 10.1.2 Education

Similar gaps continue between literacy levels and health indicators of STs and the general population and have widened over the years. The continuing gap between literacy levels of STs and the general population is shown below.

**Table 2: Literacy Rates of STs and Total Population (in per cent)**

Category	1971	1981	1991	2001
Total Population	29.45	36.23	52.21	65.38
Scheduled Tribes	11.30	16.35	29.60	47.10
<b>Gap</b>	<b>18.15</b>	<b>19.88</b>	<b>22.61</b>	<b>18.28</b>

**Table 3: Female Literacy Rates of STs and Total Population (in per cent)**

Category	1971	1981	1991	2001
All	18.69	29.85	39.29	54.16
STs	4.85	8.04	18.19	34.76
<b>Gap</b>	<b>13.84</b>	<b>21.81</b>	<b>21.10</b>	<b>19.40</b>

Thus the gap in literacy levels, both for tribal men and women, has not declined significantly despite the fact that the largest proportion of centrally sponsored programmes for tribal development are related to the single sector of education. The gap would be wider if the north-eastern states are excluded from the above table, as education and health standards of tribals in that region are much above the national average.

**TABLE 4: Dropout Rates, 2004–05**

Sex	Classes I to V			Classes I to VIII			Classes I to X		
	All	ST	Gap	All	ST	Gap	All	ST	Gap
Boys	31.8	42.6	(-)10.7	50.4	65.0	(-)14.6	60.4	77.8	(-)17.4
Girls	25.4	42.0	(-)16.6	51.3	67.1	(-)15.8	63.9	80.7	(-)16.8
Total	29.0	42.3	(-)13.3	50.8	65.9	(-)15.1	61.9	79.0	(-)17.1

The Joint Parliamentary Committee on the Welfare of Scheduled Castes and Scheduled Tribes of the 13<sup>th</sup> Lok Sabha on the Working of Integrated Tribal Development Projects in Rajasthan reported that the delay in disbursement of scholarships is one of the reasons for increasing drop out of indigenous and tribal students. Frequent evaluation of the programmes on education including the Ashram schools under the Tribal Sub-Plan (TSP) should be conducted by the Ministry of Tribal Affairs so as to understand the shortcomings and suggest corrective measures.

Most teachers teaching in adivasi schools are non-advasis who tend to view adivasi language, culture and social practices as being inferior to theirs. Psychologically, this has a strong negative impact on children, which again contributes to their dropping out of school. One way of tackling this problem would be to change the way adivasi communities are being educated. For instance, if textbooks were to be prepared in the language of the adivasis to express their culture, worldview and concepts, it would make it easier for adivasi children to begin learning since they would be already familiar with the language and content of the textbooks. It would also mean that they would have to learn only two skills, viz., reading and writing. In time, they could gradually begin to learn the language of the state, which would put them on par with non-advasi students.

Tribal hostels and residential schools in remote interiors are notoriously poorly managed, plagued by badly maintained buildings and leakages and delays in payments to students and purchases. Teachers, if they teach at all, are often poorly motivated and sometimes display prejudices against tribal children. The greatest failing has been in the context of education in tribal schools. The sensitive rhetoric of stated tribal policy of 'integration' and enabling tribal communities to 'develop according to their own genius' is entirely forgotten, as mainstream school curricula are imposed wholesale on tribal schools. The problem is not merely the medium of instruction; again, contrary to stated national policy of enabling children at the primary level to study in their mother-tongue, there are almost no tribal schools in which teaching is in tribal languages. Even more serious is the cultural bias of school curricula, which tends to be urban, upper-caste Hindu in content. Studies have also established patriarchal and communal trends.

However, despite all these limitations, education is a growing and powerfully felt need of tribal communities. The most visible evolution in tribal aspirations even in remote tribal hinterlands and among so-called primitive tribes, has been for education. The attraction is partly for eligibility for employment, particularly in

government. However, the major impetus is to acquire skills to negotiate the complex, exploitative external world. The challenge remains of meeting these aspirations without alienating tribal communities from the roots that sustain them.

### 10.1.3 Health

The health status of both SCs and STs are far worse than that of other sections of society. In 2005/6 (National Family Health Survey 3) infant mortality rate was 83 for SCs, 84 for STs, and only 62 for others. Since access to care is limited for STs, barely 42% of pregnant STs could access a doctor for ante natal care and only 28% could access an ANM. But 64% of others obtained ante natal care from a doctor. Again, since most STs live in remote rural areas, barely 18% of all STs had deliveries in a health facility, compared to 51% among other communities. There is, however, a failure of governance, which has multiple dimensions and is not confined to the inefficiency of the health delivery system only.

**Table 5: Mortality and Undernutrition**

		SC	ST	Others
1	Infant Mortality (per 1,000 live births)	83	84	62
2	Child Mortality	39	46	22
3	Proportion (%) of Children with Anaemia	78	79	72
4	Proportion (%) of Severely Underweight Children	21	26	14

(Planning Commission: naxal report)

Since most of the tribal habitations are located in isolated villages and hamlets in undulating plateau lands coinciding with forest areas, they have limited access to critical infrastructure facilities such as roads, communication, health, education, electricity, drinking water, and so on. This widens the gap between the quality of their life and the people in the country.

### 10.1.4 Migration

Migration is common to almost all tribes, but it is the highest in Maharashtra, Gujarat and Jharkahnd. In Nandurbar and Dhule districts of Maharashtra, for example, due to high indebtedness over 30 per cent of the tribal population migrate between the months of August and March to work on sugarcane fields in neighbouring Gujarat, despite owning, on an average, three to five acres of land. The landholding pattern in Jharkhand, however, differs from that in Maharashtra. Landlessness is high and land is distributed unevenly. But unlike Maharashtra, it has had a history of tribal struggles and has therefore a strong civil movement. Clearly, then, the particularities of each region will have to be taken into account if we are to develop a working plan for these areas.

It is unfortunate that Ministry of Tribal Affairs (MoTA) does not give any priority to take action against the evil consequences of migration. Often such families have no ration card in the cities, where they work for several months. The labour laws governing migrant labour are poorly implemented, as there is little knowledge about such laws, and no legal aid to help the tribals. A recent research study On 'Migrant Tribal Women Girls in Ten Cities' for the Planning Commission found that the employers paid very low wages below the level of minimum wages, made illegal deductions, and forced them to work for very long hours beyond the hours fixed by law. The principal causes of financial and sexual exploitation of the migrant tribal women and girls in cities were poverty, lack of employment opportunities,

unorganised nature of labour force, misunderstanding of the local people about free sex in tribals, and lack of community support to victims of sexual exploitation.

It is hoped that the Ministry of Tribal Affairs in consultation with the Ministry of Labour will take steps to ensure that migrant tribal labour is not exploited.

### **10.1.5 Displacement and Resettlement**

Nearly 85.39 lakh tribals had been displaced until 1990 on account of some mega project or the other, reservation of forests as National Parks etc. Tribals constitute at least 55 percent of the total displaced people in the country, though their share in population is only 8 per cent. Cash payment does not really compensate the tribals for the difficulties they experience in their living style and ethos. Displacement of tribals from their land in some districts amounts to violation of the Fifth Schedule of the Constitution as it deprives them of control and ownership of natural resources and land essential for their way of life.

**Acquisition in Scheduled Area** - Detailed executive instructions were issued by Government of India signed by the Secretary Rural Development sometime in 1998 for acquisition of land in Schedule V areas to describe the modalities of consultation with the Gram Sabhas or with the Panchayats where more than one Gram Sabha is involved. The procedure to be followed for acquisition of land in Schedule V areas was deliberately made difficult so as to discourage projects to displace tribals. For instance, it provided that the company requiring land must produce a letter of consent from each of the concerned Gram Panchayat, in favour of the proposed acquisition of land. This order (given as annexure) fortunately is still operative, though almost forgotten by the state governments. It is feared that the states may in due course of time ignore the provisions of the executive instructions issued. The Ministry of Tribal Affairs should reiterate these instructions, and get a suitable sub-section incorporated in the Land Acquisition Act, 1894, which would reflect the spirit of this notification.

## **10.2 Tribal budget**

Funds for tribal development are sourced from:

1. State Plans
2. Special Central Assistance (SCA) to Tribal Sub Plan
3. Grants under Article 275 (1) of the Constitution
4. Funds under other Schemes of the Ministry of Tribal Affairs
5. Sectoral programmes of Central Ministries/ Departments, and
6. Institutional Finance.

### **10.2.1 Tribal Sub- Plan (TSP)**

The strategy of the Tribal Sub- Plan (TSP) for the Scheduled Tribes (STs) was introduced in the Fifth Plan (1974-79) for channelising to STs their due share of plan benefits and outlays. TSP envisages to channelise the flow of outlays and benefits from all the sectors of development in the Annual Plans of States/UTs and Central Ministries at least in proportion to their population both in physical and financial terms. All Central ministries and state governments have to earmark funds for TSP at least in proportion to the population percentage of the tribals in the country and the states respectively.

**TSP of the State Governments** - The Planning Commission has issued guidelines for the States to earmark funds for TSP to be placed under a separate Budget Head Code 796 from total State Plan outlay. As per guidelines issued by the Planning Commission, the Tribal Sub Plan funds are to be non divertible and non-lapsable. The guidelines also provide that the Tribal Welfare Departments will be nodal

Departments for the formulation and implementation of the Tribal Sub Plan in the States.

**TSP Component of Central Ministries** - The TSP strategy is expected to be followed in the Central Ministries/ Departments also. The Planning Commission and the Ministry of Tribal Affairs have requested in the past all the Central Ministries and Departments to quantify the funds for the TSP in their Annual Plans in accordance with the population percentage of STs in the country, ie. 8.2%, as per 2001 census.

However, implementation of TSP is not being done uniformly in all States/UTs and Central Ministries/Departments. Different States have adopted different mechanisms without exploring effective mechanism for the planning, implementation and monitoring of TSP. The State Governments/Ministries exercise their quantification as 'Divisible' and 'Non-Divisible' components. Quantification is made only from the 'Divisible' component scheme wise. As a result of this, the actual earmarking of TSP from the total State Plan becomes much less than what should have been as per the percentage of the population of STs to the total population of the State. Some Ministries/ Departments are allegedly regulatory and are being non-divisible in nature, TSP was not earmarked as such. Despite the fact that the strategy of TSP has been in operation for more than 30 years, it could not influence all the concerned in its right perspective. Further, lack of effective monitoring to ensure that all the Ministries/Departments both at Central and State levels earmark funds under TSP and the funds received under SCA (explained below) are utilized effectively and purposefully, is another area of concern.

In 2006 Planning Commission issued new orders by way of reiterating the existing guidelines. It is stated in this order that out of the total Plan outlay of each State / UT, a proportion equal to the percentage of Scheduled Tribe population in the State/ UT should be set apart for the Tribal Sub-Plan (TSP). There should be no division of the total Plan outlay into so-called divisible and non-divisible components, with the TSP being confined to the divisible outlays alone. The Scheduled Tribe people are entitled to a share in the total plan size of the State, equivalent to that of their population in the State/UT, and no less. In fact, they need justifiably more, considering the extent of their past and present deprivations, and the magnitude of the problems before them. However indications are that even this is not being followed.

### **10.2.2 Special Central Assistance (SCA)**

The Special Central Assistance (SCA) is provided by the Ministry of Tribal Affairs (Rs 900.5 crores in 2009-10) to the 22 TSP States as an additionality to the State government's Tribal Sub Plan in the form of 100 per cent grant to fill the critical gaps especially in family-based income activities for BPL tribals. The Programme was started in 1974-75. The objective and scope of SCA to TSP which was originally meant for filling up of the critical gaps in the family-based income generation activities of the TSP, has been expanded to cover the employment-cum-income generation activities and the infrastructure incidental thereto, not only family-based, but also Community based through cluster approach. The ultimate objective of extending SCA to TSP is to boost the demand based income-generation programmes in tribal areas and thus raise the economic and social status of Tribals.

The Central Tripartite Committee set up in the Planning Commission reviewed the implementation SCP and TSP of 14 Central ministries/departments and suggested the state governments set up such Tripartite Committees at the state level to review the functioning of SCP and TSP. It is not known how many states did it.

SCA is primarily meant for family-oriented income-generation schemes in sectors of agriculture, horticulture sericulture and animal husbandry cooperation. A part of SCA

(not more than 30%) is also permitted to be used for development of infrastructure incidental to such income generating schemes.

SCA guidelines were revised in 2003 to extend financial assistance for the development of forest villages, irrigation facilities, SHGs/ community-based employment-cum-income generation activities etc. Going by the information available, 25 Central ministries and 22 states/ Union Territories are earmarking funds under TSP.

The present approach of SCA to TSP where 70% of the funds are to be spent on individual family oriented income generating schemes is overlapping with IRDP programmes, now renamed as SGSY programmes. In the absence of any mechanism to prevent overlapping, we should implement family oriented income generating schemes only through IRDP/SGSY schemes. One should use the SCA to TSP for infrastructure development, strengthening administration and monitoring, and matters incidental thereto. If necessary, an amount of about 20% of the funds could be kept for Family Oriented Schemes to meet certain exigencies where it is considered essential.

It should be noted that SGSY schemes are not working well in poorer states. Therefore to give money for similar schemes under SCA to TSP shows total lack of imagination. The Self-employment programme known as Swarnajayanti Swarozgar Yojna (SGSY) suffers from numerous defects including sub-critical investment levels; non-viable projects; lack of technological and institutional capabilities in designing and executing projects utilising local resources and expertise; illiterate and unskilled beneficiaries with no experience in managing an enterprise; indifferent delivery of credit by banks (high transaction cost, complex procedure, corruption, one-time credit, poor recovery); overcrowding of lending in certain projects such as dairy; poor targeting with a high proportion of the non-poor included; absence of linkage between different components of the SGSY; rising indebtedness; poor access to markets, and the capacity of government and banks to implement the SGSY being outstripped by the increase in its scale. A disturbing feature of the SGSY in several states has been the rising indebtedness of its beneficiaries. Other weaknesses of SGSY were uneven spread in the formation of Self-Help Groups (SHGs), high attrition rate in the SHGs, lack of adequate access to banking facilities, lack of capacity building and training and inadequate risk mitigation.

Microcredit is a necessary but not a sufficient condition for micro-enterprise promotion. Other inputs are required, such as identification of livelihood opportunities, selection and motivation of the micro-entrepreneurs, business and technical training, establishing of market linkages for inputs and outputs, common infrastructure and some times regulatory approvals. In the absence of these, microcredit by itself, works only for a limited but familiar set of activities – small farming, livestock rearing and petty trading, and even those where market linkages are in place.

For these reasons skill development should be an important component in the SCA to TSP programmes. Collaboration with the private sector in imparting skill training could be a useful approach. For instance, some of the ITIs in forested districts can be handed over to Industrial houses.

### **10.2.3 Grants under 275 (1)**

Article 275(1) of the Constitution provides as follows:-

Such sums as Parliament may by law provide shall be charged on the consolidated Fund of India in each year as grants-in-aid of the revenues of such States as Parliament may determine to be in need of assistance, and different sums may be fixed for different States:

Provided that there shall be paid out of the Consolidated Fund of India as grants-in-aid of the revenues of a State such capital and recurring sums as may be necessary to enable that State to meet the costs of such schemes of development as may be undertaken by the State with the approval of the Government of India for the purpose of promoting the welfare of Scheduled Tribes in that State or raising the level of administration of the Scheduled Areas therein to that of the administration of the rest of the areas of that State”.

This is a Central Sector Scheme and 100% grants are provided to the States (Rs 1000 crores in 2009-10). The scheme covers States namely Andhra Pradesh, Arunachal Pradesh, Assam, Bihar, Chhattisgarh, Goa, Gujarat, Himachal Pradesh, Jammu & Kashmir, Jharkhand, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Manipur, Meghalaya, Mizoram, Nagaland, Orissa, Rajasthan , Sikkim , Tamil Nadu, Tripura, Uttar Pradesh, Uttarakhand and West Bengal having Scheduled Tribe Population.

The grants are provided to the States on the basis of ST population percentage in the State to the total tribal population of the Country. The funds are released to the State Governments against specific projects for the welfare of Scheduled Tribes and strengthening of administration of tribal areas from the year 2000- 2001. A part of funds are also utilised to establish and maintain Eklavya Model residential Schools to provide quality education to ST students from class VI to XII.

States can take up activities for strengthening the infrastructure in the sectors critical to enhancement of human development indices such as education, income generation, health irrigation, roads, bridges, forests, forests villages, electrification, communication, rural marketing, agriculture, animal husbandry, food processing, processing of MFPs, human resource development in technical and vocational spheres, water harvesting, resettlement of displaced persons, tribal land management, sports promotion. Generation of community welfare assets like residential schools, maintenance of schools, providing skilled teaching including in tribal language, nutritional support to needy: children, mothers and elderly people, community grain storage, and assured drinking water. Other activities meant for welfare of tribal population different from conventional development can also be taken up.

Under Article 275 (1) of the Constitution, grants from the Consolidated Fund of India are also extended annually to various state governments having Scheduled Areas. The guidelines for releasing the grant have been revised to extend financial assistance to forest villages, model schools, expansion and integration of minor irrigation schemes etc.

### **10.3 Forest villages**

The unique aspect of forest villages is that these are not illegal as they have been set up by the forest departments themselves. Many of them are 80 to 90 years old when the colonial government initiated commercial forest exploitation and needed the availability of labour in uninhabited forest areas for their forestry operations. As long as commercial forest management continued, the residents of forest villages had wage work for several months of the year. In addition, the forest departments allocated some land to them for subsistence cultivation besides permitting them to collect NTFPs and other forest products for meeting their domestic requirements. Their livelihoods have however come under increasing constraints in the last two decades. Felling bans and reduced commercial forest exploitation has created a crisis of work availability for such villagers, particularly due to their remote locations.

The condition of such villagers has become even worse where the areas where they are located have been declared national parks or wild life sanctuaries under the Wild

Life Protection Act. In such areas, particularly after the Supreme Court order of 14.02.2000 banning the removal of dead fallen and decaying trees as well as grasses etc. the livelihood crisis has become truly acute.

One of the common problems faced by all forest villages is that the land on which they are located, irrespective of its being partly under cultivation and partly under habitation for several decades, on paper remains recorded as forest land. Although Govt. of India decided in the mid-1970s to encourage conversion of all forest villages into revenue villages through granting secure land titles to their inhabitants, enactment of the Forest Conservation Act in 1980 became a serious hurdle for state governments to undertake such conversion. The residents of forest villages today are like forgotten people invisible to society and government at large, left suspended in a legal vacuum that deprives them of basic fundamental rights enshrined in the constitution.

**Consequences of lacking land title** - Not having title to the land which they cultivate and on which they live deprives them of the following entitlements:

- They cannot get any bank loans.
- The tehsildar, apparently the only official authorised to do so, refuses to give them domicile certificates on the grounds that the land is under the forest department's jurisdiction. The forest department may not have obtained the authority for issuing domicile certificates for such people or is not permitted by law to issue them. Whatever the legal technicalities, the villagers are deprived of access to a critical document which is their passport to several other benefits/entitlements.
- Lack of a domicile certificate means that they cannot get a Schedule Caste/Tribe certificate depriving the predominantly tribal residents of all the special benefits meant for SCs/STs. They cannot apply for jobs/educational facilities reserved for such groups.
- Lack of land title also deprives them of housing assistance under the Indira Awas Yojana.
- Till recently, they did not have access even to BPL cards to enable them to avail of subsidized goods including kerosene under the PDS.
- During a drought, they are not entitled to compensation for crop loss due to not being covered by crop insurance.
- Government functionaries avoid visiting the villages, as the forest department discourages their presence in its 'jurisdiction'.

MoTA must monitor and get all the 2474 forest villages declared as revenue villages. This is also the requirement of law under FRA.

### **10.3.1 Development of Forest Villages**

Presently there are 2,474 forest villages/habitations spread over 12 states and the Ministry of Tribal Affairs has approved proposals covering 2,413 forest villages in 12 States and also released Rs. 608.76 crore during 2007-08 and 2008-09. There was no release during 2009-10, because of poor expenditure of the funds released earlier. Under the programme, infrastructure work relating to basics services and facilities viz. approach roads, healthcare, primary education, minor irrigation, rainwater harvesting, drinking water, sanitation, community halls etc. are taken up for implementation.

This programme was launched during the 10<sup>th</sup> Plan as a one time measure for integrated development of forest villages originally identified with about 2.5 lakh tribal families with a view to:

- Raise the Human Development Index (HDI) of the inhabitants of the Forest Villages
- Provide basic facilities and services like food, safe drinking water, health care, primary education, approach roads, other infrastructural facilities etc.

During the 10<sup>th</sup> Five Year Plan, Rs. 450 crore was allocated to the Ministry of Tribal Affairs for the development of forest villages under Special Central Assistance to Tribal Sub Plan (SCA to TSP). As per the latest information available in the Ministry of Environment and Forests on forest villages / habitations based on reports received from States, details are as under:-

**Table 6: No. of forest villages**

Name of the State	No. of forest villages
Assam	499
Chhattisgarh	425
Gujarat	199
Jharkhand	24
Meghalaya	23
Madhya Pradesh	893
Mizoram	85
Orissa	20
Tripura	62
Uttaranchal	61 Habitations
Uttar Pradesh	13
West Bengal	170
Total	2474

#### Process of approval

The project proposals received from the States for the activities to be undertaken in the villages are scrutinized by the Ministry of Environment & Forests and put up for the consideration of the Project Appraisal Committee constituted for the purpose. Joint Secretary MoTA acts as the chairperson of the Committee in the normal course. As per recommendation of Project Appraisal Committee, the proposals are approved and funds released after getting the financial concurrence.

#### Implementing Agency:

Forest Development Agency (FDA) - forest division level

Joint Forest Management Committees (JFMCs) - village level, composed of all willing adult members of the village. These should now be changed to the gram sabha approved committee.

### Funding pattern

The funding is done under the programme of Special Central Assistance to the Tribal Sub-plan Fund from the Ministry of Tribal Affairs to Department of Tribal Welfare/ Tribal Development of the States and then to the implementing agencies.

Since forest villages are most backward and are located in forest areas, they have not got benefits of development over the years. To enable these settlements/forest villages to get the fruits of development, to begin with 100% financial assistance is provided under this special programme. As a first step, funding of proposals for each forest village has been generally given for Rs.15 lakh each. Additional funding of Rs 15 lakh per village has been initiated in the second phase during 2006-07.

State-wise releases in the last three years as per the reply given to Lok Sabha Unstarred Q. NO. 3391 for 13.08.2010 were as follows:

**Table 7: Funds released for forest villages (Rs. in Lakh)**

S. No.	State	Total No. of Forest Villages	No. of villages for which projects approved	Fund Released		
				07-08	08-09	09-10
1	Assam	499	498	0.00	4696.05	0.00
2	Chhattisgarh	425	422	1034.00	0.00	0.00
3	Gujarat	199	199	593.62	0.00	0.00
4	Jharkhand	24	24	0.00	0.00	0.00
5	Meghalaya	23	23	0.00	0.00	0.00
6	Madhya Pradesh	893	867	2829.00	6502.50	0.00
7	Mizoram	85	85	190.00	435.00	0.00
8	Orissa	20	20	0.00	180.00	0.00
9	Tripura	62	62	0.00	558.00	0.00
10	Uttrakhand	61	41	0.00	0.00	0.00
11	Uttar Pradesh	13	2	0.00	30.00	0.00
12	West Bengal	170	170	0.00	2550.00	0.00
	<b>Total</b>	<b>2474</b>	<b>2413</b>	4646.62	14951.55	0.00

(Lok Sabha Unstarred Q. NO. 3391 for 13.08.2010)

### **10.4 Overall Releases and Expenditure by MoTA**

Table 8 shows the Budget Estimate, Revised Estimate and Actual Plan Expenditure for the previous years along with the Budget Estimate for 2010-11.

**Table 8: Plan expenditure against budget provision for the Ministry of Tribal Affairs (In crore Rs.)**

Year	Budget Estimates (BE)	Revised Estimates (RE)	Expenditure	% age of expenditure over BE
2006-07	1656.90	1652.68	1647.37	99.42
2007-08	1791.71	1719.71	1524.32	88.63
2008-09	2121.00	1970.00	1805.91	85.17
2009-10	3205.50	2000	1996.79	62.35
2010-11	3206.50			

Scheme-wise budget provision and expenditure for 2009-10 in the Ministry of Tribal Affairs is as follows:

**Table 9: Plan Provision & Expenditure for the Ministry of Tribal Affairs in 2009-10 (in crore Rs)**

Item	BE	Exp
Special Central Assistance to Tribal Sub-Plan	900.50	481.24
Assistance for schemes under proviso (i) to Article 275(1) of the Constitution	1000	399.1
ACA for Educational Development of Tribal Children in Schedule-V areas and Naxal-affected areas	500	500
<b>Total- Central Assistance for State Plans</b>	<b>2400.50</b>	<b>1380.34</b>
PTGs	155	83.62
Scholarships	45	30
NGOs	42.75	49.75
Book bank etc	217.95	271.37
<b>Total CSS for STs (education, NGOs, etc)</b>	<b>805.00</b>	<b>616.45</b>
<b>Total-Welfare of Scheduled Tribes</b>	<b>3205.50</b>	<b>1996.79</b>

There has been large surrender of funds by the Ministry every year in the last 5 years which amounts to Rs. 95.12 crores in 2004-05, Rs. 109.62 crores in 2005-06, Rs.45.91 crores in 2006-07, Rs. 216.51 crores in 2007-08, Rs. 318.38 crores in 2008-09, and a staggering figure of 1208.5 crores in 2009-10. Because of the poor expenditure by MoTA in 2009-10, there has been little increase in the BE for the Ministry in 2010-11. Non-receipt of adequate number of complete proposals in accordance with the scheme guidelines from the State Governments, non receipt of Utilization Certificates and lack of physical progress by State Governments, non-filling of vacant posts, austerity measures, non-receipts of bills from the suppliers etc. have been cited by the Ministry as the reasons for the surrender of funds. MoTA should also improve its monitoring capabilities.

Grants have been withheld to States/UTs due to inability to furnish UCs as shown below:- (Rs. in lakhs)

**Table 10: State-wise grants withheld under SCA**

States	Funds not released in 2008-09 (SCA to TSP)
Assam	140.35
Bihar	816.00
Chhattisgarh	9.80
Goa	150.00
Gujarat	1523.82
Jharkhand	6594.75
J&K	676.00
Maharashtra	2330.00
Uttarakhand	124.00
Total	12364.72

It has been observed from the above that under the schemes of Special Central Assistance to Tribal Sub-Plan during 2008-09 funds amounting to Rs. 12364.72 lakh were not released to States due to non-availability of Utilization Certificates of the previous years. Similarly, in case of Grants under First Proviso to Article 275(1) of the Constitution, full grants were not released to States due to non-utilization of funds during the previous years.

Elucidating the reasons for less expenditure Secretary, Ministry of Tribal Affairs, during evidence to a Parliament Committee stated, 'There are some States who just send us a piece of paper – we need so much of money for so many Ashram schools. We send it back saying – no, this is not the proposal. In our scheme which is on the website, there is a checklist. You see the checklist, you fill up all the information as per the checklist and then we will be able to sanction the scheme.'

Huge unspent balances are lying with the State Governments under the various schemes of the Ministry:

**Table 11: Unspent balances with the states (in lakhs Rs.)**

	Amount
Post Metric Scholarship for Scheduled Tribes Student	21973
Upgradation of Merit	90
Vocational Training in Tribal Areas	871
Ashram School in Tribal Sub-Plan Areas	1031
Hostels for ST Girls & Boys	7928

Under the scheme, development of forest villages, during 2007-08 about Rs 103 crore was surrendered due to i) non-submission of proposals by the States in time and ii) comments from Ministry of Environment and Forest were delayed.

The amount of funds released and unspent balance under the scheme of SCA to TSP for 2006-07 to 2008-09 are as follows:

**Table 12: Funds released and unspent balance (Rs. In lakh)**

State	2006-07		2007-08		2008-09	
	Fund Released	Unspent Balance	Fund Released	Unspent Balance	Fund Released	Unspent Balance
Andhra Pradesh	3344.33	0.00	3712.99	0.00	4176.75	1944.00
Assam	3601.59	0.00	3220.27	0.00	3755.65	0.00
Bihar	656.00	0.00	715.50	456.43	0.00	0.00
Chhattishgarh	5477.04	0.00	5893.78	0.00	6829.20	2615.36
Goa	110.00	105.995	133.00	133.00	0.00	0.00
Gujarat	4882.13	0.00	5419.14	29.99	4517.44	0.00
HP	1022.14	0.00	1133.43	0.00	1276.00	138.65
Jharkhand	7041.25	0.00	7711.12	937.76	2198.25	2198.25
J&K	1088.00	0.00	956.24	384.90	676.00	676.00
Karnataka	1242.00	0.00	1372.00	0.00	1544.00	101.05
Kerala	318.13	0.00	352.36	0.00	396.25	396.25
MP	10126.02	0.00	9129.39	0.00	12644.25	0.00
Maharashtra	3888.00	1291.20	4293.00	1020.10	2500.00	2500.00
Manipur	796.00	0.00	879.00	0.00	989.00	989.00
Orissa	7695.87	0.00	8543.41	0.00	10110.50	3832.61
Rajasthan	4214.00	0.00	4654.00	1083.72	5236.00	5236.00
Sikkim	135.52	0.00	280.36	37.39	315.00	315.00
Tamil Nadu	375.55	0.00	142.59	118.29	469.00	469.00
Tripura	1240.34	0.00	1318.28	0.00	1548.00	147.25
Uttar Pradesh	0.00	0.00	425.36	425.36	644.25	644.25
Uttarakhand	50.00	50.00	0.00	0.00	0.00	0.00
West Bengal	2270.00	0.00	2894.59	355.54	3255.75	3255.75
Grand Total	59573.91	1447.20	63179.81	4982.45	63135.29	29306.07

As stated in the Outcome Budget 2009-2010 for the Ministry, under the scheme of SCA to TSP the target during 2008-09 was to cover 7,00,000 beneficiaries but the number of beneficiaries covered has been reported only from Andhra Pradesh, Gujarat, Kerala and Madhya Pradesh. The figures of beneficiaries from the remaining 18 States are awaited.

The Budget Estimates, Revised Estimates and Actual Expenditure incurred under 275(1) scheme during the last four years is as under:-

**Table 13: BE, RE, and expenditure under 275 (1) (In crore Rs.)**

Year	Budget Estimate	Revised Estimates	Actual Expenditure
2006-07	400.00	400.00	400.00
2007-08	400.00	400.00	390.28
2008-09	416.00	392.00	339.78
2009-10	1000.00	399.1	399.1

It is unfortunate that the Ministry has not been able to improve expenditure, and there have been large surrenders in 2009-10.

Grant under Article 275(1) is released to State Governments for the welfare of STs and raising the level of administration of Scheduled Areas to that of the rest of the areas of the State. As per the guidelines state governments have been requested to give preference to the proposals to strengthen and upgrade the levels of Administration in the sectors of education, health, irrigation, water conservation, connectivity, communication, electrification etc within their allocation. The funds are allocated to States on the basis of ST population in each State as percentage of the total tribal population of all these States. Releases are made to the States within their allocation and utilization reports received from them for the funds released in the previous years for which UCs has become due. State Governments undertake the projects based the felt need of the tribal people and area. The list of all proposals is not maintained in the Ministry. An amount equivalent to 10% of the total allocation under Article 275(1) is to be earmarked for innovative projects to be given to States as incentive for adoption of TSP approach.

The programme of Grant under Article 275(1) of the Constitution has a component of setting up of Eklavya Model Residential School for providing quality education to Scheduled Tribe students. It was proposed to utilize significant portion of grant during 2009-10 for completing the existing sanctioned EMRSs, opening of more EMRS and providing recurring grant to the existing EMRSs at enhanced costs.

During the year 2008-09, though 17 States namely Andhra Pradesh, Arunachal Pradesh, Chhattisgarh, Gujarat, Himachal Pradesh, Jharkhand, Kerala, Madhya Pradesh, Manipur, Mizoram, Nagaland, Orissa, Sikkim, Tripura, Uttar Pradesh, Tamil Nadu and West Bengal were eligible to get grant for innovative projects, only 7 States namely Andhra Pradesh, Chhattisgarh, Madhya Pradesh, Meghalaya, Mizoram, Orissa and West Bengal could avail the benefit of grant under innovative project as other States did not submit project proposal/UC/physical progress of previous releases.

To sum up, the Tribal sub-plan mechanism involving area specific development and special schemes for numerically small and economically and socially more marginalized vulnerable groups, has not made much headway. In particular, the state perception for planning was deficient both in micro and macro planning. Further, the implementation of TSP has been mostly with untrained, inefficient, insensitive and often untrustworthy hands. In general, the implementation of the policy of affirmative action has often been mindless and therefore sterile.

Although there are hoards of centrally sponsored schemes from the social Ministries of GOI, tribal households have not been able to avail of reasonable assistance from such schemes. This is because of governance issues discussed in section 5, which should engage serious attention of state government authorities.

## **10.5 Governance**

Apart from poor utilisation of funds discussed above, tribals have also suffered because of the poor quality of governance. Programme delivery has deteriorated everywhere in India, but more so in tribal areas, where government servants are reluctant to work, and are mostly absent from their official duties. Government seems to have surrendered to political pressures from the staff, as many of their posts have now been officially transferred from tribal regions to non-tribal regions, where they can draw their salaries without doing any work! It is a pity that massive vacancies exist in tribal regions in the face of acute educated unemployment in the country. The Joint Parliamentary Committee on the Welfare of Scheduled Castes and Scheduled Tribes of the 13<sup>th</sup> Lok Sabha in its 23<sup>rd</sup> Report stated that hundreds of posts of medical staff in Tribal Sub-Plan areas in Rajasthan have been lying vacant. The State government of Rajasthan could not give any answer as to the reasons for not filling up the vacancies.

In a study by Unicef of Jharkhand it was revealed that one of the main constraints that NRHM in the State faces is that of lack of skilled manpower. In the two districts visited, Sahibganj has less than 50% positions in place, while that of East Singhbhum, with its better infrastructure, it is just around 54%. Other major reasons as identified during this study for low utilisation appeared more due to lack of systemic controls, such as lack of monitoring, and lack of understanding among the staff on implementation of rules.

In Sahebganj district, even several CDPOs are not in position, against a sanctioned post of 7, only 3 positions are in place. In such situation one person has charge of more than one CDPO, or the BDO gets additional charge. Obviously in such situations one of the supervisor, ends up doing most of the work that a CDPO is required to do, thus overall supervision further suffers.

The indifference to tribal issues is also demonstrated by the delay in the finalization of National Tribal Policy that has been in the making for the last six years. The Ministry of Tribal Affairs has, during the year 2006, formulated a draft "National Tribal Policy" covering all important issues that concern tribals. The Policy was publicized and widely circulated through print and electronic media and large scale consultations were made. Final draft of the Policy was placed before the Union Cabinet for approval on 31-5-2007. Union Cabinet referred the Policy to a Group of Ministers (GoM) for consideration and harmonization with National Rehabilitation Policy. After deliberations, the GoM made its recommendation. The recommendations of GoM were accordingly incorporated in the Cabinet Note and the same was submitted on 14.7.2008, and resubmitted on 7.11.2008 to Cabinet Secretariat for placing it before Cabinet for approval. The Cabinet Secretariat returned the Cabinet Note in March 2009 with the remark that the proposal would require further consultations with the Prime Minister's Office which may be carried out and after that if necessary, a revised Note may be forwarded to the Cabinet Secretariat after completion of the election process and formation of Government thereafter. There seems to be little movement since then.

The isolation of most of the scheduled tribes calls for special attention from the state governments to improve geographical targeting. Tribal villages and hamlets are often hilly and forested, making it difficult to reach them even in normal circumstances, but more so during natural disasters and monsoons. Services have not reached into these areas, which are more sparsely settled than the standard population norms for health centres, schools, or roads. Service providers, such as doctors, do not reside in these areas and very often do not even visit them because of the difficulty of access.

Constitutional provisions aimed at protecting adivasi culture and interests have been mostly ineffective. Part X (Article 244) of the Constitution deals with the

administration of scheduled areas and tribal areas, which covers the operation of the V Schedule. In practice, experience with the V Schedule has been disappointing. Tribal Advisory Councils hardly have any teeth, laws applicable to the rest of the state are routinely extended to scheduled areas, the governor rarely exercises the powers vested in him or her, and the overall result manifests in the miserable human development indicators for adivasis.

The draft policy admits that the existing administrative machinery has 'not been up in terms of the quality of performance and development indicators', but the solutions proposed are weak and toothless. The draft 'seeks to revitalise the administration by proposing the following:

- Skill upgradation-cum-orientation programmes shall be conducted for tribal administration officials.
- Infrastructure development shall be given priority so that officials will function from their places of posting.
- Only officials who have adequate knowledge, experience and a sense of appreciation for tribal problems shall be posted for tribal administration.
- As the schemes meant for improving tribals' condition take time, a tenure that is commensurate with their implementation shall be fixed for officials.'

While it is easy to talk of long tenures and posting officers with commitment in the tribal regions, the reality is that postings are done by the state governments who generally succumb to pressures from the officials who wish to move out of tribal blocks on one pretext or the other. The only way to combat political compulsions and opportunism, and promote good governance is by prescribing hard punishment in terms of loss of central funds for those states who do not follow prescribed norms. In addition we suggest that the Ministry of Tribal Affairs must obtain approval of the Cabinet after consulting Planning Commission and the Finance Ministry on linking devolution with performance. However, the pre-requisite for achieving this would be a good system of monitoring which will capture the performance of the states on key indicators. In addition, one would have to think of innovative solutions, such as empowering tribal gram sabhas to hire staff on contract, Mobile Health Services, and compulsory tenure in tribal regions before confirmation of government staff, to improve programme delivery.

In this connection, the suggestion in the draft policy to 'encourage qualified doctors from tribal communities to serve tribal areas' is an attempt to further ghettoize the indigenous peoples, and let non-tribal doctors escape a hard posting in remote areas. Serving in the rural areas for a period of 10 years with five years exclusively in Tribal Sub-Plan (TSP) areas must be made mandatory for all government doctors. All the vacancies of medical staff in the TSP areas need to be filled up within a specified time frame. The government may consider additional benefits to medical staff working in TSP area and concomitant budgetary allocations need to be made under the TSP.

Effective mechanisms need to be devised to ensure that all allocations for tribal areas actually reach the people. Increasing allocations will have little impact unless the present systems of looting are smashed. Direct transfer of funds and PDS supplies to gram sabhas is required but that runs into resistance from state govts. Similarly, either local people should be recruited as teachers and health workers or incentives provided to staff from outside to actually stay in the areas and do their work. For that, the availability of basic facilities like electricity, health centres and schools simply has to be improved. In the Satkosia wild life sanctuary (district Angul, Orissa) visited by Ms Sarin in January 2008, none of the 92 villages with a population of over 30,000 living inside had any electricity, few schools had teachers or the PHCs

any health staff. The worst was that the PA staff harassed traders and others delivering construction and other essential material to the villagers while entering the area. Which outsider with a family and kids would be willing to work in such an area no matter how effective the monitoring is?

It is not fortuitous that overwhelmingly large sections of bureaucracy/technocracy constituting the delivery system come from landowning dominant castes or well to do middle classes, with their attachment to ownership of property, cultural superiority, purity-pollution governed behaviour and a state of mind which rationalizes and asserts their existing position of dominance in relation to others. This influences their attitudes, behaviour and performance. As it happens, the politics has also been aligned with this social segment which constitutes the power structure in rural and urban areas since colonial times. It is this coalition of interests and social background that deeply affect governance at all levels.

There is a distinct feeling both within government institutions and outside that reports of National Commissions for SCs/STs do not carry any weight. Parliament finds no time to discuss them. Government has shown little seriousness in making meaningful use of them and initiating corrective measures. The Commissions are also not being effectively used as instruments for grievance investigation and redressal mechanism where official agencies have failed or faulted. The Commissions are primarily used to provide symbolic representation to members of the ST communities to deflect political criticism about neglect of these groups. The Commissions have considerable potential in bringing to the notice of government the simmering discontent of the communities, and giving them a voice where bureaucratic and political structures have fail to respond. But they need to be restructured and strengthened to command attention from official agencies for discharging this responsibility. Appropriate measures may be worked out by the government.

The area affected by extremist movement is the region of central India with concentration of tribal population, hilly topography and undulating terrain. The area has much less density of population than the plains. The failure to provide infrastructure and services as per national norms is one of the many discriminatory manifestations of Governance here. These disparities result in non-available/poorly provided services. The removal of these disparities should be among the top priorities to convince people living in these areas that they are equal citizens and that they matter in national life.

A mechanism should be set up at the state level to periodically review cases in which STs are involved, recommend withdrawal of cases in petty offences, release of undertrials on bail where they are unable to find a bailer, arrange effective legal aid to defend them in other cases, and issue directions for speedy trial in cases pending for long.

The Government of India must start forthwith an annual review of the state of administration in the Scheduled Areas in terms of its responsibility under the first proviso to Article 275(1), with a clear goal to raise it to the level obtaining in the rest of the State within a period of five years.

#### **10.5.1 A few suggestions on administration**

- All States having Scheduled Areas should have Integrated Tribal Welfare Agencies or their equivalents and 30% of the revenue from excise and any other form of income should be allocated to these agencies.
- A periodic and independent review of tribal administration at the national, state and district/ITDA levels should be taken up.

- Officers posted in the tribal areas (IAS, IPS, IFS) should have a strong understanding, orientation and empathy to tribal rights and culture.
- The tenure of the officers should be fixed for at least a minimum period of 3 years so as to give consistency to the programmes/action initiated during their respective tenures.
- Awareness and sympathy of police department on understanding tribal problems, on taking action against atrocities on tribals, the laws relevant (SC/ST prevention of Atrocities Act and others), is poor. There is a growing violence against tribals especially State induced violence in the name of maintaining law and order. This should be curbed and police harassment on tribals should be stopped. Police should not refuse to register cases filed by tribals on any atrocities against them.
- Primary Education and Health should not be privatized or handed over to private institutions particularly in the tribal areas, as it is the primary responsibility of the State and a Fundamental Right of all citizens.
- Every tribal village should have a primary school and government cannot refuse to set up schools in any tribal village with atleast 30 households on grounds of lack of funds or any other.
- The Plan allocation in Central and State Budgets for Tribal Welfare and especially for education and health shows very poor percentages. (This if increased even by two or three percent will be able to bring great changes to the prioritization of budget allocations)
- Electricity should be provided in each and every village and hamlet especially in those village affected by electricity projects.
- The officers of the Tribal Affairs Department should be represented/be part of the policy formation process/protocols of all other departments of the Government (State and Central).

## **10.6 Convergence**

### **10.6.1 Introduction**

The forest dwelling tribals and other traditional forest dwellers that have and will become the right holders under FRA, have traditionally remained a deprived lot. The inherent poor agricultural productive potential of the forest lands they occupied coupled with the fear of eviction all the time looming large, these occupants made very little or zero investment to improve the productivity of the area. Further, being inside the forest areas, they suffered from geographical disadvantageous location syndrome. In addition the general apathy of the local administration, including the Tribal Development Department and Rural Development Departments who had the chief mandate to develop such areas and the Forest Department in whose area of jurisdiction they were located, further increased their sufferings. This has resulted in their poor economic conditions. Convergence of programmes of various departments contributing to productivity enhancement of such areas with sustainability as the focus is what is required on an urgent basis. In this regard, consolidation of such pock marked scattered areas and bringing them to the fringes of existing villages could be developed as a new scheme in the Tribal development department and that would itself considerably enhance the chances of improvement of land based outputs and income for the forest right holders on one hand and allow the Community forest Resource areas to sustain and improve on the other.

As regards the current situation of the Community Forest Resource and their use by the forest dwellers, in many areas the year to year unregulated removals and lack of

adequate conservation and regeneration inputs by both communities and the government, have brought them into an uncertain situation where sustained output from such lands for meeting the community rights could not be optimised. Where communities or the government, or the two together, have established institutional mechanisms to regulate harvest and use, the resource has been sustained. Bringing these degraded areas to the desired level of productivity and supplementing the same with forward linkages is urgently needed. Enhancement of productivity needs appropriate planning, management and protection inputs. It also needs convergence with specific focus on the programmes of soil and water conservation, natural and artificial regeneration, animal husbandry, removal of unauthorized occupations (ineligible under the FRA) hindering community forest rights and obstructing flow of benefits from the forest resources to the village, fisheries, marketing systems, and also tribal and other department's schemes related to natural resources as well as those pertaining to alternative energy resources, to name just a few.

All such inputs for convergence need to be ecologically and culturally appropriate, built on local knowledge and skills, and not just the usual run-of-the-mill development and welfare programmes that have caused huge problems in the rest of rural India by introducing ecologically damaging activities (e.g. chemical-intensive agriculture), causing cultural and other forms of alienation (e.g. standard education), displacing local knowledge (e.g. focusing only on allopathic medicine in clinics, etc.).

Maharashtra's TRTI website on Forest Act and Forest Rights PLUS shows some efforts having been made in the state in the direction of sustainability and convergence. Vision and mission have also been developed for the purpose. The outputs of the workshops placed on the website on the subject show that convergence is desirable for meeting the objectives of the Act as enunciated in the preamble. In the PTG workshop conducted in Nagpur in the presence of Committee members on the 4<sup>th</sup> October 2010, the Collector, Gadchiroli district showed that he has taken initiative to ensure convergence. He has directed that the title deeds received by individuals should be considered adequate for them to benefit from various government schemes. In Hoshangabad district of Madhya Pradesh when one village situated in Satpura National Park was relocated, Collector of district took all the district heads of the development department to that village and every scheme of the concerned department was implemented in that the village.

#### **10.6.2 Existing initiatives**

Some states or local administrations have taken the initiative towards convergence of government schemes to benefit individual and communities that are getting rights under the FRA. For instance, in Nabarangpur district of Orissa, officials and NGOs worked together to facilitate linkages with irrigation, horticulture, rural development and other departments under laws and programs like MGNREGA to enable rights-holders develop forest land and community resources, enhance livelihoods and obtain new facilities and infrastructure. In several villages of Vaijapur taluka in Maharashtra, civil society networks like Lokshakti have worked with local authorities to plan NREGS options for 212 families that have got land rights under FRA.

Notwithstanding these examples, very little progress has so far taken place across the country on providing convergence benefits to rightsholders. Of course in most cases the rights have only very recently been provided, so there is a good opportunity for programmes to be developed to reach them soon.

There are of course many other pre-FRA examples of convergence where individual or communities have received new rights to land. For instance, in Hoshangabad district of Madhya Pradesh when one village situated in Satpura National Park was relocated, the district collector ensured that every scheme available to the area was

implemented in that the village. In the State of Kerala also the project for convergence of all the development schemes is being implemented in various districts of the State.

Here it has to be remembered that the attempts through convergence should be to develop the area and the individual families in consonance with the local ecological and cultural conditions so that the individual families do not find themselves as aliens in their own area. This will require consultation not only with the local communities but also with the Gram Sabhas. In addition to this, the help of the State Tribal Research and Training Institutes, or of appropriate civil society organizations and institutions including those of communities themselves, should also be taken to understand the local traditions and cultural ethos of the local communities and develop appropriate developmental programmes.

#### **10.6.3 The objectives behind Convergence:**

The convergence approach should primarily ensure the following:

- (i) develop the forest lands with forest rights under FRA so that such lands are utilised to the optimum level of production,
- (ii) provide the habitations of the right holders with such infrastructure which is necessary for decent way of life,
- (iii) create opportunities for employment preferably in-situ in sectors in addition to land based agriculture,
- (iv) ensure the utilisation of community forest rights and create such conditions so that such rights are utilised in perpetuity on sustainable basis.
- (v) facilitate hassle-free convergence of governmental schemes operating in areas of education, training, health, employment etc., to achieve higher "happiness index" among the right holders and,
- (vi) put in place such monitoring system both at the district as well as State level so as to deliver all proposed services to the right holders speedily and smoothly.

#### **10.6.4 Action Points:**

To achieve the above objectives, the Committee recommends that -

- (a) The land of the right holders should be developed so that it becomes more productive, through organic and biologically diverse means. Some of the works that could be suggested for land development are levelling/consolidation, leveling, fencing to protection from damage by wild life or, bunding, digging of well for irrigation, providing proper equipments, integrated agriculture-fisheries-animal husbandry, etc., The right holder should be paid for carrying out these works under existing Govt. schemes or under MNREGP.
- (b) The ration shop under PDS should necessarily operate in these areas so that the right holder can get food at a subsidised rates; additionally. Additionally, the PDS should as far as possible be local, community-driven, procuring nutritious food from farmers who are encouraged to grow the local cereals, pulses, etc (if necessary, we can use for this the example of Deccan Development Society, [www.ddsindia.org](http://www.ddsindia.org)). The margins may be utilised by the right holder for better living. This will also facilitate better productivity of forest land.
- (c) To insulate her/him from migration, it is recommended that the present limit of providing job for maximum 100 days under MNREGP should be fixed at 150 days for right holders. Job card with a different colour may be provided to them for identity.
- (d) Every Department or agency of the Govt. operating in the district, under the chairpersonship of the Collector of the district should converge all activities and

budgetary provisions to undertake every possible infrastructural and family based development works where the right holder/s is/are residing. If need be, the Ministry of Tribal Affairs, Govt. of India should provide an untied fund to the concerned State Govt. for such purpose so that the works can be planned and executed speedily.

The infrastructure development works would relate to -

- (i) road connectivity
- (ii) electricity
- (iii) education
- (iii) Public health and veterinary health related structures
- (iv) irrigation and other water harvesting structures and
- (v) any other works suitable to the area as demanded by the local people including right holders.

(e) Apart from increased number of days of employment under MNREGP (as suggested in (c) above), concerted efforts should be made to establish micro-enterprises based on forest or agricultural raw-material or animal husbandry. The capital and working costs for establishing and running such enterprises should be borne by the Govt. of India, Ministry of Tribal Affairs. The working capital so provided, should be kept in a joint account to be operated jointly by one representative of the group of villagers running the enterprise and one Govt. official nominated by the designated officer of the State Govt.

(f) When fragmentation of forest rights will take place as a result of inheritance by children, the production from the area in future may not be sufficient to sustain them forcing them to either leave the land or occupy new piece of forests.

To avoid such situation it is recommended that -

(i) the children of right holders should be provided with good, locally relevant, and ecologically/culturally sensitive education, including higher education, at Govt. costs under the existing schemes of the Tribal Department of the State. This assistance would include the boarding and lodging fees of the hostel also which will include the private hostel if Govt. onerun hostel is not available at the place where ward of the right holder wants to study. Local methods of learning and teaching, such as working within the community or with village elders, should be an integral part of the educational system (examples of this are available from various schools in MP/Maharashtra/AP, and the college under Adivasi Academy in Gujarat)

(ii) The vocational training should be provided on priority basis to the right holders and their family members. The emphasis may be mentioned given such trades members which may create employment opportunities in and an around their habitation, building. Building on and enhancing local skills where available, and giving a prominent place in the training to local experts along with outside ones. could be a good strategy. However, if any right holders or his family members want to get training in such trade which can get them any better employment in around outside their habitation, the facilities should also be created for such training. Some of such trades can be computer training, food and vegetable preservation, artificial jewellery, tailoring, electrical repair, motor winding, mushroom cultivation, cooking, carpet making, vehicle repair, sericulture, handicrafts, fish rearing , fabrication, welding, driving, building works masons making etc. The fund for training should be provided by the Ministry of Tribal Affairs, Government of India to various State Governments of priority basis.

These and other trades be included to increase the educational and technical qualification of the right holders or their family members may bring them out from their present habitation for a different socio-economic life as per their choice. It will also avoid the situation of undue pressure on the limited land for cultivation/use in future.

(g) The Tribal Welfare Department's programmes be examined and modified in such way that the tribals in general and all other right holder under FRA in particular become self reliant in future.

(h) For facilitating the utilisation of community rights relating to collection and marketing of NTFPs, grazing, to bring fuelwood etc., action be taken to -

- (i) establish storage, value addition, and marketing channels to facilitate MFPs collection and trade,
- (ii) raise and/or develop and manage grazing lands on scientific principles in and around the villages.
- (iii) to create ' Urja Vans ' for enhancing the production of wood in nearby areas of the villages so that the right holders or their family-members especially women need not travel long distances to bring fuel wood.; and eventually to replace fuelwood with decentralized renewable sources.

(i) For monitoring the implementation of works relating to upliftment of socio-economic condition of forest right holders it is recommended that the Committees proposed in the chapter on future structure of forest governance may be authorized.

(j) The inputs from Civil Society and NGOs be taken in developing, implementing and monitoring site specific Convergence modules.

(k) Every attempt should be made to avoid delay in transfer of benefits to the right holders or their family members under various schemes of development. For meeting this end, the attempt by Maharashtra TRTI of integrating the data base of all forest right holders on GIS platform by giving a thirteen digit code to all claimants could be studied and used with local level modifications, as required.

## **Chapter 11. Main Findings and Conclusions**

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (hereinafter 'FRA') is a watershed legislation to undo historic injustice especially to forest dwelling tribal communities as well as bonafide "other traditional forest dwellers", by recognizing and vesting those individual and community rights (IFR & CFR) which had not been recorded during the consolidation of State forests during the colonial period as well in independent India.

### **11.1 Status of implementation**

However, the current state of implementation is characterised by a series of serious problems, including in particular:

1. Constitution of Gram Sabhas is at the panchayat level, rather than at the village/hamlet level. As is evidently clear from section 2(g) and 2(p) of the Act, the gram sabhas are to be convened at the hamlet level in schedule V areas, and the revenue village level or traditional village or habitations and settlements in other areas. However, in a number of states, such as AP, WB, and UP, these are being called at the panchayat level, which is illegal.
2. Extensive and wrong rejections/recognitions, primarily due to hasty enquiries and lack of a thorough examination of the rejected /recognized cases by senior officials or the higher level committees. Claimants whose cases are rejected are not given any "reasonable opportunity", as provided in Rule 4(c). Decision rejecting the applications has not been communicated to the claimant in writing anywhere, with the result that the people have not been able to exercise the right to appeal. The Tribal Development Departments of the state governments have neither cross-checked the work being done at the village level by the revenue and forest officials, nor did they engage any outside agency to do independent assessment.
3. Powers of the FRC and GS are exercised by the village level officials, and the non-officials of the FRC and GS are just putting their signatures to the reports written by the officials. The village level enquiry reports have not been verified (not even one percent) by block or district level officials. Neatly devised systems of processing of claims at various levels has not been operationalized, except in few areas of some states.
4. As per rule 10, the State Level Monitoring Committee has to devise criteria and indicators for monitoring the process of recognition and vesting of forest rights; and monitor the process of recognition, verification and vesting of forest rights in the State. It was for the Tribal Department in the States to develop qualitative indicators, call meetings with peoples' representatives, hold public consultations, put pressure on the Revenue and Forest Departments at the district level to do justice to the forest dwellers, and improve communication between officials and the people. In most states, on the other hand, it appears that monitoring has been only statistical with a focus on quick disposal, rather than on ensuring that all occupations are regularised as per law, fair play is observed in the field, and adequate field verifications lead to enhanced satisfaction and improved livelihood opportunities.
5. In almost no instance has the SDLC pro-actively provided maps, documents, and evidence to FRCs and GSs, though this is required by the FRA.
6. Though the FRA provides for multi-stakeholder verification and decision-making at various levels, in many places the opinions of forest staff/officers

appear to have over-riden all else. This is due to lack of interest and capacity in Tribal Department officers and lack of confidence and concern in the Revenue Department officers to handle matters of forest rights. The Tribal departments are used to giving scholarships and grants to beneficiaries, but have no experience of dealing with programmes that require inter-departmental coordination. Most nodal officers, without much of capacity building inputs given to them, were thus quite happy collecting statistical information (often from FD) on FRA, but took no initiative in verifying the figures, arranging for a supervision architecture, or assessing the quality of performance of districts. The Tribal Department officers are seen as very low in the hierarchy as compared to the Chairman and hence had hardly any say in the matter and hardly took any initiative. The show was seen and projected primarily as Chairman's or FD show.

7. Evictions are reportedly taking place in violation of Section 4(5) of the FRA, which states: "Save as otherwise provided, no member of FDST or OTFD shall be evicted or removed from forest land under his occupation till the recognition and verification procedure is complete". There have been widespread reports of evictions in violation of this provision, before and during the tenure of the Committee. There is little evidence that such illegal actions have been dealt with seriously by either state governments or by MoEF and MoTA.
8. OTFDs: The committee has observed that, in all the states where FRA is being implemented, OTFDs have been generally excluded from the claims process on the grounds that they have not been cultivating the claimed plot for 75 years. MoTA needs to clarify that the requirement "for at least three generations prior to December 2005" applies to the residency clause only, and relates to the recognition of a non-Scheduled Tribe person as an OTFD under the Act; this requirement does not relate to the parcel of land for which a claim is being made, or to the forest on which other rights are being claimed. The claimant need not have occupied the land, or been using the forest, for 75 years. If s/he was primarily residing for 3 generations in forest or forest land and is dependent on the forest as of 13 December 2005 for her/his bona fide livelihoods needs as defined in Rule 2(b) of the FRA Rules, s/he would be eligible under the Act.
9. Only a few states have been able to use application of the spatial and remote sensing technology mainly GPS or PDA for demarcating the boundary and measuring area of plots for individual forest rights because of lack of capacity building in the application of this technology.
10. There are no national level data on the status of FRA implementation specifically with regard to PTGs. The various processes of the FRA have hardly reached them and the progress of implementation is very poor.
11. As per the provisions of FRA forest dwelling communities are eligible to forest rights even in the protected areas (PAs). But no consolidated picture of the status of its implementation is available at the national level. No state is maintaining such data or analyses separately, nor are MoEF or MoTA asking for them. There is however, a clear trend of initially denying the rights under FRA within PAs at the ground level in some states. In many states it has been wrongly believed, or conveyed, that tiger reserves are exempted from the FRA. It has also been wrongly conveyed that FRA does not apply if rights of people have been previously settled under the WLPA, even if people might still be residing within or depending on the resources of the PA, and also the

FRA does not apply to villages where resettlement is part of an ongoing process that began before the FRA was promulgated.

12. PESA and FRA provisions, especially on MFP, need to be rationalized so that people come forward to claim and there is no conflict later on.
13. Non-recognition of community forest resource rights and other non-land rights (discussed in detail below)

### **11.2 Progress on community rights**

The foundation of FRA is the assertion that only security of tenure and formalised recorded rights in favour of forest users would lead to its responsible management and sustainability. The Act and the Rules made under FRA therefore give details of institutional arrangements for the protection, management and regeneration of community forest resources (CFRe), defined in section 2(a) of FRA as customary common forest land where the communities had traditional access, or which could be construed to be customary boundaries of a village, in other words, those areas where communities can demonstrate their traditional access.

Despite the fact that the main intention of FRA was to promote community participation and management, our field work shows that recognition of individual rights has taken precedence over community or group rights, and the focus seems to be confined only to land rights for agriculture and habitation - one amongst the thirteen sets of rights recognised under the Act. Out of the remaining 12, at least the following seven rights constitute community forest rights (CFRt), the formalization of which has unfortunately been ignored by the Implementing authority:

1. Community rights such as nistar, by whatever name called, including those used in erstwhile Princely States, Zamindari or such intermediary regimes; (Section 3(1) (b))
2. 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; (Section 3(1) (d))
3. Rights including community tenures of habitat and habitation for primitive tribal groups and pre-agricultural communities; (Section 3(1) (e))
4. Right to protect, regenerate or conserve or manage any community forest resource which they have been traditionally protecting and conserving for sustainable use. (Section 3(1) (i))
5. Rights which are recognized 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; (Section 3(1) (j))
6. Right of access to biodiversity and community right to intellectual property and traditional knowledge related to biodiversity and cultural diversity; (Section 3(1) (k))
7. 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 or extracting a part of the body of any species of wild animal (Section 3(1) (l))

In addition to these seven rights, section 3(1)(c) recognizes right of 'ownership, access to collect, use, and dispose of minor forest produce which has been traditionally collected within or outside village boundaries', and this right is both for individuals and communities of the village. Further, community can also have rights of cultivation under 3(1)(a).

The reasons for neglect of the community perspective in the implementation of the Act are summarized below:

- FRA has largely been portrayed as a legislation to provide individual land rights, especially during its promulgation and in its first phase of implementation. At several sites the Committee was told that the SDLCs or DLCs were first dealing with IFRs and would only then get into processing CFRt. Many officials stated lack of staff as one reason for this, though it is not clear why they cannot deal with CFRs which are always going to be much less in number than IFRs.
- MoTA has not collected information on cases and area for which community rights under section 3(1)(b) to (m) have been granted by the states, and thus has not been able to build any pressure on the states for ignoring to recognize these rights. It is simply not known how many claims have been made/accepted/rejected at various levels, of each subsection of section 3 that provides for community rights.
- The data are further complicated by the confusion prevailing in the field between Section 3(1) and Section 3(2); several states appear to be reporting the latter for the former; many of the claims currently being classified as CFRt claims in the State or MoTA databases, are actually claims for development facilities under Section 3(2). Even MoTA is unable to provide figures separately for the two sub-sections.
- There is a lack of baseline information on the existence of rights (recorded or unrecorded), and existence of customary practices relating to management, use, and protection, in most places. This makes difficult any robust comparative assessment of the situation prior to and after the FRA's promulgation.
- The number of applications received for CFRt is very low, and acceptance abysmally lower, compared to the potential if judged by the number of villages that are living within or adjacent to forests.
- Where CFRt claims have been claimed or accepted, the extent is often much less than actually used or managed by the community.
- There is little thinking on the status, management, and conservation of areas with CFRt, and specifically CFRe, including issues of relationship of the Gram Sabha with existing agencies managing these areas, and of the complementarities and contradictions with other laws operating in such areas.
- Even where there is knowledge about the fact that CFRt can be claimed, at many sites communities or relevant officials are not clear on how to determine and verify such rights, and so have not started the process. There is also confusion on how to determine the boundaries of CFRt (especially in the case of the claim to CFRe); or on whether CFRt can be claimed over more than 4 hectares, even though the FRA is clear that this limit is only for rights claimed under Section 3(1)(a). The process has also got stuck in places where more than one village has a claim on the same forest area, and no process has been put in place to reconcile such overlapping claims (though the FRA has provided for such a procedure).
- Amongst the various kinds of CFRt, the right to manage/protect CFRe given in Section 3(1)(i) is one of those with the least awareness. One reason for this is that this sub-section is not specifically mentioned in Claim Form B that is attached with the Rules; this inexplicable and unexplained omission has

caused many communities to not claim this right even when they have claimed other CFRt.

- At many sites, misleading information on CFRt has been provided by officials or civil society organizations, to communities (not necessarily deliberately, since in many cases such officials or NGOs have themselves misunderstood the FRA's provisions). Amongst the most common of these is that CFRt relate only to development facilities listed under Section 3(2). Also widespread in some states is the belief that CFRt need not be applied for, since people are already benefiting from existing arrangements such as nistar rights, JFM/CFM agreements, Van Panchayat agreements, etc.
- At many places where communities have attempted to make CFRt claims, they have encountered various kinds of obstructions, such as refusal to give relevant records, such as maps, refusal to accept claims because the land being claimed is located in "Joint Forest Management" areas, etc.
- Approaches in all areas related to land and property in general have promoted individual ownerships.
- Community responsibility and benefits from common resources, in general, are relegated in the society due to specific approaches of individualization of properties, resources and benefits promoted even by Government schemes. In some areas people would like to have benefits but leave the headache of management to the Government.
- The currently prevalent mostly open access situation in the forest areas for the people actually deters them from moving towards a responsibility based self-control oriented regime.
- Community resources are considered nobody's but Government's responsibility.

In some cases communities, however, have already had problems in operationalising CFRts. For instance, villagers of Mendha-Lekha were stopped while attempting to take bamboo out of their village for sale, with forest officials saying they would not give a transit permit. This raises questions of the interface between the FRA and the Indian Forest Act, and issue dealt with in more detail in Chapter 8. But other than this relationship, the crucial issue is, how can a right to collect, transport and sell minor forest produce (which includes bamboo) be operationalised if another agency has the power to stop transit of this produce? Once again, there may be genuine conservation concerns involved in such an action, but such concerns need to be dealt with through negotiations and discussions rather than unilateral imposition of powers.

There are a number of issues where there is lack of clarity, on the relationship between the GS and the Forest Department, and the relationship between the FRA, IFA and WLPA, in relation to CFRt. These are yet to manifest themselves across most of India, simply because CFRt have hardly become operational as yet.

Overall, given the serious inadequacies in implementation of CFRt at all levels, there is a need for a 2<sup>nd</sup> phase of FRA implementation in all states, in which primary focus is on CFRt. Such a course of action is indicated also by the 20 July 2010 letter of MoTA to all states. While this belated letter is appreciated, it is important for MoTA and all state nodal agencies to go beyond this by issuing clarifications and instructions along the lines laid out below.

Progress with CFRt implementation needs to be monitored as a special exercise, as part of the overall monitoring process by the National Forest Rights Council suggested in Chapter 8. A simple, 'how-to' guide on CFRt needs to be produced by

MoTA which can be adapted by state nodal agencies as appropriate, and issued in large numbers to communities and relevant officials.

### **11.3 Convert JFM into CFM**

It may be recalled that the National Forest Policy way back in 1988 had recognized the meeting of local needs as an important goal of forest policy, and explicitly de-prioritized revenue generation as an objective. It gave a clear push for participatory forestry, and recommended creating a massive people's movement with the involvement of women for achieving objectives of the policy which included conservation of biological diversity, increasing "forest/tree cover, increasing productivity of forests etc. One of the immediate impacts of this policy was the 1990 circular from MOEF asking states to initiate Joint Forest Management for regenerating degraded forests.

The JFM experiment has generated many positive outcomes in different locations, but there are limitations too. The 'jointness' in JFM is seriously limited in the field, with day-to-day decisions being controlled by the forest official who is usually ex-officio secretary of the committee. The silvicultural decisions rest with the FDs, and their focus remains on tree planting (often fast-growing exotic species) thereby adversely affecting graziers and not necessarily meeting even firewood or NTFP augmentation goals. Being implemented as part of bilateral/multi-lateral projects, JFM has tended to be funding-driven and therefore funding-dependent, with activities dropping dramatically after the project is over.

A serious problem is that of elite capture. This problem be-devils all 'participatory' government programmes (such as watershed development), not just JFM. But it is particularly problematic in forest management because there is often divergence of interests over how to manage commonly held resources, between women, graziers, firewood headloaders, NTFP collectors, and those looking for profits from commercial timber/softwood production. Consequently, elite capture actively hurts marginalised groups. FDs often find it convenient to allow elite capture, and in fact to actively use the elite to achieve these objectives while bypassing true participation, which is a difficult and messy process.

**FRA provides an opportunity, as all JFM areas as well as forests under exclusive village management should be claimed by the community under section 3(1)(i) of the Act and managed as a community resource.** To facilitate the process, FD should provide protection and technical support, and be responsible for ensuring compliance with sustainable use and conservation regulations. The FD will also have to provide support since the landscape management/ watershed aspects may go beyond such areas under 3(1)(i). Otherwise, it seems that we are talking of garden management in small areas whose impact on neighbouring areas could be limited!

In case the gram sabha or the community is not keen to take over management of JFM forests under FRA, or management claims are not accepted under FRA, the government should take *suo moto* action to place JFMCs under the Gram Sabhas. This will ensure that the members of the JFMCs are democratically elected by the Gram Sabha. We expect government to learn from the past experience, as discussed in section 8.3, and make JFM more democratic and participatory, giving highest priority to the livelihood needs of the poorest.

Despite several limitations JFM has one plus point over wholesale one-time and premature transfer of control to the village institutions<sup>58</sup>; it allows for a flexible arrangement of sharing of authority between the village and government. This flexibility is desirable as an interim measure because the precise distribution of control and management between the state and the community/gram sabha should depend on a number of situation-specific factors, such as the ease with which control groups can be formed and can retain cohesiveness. The process of sharing decision making and management of forest lands will then proceed at different paces in different conditions. In the initial stages the community institutions are often at a low level of formation, and therefore the forest officials may be justified in not diluting their basic responsibility of protection. Often one-to-one correspondence between protecting community and the forest patch is not there, leading to inter-village conflict, and requiring government intervention. The gram sabha may also look forward to getting support from the Forest Department in booking offenders, negotiating with other villages/departments etc. However, FD should gradually withdraw as the capability of the community improves, and transfer management to the community under FRA.

Increasing the organisational capacity of the village so that their management is both equitable and effective is not an easy task. It takes time to mobilise a village community into a coherent and empowered group and local officials must allocate sufficient time and facilitate this as early as possible. Greater transparency within village groups—between the local leadership and the wider group membership—is essential to ensure marginalised groups benefiting from participatory forest management.

#### **11.4 Livelihood support through MFPs**

Even the best of efforts to promote CFM and participatory JFM may still leave out vast tracts of forests where there is substantial use of forests by local communities but neither community management under FRA, nor JFM are in place. In such areas as well as in CFM/JFM areas, as per the 1988 Forest Policy, government should promote such silvicultural practices that maximise the production of NTFPs and gatherable biomass. This will take care of the populations who are not the direct beneficiaries (as per definition of claimant) of FRA but who have been depending on the forest resources. This will reduce the conflicts. Legal safeguards of providing ownership over MFPs to communities under PESA and FRA may not be able to prevent deterioration in the quantity and quality of the gathered NTFPs, or incomes therefrom. Some of the processes that may cause this are; deforestation, preference for man-made plantations in place of mixed forests, regulatory framework, diversion of NTFPs and forests to industries, nationalization of NTFPs, and exploitation by government agencies and contractors in the marketing of NTFPs.

Therefore in addition to guaranteeing that FRA is implemented in letter and spirit, one would have to address three inter-related issues for ensuring that forest dwellers' livelihoods are supported and enriched by NTFPs:

1. how to increase NTFP production, while sustaining the resource
2. how to improve access of the poor to NTFPs, and
3. how to maximize their incomes through marketing.

Multiple objectives to maximise outputs from many products will require innovative and experimental silviculture, which must focus more on the management of shrub

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<sup>58</sup> This is presuming that there is a genuine desire on the part of FD to transfer authority to willing and capable communities, an assumption that is often challenged by civil society groups.

and herb layers, and on forest floor management to enrich the soil and encourage natural regeneration. For instance, FD's present management of sal in AP and MP seems to be for timber, and hence only one shoot is allowed to grow. Since sal is an excellent coppicer, degraded forests and hills close to a village should be managed under a coppice or a coppice with standard system for fuelwood and sal leaves.

In the states of MP, Andhra and Maharashtra bamboo is an important ground crop. Yet, the productivity and quality of the bamboo has been far below its potential due to the dense build up of dead leaves and other organic material. The abundance of litter within the clump has suppressed the growth of new shoots and poses additional fire hazards during the dry season. If the stands were routinely cleaned and thinned, the danger of fire would be reduced, productivity would increase several fold, and a regular flow of bamboo stands will be ensured to the bamboo artisans. Artisans living close to forests should be involved in the management of bamboo forests, so that they extract bamboo themselves without damaging the clump.

As the commercial importance of NTFPs increased in the past, the state governments nationalised during the 1960's and 70's, many important NTFPs, that is, these can be sold only to government agencies or to agencies so nominated by the government. In theory, this right was acquired ostensibly to protect the interest of the poor against exploitation by private traders and middlemen. In practice, such rights in some states were sublet to private traders and industry. Thus, a hierarchy of objectives developed: industry and other large end-users had the first charge on the product at low and subsidised rates; revenue was maximised subject to the first objective which implied that there was no consistent policy to encourage value addition at lower levels; tribal and the interest of the poor was relegated to the last level, or completely ignored. While collectors of NTFPs are often some of the lowest income groups in India, they often receive only 5 to 20 per cent of the retail value of their goods. Various governments run marketing and cooperative schemes and have established parastatals for this purpose, but these have frequently failed to result in major improvements in prices. In Orissa, Govt gets 150 crores as royalty from Kendu leaves (KL) - for every Rs to plucker royalty is 3 Rs.

Supply of subsidised forest produce to industry must stop forthwith. Despite it being against the Forest Policy of 1988, Orissa has continued such supplies and in fact has transferred the management of bamboo forests to JK Paper Mills, which contravenes the Forest Conservation Act too.

For marketing NTFPs, government should not have a monopoly, nor create such a monopoly for traders and mills. The solution is to denationalise NTFPs gradually so as to encourage healthy competition and increase the number of buyers. Government should set up promotional Marketing Boards, as distinct from commercial corporations (which are inefficient, and hence demand nationalisation), with responsibility for dissemination of information about markets and prices to the gatherers. The Boards should provide a guaranteed price for MFPs like tendu, as in the case of wheat and rice, but allow free purchase by all and sundry.

Low returns to forest gatherers are not only due to policy distortions arising out of public and private monopolies, and to traders' hold over the poor and ignorant forest dwellers. They are the result of the very nature of dispersed and uncertain production combined with fluctuating demand and undeveloped markets. These issues may help to explain why removing government controls in March 2000 in Orissa, or why free trade in a large number of non-nationalised NTFPs in Jharkhand, MP and Chattisgarh did not lead to a rapid increase in gatherers' incomes. Therefore there should be price-based aggressive buying of NTFPs by state agencies, as has been done for wheat and rice, with GOI subsidising the storage and marketing of such produce. Aggressive buying of NTFPs by state agencies alone can break the

dominance of the wholesale traders and their linkages with the village level market. The nature of produce and actors involved makes it obvious that without government support there can be no justice to forest gatherers. However, government organisations should compete with private trade, and not ask for monopoly.

#### 11.5 ***Sensitising the forest service***

Since both FRA and JFM mandate close collaboration between foresters and the local forest dwellers, the need for sensitive and responsive Forest Service cannot be just over-emphasized. Unfortunately the internal culture of the Forest Service has continued to be hierarchical and authoritarian, and not participative. A paradigm shift in their outlook can be achieved by good training modules at the IGNFA and refresher/in-service courses at various institutions. This and other policy measures within the department should aim at the following outcomes:

- As a clearly declared policy by the Government, greater interaction with forest dwellers and ensuring their all-round economic and social development, involving them at all stages of planning and implementation of forestry programmes run by the Department, and supporting their own planning and implementation of community-based forestry programmes,
- Mainstreaming the FD into implementation of developmental programmes which has, post forest villages era, been removed from it and given to specialized wings. The trend continues today also and the latest example is the implementation of FRA itself, where there is a lilted role indicated for the FD.
- increasing emphasis on environmental conservation and for strengthening the base for sustained silvicultural as well as agricultural production and water security,
- increasing role of watershed and landscape approach to forestry requiring integrated land management,
- increasing interaction between agriculture, animal husbandry and forestry and tribal department,
- greater public awareness about forestry and the demand for peoples participation in forestry programmes,
- greater appreciation of the role of environmental aspects in forest management,
- more adaptive, participatory and transparent planning processes, based on robust research that is open to independent expertise and knowledge including from local communities, and
- increasing focus on understanding and managing complex ecosystems, helping sustain their resilience and adaptability in the face of multiple challenges including climate change, conserving a range of native biodiversity rather than only individual megafauna species, and helping revive/sustain threatened species of both plants and animals.

#### 11.6 ***Role of the Ministry of Tribal Affairs (MoTA)***

As the nodal agency at the Centre, MoTA has the most crucial role in FRA's implementation. However it suffers from the following problems:

- a general lack of pro-activeness, with only occasional clarificatory or directive circulars being issued and occasional workshops and state visits being organised. Several critical issues that have emerged and been pointed out by

civil society organizations or states (including those pointed out by this Committee) have been ignored, and there is no regular, systematic attempt to meet with and visit states to promote implementation. MoTA representative hardly attended the meetings of the Committee, nor sent his representative.

- designing of faulty claim forms, e.g. Form B does not mention a number of rights including 3(1)(i)
- issuing confusing, regressive or illegal circulars, e.g. the one on rejections, dt. 4 March 2010, which stated that once rejected, claims cannot be re-opened except in cases of “unduly large” rejection levels, and the one on development rights under Section 3(2), dt. 18 May 2009, asking the user agency to submit plans for compensatory afforestation (“twice the number of trees to be felled”), even though the FRA (under Section 4(7)) specifically exempts development rights from such provisions that are otherwise mandatory under the Forest Conservation Act.
- has not involved professional organizations in evaluation or assessment of the programme, so that corrective action can be taken in time.
- as already pointed out, MoTA has not collected information on cases and area for which community rights under section 3 (1) (b) to (m) have been granted by the states, and thus has not been able to build any pressure on the states to recognize these rights.

MoTA needs to give clear instructions and guidance to states to strengthen nodal agencies and departments, and issue circulars on a range of issues brought up by this report, including process/institutional recommendations made in this chapter, the formation/constitution of gram sabhas, withdrawal of illegal deadlines, issuing of titles without conditions that violate the FRA, special procedures and steps for groups like nomadic and pastoral communities, PTGs, shifting cultivators, etc. It should direct re-opening of mass rejections, pointing to the various wrongful ways of rejecting claims that have come to light, formulate robust data collection and monitoring formats, actively seek such information from states, commission independent studies to find out status of implementation, and provide regular analytical reports on implementation. It should direct states to take action against officials who are obstructing or violating the FRA process, collate and disseminate ‘best practice’ cases, and do monthly videoconferencing with SLMCs to monitor progress.

Not only has the Ministry failed to get FRA implemented faithfully, its record on other tribal issues is equally dismal. MoTA has still not been able to finalise the National Tribal Policy, the draft of which was announced some six years back with a great deal of fanfare. Law pertaining to involuntary displacement has been discussed since 1998, but it has still not seen light of the day, though it is well established that tribals suffer most when new projects lead to involuntary displacement. MoTA takes no interest in pushing the states to change their state laws in conformity with PESA. There is no white paper from the Ministry relating to pathetic condition of governance in forest dependent villages, including huge vacancies and absenteeism of staff. The Ministry has no meaningful partnerships with advocacy organisations that could produce credible and evidence based reports with a view to put pressure on other Ministries that ignore tribal interests. It is strongly recommended that the Ministry of Tribal Affairs (MoTA) must change its style of functioning.

It is unfortunate that MoTA does not give sufficient attention to the important problems of the tribals on the plea that many of these subjects, such as land alienation, displacement, and PESA, have not been allotted to it. Even then the Ministry should play a more activist role in addressing these issues by pursuing with the concerned Ministries, where these subjects get a low importance, as the

Ministries' excuse is that they are concerned with 'bigger' and more 'general' issues. At least, MoTA can set up a monitoring mechanism to bring out the dismal picture of tribal areas that would put pressure on the sectoral Ministries and the states to improve their policies and implementation. MoTA would be taken seriously by other Ministries only if MoTA does evidence based advocacy by analysing why delivery in the forest regions is not improving. Government could also set up a Group of Ministers to review the implementation of suggestions given in this note.

When a new Ministry is set up to help the marginalized people, it is expected that it would take a holistic view of their problems, and coordinate the activities of all other Ministries that deal with the subjects impinging on the work of the newly created Ministry. It would develop systems that inform Gol how and why tribals are denied justice. On the other hand, it has been observed that the new Ministry takes a minimalist view of its responsibility, and reduces itself to dealing with only such schemes (such as distribution of scholarships and grants to NGOs) that are totally outside the purview of the existing Ministries. Such ostrich like attitude defeats the purpose for which the Ministry is created.

It is rather sad that the Ministry of Tribal Affairs is more concerned with spending its budget (through NGOs that create opportunities for clientelism and patronage), and less with the impact of overall policies of other Ministries on tribals. It is reported to be surrounded by manipulative NGOs who hog the entire attention and time of the senior officers, leaving little time with them for the real pressing problems of the adivasis. This attitude results in continuing neglect of tribal issues. It also under-plays the role of non-monetary policies (such as displacement) and the impact they have on the lives of the people. As is well known, certain government policies harm the tribals much more than any benefit that accrues to them through money-oriented schemes of the Ministry of Tribal Affairs.

For instance, NTFP policies in the states are often dictated by the desire to maximise state revenues, and not maximise welfare of gatherers, who are often women. The revenue interest of Orissa can be judged by the fact that during the period 1989–2001, the State Government earned revenues of Rs 7.52 billion from kendu leaves (KL). The total wages earned by KL pluckers during the same period was only Rs 3.87 billion. The high incidence of royalties on KL needs to be contrasted with the royalties collected on a major mineral, where labour is organised, e.g. royalties are Rs 30 per tonne on bauxite, but a whopping Rs 12,000/tonne on KL!

Even the Planning Commission does not monitor regularly the impact of existing policies on the tribal population and pull up the concerned sectoral Ministries. There seems to be an obsession in Government of India with financial budget and not with the impact that policies (or the lack of it) have on the marginalised peoples. Policies and budgetary provisions, despite the rhetoric, have not been integrated so far. Changes in policy or laws, are not seen as an integral part of the development process because these have no direct financial implications. One lesser known reason for this isolation is that development and planning in India are associated with spending of money. That Planning *means* Expenditure, and *this will lead to* Development is the mindset behind such beliefs. The Indian planner unfortunately has still to understand the difference between planning and budgeting.

### **11.7 Role of the Ministry of Environment & Forests**

MoEF needs to urgently guide the move towards a new governance regime of forests, as suggested in this report. It must review all activities and projects relating to forest commons, including plantation and afforestation projects, to ensure that FRA processes are respected and ensured, and GS consent has been obtained. Its circular of July 2009 should be strictly enforced. It must also halt illegal relocation

from PAs. All notifications or steps relating to Tiger Reserves, Critical Tiger Habitats, and Critical Wildlife Habitats that have been undertaken in violation of the FRA (and in some cases even in violation of the WLPA) subsequent to 1.1.2008 need to be reviewed, and fresh process started that follows the due procedures under FRA, WLPA, and MoEF's guidelines relating to CWH (modified as per recommendation given in this report). Such a process must be followed for all proposed CWHs.

It must act or direct action on officials who are violating the FRA process, on evictions in violation of Section 4(5), and on fresh encroachments. In addition, it should

- Take action or direct states to take action against those responsible for cases of fresh post-2005 encroachments
- Urgently update national level information on villages inside and adjacent to forests, through FSI, and providing this to states to pro-actively facilitate CFRt claims
- Review the present state-wise policies relating to production, access, and marketing of MFPs/NTFPs, and initiate new policies as suggested in this report.

Both MoTA and MoEF have done little thinking and issued no guidance to states on the processes needed after giving titles, e.g. for management of community forest resources, for interface with relevant govt agencies, for overlap with other laws and institutions, for convergence of schemes, and so on. Suggestions made in this report need to be urgently and jointly taken forward by these two ministries.

Finally, Government of India should establish a National Forest Rights Council (similar to NREGA Council):

- which is comprised of balance of officials and non-officials (especially those experienced with forest rights issues), headed by the Minister of Tribal Affairs, and containing the Commissioners of ST and SC;
- whose key functions include independently and regularly assessing and monitoring implementation status, advising GOI and states on implementation, carrying out or authorizing periodic public consultations and hearings, etc.; and
- which is vested with relevant powers to access state and central government records, and carry out independent investigations.

This Council should be provided adequate funds to carry out its functions.

It is hoped that the two Ministries would consider our suggestions that are aimed at strengthening the rights-based approach to development for forest dwellers.

## Chapter 12. Notes from Individual Members

### **12.1 Alternative recommendations from ten Members on certain aspects of Forest Governance, NTFPs, and Convergence**

While the entire Committee is in substantial agreement for most of the report, there are certain recommendations under Forest Governance (chapter 8), NTFPs (chapter 9) and Convergence (chapter 10), where there remain differences between the 10 undersigned members and certain members of the Committee, including the Chair. We make the following recommendations with full respect for the consensus achieved on the majority of the report.

#### **12.1.1 Chapter 8: Future Structure of Forest Governance**

Our differences here revolve around the scope and implications of the core idea of ‘**democratizing forest governance**’.

##### *1. Goals [para 8.5]*

We believe that the goal of “Democratization of forest governance” is a goal for **all** forest areas, not just for “where rights have been recognized under FRA”.

##### *2. Principles and Assumptions [para 8.5]*

We believe that, in addition to the principles already stated:

- *Multiplicity of vertical roles (planning, regulation, execution and monitoring) vested in a single agency (such as the FD) leads to conflict of interest.*
- *Exclusive state control over forests that are used by communities on a daily basis is not feasible in any case, especially in Indian context.*
- *In the context of day-to-day forest use, democratization has to include devolution to the community of users. In other cases, where users are distant or occasional, democratization means increased transparency and accountability of bureaucratic structures that may be doing day-to-day forest management on users’ behalf.*

Furthermore, we believe that the following changes are required in principles articulated:

- *“Monitoring and enforcement...” must be done by **democratic/multi-stakeholder institutions through** relevant government agencies, not just by “government”.*
- *“The precise distribution of control ... between the state and the community...should depend upon ... ease with which control groups can be formed and can retain cohesiveness”. This principle violates the basic premise that local communities have the **right to democratically manage the forests they use**, regardless of whether they are ‘ready’ or ‘capable’ or ‘cohesive’. As long as some reasonable basic norms of internal democracy, equity, sustainable use and conservation are laid down, and mechanisms for their enforcement are put in place, the government must move urgently towards transferring governance and management rights to local communities and user groups.*

##### *3. Specific recommendations*

i. *SITUATION B [para 8.6.1]:* We are convinced that, if the analysis of JFM presented in section 8.3 is correct, then there is no justification for continuing JFM. The government must replace this model with a new one that parallels our recommendations for the FRA areas, but is applicable *suo moto*:

a) JFMCs should be dissolved and replaced by Community Forest Governance/Management Committees **after** a due process as below

b) CFGMCs have to be reconstituted under a new statute or proper amendment of existing statute (but not under Panchayati Raj laws, given the large size of Gram Panchayats, their lack of jurisdiction beyond NTFPs, and their liability to be controlled by the elite), at the hamlet or revenue village level, and will be completely answerable to their Gram Sabhas.

c) CFGMCs will not have any ex-officio members with executive powers, but any government official and/or NGO person can be co-opted by them in an advisory capacity.

d) The area of jurisdiction of the Gram Sabhas will be reworked to include not only what was assigned under JFM, but equivalent to the CFR under FRA; this will be demarcated and notified as CFGM area.

f) All other rights and powers of CFRMC, and the framework of equity, specified above should also be applicable to the CFGMCs.

This would also mean that MoEF has to modify its recent circulars to state governments, in which it specifies that JFMCs should come under the GS authority through amendment of the Panchayati Raj Act, without mentioning the new FRA context and what all needs to change if forest management committees are to meaningfully come under the GS.

*ii. Timber in both situation A and B [para 8.6.1]:* With regard to timber extraction (other than where rights are obtained under Sections 3(1)l or 3(1)j), it is recommended that the GS have a substantial role in deciding whether to continue existing arrangements under JFM or switch to new ones.

*iii. Role of FD [para 8.6.2]:* The Forest Department's role across Situations A, B, and C needs to change to one of facilitation, technical guidance, and protection support where communities request this, and monitoring and enforcement of sustainable use and wildlife conservation norms over and above what the communities themselves will be empowered to do. Its functioning will be under the supervision and guidance of district and state level committees suggested below.

This also implies that the Department needs to replace existing JFM and social forestry wings with a Community Forestry wing **in all areas under Situations A, B and C**, oriented to the role of community facilitation, guidance, and protection support.

*iv. Sub-state institutions of forest governance [para 8.6.3]:* The current recommendations do not clearly include a key component of democratization and community-based governance, viz., having systems of coordination, conflict resolution and regulation at levels below the state government and that are more democratic and accountable. We recommend the following [to be inserted before para 8.6.3]

*a. Landscape level community institutions:*

At the landscape level, in the case of Situations A, B and C, federations of village-/hamlet-level institutions will be facilitated and empowered under relevant legislation including the FRA.

*b. District-level Forest Governance Committees (DFGCs)*

FDAs should be replaced by **statutorily** constituted District-level committees containing appropriate representation from GS-based committees, representatives from PRIs, civil society organizations, and line departments, with democratic

decision-making rules. These committees will have the following responsibilities and powers:

- DFGC will receive and distribute funds for forest-related activities to the Gram Sabhas.
- DFGC will approve criteria for sustainable use and conservation, will decide on major violations reported by the FD, local communities, civil society or other agencies, and take action in cases where Gram Sabhas are unable to ensure sustainable use and conservation.
- DFGC will have final powers to resolve intra- and inter-village conflicts and propose to the state any changes necessary in the CFR/CFGM boundaries and rights recognized, in order to minimize such conflicts.
- DFGC will ensure that the Community Forestry wing of FD is discharging its responsibilities of providing protection support and technical support to the Gram Sabhas.
- DFGC will ensure that, in the case of all proposals for diversion of forest land to non-forest purposes, the Gram Sabha consultations has been properly carried out and consent/rejection properly obtained.

*v. Legal backing to Situation B [para 8.8]*

As mentioned above, Situation B sites should get legal backing as appropriate, similar to Situation C.

## **12.1.2 Chapter 9. Enhancing livelihoods through NTFPs**

### *1. Production (para 9.2)*

Many communities have had their own traditional practices of sustaining NTFP, some of which have eroded for various reasons, some of which remain even today. Additionally, no standard prescriptions of what is allowed or prohibited would apply to the bewilderingly large diversity of NTFP and the ecosystems from which NTFP is harvested. For instance, not all fire is bad for NTFP or for the forest. Some NTFPs may already be threatened and therefore it may not be advisable to do even normal levels of harvesting that were earlier sustainable. This issue needs further and more in-depth deliberation that has not been possible within the Committee. It is recommended that such studies and discussion, with the full involvement of the harvesting/user communities, be carried out for a range of NTFPs.

### *2. Forest Development Corporations [para 9.3.2]*

FDCs were set up as state-owned logging and planting companies, in an era of state-capitalism and of forest management for industrial purposes. In light of changes in state policy, FDCs have become irrelevant, white elephants. A series of committees, including Administrative Reforms Commissions in several states, have recommended that Forest Development Corporations do not serve any useful purpose. We recommend that FDCs simply be shut down. Their transformation into “NTFP, Fodder and Fuelwood Development Corporations” is neither possible nor desirable.

### *3. Specific suggestions for Tendu [para 9.6]*

If the analysis presented in previous sections is correct, then there is no reason why the recommendations of de-nationalising and shifting to a price support and marketing support system cannot apply to tendu. **So we recommend that tendu must also be de-nationalised and brought under a price support mechanism**, and its marketing left to individuals, SHGs, and marketing cooperatives, as the collectors prefer, while the government provides all possible support in the form of credit, price information, auditing of cooperatives, training, insurance for MFP

collectors, and so on. The current recommendation on ‘better sharing of profits and increase in collection price’ fundamentally contradicts the recommendation of de-nationalization (and consequent removal of monopoly procurement) and price-support.

### **12.1.3 Chapter 10**

#### *1. General*

The issues raised in sections 10.1 to 10.5 are mostly related to tribals (other than Forest Villages). However, similar and other issues are faced by non-tribal forest dwelling communities also. It is not possible to meaningfully cover all aspects of under-development or mis-governance in rural forested areas in this report.

#### *2. Forest Villages [para 10.3]*

This section conveys the impression that such programmes will and should continue, albeit with improvements. However, in light of the FRA, there must not be any Forest Villages any more, and their development programmes must be merged with those of other villages and supported under ST-specific or general development funds.

#### *3. Forest Development Agencies [para 10.3.1]*

As mentioned above, FDAs need to be replaced by more democratically constituted district-level forest governance committees.

#### *4. Governance/Administration [para 10.5]*

This section, while clearly pointing to the various problems that tribal areas have faced, gives the impression that these can be corrected with more responsive government action. However, a change in administration and governance would also entail much greater decentralization. The intent of PESA and other legislation or policy has been to move towards adivasi self-governance. It is therefore strongly recommended that the FRA implementation be used along with PESA and other relevant laws/policies as an opportunity to facilitate political, economic, and administrative decentralization both in tribal and in non-tribal forest-dwelling communities. This would ensure much greater community say in not only forest use and conservation, but also in education, health, water supply and irrigation, agriculture and animal husbandry, livelihoods, industry, and so on. The state’s role to facilitate this, provide guidance and capacity building opportunities, ensure justice and fairness to those who may be marginalized, and facilitate sustainability and conservation across the landscape, remains vital.

*Endorsed by the following Committee members (in alphabetical order of last name)*

1. Ravi Chellam
2. Jarjum Ete
3. Vasavi Kiro
4. Ashish Kothari
5. Sharachchandra Lele
6. Mannu Lal Markam
7. Ramdhan Lal Meena
8. Ravi Rebbapragada
9. Roma
10. Arup Jyoti Saikia

## **12.2 Note of dissent from Dr Arvind K. Jha,**

Respected Chairman/ Co-Chairman Sir,

I have submitted my inputs on various chapters and issues in the past also. However, I find that some of the most crucial ones have not been considered appropriately and there is hardly any time left for discussing them in detail, I would like to submit my summarized remarks on some of them as under:

Sir, we must first appreciate the fact that the FRA has a specific context and target group to cater to. It has outlined specific roles (legal duties) for various authorities/ departments/ stakeholders for the purpose.

It has been passed after lot of thinking, deliberations, and consideration of ground level situation and it reflects the wisdom of the Parliament on the issue. Our report should fundamentally be with reference to FRA and FRA implementation only and the TOR should be seen within the context of FRA and not the other way round.

You would agree sir that even if we may presume that the executive summary is most crucial, we may not leave errors or objectionable points in our report. Hence the following points:

The Act clearly indicates the area for management right and the area on which empowerment for protection duties is to be done. I am sure that the law makers considered the capacity of all concerned stakeholders while doing that and that is why the management right is considered for only those who can establish that they have been traditionally managing forest resources. This issue is important also because the resource under question is 'national' and 'global' too and impinges even on non forest dwellers' right to life. Accordingly we must read and understand the Act as an Act and not as a policy or vision statement. I would like to reiterate that I do not agree with interpretations or recommendation not based on strict and legal interpretation of the definitions/provision of the FRA. We may at best refer contentious issues for clarification/ further action in our recommendation chapter for the appropriate authorities to take action on.

As already pointed out earlier also, we must refrain from making any recommendations based on presumptions or expanded interpretation of the Act's provisions. In our enthusiasm to democratize forestry, we cannot and should not transgress the limits laid by law. Accordingly, I would reiterate that I do not agree with the analyses, statements, and recommendations based on presumptions or expanded interpretations of the Act's provisions in general and in the Chapters 8 and 11 in particular.

In the pages 225-226 the contents from the paragraph starting with "It is unfortunate that MOTA ---" upto the paragraph ending with "-----between planning and budgeting." Are not directly relevant to the FRA implementation. I had already requested for deleting the same but my request has not been considered favourably. As such, I submit that I do not agree to the inclusion of this and subsequent recommendations based on these paras in the report.

The paragraphs 8.9.1 to 8.9.3 have many general remarks on the IFS (expanded to SFS upto forest guard and other systems through the footnote 46) and they are not specifically relevant to the FRA implementation per se. The Committee has neither during its field visits recorded facts to substantiate all such aspects with reference to the role of FD in FRA's implementation nor has gone into any detailed study of the forestry sector. Inclusion of these paragraphs here may not only be irrelevant but also unethical. As a responsible Committee's member, I would submit that the Committee should not (support) such a treatment in the report.

If necessary, my note of dissent as above may kindly be appropriately recorded.

With best regards

Jha

### **12.3 Dissent note from Dr Sreedharan**

#### **1: Ensuring The Recognition Of Rightful Claimants Of Forest Rights**

The intention of “ The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition Of Forest Rights ) Act, 2006 is to grant secure individual or community tenurial and access rights over forest and forest lands. It is being provided in the form of title deeds for land under occupation or community Forest rights as per Rule 8(h) of The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition Of Forest Rights ) Rules, 2007. Once the rights are granted it would result in secure tenure or access of land under occupation as well as cultivation, ownership of minor forest produce, rights to water bodies, grazing areas, habitat of Primitive Tribal Groups (PTGs), conversion of all types of forest villages/settlements to revenue villages, the right and power to protect, conserve and manage community forest resources, etc. It would call for certain changes in forest management in forest and forest land where rights have been granted alone, to ensure that the forest resources are protected and sustainably managed. In forest areas where Indian Forest Act or Wildlife Protection Act are operated and wherein Community Forest rights are also granted those tenure, access and activities will be exercised without any hindrance to either. The whole process of FRA needs to be implemented in such a way that it does not deviate from the letter and spirit of the said Act. Nothing more and nothing less than what has been contemplated in The FRA should be the guiding factor in implementation. Attempts being made to liberally interpret by presumptions and assumptions and extend the provisions of the act to all and sundry should not be encouraged so that the rights of genuine claimants do not suffer. FRA should not be permitted to be used as a ploy to distribute national wealth of forest land to all claimants irrespective of their real legal eligibility.

#### **2: Contradiction In Clarification Issued By Ministry Of Tribal Affairs**

As per the clarification issued by the Ministry of Tribal Affairs, in their letter dated 9<sup>th</sup> June 2008 a person need not necessarily reside inside the forest to become eligible as “Other Traditional Forest Dweller”. Then obviously the time limit of 75 years of primary residence in forest as an eligibility criterion also becomes null and void. Thus there remains a severe contradiction with reference to the clarification given by the Ministry of Tribal Affairs on forest dwellers. The clarification given by the Ministry of Tribal Affairs perhaps is definitely contradictory and not in conformity with the preamble and the definition of other traditional forest dwellers in the said Act. This contradiction is being brought to the notice of the Ministry Of Tribal Affairs for redressal and rectification as otherwise people who otherwise are not eligible would claim and get the undue right and consequential entitlements under this act.

#### **3: FRA and Forest Governance**

There are two divergent views about the FRA and its likely impact on forest management. The National Forest Commission (supported by conservationists) is of the considered opinion that the proposed Scheduled Tribes (Recognition of Forest Rights) Act would be harmful to the interests of forests and to the ecological security of the country. It would be bad in law and would be in open conflict with the rulings of the Supreme Court. The tribal and OTFD activists are of the opinion that governance

and management of all forest should be vested with local communities through gramsabha in total.

Forest as a land use is riddled with numerous problems of very complicated nature like land grabbing and encroachments, timber smuggling by mafias, ganja cultivation, large scale thefts, shelter and operation by maoists and naxallites, wildlife poaching and hunting, massive forest fires and a host other biotic interferences which are threatening the very existence of forest ecosystem. The gramsabha definitely are not capable of handling and managing such dangerous threats on their own. While fulfilment of requirements of the community from adjoining forests cannot be denied, the fact remains that the 'forests' are a national wealth and their protection and preservation must be viewed from that angle and not only from regional, sectoral, ethnic or political standpoints. The role of professional forest managers in scientific management of forest resources of the country to ensure the flow of ecological goods in perpetuity for the masses in total need not be overemphasized. Forest management in the country should not result in utter chaos and confusion like the classic case of Hardin's "tragedy of the commons" wherein multiple individuals, acting independently, and solely and rationally consulting their own self-interest, will ultimately deplete a shared limited forest resource even when it is clear that it is not in anyone's long-term interest for this to happen. A well balanced approach wherein the gramsabha manages and protects only the community forest resources alone would be the best option in the prevailing circumstances. In all other areas the Reserved Forest should generally be managed and protected by forest department with support from people, in the interest of ensuring the ecological security of the country.

#### 4: Transforming The Forest Dependency of Tribals and OTFDs

A shift from primary sector activities to that of secondary and tertiary sectors is a better indicator of economic transformation of any marginalised community or developing nation. Policies with this objective are invariably being pursued by different countries to attain faster growth and development. As far as India's tribals are concerned, a shift from forest-based subsistence economy to other economic activities becomes a prerequisite for their socio-economic transformation.

#### 5: Joint Forest Management And Community Forest Management

Joint Forest Management (JFM) have played an important role in restoring, conserving and managing vast forest areas across the country. It has succeeded in reversing the threatening trend of forest degradation all over the country. Attempts being made to replace the JFM by community forest management in areas other than where FRA rights are exclusively granted are just theoretical and are not supported by any findings and should not be encouraged. JFM committees being integrated with Panchayats would make it more participatory, effective and sustainable.