

# **Independent People's Tribunal**

## **An Inquiry into the Status of Implementation of the Forest Rights Act 2006**

**in collaboration with**

CFR - Learning and Advocacy Process and UYRDC -  
Uttarakhand, CIRTD - Odisha, CORD - Coorg, Uttar Banga  
Van-Jan Shramjibi Manch - Darjeeling, Jagrut Kashtakari  
Sangathana - Maharashtra, Adivasi Munnetra Sangam - Tamil  
Nadu, Rajendra Prasad - Kerala, Lok Sangharsh Manch  
- Maharashtra, RMKU - Rajasthan, Seba Jagat - Odisha,  
Chhattisgarh Bachao Andolan - Chhattisgarh, Mahesh Raut -  
Maharashtra, Shramik Adivasi Sangathana - MP, Naya Savera  
- Jharkhand, Himdhara - HP, KIRTDI - Odisha, Navrachna  
- Chhattisgarh, Agariya Hitrakshak Samiti - Gujarat, Van  
Panchayat Sangharsh Morcha - Uttarakhand, Disha - West  
Bengal, Amitha Bachan - Kerala, Srishti - Maharashtra,  
Himalaya Niti Abhiyan - Guman Singh, Jharkhand Jungle  
Bachao Andolan - Jharkhand, ASDS - Andhra Pradesh, VGKK -  
Karnataka, CREFTDA - Odisha, Seva Mandir - Rajasthan

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INDIAN PEOPLE'S  
TRIBUNAL

**Independent People's Tribunal on the Status of  
Implementation of Forest Rights Act (2006) – A Report**

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## Abbreviations

CAMPA	Compensatory Afforestation Fund Management and Planning Authority Act
CFR	Community Forest Rights
CFC	Clear Felling Coupe
CSO	Civil Society Organizations
DLC	District Level Committee
FD	Forest Department
FDC	Forest Department Corporation
FRA	Forest Rights Act
FRC	Forest Rights Committee
GS	Gram Sabha
IFR	Individual Forest Rights
JFMC	Joint Forest Management Committee
MoEFCC	Ministry of Environment and Forests and Climate Change
MoTA	Ministry of Tribal Affairs
NHRC	National Human Rights Commission
NTFP	Non-Timber Forest Produces
PESA	Panchayat (Extension to Scheduled Areas) Act
PVTG	Particularly Vulnerable Tribal Groups
SDLC	Sub-Divisional Level Committee
ST	Scheduled Tribes
SLMC	State Level Monitoring Committee
VFR	Village Forest Rules

## Introduction

World over, the territories of indigenous people overlap with the rich bio-diverse areas. Their identity, traditional practices, customary laws, and livelihood are tightly inter-linked to their land and natural resources. Protection and management of natural resources ensure their survival, physically as well as culturally. These forest and nature-dependent communities are increasingly coming in conflict with their respective governments and powerful corporations due to the rise in urbanization, changing economic factors, and push for mega projects across the globe, thereby making it more difficult for them to secure their basic rights and access to land and natural resources. Similar to the global trend, the rights of tribal and other forest-dwelling communities in India, who constitute eight per cent (2011 Census) of the country's population, are also being expropriated leaving them further marginalized.

The consecutive policies in India have failed to recognize the forest-dependent communities and their rights to land and natural resources. By handing over control of forest land to FD, the government has not only branded the forest-dependent communities as 'encroachers' in their own land, but has also legally alienated them.

When the Scheduled Tribes and Other Traditional Forest Dwellers' (Recognition of Forest Rights) Act, or the Forest Rights Act (FRA) was enacted in 2006, it was hailed by many as an emancipatory law which upheld the rights and entitlements of the marginalized communities. By recognizing the rights of communities over forests and natural resources, which they have traditionally accessed, and by giving them the right to manage, use, protect, and conserve their habitat/forests, FRA had the potential to radically transform the governance and conservation of forests by shifting the control from the states to the communities.

Glimpses of this potential and the resultant improvement in their food security and economic conditions can be seen in success stories across the country. Some of these include:

- Soliga tribes in Biligiri Rangaswamy Temple Wildlife Sanctuary in Karnataka reclaimed their traditional and sacred areas under FRA. In 2004, the Supreme Court had banned sale of forest produce, and in 2011 their habitat was converted into a tiger reserve.
- Many villages in Gadchiroli district of Maharashtra used their rights under CFR to collect and sell bamboo and tendu leaves directly. In 2016, as many as 20 villages sold tendu leaves for Rs. 1.54 crore.
- More than 10,000 villages in Odisha are part of a self-initiated network which works along with the government to implement FRA, and regenerate and conserve their forests.

However, despite its intention and potential, the implementation of FRA has failed to achieve the tasks and objectives it set out to do. Even after a decade of its enactment, implementation of the Act, especially CFR, has been either abysmal or half-hearted. Many states either lack awareness of the provisions of the Act, or are reluctant to recognize it. States which have implemented the Act, have largely focused on granting IFR, mostly as a strategy to generate popular and political support. As per the 2016 report by CFR-LA Process, only three per cent of the total potential of CFR (170,000 forest and forest fringe villages – source FSI) have been granted. Many such titles are either wrong or in direct contravention to the Act. In many cases, CFR titles were given to facilitate developmental processes instead of recognizing rights, as vested under CFR. In such a scenario, the rights of Particularly Vulnerable Tribal Groups (PVTG), nomadic tribes, pastoralists, fisher folk, and women have remained absolutely neglected, even excluded.

The situation becomes more serious due to the economic and developmental policies of subsequent governments which have been pushing for diversion of forest land for mining, industrial corridors, and other mega projects. Since the enactment of FRA,

204,000 hectares of forest land have been diverted for development projects. Most of the diversions have taken place without the compliance of the Act or the consent of GS. A joint committee report by MoEFCC and MoTA in 2010 acknowledges this. The diversions have often led to violent conflicts with the state administration, further aggravating human rights violations of these communities.

An overview of the status of FRA's implementation in the country suggests that the government has been systemic and deliberate in its attempt at not recognizing the rights of tribal groups and other forest-dwellers. As a result, they continue to face exclusion from their land and forests, exploitation at the hand of government and private agencies, and threatened with eviction or dislocation from their ancestral home.



## About Independent People's Tribunal

The Independent People's Tribunal (IPT) undertook an inquiry on the status of implementation of FRA to understand and analyze the reasons behind the lack of implementation and/or the violations in the implementation of the Act. The objectives of IPT were to:

1. Identify and analyze the various violations happening across states on the implementation of FRA, and whether they are procedural or structural in nature.
2. The direct and indirect impact its non-implementation would have/has had on the communities.
3. Assess the status of FRA thereof.

As many as 37 CSOs and community members. These CSOs are: Uttaranchal Youth and Rural Development Centre - Uttarakhand, CIRTD - Odisha, CORD - Coorg, Uttar Banga Van-Jan Shramjibi Manch - Darjeeling, Jagrut Kashtakari Sangathana - Maharashtra, Adivasi Munnetra Sangam - Tamil Nadu, Rajendra Prasad - Kerala, Lok Sangharsh Manch - Maharashtra, RMKU - Rajasthan, Seba Jagat - Odisha, Chhattisgarh Bachao Andolan - Chhattisgarh, Mahesh Raut - Maharashtra, Shramik Adivasi Sangathana - MP, Naya Savera - Jharkhand, Himdhara - HP, KIRTDI - Odisha, Navrachna - Chhattisgarh, HRLN - Odisha, Agariya Hitrakshak Samiti - Gujarat, Van Panchayat Sangharsh Morcha - Uttarakhand, Disha - West Bengal, Amitha Bachan - Kerala, Srishti - Maharashtra, Himalaya Niti Abhiyan - Guman Singh, Jharkhand Jungle Bachao Andolan - Jharkhand, ASDS - Andhra Pradesh, VGKK - Karnataka, CREFTDA - Odisha, Seva Mandir - Rajasthan.

A few testimonies could not be presented as the members were not able to travel due to delays in railway schedule as a result of

fog. However, their testimonies have been included in this report. Many questions which CSOs and community members raised to the jury panel at the Tribunal, have been included here. Some testimonials, which were not part of the schedule but shared at the Tribunal, have also been added here.

The jury constituting six panelists was headed by Retired Justice H. Suresh. The other five members were Purabi Bose, Madhu Ramnath, Amba Jamir, Avinash Kumar and Dr Arvind Tiwari. Their short profile is given at the end of the report. Due to the nature of violations in the implementation of FRA in the states, the testimonials were scheduled under five specific themes. Each theme was introduced or contextualized by an expert through their deposition on the subject and were followed by testimonials by CSOs and community members.

4. Madhu Sarin presented the overall status of FRA and challenges facing its implementation in the current scenario.
5. Tushar Dash discussed the status of recognition of rights under FRA, including claims process, pending claims, responses from various government departments, withdrawal of claims etc.
6. Chitragada Choudhary provided a background on FRA violations due to forest land diversion, conflicts due to displacements and evictions, and issues related to GS consent.
7. Soma K.P. threw light on the status of women as a vulnerable group under FRA.
8. Hemanta Kumar spoke on the status of other vulnerable groups under FRA such as PVTG, and nomadic tribes.
9. Sanghamitra Dubey talked about the continued violations by FD across states.
10. Nitin Rai provided an insight into the conflict between conservation and FRA in protected areas and reserved forests.

## Background on status of FRA

### Expert deposition – Madhu Sarin

The most important aspect of FRA is that it has not the result of a high level government consultation, but in response to a strong grassroots movement. To understand the genesis of the movement, we need to understand the historical injustice inherent in the arbitrary processes by which the ancestral lands of our forest-dwelling communities were classified as state forests. During the colonial rule as well as after Independence, land classification was done without recognizing the pre-existing rights of the communities. During colonial rule, the British faced maximum rebellion from Adivasis and other forest-dwellers against notification of their ancestral land as reserve forest. This compelled the British to make special provisions for the administration of tribal areas (now under the Fifth and Sixth Schedules of the Constitution) and enact special laws such as the Chota Nagpur and Santhal Parganas Tenancy Acts in Jharkhand, and undertake comprehensive forest settlements in states like Himachal Pradesh and Uttarakhand. Van panchayat, the oldest legally recognized community managed forest institution, was also created in Uttarakhand to quell people's rebellion against denial of forest access through reservation. At the same time, the British also declared large areas of customary common lands as protected forests, more to assert state ownership over them rather than to protect and exploit forests.



Post-Independence, the national and state governments went a step ahead. Instead of restoring people's rights, between 1951

and 1988, the government increased the area classified as state forest from 26 million hectares to 41 million hectares. A lot of this was done by vesting ownership of tribal and other common lands, recognized as community resources even by the British, by sweeping notifications without any recognition of rights. Thus, all 'wasteland' in Himachal Pradesh was declared 'protected forest' in 1952. Almost 10 million hectares of common land in undivided Madhya Pradesh was handed over to FD as protected forest. In Odisha, podu (shifting cultivation) land of Adivasis was left unsurveyed and was recorded as state-owned revenue or forest land. The result is that despite constitutional protection to tribal cultures and resource rights, between 50 and 80 per cent of the land in Fifth Schedule areas now belongs to the government, mostly to FDs, leaving large numbers of Adivasis legally landless and labelled 'encroachers' on their own lands. Due to extension of stringent laws like the Indian Forest Act, 1927, the Forest Conservation Act, 1980 and the Wildlife Protection Act, 1972 to Fifth Schedule areas, not only have the forest-dependent communities been denied access to critical livelihood resources, but even their recognized rights have been further diluted or taken away.

Consequently, till 1990, over 8.5 million Adivasis had been displaced by development projects such as dams, mines, and industries with the majority neither being compensated nor rehabilitated since their rights were never recognized. The Supreme Court orders under the ongoing Godavarman PIL, which actually started as a petition against FD, have made this department even stronger, due to the involvement of several influential conservation NGOs.

Matters came to a head in 2002 when, citing Supreme Court concerns, MoEFCC ordered the eviction of all "encroachers" on forest land across the country within five months. The ensuing brutal eviction of impoverished forest-dwellers brought grassroots movements of the entire country together in protest. It resulted in the demand, and eventually the enactment of FRA. It is important to note that this Act is for the recognition of pre-existing rights,

not about a benevolent state issuing new rights. FRA vests and recognizes 14 rights which include individual or community rights to land under occupation and a wide diversity of CFR. The most important right under Section 3 (1)(i) is for community forest resources which empowers GS, instead of FD, to protect, conserve and manage people's customary forests for sustainable use. GS is also the initiating authority for receiving, verifying and recommending claims. The Act also provides that no claimant can be evicted from forest land till the rights recognition process is complete. Further, instead of MoEFCC, MoTA is the nodal ministry for the Act, although, unfortunately, it is a weak ministry. Till today, the implementation of FRA has been poor, with CFR rights being recognized over only 3 per cent of the potential area of over 34 million hectares. There are several roadblocks to proper implementation, a major one being FDs' unwillingness to let go of their control over forests and the lack of political will both at the Centre and the state levels. Effective strategies need to be identified for overcoming the roadblocks in implementing this Act.

*(Madhu Sarin is a fellow of the Rights and Resources Initiative and has been working on forest tenure reform in India for the last 15 years. She was a member of the Technical Support Group constituted by MoTA which drafted FRA 2006. She remains actively involved with the Campaign for Survival and Dignity in mobilizing communities for claiming and asserting their rights under the Act. Combining grassroots work with policy analysis and advocacy, her primary focus for over three-and-a-half decades has been on gender and equity-sensitive community empowerment and democratizing natural resource governance.)*

## Theme 1: Recognition of rights under FRA

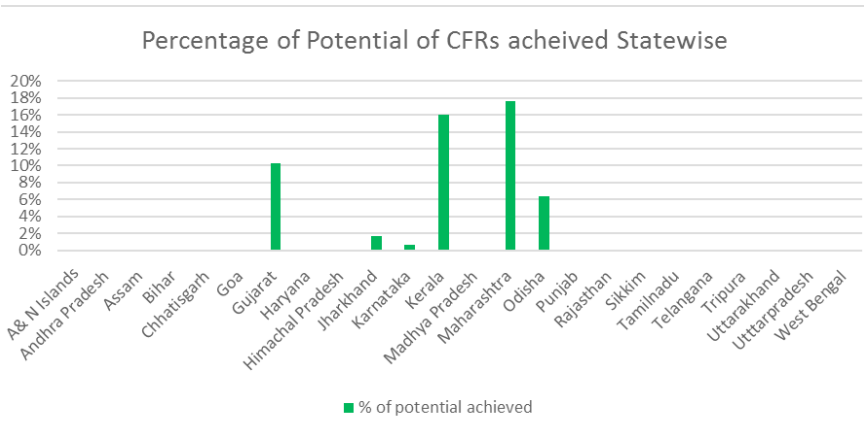
### Expert deposition - Tushar Dash

The CFR - Learning and Advocacy initiative published a report—Promise and Performance of FRA—on the tenth anniversary of the enactment of FRA. The report provides a conservative estimate of the potential forest area which can be recognized as CFR, based on Census data on forest land within village revenue boundaries and outside it, and analyzes FRA's actual performance. The performance data has been taken from MoTA and the reports compiled by individuals and organizations in different states. It has been observed that the MoTA report does not match the reports of the states. Also, it does not provide segregated information on CFRs as well as rights of women, PVTGs, and pastoralists.



The findings of the CFR - Learning and Advocacy initiative report suggest that at least 34.6 million hectares forest land can be recognized and vested as CFRs under FRA with the highest potential in Madhya Pradesh, Maharashtra, Chhattisgarh, Odisha, Andhra Pradesh, Telangana, Rajasthan, Karnataka, Himachal Pradesh, and Uttarakhand. The report also observes that the areas with highest potential of rights recognition within FRA are the most vulnerable in terms of poverty and lack of resources. Along with quantitative estimates, the report looks into the qualitative aspects of the Act for securing rights of women and other vulnerable groups. FRA helps the government achieve its national and global

goals like the Sustainable Development Goals 2030. The report also tries to address issues of conflict. In this, land tenures have emerged as the biggest concern. In terms of performance, only 3 per cent CFRs have been recognized. If we look at statewide implementation, statistics suggest that implementation has been better in Maharashtra, Odisha, Gujarat, and Kerala. But even in these states implementation is restricted only to certain districts which don’t have mining activities. Implementation is absent in districts where mining activities are rampant, just like in other states. Even “better performing states” have performed mostly because of the initiatives by the community or civil societies.



The report has identifies the roadblocks due to which FRA implementation has been so poor. A detailed analysis of the institutional structure, policies, and process suggests that the biggest roadblock is the lack of intention within the state and the national governments to implement this transformative law. Other roadblocks are the lack of support to MoTA for effective implementation, and resistance by FD to transfer power to GS. It is also seen that no state has regularly conducted SLMC meetings which are supposed to happen every three months. In Odisha, there have been only eight SLMC meetings in the last 10 years. Similarly, district committees and sub-district committees are also non-functional. Since the enactment of FRA, FD officers are being

deputed to the tribal welfare departments to resist implementation of the Act. Another key reason for the lack of FRA implementation is the divergent and conflicting policies that have come into place, especially in the last two to three years. The Compensatory Afforestation Fund Act, 2016 has been enacted without complying to FRA. On the way forward, the report recommends a re-look at the institutional structure and suggests implementation of FRA in a proactive mode. There is a need to include the community and civil societies working towards implementation of FRA.

*(Tushar Dash is a researcher associated with Vasundhara, which is working on forest rights and governance issues. He is actively involved in a national initiative for research and advocacy focusing on CFR provisions of FRA (CFR – Learning & Advocacy Process). The CFR – LA initiative engages with CSOs and networks in different states that are working on FRA and CFR rights. He has conducted several training programmes on FRA organized by MoTA for state governments as well as learning workshops for CSOs, development agencies and academic institutions. He has served in committees and forums set up by the Central and state governments. He has written extensively on the implementation of FRA.)*

## Community depositions

### Testimonial 1

**Organization:** Uttaranchal Youth and Rural Development Centre

**Presenters:** Bharat Rawat, Rajendra Rao

**State:** Uttarakhand District: Chamoli

**Affected villages/families:** 48 revenue villages in Narainbagar block of Tharali taluka





**Key issue:** Although the CFR claims have been completed (48) and submitted (31) by gram panchayat, they have not been processed by the government.

Case presented: Uttarakhand Youth and Rural Development Centre works in 55 villages in Narainbagar block where they have been spreading awareness on CFR. So far, 48 claims have been completed and 31 have been submitted by the gram panchayat. However, nothing has been done regarding the claims till now. Narainbagar is one of the blocks affected by natural disasters. In the 2013 flash floods, 45 houses were washed away. Hence, there is a clear understanding of the need and demand for forest rights by the people. Uttarakhand has 13 districts, of which only two fall in the plains. About 80 per cent of the people residing in the hills are dependent on forests for their livelihood and sustenance, especially the women, be it for fodder for animals, firewood, or medicinal herbs.

FD restricts village communities from going into forests and undertaking necessary activities such as establishing footpaths, planting local tree species, or using minor forest produce. But when it comes to harvesting forest produce, FD gives tenders to people who bring labour from outside. They take away everything. Even the way they lop trees or cut barks for resin ensure that the trees die. The impact of prevalent laws and traders' influence on marginalized households has been immense. After the disasters in the recent past, the impacted communities could not utilize the forest resources to re-establish their houses, even when each village is given timber right under the state law. People in Uttarakhand are unable to use their own forests for their livelihood, leading to mass migration of people.

There is a lack of awareness among government officials about the Act. The officials think FRA cannot be implemented in the state as all rights of the communities were settled long ago under the Van Panchayat rules of 1931 (amended in 2005), and under privileges and concessions in reserve forest through the 1927 Indian Forest

Act enactment. They argue that forest-dwelling means people who live inside forests. Village-level Forest Rights Committees (FRCs) have been formed by the social welfare department without the knowledge of the members. In the case of these villages, there is also no delegation to SDLC by DLC to help implement the Act. Relevant officer-bearers change frequently. For example, in Narainbagar block, more than 10 SDMs have changed in the past two years. The DMs has also changed more than five times in the district.

## Testimonial 2



**Organization:** Centre for Integrated Rural and Tribal Development

**Presenter:** Supriyan

**State:** Odisha District: Sundargarh

**Affected villages/families:** 78 households in Dhamia Punji village

### Key issues:

1. DLC approved 329 claims, of which 30 were not given titles. However, the sub-collector issued a notice asking all 30 claimants to return their respective titles, failure of which could result in legal action.
2. As many as 660 communities have claimed rights under CFR. None of the claims were sanctioned till October 2016. Nine villages in the district convened a special GS to self-declare their rights over their forests.

**Case 1 presented:** The provisions under FRA of “Other Traditional Forest Dweller” states that communities who have resided in and are dependent on forests or forest land for bona fide livelihood needs for at least three generations prior to December 13, 2005, can claim forest rights after providing due evidence.

Based upon this constitutional provision, 329 claims were filed in Sundargarh after following the due procedure of filling Form-A and submitting it with supporting documents of evidence through their respective FRC after the approval from GS. The claims were verified by the sub-collector, the convener of SDLC and finally, DLC chaired by the collector-cum-district magistrate of Sundargarh. Out of 329 claims approved by DLC, 30 were not given titles. However, the sub-collector of Sundargarh, through his letter number 7928 dated 1.9.2016 served notice to the claimants asking them to return their titles which were given “illegally”, failure of which could lead to legal action as per the provision under Section 12(a) and Sub-Section 7 and 10 of FRA.

Under the provision of FRA, amendment Act of 2012 and its sub-section 7, SDLC will forward the claims to DLC for finally getting the rights with signature. It is clearly mentioned under sub-section 10 of the same Act that no claim can be rejected due to lack of any procedural lapse. Also, it is mentioned under Section 11 that no claim can be rejected due to lack of evidence. But there is no provision in the Act for returning given claims.

Case 2 presented: From 2016, nine villages in Sundargarh have decided to use the provisions of self-governance under PESA to self-declare or self-assert CFR in their respective areas. This is being done since the government has not taken cognizance of CFR for other traditional forest-dwellers as under FRA. As many as 660 communities have submitted their claims on CFR between 2012 and 2016. However, the district administration did not issue a single CFR till October 2016.

Forest-dwelling communities in the region have faced a lot of problems due to the depletion of minor forest produces caused by deforestation in the name of developmental projects and due to plantation of single species. The declarations were done in special GS under the chairmanship of the sarpanch and in the presence of MLA, government officers, media, and leaders of a people's organization called Ath-kosia Adivasi Ekta Manch. GS passed

resolutions to protect the forests and conserve biodiversity as per the provisions of FRA. It also declared through messages on sign-boards that any government official, agency, NGO or outsider will not be allowed any activity without its prior permission or consent, as per the provision under Section 4 (e) 1 in PESA Act of 1996.

### Testimonial 3

**Organization:** Coorg Organization for Rural Development

**Presenters:** J.K. Thimma, V.S. Roy David

**State:** Karnataka District: Kodagu



**Affected villages/families:**

**Key issues:** Procedural delays in the implementation of FRA. IFR not recognized due to non-acceptance of GS recommendations. CFR and Community Forest Resources Rights have not been given because the region is declared a tiger project area—Nagarhole National Park.

**Case Presented:** The tribe that live in the forest areas in and around Nagarhole, which has now been declared a national park. The communities have been living here in harmony with nature and take measures to conserve forests and wildlife. More than 25,000 claims have been submitted in the state, but only 10 per cent of it has been processed. Even in the 10% claims that were processed, people have not got what they had claimed but just three or five cents of land under IFR.

After the region was declared a national park, FD has been misinterpreting various laws to harass the communities. It has not allowed people to reconstruct their houses and has filed criminal cases against them asking them to voluntarily take the relocation

package (of Rs 10 lakhs) and move out of the park, or else seek permission from the Prime Minister to construct houses. It has taken false declaration from people without their consent on giving up their rights. The villages had filed CFR claims in 2010 but nothing has been processed even in six years. In the meanwhile, they are being forcibly evicted from their land.

#### Testimonial 4



**Organization:** Uttar Banga Van-Jan Shramjivi Manch

**Presenter:** Swaroop Saha

**State:** West Bengal District: Darjeeling

**Affected villages/families:**

Villages located along National Highway 31(A) on the embankment of River Teesta under Kalimpong Sub-division

**Key issue:** More than 120 families in two villages are under direct threat (both life and livelihood) of River Teesta because of the activities of Teesta Lower Dam Stage-III project, which is being constructed by NHPC in the area.

**Case presented:** The case is presented of only one village, but the situation is similar across the region. The village of 29<sup>th</sup> Mile constitutes 120 families with a mix of tribal and non-tribal communities. A 132-MW hydel power project is being developed very close to the village by NHPC. On July 21, 2016, without providing prior notice, 13 houses were demolished by NHPC. The village is situated in forest land and has not been converted into revenue village. FRA has also not been implemented here.

The compensation package which has been provided to some

people is only for construction of their houses. Nothing is provided to compensate for the loss of livelihood opportunities. In the case of Sangey Sherpa and Wangdup Sherpa, whose houses were demolished along with others, compensation offered was as low as Rs 11 lakhs while on paper it was Rs 32 lakhs. Along with civil society, the people have written even to the Prime Minister's Office, but nothing has been done yet. Both the families are still living in the same condition.

### Testimonial 5



**Organization:** Jagrut Kashtakari Sangathana

**Presenters:** Keshav Waghmare, Hiru Niruguda

**State:** Maharashtra District: Raigad

**Affected villages/families:** Phanglichiwadi - Mamdapur Gram Panchayat, 42 families, 450 acres (182.1 hectares)

**Key issue:** CFR claims submitted in 2010 have been rejected due to confusion between Section 3(2) and Section 3 (1). Even after six years of continued struggle, the claims have not been accepted.

**Case Presented:** Phanglichiwadi village lies on the foothills of Matheran, a tourist place. Tribal community living here has been instrumental in regenerating the forest cut down by FD three decades ago. Their Dalli land (traditional common land on hill slopes used for agriculture) has been shrinking as both FD and outsiders have been claiming forest land for their own purposes. Due to the influx of tourists and proximity to Mumbai, people are buying land for properties and other purposes. Hence, it is important for the village to have their rights over their traditional forest area.

In 2010, they filed CFR claim over 450 acres (182.1 hectares) of their traditional boundary listing down in detail all the local flora and fauna including fish species. SDLC passed the claim to Range Officer at Neral, who rejected it stating it falls under the economic zone. Even though clarified many times, confusion persists about the rights as under Section 3(2) and Section 3(1). In 2015, the claim was returned to SDLC who again sent it back to the Range Officer in Neral. It has been six years since the claim was filed, but it has not been accepted yet.

### Testimonial 6

**Organization:** Adivasi Munnetra Sangam

**Presenters:**

**State:** Tamil Nadu District: Nilgiris

**Affected villages/families:** 312 tribal villages in 3 town panchayats and 4 village panchayats in Gudalur and Pandalur taluks



**Key issue:** Rejection of IFR, CFR and Community Forest Resources Rights claims due to the implementation of Section 17 of the Gudalur Janmam Estates (Abolition and Conversion into Ryotwari) Act, 1969 which is in contravention of Section 3(1)(b) {Nistaar Rights} and Section 3(1)(f) {rights supersede issues on disputed lands}.

**Case Presented:** The Gudalur and Pandalur talukas in the Nilgiri region is home to more than 25,000 PVTGs belonging to five distinct tribal groups – Bettakurumba, Irula, Kattunayakan, Mullukurumba, and Paniya. Although 1,911 IFR, 312 CFR, and 5 Community Forest Resources claims have been passed by 31 special GSs, they are pending at the SDLC level, and many rejected citing Section 17 of the Gudalur Janmam Estates (Abolition and Conversion into Ryotwari) Act, 1969.



The Gudalur Janmam Estates Abolition Act, 1969 was legislated to take over large areas in the Gudalur taluk from the landlords (Janmi) of the Nilambur Kovilagam. Section 17 of the Act gave status quo rights to land that was leased by the Kovilagam to plantation estates with the state having the right to take them back if it were felt necessary to do so in public interest. The Act ignored the traditional tribal-dwellers as equal stakeholders in the Janman lands.

In keeping with Section 17 of the Act, 32,000 hectares were taken over and converted to a government-owned tea estate (TANTEA) for the rehabilitation of Sri Lankan Tamil repatriates. A part of the estate, which was initiated in the name of the tribal groups in the Kolapally division too, was taken away. The Supreme Court in its recent judgement directed the state government to resettle lands under Section 17 in due course after identifying the traditional dwellers. However, inaction on the part of successive state governments has led to delays. Recently, uncultivated vacant lands under the lease of plantation estates in O'Valley were resumed by the government and handed over to FD. Also, the land taken back was declared reserved forest.

### Testimonial 7

**Organization:** Thambu

**Presenter:** Anthony

**State:** Kerala    **District:** Attappadi  
Region, Wayanad



**Affected villages/families:**

**Key issue:** Tribal groups of Attappadi are working to reclaim the land and forests declared as one of the seven tribal blocks in Kerala.

**Case Presented:** In 1975, Integrated Tribal Development Programme (ITDP) came into force in seven tribal areas of Kerala. In 1978, Attappadi was declared the first Adivasi block. The



material gains which followed, resulted in further detriment in the conditions of the Adivasis. In the background of these gains, migration worsened in the area. As per the records of ITDP, till 1978, as much as 10,454 acres (4,230 hectares) of Adivasi land has been lost. Deforestation and climatic change, which followed this, made Attappadi equivalent to a desert. Adivasis lost their indigenous cultivation, and withdrew into the forest more and more. Infant mortality rate in Attappadi skyrocketed and put it on the global map. During 2012-2016, around 200 infants in the area died due to malnutrition. The people of the region decided to form FRC which has been filing IFR claims. Now, the focus is on claiming CFR, especially 745 sq km (both land and community rights) which is exclusively tribal land. Although the district administration is aware of the provisions under FRA, there are many cases where the District Forest Officer has opposed the application stating the land is within forest border or has sandalwood plantations. There is also dispute regarding land between revenue department and FD.

### **Annexure: FRA in Kerala by Rajendra Prasad**

#### **Testimonial 8**

**Organization:** Lok Sangharsh Manch

**Presenters:** Zila Bai, Prakash Kabir Barela, Pratibha Shinde

**State:** Maharashtra District: Nandurbar

**Affected villages/families:**

**Key issue:** Status of FRA in Nandurbar, Nashik, and Jalgaon districts

**Case Presented:** In Nandurbar, 44,623 IFR claims were submitted, out of which only 25,132 have been categorized as eligible. In Nashik, 50,443 claims were submitted out of which the state government's



record shows that 31,534 titles were given. However, as per the villages' records, only 15,623 titles have been received. Nobody knows where the missing titles are. In Jalgaon, 7,140 claims were submitted, out of which 5,367 were rejected. In these three districts, more than 60 per cent of the claims have been rejected. SDLC has sent notice in a 'speaking order' format to all rejected claimants without clarifying the reasons behind the rejection of each claim. The village forest committee had invited FD for a joint verification of the claims. Their response was also filed along with the claims. However, these responses were overlooked by SDLC who sought to engage with FD separately and considered those responses as actual proofs for rejecting the claims.

During the Godavarman case, on October 10, 2001, the Maharashtra government had said in the Supreme Court that there was no data related to the number of people farming in the state. To record such a data, the state government had formed a committee in each village which included an official from FD and members of the village. It conducted a detailed survey from 2001 to 2002. Also, between 1992 and 2004, village members used to give application for farming. All these evidences were included in the claims filed. However, SDLC chooses to ignore these and only considers the proofs provided by FD as true evidences.

### Testimonial 9



**Organization:** Rajasthan Mazdoor Kisan Union

**Presenters:** Prabhat Kumar Sinha

**State:** Rajasthan District:

**Affected villages/families:**

**Key issue:** Overall state perspective

**Case presented:** Rajasthan Mazdoor Kisan Union (RMKU) works in 27 of the 33 tribal districts of Rajasthan. Around 20

lakh people in many of these states are affected by mining. Each village has been surveyed by the team at RMKU, details of which are there with the union. So far, 71,200 IFR and CFR claims have been filed, out of which 38,848 have been rejected. In many cases people have not been informed about the rejection even after six months or one year.

### Testimonial 10



**Organization:** Janjati Adhikar Manch (not part of the final schedule)

**Presenter:** Prayas

**State:** Rajasthan      **District:** Udaipur

**Affected villages / families:**

**Key issue:** All CFR claims are stuck at the DLC level since 2008.

**Case Presented:** Salumbar is an Adivasi region which falls under Schedule V, so provisions of PESA is also applicable here. The CFR claim was filed by Moriga village in 2008 where all details were furnished except GPS mapping. FD is responsible for taking down GPS points in front of GS. However, FD used this very point to reject the claim, which the DLC also accepted. Since 2008, this claim has been going back and forth between the village and the DLC without any resolution. The 172 people of the village are still awaiting their rights. Even though it is the duty of FD to create awareness of the process of filing the claims under the Act through camps, no such activities have taken place. As a result, the village members do not know about FRA or its processes.

They had filed 10 more claims subsequently. Nine claims are stuck at the block level. One claim which went to the DLC level was rejected on many grounds, which were duly processed and fulfilled

by the community. However, DLC is yet to approve the claim. The question that arises out of these situations is that when GS has been given the rights under PESA to take such decisions, then why are they trying to diminish the strength of PESA.

### Testimonial 11

**Organization:** Seba Jagat

**Presenter:** Silli Dalai

**State:** Odisha **District:** Rampur block

**Affected villages / families:**



**Key issue:** Family threatened with eviction from their traditional farm land.

**Case Presented:** As many as 1,100 IFR claims and 31 CFR claims were submitted in Rampur block, of which 700 were given titles (IFR) while only one was accepted. In Chitalpatta village of Rampur block, a family has been struggling with their IFR. The panchayat has planted mango trees on their land with support from the horticulture department, and threaten them to leave. However, the family did not leave. They continue cultivating on the land and are taking care of the mango trees. Even though he got the patta under IFR, no demarcation or GPS mapping was done. As a result, non-Adivasi groups were also threatened to leave the land. The panchayat raised this issue with the collector. The collector who came for verification clearly stated that demarcation is the responsibility of SDLC and nothing can be done by him in this regard. The community has also come together on this issue.

### Questions by the community members

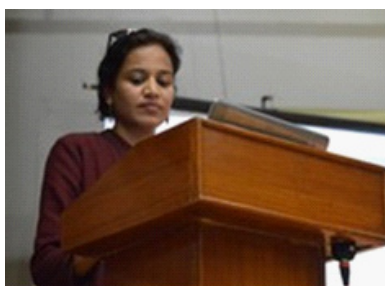
- Forest communities have worked over their respective

pieces of land for years, but now in many places, the government is acquiring their land for various purposes. After the land is acquired, would these people still be given the status of actual owners of the land, or would their rights to ownership be denied and passed on to the government?

- In West Bengal, most tribal areas are scattered and do not fall under Schedule V. Because of this, FRA is not applicable here and the people do not receive compensation or rights. Can anything be done to change that?
- Road broadening projects across the country have led to displacement of forest communities. Can IPT and similar bodies intervene to review if any legal violations are happening in these areas?
- The Delhi-Mumbai Industrial Corridor is a big threat and the entire forest areas in Rajasthan are being compromised because of which the tribals will suffer. Can PESA and FRA be used to fight this?
- There is no voice of MoTA, and FD officials are deputed. Can this be raised legally as it is a nodal ministry? Have other states faced this issue and tackled it?
- In Bilaspur, six villages were created around the forest and people were stopped from entering the forest. Is this illegal and against the habitat rights as defined in FRA?
- A large share of claims is pending. No timeline or process has been defined. How can this process be legalized?
- According to Section 4.5 of FRA, rehabilitation should be provided before people are displaced from their respective homes, but we have seen in many cases that there is no proper rehabilitation. What legal action can be taken to challenge this issue?

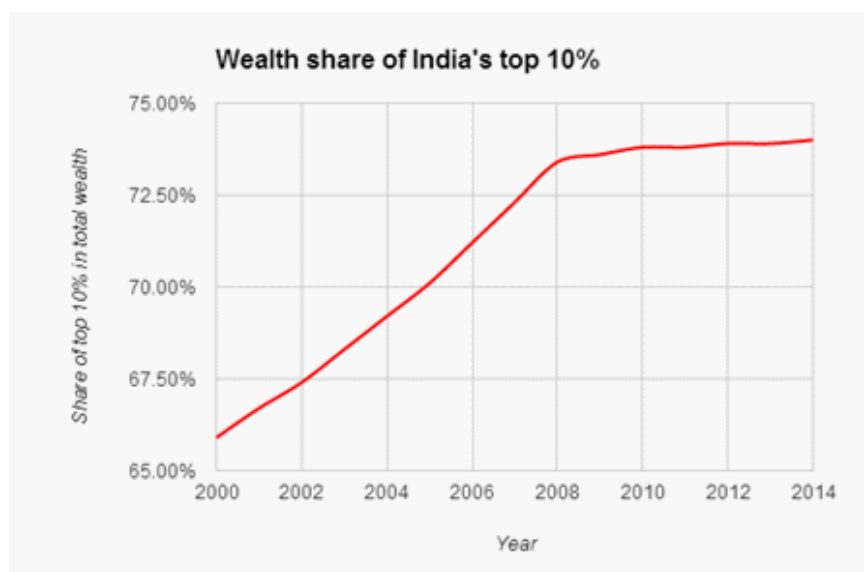
## Theme 2: Diversion of forest land, displacements and evictions, issues of gram sabha consent

**Expert Deposition:** Chitrangada Choudhury



What is happening today in the country can be understood as 'stealing of forests'. The passage and stillborn implementation of FRA has been paralleled by dispossession of assets of many vulnerable people, and a continuous rise in the share of wealth among the top 10 per cent of the wealthiest. Much of this wealth

draws from the control of natural resources.



In elite discourse, development is intimately related to economic growth. A key goal of the government is to attract capital investment and be 'business friendly'. This has translated into specific policy decisions like making environmental clearances faster, diluting forest rights, easing public hearings, mapping local livelihood bases as coal blocks and auctioning them in a distant capital. The main effect of all this is that the voices and perspectives of rural peoples get erased or negated. But at the same time, new legislation such as the Right to Information Act, FRA have been put in place with the stated aim of empowering people. Acts like FRA allow for participation of people, which creates unpredictability and uncertainty in decision-making. The state's response to this uncertainty has been violence. In Adivasi and resource-rich areas, grassroots resource justice movements are commonly called 'anti-national'.

With respect to forest land, statistics by Kalpavriksh and the Centre for Science and Environment indicate that from 2014 to 2016, as much as 47,473 hectares have been diverted for non-forest purposes, 30 percent of which is only for mining projects. In the last 30 years, 11,37,686 hectares of forest land has been diverted for non-forest purposes. This phenomenon has been one of violent dispossession.

Before 2009, if a mining company wanted to take over forest land, the government authorities could award it the right to do so. The community had no formal say or participation. In July 2009, through FRA and a circular by MoEFCC, it was mandated that all 'forest-diversion' proposals would need to secure the consent of GS for diversion of forests. Few are willing to implement this provision in letter and spirit, to democratize decision-making around forests.

In Odisha, a state where illegal mining has done much damage, this provision has been routinely misused and consent has been manufactured. In one such instance, for the Gandhamardhan-B Iron Ore Mine's forest clearance proposal, signatures of GS members were forged in seven villages, and such manufactured resolutions submitted to MoEFCC for the requisite clearance.



As FRA gets hollowed out through such illegal practices <http://www.thehindu.com/opinion/columns/Making-a-hollow-in-the-Forest-Rights-Act/article14226592.ece>, there is a need to enhance awareness among the community on the rights and provisions under the Act. It should be mandatory to notify GS when a forest clearance proposal is actually submitted to the state and Central authorities, since villagers are usually not aware when this step of the clearance process takes place, and lose the opportunity to discover and point out illegalities. Putting together more case studies from across states will help build a national case for the widespread extent of illegalities.

*(Chitrangada Choudhury is an Odisha-based journalist and researcher.)*

## Community Testimonials:

### Testimonial 12



**Organization:** Chhattisgarh Bachao Andolan

**Presenter:** Jayanandan Singh Porte

**State:** Chhattisgarh District: Sarguja

**Affected villages/families:** 250 families in Udaipur block

**Key issue:** In an unprecedented move, the government cancelled the CFR title issued to the community on a complaint filed by the coal mining company that the CFR titles were interfering in their coal mining operations.

**Case Presented:** Ghatbarra village (Schedule 5 area) falls in the core zone of Parsa East Kete Besan (PEKB) coal mines run by Rajasthan Rajya Vidyut Utpadan Nigam Limited and in turn by Adani Enterprises through the MDO contract. The company has



used every method to sideline the implementation of FRA and obtain the mines illegally. The coal block is spread over 2,700 hectares.

In 2006-07, the Ministry of Coal allotted the PEKB coal block to the company. The company filed for forest clearance on January 12, 2009 (and revised proposal on March 2, 2011). In 2010, the entire region was declared No-Go for mining based on a joint study of Ministry of Coal and MoEFCC. On May 14 and 15, 2011, the sub-committee of the Forest Advisory Committee visited the area to assess the proposal for forest clearance and in its report recommended rejection of the mine for causing environmental degradation and destruction of wildlife and biodiversity. This committee also noted that the procedure for recognition of FRA was incomplete in the region and people lacked awareness of the provisions of FRA. On June 23, 2011, the Environment Minister over-ruled the advice of FAC and gave in-principle Stage-1 clearance for the project, incorporating the condition that the final clearance shall be granted only after the procedure for recognition of forest rights is complete. However, without completion of the FRA process, Stage-2 clearance to the project was given on March 15, 2012.

Local villagers have been resisting the coal mining project, and allege that GS never took place to seek their views with regard to the mining project as is required under both PESA and FRA. They recalled a fraudulent meeting with the Collector in 2009, which they had opposed. On October 2, 2011, the villagers proactively passed a resolution through GS protesting against coal mining in their village. On March 5, 2012, they again submitted representations to officials highlighting the issue of PESA and FRA and requested for stopping of coal inspection. On June 2013, FRC of Ghatbarra village submitted the claim form for CFR title and on September 3, 2013, DLC gave the title. This was after the mine clearance and mining work became operational. Three adjacent villages – Salhi, Hariharpur and Fatehpur (in the mining core zone) – had also got CFR titles in similar way. The respective GSs then passed resolution for amendment complaining that the area granted in title was smaller than the traditional village boundaries. The traditional

boundary constituted 2,300 hectares of forest land, but only 800 hectares were recognized under CFR. However, on September 3, 2014 the Collector replied that part of the community forest cannot be granted since it has already been allotted for coal mining. On January 8, 2016, GS received a letter from the Collector stating that CFR granted to Ghatbarra village was cancelled as they are interrupting mining work and directed the tehsildar to seize the record of right. The entire process has been a joke.

### Testimonial 13

**Organization:** Chhattisgarh  
Bachao Andolan

**Presenter:** Priyanshu Gupta

**State:** Chhattisgarh    **District:**  
Surajpur

**Affected villages/families:**  
4,000 families in Premnagar



**Key issue:** The PESA village was converted into nagar panchayat without notification or GS consent. FRA was not implemented before converting it into nagar panchayat.

**Case Presented:** Even though the case is mostly related to PESA violation, it has implications on the implementation of FRA. The case pertains to illegal conversion of Premnagar gram panchayat to a nagar panchayat despite opposition from the local people. This has been done to escape the provisions of PESA Act because Premnagar GS was protesting against the setting up of IFFCO's coal-based power plant. FRA was not implemented before the conversion.

Premnagar is a large village which served as the tehsil headquarters. As per 2000 Census, the total population of the village was 3,920, of which 60 per cent were BPL. The ST population in the village was

61 per cent, but 7 of the 15 wards had approximately 80 per cent or above ST population. Since it lies in scheduled area, provisions of PESA Act were applicable. In June 2005, the state government signed an MOU with IFFCO for setting up a 1,000-MW coal-based power plant as well as coal mines in Premnagar, Raghunathpur and Abhaypur villages of Premnagar panchayat. The Premnagar GS regularly opposed setting up of the plant, signing at least three resolutions between 2005 and 2006. These resolutions were sent to high-level officials, including the Governor and the President. The state government was determined to go ahead with the power plant despite local opposition and several media reports on the confrontation. On July 7, 2009, the Chief Minister of Chhattisgarh suddenly declared that the gram panchayat would be converted into a nagar panchayat at a local event in the district headquarters. This was reported in local newspapers. The villagers were surprised since they had not made any representation, nor did they receive any official intimation.

In March 2010, through RTI queries, the villagers were shocked to learn that not only had the gram panchayat become a nagar panchayat, but a new nagar panchayat body had been nominated with the erstwhile sarpanch as the President. In April 2010, people tried to seek official explanation from the new nagar panchayat, but they stated that the decision to set this up was taken from above in which they had no role to play. On April 29, 2010, the people of Premnagar gave representation to the Collector objecting to the formation of nagar panchayat, and mentioned that the opinion of GS was never taken. On May 31, 2010, the additional collector rejected the objections claiming that the related notification had already been published in the state gazette on July 30, 2009 and it was affixed on the notice board of the gram panchayat for registering objections between August 7, 2009 and September 10, 2009. The additional collector claimed that since they did not receive any objections then, the new complaint cannot be entertained and will be summarily rejected. However, later documents from RTI revealed that notification was affixed on the notice board of the collector. The matter is ongoing at the Bilaspur High Court.

### Testimonial 14



**Organization:** Representative of 70 Gram Sabhas

**Presenters:** Ramdas Jalate, Saunu Gota

**State:** Maharashtra District: Surjagad

**Affected villages/families:**

**Key issue:** Police atrocities on Maria Gond (PVTG) community members for opposing mining of a hill which they consider sacred. A story similar to Niyamgiri in Odisha.

**Case Presented:** 'Surjagad Ilaka' is the traditional unit of 70 villages in Etapalli block of Gadchiroli district in Maharashtra. All the GSs under the Surjagad Ilaka are in correlation with each other in their cultural, social and religious practices. And they are strongly related to each other. 'Madia Gond' a PVTG, is a major inhabitant of this area. Since generations, locals of this area have protected the forest and environment in its natural form. They worship nature and other things associated with their clan. 'Thakur Dev' is an important deity of this ilaka, whose worship place is situated on the Surjagad Hills. They also worship other deity such as Marai Sedo and Bhimal Pen. People are largely depended on forest and forest resources for their livelihood.

The government has been trying to take the area for mining since a long time. Lloyds Metal and Engineers Ltd, Mumbai, was first given lease in 1993 which expired in 2006. No work happened till 2006 due to strong public resistance against mining. The lease was extended for another 20 years in 2007. There are more mining companies (25 leases) in the region, such as Jindal and Mittal, which have been given land on lease in this region. Despite people's resistance, the government is helping the companies to start the mines. A total of 6,068 hectares of traditional land and forest are being forcibly taken away from the people. Bhamragar ilaka's 126 GS, Torsa ilaka's 40 GS, Venhara ilaka's 78 GS, Jharabara's 70 GS, Khudgaon's 65 GS,

Teepagarh and Korchi's 439 GS have also extended their support to the 70 GSs of Surjagad ilaka. Since 1993, the company has not given any report to GS. They have violated the provisions of PESA by not taking the consent of GS; there has been no environmental or forest clearance for mining in the region; neither has there been any social impact assessment or environmental impact assessment done. FRA has not been implemented in this area, and very few CFR titles have been given. Wherever CFR titles have been given, they are very less compared to their traditional areas keeping the rest for mining. Since it was once a naxal-affected area, police have been using it as an excuse to continue their atrocities on all those resisting land acquisition.

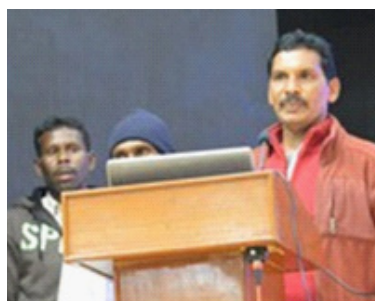
GSs have exercised their rights over forests and other natural resources, under the provisions of FRA (Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006, Rule 2008 and Revised Rules 2012), and PESA (Provisions of Panchayats (Extension to Scheduled Areas) Act 1996). There is considerable rise in the income of people as individuals and also as community (in GSs) by organized management of Minor Forest Produces, and management and sale of bamboo and tendu leaves. GSs are moving towards sustainable development model with protection of environment.

### Testimonial 15

**Organization:** Associated with Shramik Adivasi Sangathan

**Presenters:** Rajendra Garhwal, Basant Tekam

**State:** Madhya Pradesh District: Betul



**Affected villages/families:**

**Key issue:** Homes and standing crop of the Adivasi community destroyed. They have been asked to evict the area without recognizing their rights under FRA

**Case Presented:** People of the village have been fighting for their rights for the past 15-20 years. The situation hasn't changed even after FRA, and people getting into direct conflict with the government over their land and livelihood. FRA has not been implemented in the district. People have not been made aware or given training on the Act despite demanding it. They have put in 40 claims, but all have been rejected on various grounds. FD officials, along with officials of various other departments, routinely come with forces to burn down standing crops ready for harvest. They poison water bodies, and kill poultry and livestock. Despite peaceful protests and rallies, people have been falsely accused of charges.

In 2011, the Adivasi village of Umardoh was completely destroyed by a team of over 200 people, which included SDM and the police who came with trucks and pesticide sprays. They were not given prior notice, neither were the provisions of FRA followed. The task force razed the crops, poisoned livestock and water sources leading to death of cattle and chickens. The area is known for malnutrition deaths. Razing crops added to people's problems. When the fact-finding team of TISS inquired about the situation, the then District Collector did not see any illegality in the process. Cases against Adivasis were also registered.

Some of the key findings of the TISS fact-finding team are as follows:

- The main stumbling block in the implementation of FRA is that the implementing authorities at the district level are still giving precedence to the colonial Indian Forest Act, 1927 over FRA.
- The district administration and FD are blatantly violating the provisions and procedures laid down in FRA for the settlement of claims to the forest rights.
- FD is transgressing the rights of tribals by evicting people from their homesteads and by destroying their cultivation.

The task force eviction of the 45 households at Umardoh was arbitrary and illegal.

- Alienating tribals from forest land and deliberately destroying their crops would contribute to further malnourishment and deprivation of these communities and may have serious implications.
- The incident at Umardoh village was not the first incidence of abuse of power by the district administration. There have been several other incidences which eventually led to the apex court directing the formation of the Grievance Redressal Authority to check the arbitrary and illegal acts of commission and omission.

Evictions of Adivasis from forests in MP are not uncommon. There have been many incidences of setting of fire to huts and crops by task forces.

### Testimonial 16

**Organization:** Naya Savera

**Presenters:** Bijendra Kumar,  
Lakhendra Thakur

**State:** Jharkhand      District:  
Hazaribagh



**Affected villages/families:** Eight panchayats of Badkagaon block, 60,000 people (around 400 villages)

**Key issue:** India's biggest coal block, forest land and non-forest land has been acquired illegally without recognition of FRA or even the consent of GS

**Case Presented:** Jharkhand is known for its coal reserve. Since its formation, many coal mines have come up which have



displaced hundreds of Adivasis. However, neither the state, nor any organization has recorded where 50 per cent of these displaced people are now. Some of the displaced Adivasis sell haria (local beer made from rice) on the roadsides for livelihood. Like Hazaribagh, almost all districts in Jharkhand have lush forests. However, the state government has declared that Karnpura area (consisting of Badkagaon, Kandwa, Kerari blocks) is barren and only four species of animals (rabbit, snake, squirrel and fox) are found here. FD has listed 200 species of animals and birds that have a habitat in these forests. Badkagaon is extremely fertile with farmers cultivating three crops a year. According to the state government's records, the block's turnover only through farming is more than Rs 300 crores per year, and is, therefore, called the rice bowl of Jharkhand.

Eight panchayats of Badkagaon have been found to have vast coal reserves. This is called Pakri-Barwadih coal block. NTPC proposed to acquire this land which includes both forest and non-forest private land of farmers/rayyats. The land acquisition process was initiated long back, but till date only a small portion of the land has been acquired, which is mostly forest land. This forest land has been acquired in total violation of the law in force, without the consent of GS which is mandatory under FRA. Even though all GS had unanimously declared that they do not want any kind of projects in future, the SDO changed the statement to say that all GSs agreed to give their land. Signatures of only a few people from different villages were taken. It included members of Van Suraksha Prabandhan Samiti formed by FD.

As regards non-forest land, the rayyats or farmers of this area are generally not willing to part with their land at any cost, and have been agitating for a long time against the proposed land acquisition and people's displacement. If this land acquisition takes place, it will displace about 60,000 people of 11,000 families from 400 villages. As a result, many protests have taken place with police firing twice at such protests killing four people. All others injured in the firings, have bullet wounds above the waist. Armed forces now defend coal blocks from its own people. Some officials are even accused of committing atrocities against women.



The land acquisition process was started under the old Land Acquisition Act of 1894, but in the meantime, in 2013, the new land acquisition law came into being. Now, due to certain provisions in the new Act, the land cannot be acquired under the old law, and has to be acquired under the new law of 2013, which entails consent of 70 per cent of the land holders. However, the government, administration, NTPC, and the private agency to which the work of digging of coal has been outsourced, are not willing to follow the new law. They want to go ahead with land acquisition under the old law, without the approval of GS, which is now illegal. The diversion of forest land happened in 2010, despite a circular by MoEFCC in 2009 asking for settlement of FRA in the region. Even in other regions affected by mining, no claims, even IFR, have been given till date.

### Testimonial 17

**Organization:** Himdhara

**Presenters:** Prakash Bhandari, Shazia Nigar

**State:** Himachal Pradesh District: Kinnaur

**Affected villages/families:** 400 families, 85.7 hectares



**Key issue:** People opposing hydro-power projects in Scheduled V area which was given forest clearances without GS consent or FRA compliance.

**Case Presented:** A total of 346 (238 IFR and 108 CFR) cases have been approved in Himachal Pradesh. However, only 60 individuals have got titles so far, and that too of only 0.35 hectares. Ninety per cent of the people of the state live in rural areas, while two-thirds of the forests are under the control of FD. Himachal Pradesh also has nomadic tribes like Gaddi (sheep) and Gujjars (buffalo) who are totally dependent on forests. In 2002, the state had come out

with a legislation which said that all people who have encroached forest land and have filed affidavit will be given titles. Around 40,000 families had filed affidavits but the state did not have any law under which it could regularize this. Now all these families are facing charges, and do not have access to any government's development schemes. The state has denied implementation of FRA saying titles and rights of people were settled in the early 20th Century under forest settlement. However, these titles come with conditions unlike FRA. People are also afraid to ask for rights under FRA due to government's turnaround with the 2002 legislation.

Many hydro-power projects have been planned in the state, for which forest clearances are being given easily. Even though public hearings take place, the inputs and concerns of GS are not included or addressed. One such example is that of the 243-MW Integrated Kashang Hydroelectricity Project (Rs 1,800 crores executed by Himachal Pradesh Power Corporation Ltd (HPPCL) that is proposed on the Kashang and Kerang streams – the right bank tributaries of Satluj River in Morang Tehsil of Kinnaur district in Himachal Pradesh. Kinnaur is a Schedule V area under the Indian Constitution with a high percentage of tribal population who are settled around forest areas. Major opposition is against Integrated Kashang Stage II and III, where affected communities from Lippa and Rarang villages are demanding to scrap the project as it diverts the water of Kerang stream through KK link tunnel to Kashang stream. Stage I is already built.

People have opposed the project on four grounds: that it will impact their villages, livelihood, sacred places, and biodiversity (chilgoza pine – an endangered species of trees), and also non-compliance of FRA and violation of PESA. On May 4, 2016, the National Green Tribunal passed a judgement directing MoEFCC and the Himachal Pradesh government to place the entire forest clearance proposal for the Integrated Kashang (Stage II and III) hydroelectric project before the affected GS. The judgement concluded that, “the gram sabha shall consider all community and individual claims” in the process bringing under it the cultural, religious, environmental and livelihood impacts as a result of the loss of forests and water sources. Despite this order, not much has happened.

## Testimonial 18

**Organization:** Keonjhar Integrated Rural Development & Training Institute (KIRDTI)

**Presenters:** Kartika Sahoo, Debasis Pattanaik

**State:** Odisha District: Keonjhar



**Affected villages/families:** Urmunda and Uppar Jagara villages of Kumundi panchayat, Donla village of Suakati panchayat, Ambadahara, Ichinda, Uppar Kainsiri and Nitigotha villages of Talakainsiri panchayat, 1,565 families, 1,400 hectares

**Key issue:** Fake GS conducted in seven villages to give the consent for Gandhamardan-B iron ore mining expansion in 1,400 hectares of forest land to Odisha Mining Corporation (OMC).

**Case Presented:** The Gandhamardan Hill range is dominated by Bhuiyan Adivasi population. The forest is dense consisting of many indigenous species. It also comes under Baitarani elephant corridor planned by the state. The hill range is also the origin of many perennial streams which local indigenous communities use both for domestic and agriculture purposes.

In 1970, the Gandhamardan Block-B mining lease was given to OMC. In 2013, the Shah Commission found irregularity in mining as the operation was continuing without forest clearance from 2000 to 2006. On behalf of OMC, the state government applied for forest clearance to expand the mining area to 1,590 hectares, of which 1,400 hectares forest come under seven Adivasi village boundary with ancestral rights. The mining expansion application was submitted without the knowledge of the village communities. It was also approved by the Forest Advisory Committee.

In early November 2015, the seven affected village communities came to know about the fake GS resolutions submitted with the application on behalf of their villages. On inquiry, they found

exactly seven GS consent resolution of seven different affected villages with numerous illegalities in the resolutions, such as fake signatures, double or triple signatures of a single person. Signatures of government officials like that of the revenue department and the forest departments are also present. This means it happened during their presence. In September 2015, during the forest clearance of OMC, no question was raised from FAC despite identical resolutions of all the seven villages.

The then district collector provided FRA clearance on January 19, 2013 with the certification that forest rights claims had been settled in seven villages, but in fact, no clearance had been settled in Danla and Upper Kainsary affected villages. Only 210 families were provided IFR title out of 1,257 families in rest of the five villages. None of the villages have got CFR. Site verification happened in 2014, while the forged GS consent was taken in 2011.

Nitigotha and Ambadahara village took the first step against the violations and sent petitions to MoTA, MoEFCC and the Governor of Odisha questioning the violations. In five villages, the leaders organized GS and unanimously rejected the fake GS consent. They demanded DLC to settle their CFRs immediately, and urged for a CBI enquiry. When people went to OMC to complain, they were beaten up. Police refused to file an FIR against the company. On the other hand, false charges were implicated against them. One person was arrested as well. The BDO, who overlooks the whole process of clearances, is also in-charge of investigating their claims, putting a big question mark on the justice process.

## Testimonial 19

**Organization:** Navrachna

**Presenters:** Devjit Nandi

**State:** Chhattisgarh District: Korba

**Affected villages/families:** 476 households in the Kartali panchayat (four villages)

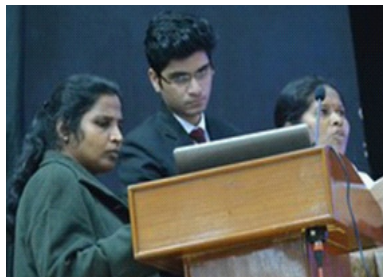


**Key issue:** There are numerous procedural violations in granting CFR in the high-pressure mining area. CFR titles have been given to JFM. Rights for grazing and collection of minor produces have been given, but within the working plan of the forest range.

**Case Presented:** Korba, which has 66 per cent forest area, 66 per cent tribal population, and 52 per cent of the population living under poverty line, is considered the power hub of the country. It is highly mined. The forests that exist are under high pressure of being mined. The forests are rich in biodiversity and fall in the coal mining periphery of the government-owned South Eastern Coalfields Ltd (a subsidiary of Coal India Ltd). The government reports that the area has enough coal reserve to last 200 years. There are 79 sponge iron factories in the neighbouring Janjgir-Champa district which get its supply of minerals from Korba. There are numerous violations in the area related to land acquisition, FRA, coal bearing Act etc.

Annually, 2.5 million tonnes of coal is mined from the open cast mines in the Kartali panchayat area, although open cast mining is being banned across the world. Forest Rights Committee under FRA was formed only in 2014 after the organizations pushed SDLC to look into the implementation of FRA in Pali block. Out of 476, as many as 317 households are still called “encroachers” as they have not received their titles despite filing for it thrice. Two out of four villages of the panchayat are already under mining. In Kartali village, land is being acquired for roads, fly ash dumping etc without the implementation of FRA and at old rates, that is, Rs 4 lakhs for non-irrigated land and Rs 6 lakhs for irrigated land. The land is fertile here with good water availability, resulting in two crops farming in a year. Those whose houses have been affected, have received only Rs 2 lakhs or 3 decimal land. People have opposed any kind of land diversion. As a result, GS consent has been forged.

## Testimonial 20



**Organization:** Human Rights Law Network

**Presenters:** Sevati Soren

**State:** Odisha District: Sundargarh

**Affected villages/families:** Kusumdihi and Kamando villages

**Key issue:** Land forcefully taken from village members

**Case Presented:** In 2003, Rungta Mines had taken 111 acres (44.9 hectares) from the people of Komanda village to establish a steel plant promising them to give employment in the company. Due to this assurance, people agreed to give their land on lease and allowed the steel plant to become operational. In 2015, Rungta Mines acquired, through Infrastructure Development Corporation of Odisha, 186 acres (75.2 hectares) more private land from the people without prior permission from the authority or notice. It started construction work over the land, built a wall over people's farms, and even destroyed standing crops. When people protested, the company lodged false cases against them. Police were called, who made many arrests, which included women.

All the land acquired by the company is private land and belongs to the people of Komonda, as recorded in the patta.

## Testimonial 21



**Organization:**

**Presenter:** Prashant Paikra

**State:** Odisha District: Jagatsinghpur

**Affected villages/families:**

**Key issue:** False cases against people who were part of the struggle against POSCO

**Case Presented:** (not part of the schedule)

The movement against POSCO in Odisha is 12 to 13 years old. The FRA movement has been active since 2005 wherein, as per the MoU, people can claim rights over forest land. When the government wanted to handover this land to POSCO, people protested as that land had been in use by forest-dwellers and villagers for over 100 years. The pattas were shared stating use of land for more than 100 years. FD declared them fake. In 2006, after enactment of FRA, claims were submitted for IFR and CFR and all relevant documents were submitted declaring habitation of land for over 100 years. GS was also declared fake by the state government despite video recordings of the sabha in which a government official was present. A complaint was filed with the MoEFCC, which sent three committees. The Saxena Committee acknowledged that there were FRA violations, and a report was submitted to the Central government. However, the government was not “satisfied” with the report. The Meena Gupta committee was sent, which sent a similar report of violations to the Central government. This, too, failed to satisfy the government. Then, the Raipur committee was sent for investigation. All three reports highlighted violations by the department and company. However, MoEFCC stated that PMO has instructed that these reports cannot be accepted. When media intervened, PMO stated that the diversion was being done for the betterment of the country. Their IFRs have been filed at the district, state and national levels with all relevant documents. However, the claims are neither rejected nor accepted. There has been no response on it till today. From 2011 to 2013, 2,000 acres (809.3 hectares) has been acquired and handed over to POSCO. A lot of violence has ensued as well. More than 2,000 trees have been cut in the area. This is dangerous in the cyclone-prone area. People have reapplied for their claims on that land. Resultantly, POSCO and the government have filed civil and criminal cases.



### Theme 3: Recognition of rights of vulnerable groups including PVTGs, nomadic tribes, fisher folk, and women

#### **Expert Deposition:** Soma K.P. (women's rights under FRA)

Today, the rights of vulnerable groups in the country are shrinking. Forest communities who are struggling to protect and maintain rich biodiverse areas are labelled anti-national and anti-development, whereas all that they are trying to do is live and maintain their livelihood in forests, as they have been doing for



centuries. We are talking about progress in a scenario where life of tribal women is becoming increasingly challenging. Their survival is at risk as violence against women is increasing, and they're being called encroachers for carrying out activities they've been undertaking for generations. A glance at statistics reveals that in the first three months of power, the current national government passed 33 out of 81 proposals of diversion of land, affecting 7,000 hectares. This trend increased in the last two years and has caused 1.34 lakh hectares being handed over for diversion. This has caused strife and violence, especially against women who seek to protect their rights to access to such lands.

In Andhra Pradesh, acquisition of over 2,00,000 hectares for diversion and submergence will impact over 85,000 families, of which 100 families fall under PVTG category. However, in today's definition of progress there is no place for vulnerable communities such as forest-dwellers, PVTGs, nomadic tribes, fisher folk, and



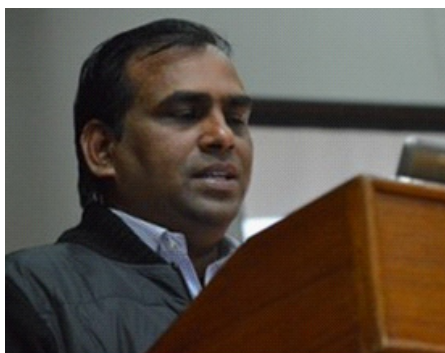
women. Nomadic tribes have been terribly affected as their roads and paths have been blocked due to highways. For example, the area near IIM campus in Ahmedabad, where nomadic tribes lived, now has concrete buildings. FRA was passed to correct the historical injustices of the past, specifically the injustices that were meted out by FD that has continued the colonial authoritarian control over large tracts of forests and denied communities access to their areas, resources and livelihood. Whereas the enactment creates opportunities for the recognition of rights for forest-dwelling communities, implementation of the Act has been hugely impeded by FD's attempts to control these terrains and deny the recognition of individual and community rights. FD continues to intervene in processes by rejecting and challenging claims, and is extending its reach to bring new areas into its domain, even as it charges local communities with cases of violation on petty pretexts. National Resources Conservation Board data reveals an increase in the number of cases against women for violation of forest rules. Provisions are used to target those protesting against FD for its aggressive control, while seeking to claim traditional rights.

These processes of development have led to the "process of othering". Nomadic communities have been forced to settle in the Rajaji National Park as their traditional route of transhumance has been blocked with construction and development of infrastructure. They are not allowed on these routes, and are now being called encroachers. The FD has resorted to assault on their land and their meager resources to scare and impede their existence. It is denying them access to their own resources. Last year, several women were physically assaulted and not even given medical care. In Gujarat, members of Maalya Mahila Macchi Maar Sangathan spend a part of the year as livestock herders, and a few months after monsoons as salt and prawn cultivators in the Rann of Kutch. But today, these women are in a situation where their rights are being threatened as their land has been allocated to companies on lease. Allocation of forest land for other uses such as industry and mining is a common practice by FD across the country even though it displaces vulnerable groups and denies the traditional dwellers their rights.

FRA states that people have rights over NTFP. Yet, these resources continue to be auctioned on tender to traders and companies. There is clear evidence from available data that the land recognized under FRA provisions is far less than the land claimed by forest-dwellers, although the Forest Rights Committees are recognized under the Act as bodies that can validate claims at the habitation level. FD postures as obliging communities by giving IFR or recognizing CFRs, but far less is recognized than actual claims. The interventions by FD are beyond the brief of FRA. This denial of rights impinges upon their current economic activity as well as their means of sustaining their lives for the future in embedded environments, from which they draw food, fodder, and other livelihood needs. According to estimates, CFR and IFR rights should be recognized for 200 million STs and OTFDs in over 170,000 villages. But only 3 per cent rights have been recognized in the past 10 years, since the Act was passed. Moreover, the area recognized is far less than what is claimed. These are strategies to prevent communities from having access to their resources and being independent of market forces for their livelihood. It will drive forest dependent communities to alienation from food and subsistence resources. FRA has provisions that are transformative in nature, but it has not been implemented because of lack of government's intention to shift power into people's hands. For women risks multiply as they struggle against violence and denial caused by state action. They struggle to manage survival needs and assert their rights. FRA does give women rights. They are appended to male heads of households. Their status is recognized within the FRC but are rendered a minority. Data systems of FRA monitoring process do not record gender disaggregated data, hence the implications of FRA from a gender perspective continue to be ignored. The need is to independently recognize women's claims and give them equal representation in decision-making structures related to forest management and conservation. These measures, along with gender budgeting and gender disaggregated management of data systems, will serve to facilitate redressal of gender priorities in relation to FRA and overall rights and claims over forests.

*(Soma K.P. is a gender, natural resources and livelihood practitioner. She is working as an independent researcher seeking to support people's organizations and strengthen gender strategies and women's voices in public. Presently, she is a member of the CFR – Learning and Advocacy Process as coordinator of the gender sub-group, and MAKAM national facilitation team.)*

### **Expert Deposition:**



**Hemanta Kumar Sahoo  
(PVTGs and other groups)**

Habitat is not something new. However, post-FRA, the discourse on habitat has been immense. The process of habitat right recognition required extensive research and close interaction with the respective community to understand the territorial concept which is culturally, socially, ecologically and economically linked. In FRA, Section 3 (e) recognizes habitat right as:

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

Along with that, Section 5 (c) of FRA empowers forest right holders and their institutions to:

‘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’

There is no definition per se of habitat rights around the world.

But in international parlance it is recognized as 'ancestral domain', 'reserved land' etc. During the process of recognition of habitat rights, different state governments misunderstood habitat as providing housing facilities. MoTA stated that the right to community tenures of habitat and habitation may be recognized over customary territories used by the PTG for habitation, livelihood, social, economic, spiritual, cultural and other purposes. In some cases, the habitat of PTGs may overlap with forest and other rights of other communities. To clarify the definition of habitat rights, UNDP and MoTA has done a study – National Study on Mechanism for Recognition of Habitat Rights – to derive the suggestive process guideline for the determination and recognition of habitat rights. The study is divided into four parameters – ecological, demographic, economic, and cultural. In Odisha, we experimented the guidelines it suggested. There are 75 PVTG in India, of which 13 are in Odisha spread over 12 districts. Our work is currently limited to seven districts and nine PVTGs such as Juangs, Bonda, Didayi, Dongria Kondhs, Kutia Kondhs, Paudi Bhuyans, Khadia, and Lodha. The habitat right of Mankidia community in Mayurbhan is approved by DLC but is yet to be distributed.

The major issue in this process is inadequate explanation on nature, scope and extent of habitat rights in the Act and lack of a guideline issued by MoTA.



In this process, the preparatory phase is important because habitat rights are different from IFR and CFR. In IFR, rights are given in the name of the community and not in the name of the village or individual. One of our studies, done by Subrat Nayak, found that amongst the Kutia Kondhas, the unit of their larger habitat is a set of clan territories which constitute a group of padars (a geo-cultural landscape marked by one or more dongars or hills and presided by a deity Dharani Pennu).

Hence, there is a need for the community to completely understand the process before filing claims. This step is then followed by the 'determination and recognition of habitat rights' which involves awareness building among the community as well discussion with traditional leaders. This discussion is followed by data collection and mapping and finally submission of claims.

*(The work of Hemanta Kumar Sahoo focuses on interactions between forest and indigenous societies inhabiting biodiversity-rich areas, the state's socio-environmental policies and the circumstances through which the local population may achieve sustainable natural resource management and improved livelihoods across Odisha. He supports community-based institutions formation, governance, functional mechanism so that the participation and voice of marginalized groups is easily integrated with in the decision-making process as a right.)*

## Community Testimonials

### Testimonial 22

**Organization:** Agariya Heetrakshak Manch (AHRM)

**Presenter:** Pangti Jog

**State:** Gujarat District: Kutch, Patan, Morbi, Banaskantha, Rajkot and Surendranagar districts, and Little Rann of Kutch



**Affected villages/families:** 250 villages, 12,000 families belonging to nomadic and de-notified tribes. Little Rann of Kutch is 4,890 sq km. Land used by salt farmers is estimated to be 2.3 per cent of the total land.

**Key issue:** Traditional salt farmers of Little Rann of Kutch have been demanding customary seasonal community user rights under FRA.

**Case Presented:** The Agariya or the salt-farming community of Kutch have been present for the past 600 years. Making organic crystal salt called “poda” is their traditional skill which they have been practicing for centuries. For them, salt farming, or Mithani Kheti, is the only source of livelihood. Every year, 12,000 Agariya families (185 panchayats and 250 villages) migrate to the Little Rann of Kutch (mud desert) for a period of eight months (from September to April-May) for salt farming. The Agariyas belong to the category of nomadic and denotified tribes.

Little Rann of Kutch was declared a sanctuary in 1973, thus technically it comes under the definition of ‘forest’. In 1948, Government of India declared that small-scale salt farmers, who have less than 10 acres or 4 hectares, do not require lease to make salt. After the declaration of the sanctuary, FD demands lease from the community. But around 5,000 sq km of Little Rann of Kutch has never been surveyed before or post Independence, so no district collectorate has jurisdiction over it. As a result, FRA is not being implemented here. The Agariya community, along with other nomadic and denotified communities who farm prawn in the non-salt farming months, seek seasonal rights to use resource in Little Rann of Kutch. Under FRA, Agariyas are entitled to “Other community rights of uses or entitlements, such as fish and other product of water bodies, (grazing both settled and transhumance) and traditional seasonal resource access of nomadic and

pastoralist community", as they hold seasonal use of water in the desert to farm salt.

The conservation of wild asses in Little Rann of Kutch is a success story, with an annual increase of 10 per cent. Recent Census estimates the wild ass population to be 4,800. Agariya community and wild asses, along with other wild species, have been residing in Little Rann of Kutch for centuries. The land is known as a 'Zero Conflict Zone' and has set an example of how conservation can be done without conflict between communities and species. There is a coherent and enabling environment, where the Agariyas, the fishing community and the farmers play a very important role in protecting and conserving wildlife. As per a study conducted by Center for Economics and Social Studies (CESS), farmers give up to 18 per cent of their crops to wild asses, Neelgai (blue boar) and other animals. FD, too, appreciates communities' role in conservation.

### Testimonial 23



**Organization:** Van Panchayat Sangharsh Morcha

**Presenters:** Tarun Joshi, Mohammad Safi

**State:** Uttarakhand District: Nainital

**Affected villages/families:** Tumiriya Khatta

**Key issue:** Forcible eviction and beating of Van Gujjars despite High Court judgement in 2007 stating that eviction cannot take place without recognition of FRA

**Case Presented:** The Van Gujar communities of Uttarakhand and Uttar Pradesh have traditionally been nomadic pastoralists who have, over generations, been forced to give up their nomadic lifestyles and settle in forest land along several blocks across the state.



Over the years, forest rights and human rights of the community have been severely violated by FD (and the complacency of the state government on Van Gujjar issues) since there have been several attempts to evict them from forest land under their occupation.

Section 4(5) of FRA states that no forest-dweller can be removed from the land under his/her occupation unless the processes of recognition and verification of rights under FRA are complete. The Act was upheld in the Nainital High Court in a judgement passed in February 2007 when it specifically stated that Van Gujjar evictions cannot take place without recognition and vesting of rights under FRA. The court was hearing a PIL filed by the Van Gujjar community of Rajaji National Park who were issued eviction notices by the park authorities. In September 2014, MoTA wrote to the National Tiger Conservation Authority stating that GS of Van Gujjar villages have to be consulted on the completion of FRA processes within the village in cases of relocation from the Corbett landscape. Despite the order, eviction of Van Gujjars have continued.

In a recent incident at Tumiriya forest village, FD officials razed standing crops, tried to destroy houses of villagers and mercilessly beat them up with the intention of evicting them. Two women, Janab Begum and Salma Begum, were severely beaten by forest personnel. The only school in the village was demolished by the forest team without any prior notice. They used JCB machines to dig up the area around the village, so that neither the people nor their livestock could step outside forcing them to leave their village.

The people of Tumiriya village allege that while carrying out the eviction drive, FD refused to recognize the claims they had filed under FRA. This is in clear violation of a Central law. Since 2010, more than 2,000 IFRs and 500 CFRs have been filled, however, till now nothing has happened. Only 45 claims have been accepted, and only one CFR title over community pond was given for the use of animals.



## Testimonial 24

**Organization:** Dakshin Banga Matsyajibi Forum

**Presenter:** Milan Das

**State:** West Bengal District: South and North 24 Parganas



**Affected villages/families:** Around 70,000 families in all fringe villages of Indian part of Sundarbans, the mangrove forest spread over two districts – North and South 24 Parganas.

**Key issue:** Small and traditional fish workers dependent on forest resources like fish and honey are deprived access to fishing in the name of conservation. FRA is not recognized here.

**Case Presented:** In Sundarbans, declared reserved forest, there has been absolutely no government effort to implement FRA and restore peoples' traditional livelihood rights on natural resources. The Backward Class Department and the Tribal Welfare Department of the state government, who are supposed to implement FRA in the state have excluded South and North 24 Parganas from implementation of the Act. In West Bengal, Sundarbans lies in these two districts. So far, no administrative step has been taken to confer the rights of the traditional fisherfolk whose livelihood was dependent on forest resources like fish, honey, golpata, and dry fuel since ages.

There are no forest villages in Sundarbans as people cannot reside inside mangrove forests due to its natural features. However, fishing has been the only source of livelihood for the communities living around it for ages. Since late 1970s, restrictions were introduced without going through the statutory processes. Stage by stage, almost 80 per cent area of Sundarbans has been declared "core" or non-violable. Since early 80s, some areas have been identified as "buffer" and restricted permission was given by FD. Only 930 Boat License Certificates (BLCs) were issued in the reserved forest area. This provides fishing opportunities for only 3,500-4,000 fishing families.

Renewal of BLCs every year and additionally obtaining permits for every fishing trip became compulsory. Fishing for all others became illegal. However, around 3,500 BLCs have been given to boat owners outside of the reserved forests. A considerable number of such BLCs are owned by non-fisherfolk and they give it on rent to actual fishers in lieu of good amount — Rs10,000 to Rs.50,000 per year. Those who go for fishing with all odds and risks to maintain their livelihood are also under constant threat and misery.

Fines, seizure of boats, nets and catch, cancellation of permits, compulsory delivery of all collected honey to FD for a pittance, threats of imprisonment, abuses and even physical assaults are regular for these forest dependent people. The traditional forest dependent people of Sundarbans are treated as trespassers in their own land and punished by forest guards. Victims have to move from one range office to another in remote forests to get back those documents and implements on payment of huge fines. Even 'tiger widows' are not compensated due to these restrictions and rules.

## Testimonial 25

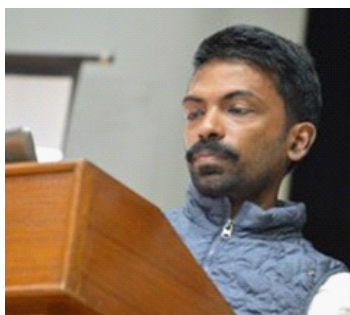
### Organization:

**Presenter:** K.H. Amitha Bachan

**State:** Kerala District: Vazhachal

### Affected villages/families:

**Key issue:** PVTG rights not recognized or process not initiated. In Vazhachal, CFRmC and other committees were illegally constituted to sabotage actual CFR process.



**Case Presented:** Kerala has 29.1 per cent land as legal forest. Of this, 77.6 per cent is natural forest, 13.5 per cent is forest plantations, 5.27 per cent is leased for various purposes, and 3.63 per cent has been diverted for non-forest purposes under the Forest Conservation Act of 1980. Only 1.94 per cent of forest land is home

to tribals. However, tribals have been excluded from ownership, use and access to forest land for the past 150 years. There are 36 listed Scheduled Tribes of which five are PVTGs.

Numerous violations are happening around the implementation of FRA. Although there are 1,500 GSs (under 2,500 hamlets) eligible under FRA, only 579 have been listed so far. FRCs are being constituted at various levels instead of at the GS level. IFRs have been given on residential land and not on agricultural land. PVTGs in Wayanad district and elsewhere in Kerala have not been given full access to their natural habitat. CFRs have been given to only 2 to 20 acres (0.8 to 8 hectares) which does not cover the area from where they collect honey.

There has been illegal eviction of tribals, including Kattunaikka PVTG in Wayanad between 2010 and 2015 without recognizing their rights. A case in point is that of the proposed Athirapilly Hydroelectric Project which got clearance twice from MoEFCC. One of the EIA prepared by TBGRI recorded that the Vazhachal Kadar GS is 5km from the proposed dam site. The ST commission, which inquired into the complaint, reported that the Vazhachal settlement was just 400m from the dam site and will be effected. The second EIA by WAPCOS did not mention the village at all. The government is now going ahead with the old EIAs to obtain technical sanction and forest clearance for the project. Tree-felling has started without GS consent, and nine PVTG (Kadar) villages will be forced to be displaced due to the dams, which was also not included in the clearance processes.

### **Questions by community members**

- The tribal population in south India is in minority. Should there be a separate provision for them as they're extremely excluded. How can FRA address that?

## Theme 4: Issues with forest administration – dilutions by FD through CAMPA Act, plantations, VFR, JFMC, FDCs etc.

### Expert Deposition: Sanghamitra Dubey



On July 28, 2016, the CAMPA Act was passed and allocated Rs 42,000 crore. Discussion regarding this Act in the Parliament did not include any reference to FRA or the impact of this Act on the forest-dependent communities. The Act has given complete authority to FD. CAMPA is not new. The Supreme Court had mandated that funds should be allocated for forest regeneration in areas where forest land has been diverted for other purposes. However, with the enactment of the Act, the usage of the large sum of funds collected over the years has been made mandatory. From March 2017, these funds will be sent to the states. Already, a large number of conflicts are being reported due to plantation programmes carried out in community land without GS consent. There is a clear case of CAMPA funds being used for forcible plantation. In one such case, a PVTG area of Kutia Kondh community in Odisha, which is actually for shifting cultivation, is now being used for plantation by FD. This land is actually used for cultivation of almost 72 types of millet and pulses and is their single source of livelihood. However, this land is now being used for teak and eucalyptus plantation using the funds of FD. The share of millet and pulses is reducing. In another area of the community where IFR is recognized, FD is developing nurseries and the communities are barred from entering these areas. Despite the fact that the issue

was raised in the form of a GS resolution and reached the NHRC, there has been no solution to this issue.

### **Figure3. Plantation in PVTG areas of Odisha**



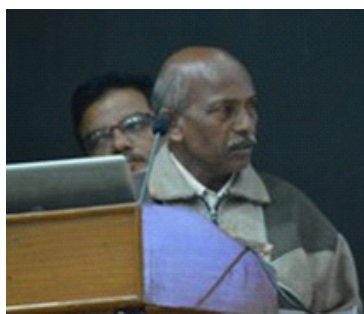
In another case in Maharashtra, the notification of Village Forests Rights under the colonial Indian Forests Act 1927 has undermined FRA and PESA by violating the authority of GS. While CAMPA clearly states that funds are to be used for relocation, it is observed that eviction is rampant in many areas of Odisha without provision of any relocation.

In August 2015, MoEFCC issued guidelines to lease 40 per cent of the 'degraded' forests to private companies for afforestation. This is in direct violation of FRA and CFR. These forests which are proposed for leasing comprise community forest resources and are vested with GS, as per FRA. These guidelines suggest restriction of rights to "10 to 15 per cent" of the allotted plots in the leased lands, again in direct violation of FRA. However, the status of its implementation is not known.

A notification by MoTA in April 2015 clearly stated that funds from CAMPA should be given to GS. This is not mentioned anywhere in the Act. CAMPA states that the money does not belong to FD, but that may not actually happen.

(Sanghamitra Dubey is a researcher associated with Vasundhara. She facilitates the process of learning and ground-level action on livelihood support to forest rights holders through convergence programmes under FRA that engage with a collective of grassroots organizations and government agencies. She is also actively engaged in the Community Forest Rights Learning & Advocacy Process, which is a national-level collective of civil society organizations, researchers, academicians and activists working to strengthen implementation of CFR provisions in FRA. She has taken up research and advocacy on compensatory afforestation, plantation and its impact on forest rights holders and is currently tracking implementation of the CAMPA Act. She has written articles and papers on forest rights, convergence and plantation issues. She has earlier worked on women empowerment in tribal district of Odisha and she is a former fellow of Asia women leadership programme.)

## Testimonial 26



**Organization:** Srishti

**Presenters:** Keshav Gurnule,  
Hiranand Karate

**State:** Maharashtra District:  
Gadchiroli

**Affected villages/families:** Chikhli  
Rith, Chilkli Tukum and Arattondi of

Gat Gram Panchayat Dongargaon which comes under PESA.

**Key issue:** Forest sector 83 A and B under Forest Division Wadsa covering 1,150 hectares handed to Forest Development Corporation



for cutting down trees and doing plantation. FD did not follow due processes under PESA or FRA.

**Case Presented:** On January 12, 2016, Forest Development Corporation Bramhapuri Division started cutting forests from Forest sector no. 83-A, 83-B. When the people of seven gram panchayats protested, it stopped for 10-15 days, but resumed later. The gram panchayat of the 11 villages passed a resolution to not allow the felling. Representations were given to various authorities under FD. However, there has been no response. On the contrary, an FIR was filed against five village leaders on February 4, 2016 on the criminal charges of attacking FD officials. They had to go to the Sessions Court and then to Nagpur High Court to get bail. As much as 3,517 hectares forest land belongs to 11 villages. If taken away, the communities and the livestock that depend on them will be left with nothing. The Deputy Conservator of Forest, Wadsa, expressed his inability to interfere as the forest was handed over to Forest Development Corporation Ltd.

One hectare of forest is being cut every day. Even though hundreds of hectares of barren land is available in Gadchiroli, which is outcome of forest harvesting activities of FDCM and failure of regeneration programme, new forest land is being acquired for plantations. Degraded forests, with density less than 40 per cent, is given to FDCM. Our forests are natural and have density of more than 60 per cent. This has been accepted by Maharashtra's Forest Department. This is a ploy of the government to come through backdoor and loot our natural resources. This is happening not just in Maharashtra but all over India despite knowing that if this is done, people will starve and have to migrate. The forest was handed over in 2014. After FRA, all 11 villages had filed claims for CFRs but only three villages have got CFR which is also lesser than claimed. Even after people appealed to SDLC within 60 days as per process, there has been no reply.

FD has not followed any law. GSs were not informed as per PESA, FRA was not given, and they have not even informed JFMC, through which they have been operating in these villages. Supreme Court has passed judgments that NTFP trees cannot be cut down as they

provide sustenance, however, even that has not been followed. A PIL was filed in the Nagpur High Court who stayed tree-felling on April 28. But on May 6, it was vacated post which the Court went on a holiday and for a month many trees were felled by machines.

## Testimonial 27

### Organization:

**Presenter:** Mahesh Raut

**State:** Maharashtra District:

**Affected villages/families:** All villages under PESA and FRA

**Key issue:** The state government is pushing the Village Forest Rules, which is in complete contradiction to PESA and FRA



**Case Presented:** On May 13, 2014, the state government notified the Indian Forests (Regulation of assignment, management and cancellation of village forests) Rules, 2014, in short the Village Forest Rules 2014. Proposal for notification of VFRs in Maharashtra had been under consideration for the past few years. FRA has emerged as a potential legal instrument to establish democratic governance of forests by the forest-dwelling communities and GSs across the forested landscapes of India. This has faced strong resistance from FD which has tried to regain lost control over forests by adopting various means. Notification of VFR is one such attempt by FD to take over forests claimed by local communities and GSs under FRA.

VFR is opposed by all affected communities as it fundamentally contradicts FRA. It lays more emphasis on management of forests than ownership. It suggests that there are forest lands where FRA may not be applicable and states that GS take a suo muto resolution to adopt VFR even in Scheduled Areas and/or areas where CFRs



are being/could be claimed by the local communities. VFR has provision to constitute Van Vyavasthapan Committees (Joint Forest Management committees) which directly encroach upon the rights and authorities of GS and the committees proposed under FRA for management and conservation of forests.

The state government, along with MoEFCC, has been putting pressure on MoTA to allow implementation of VFR despite that fact that state government rules cannot in-principle override Central government acts. Please find details of VFR, reasons for opposition, current status and so on at the end of this report.

### Appendix: Note on VFR by Mahesh Raut

#### Testimonial 28

**Organization:** Himalaya Niti Abhiyan

**Presenters:**

**State:** Himachal Pradesh District: 12 Districts

Affected villages/families:

**Key issue:** Eviction of tribals from their land using wrong interpretation of a High Court order

**Case Presented:** (could not be presented)

Himachal High Court, in Cr.MP(M)No. 1299 of 2008, in its order dated February 27, 2016 directed eviction proceedings against those in possession of less than 10 bigha forest land, and that FIRs shall be filed against those who do not vacate the land within six weeks. The same order was passed by court on April 6, 2015 in CWPIL No.17 of 2014 for those in possession of more than 10 bigha.

Under this pretext, FD cut down more than 40,000 fruit-bearing trees, destroyed orchards, and farm land of several small farmers

having less than 10 bighas. Residential houses were demolished in many parts of the state, water and electricity connections were cut in all parts of states, even in tribal areas. Unfortunately, attorney general of the Himachal Pradesh government did not present before the court the restriction to evict such possessions under the provisions of FRA, nor did it refer to the Supreme Court judgement on Niyamgiri which confirms that no eviction can take place till verification and recognition under FRA is complete.

The state government has issued many orders claiming that rights were settled by the British through the imperial settlement process, so recognition under FRA was not necessary. After constant pressure from MoTA, the state government started the recognition process in 2008 in tribal region. The half-hearted attempt had several illegal riders such as the claimant should not be a government employee or an income tax payee. Some were even considered encroachers. Most forest-dwellers were not informed that the process had started. Training to GS or local officials was never properly imparted. In fact, in several places, FD threatened people not to file claims.

As per MoTA, 5,409 individual claims and 283 community claims of rights have been filed till date. Of this, 238 individual claims and 108 community claims were settled providing only 0.35 acres (376.74 sq feet only in both Individual and community claims cases). However, MoTA has presented an affidavit in the Himachal Pradesh High Court stating that the state government has claimed that it has constituted FRCs in 14,206 out of the 18,055 revenue villages.

### **Annexure: Representation to the Governor HP**

## Testimonial 29

**Organization:** Himachal Van Adhikar Manch

**Presenter:** Akshay Jasrotia

**State:** Himachal Pradesh District: Kangra

**Affected villages/families:**

**Key issue:** Overall status of the implementation of FRA in the state



**Case Presented (not part of the final schedule):** It is known, and acknowledged by MoTA, that FRA is not being implemented in Himachal Pradesh. In 2008, it was declared that FRA will be implemented only among tribal groups, and was clearly stated that the Act will not be enforced in non-tribal areas. As a result, our organization approached the High Court as the area we work in falls under a sanctuary. We mentioned in court that all forests, including the area which is a part of the sanctuary, falls under the purview of FRA. Resultantly, in 2012, it was stated by the High Court that FRA will be implemented in the entire state. There are two major concerns in Himachal Pradesh:

(i) **Eligibility:** The notice issued by FD regarding eligibility is illegal, as it is based on the 2008 rule which says that claim can be filed only by those who are using forests for "sustenance" (three laws under Section 3.1). In 2012, this was amended and the word "sustenance" was replaced with "bonafide", covering a larger group of people under the Act.

(ii) **State-related rights that have been settled since the British rule:** Even though FRA is a pan-India Act, the state says that rights related to forests have already been settled in Himachal Pradesh and FRA need not be implemented. With respect to IFR, in 2005, the state took out a provision for people to file for claims in forest land of which all are still pending. Neither the High Court, nor MoTA has given a positive response to our request. We desperately need a robust legal system to address these issues in the state.

### Testimonial 30



**Organization:** Uttar Banga Van-Jan Shramjivi Manch

**Presenters:** Swaroop Saha, Sundar Singh Nava

**State:** West Bengal District: Darjeeling, Jalpaiguri, Coochbehar, Alipurduar

**Affected villages/families:** More than 250 forest villages

**Key issue:** Non-recognition of CFR, self-declared Community Forest Governance, coupe felling of trees within FRA boundaries

**Case Presented:** In 2010, GS members of Kodol Basti forest village, under Jaldapara Wildlife Division, had taken the decision to run self-declared Community Forest Governance in their CFR area following delayed implementation process of FRA. They put on a board mentioning the area of CFR and the concerned Section of FRA 2006. Within a few days of this incident, FD officials, along with police administration, uprooted the board and filed non-bailable cases against community members. The cases are still ongoing and community members are still attending dates in court.

In 2014, the Divisional Forest Officer of Jaldapara Wildlife Division initiated CFC (Clear Felling Coupe) activity in North Khayerbari forest village which comes under Jaldapara Wildlife Division. The authority officially declared that CFC would be done in 32 hectares only, and 1,600 mature teak plants would be cleared. The purpose of CFC was to create land for new plantation.

In this context, GS members from North Khayerbari directly challenged the CFC activity in their adjoining and self-declared CFR area, showing the vested rights provided in FRA 2006 (Section 3(i), Section 5). Investigation on behalf of GS members proved that more than 2,500 mature and young plants were marked for CFC where only around 300 teak plants were there. It was also seen that

there was enough degraded land in and around Jaldapara Wildlife Division where new plantation work could be carried out without performing the proposed CFC.

Other violations of FRA are that IFRs are being only given to people belonging to Scheduled Tribes and that too land use certificates instead to titles as forest land have not been converted to revenue land, and CFR claims have been accepted only for the area where the village school is situated. There has been no mention of resource rights.

### Testimonial 31

**Organization:** Chhattisgarh Bachao Andolan

**Presenters:** Priyanshu Gupta, Jayanandan

**State:** Chhattisgarh **District:** All districts



**Affected villages/families:** As the issue relates to illegal circulars issued by the state government authorities, it pertains to all the villages/panchayats of Chhattisgarh.

**Key issue:** Illegal circulars issued by the state government to subvert the provisions of FRA and deny CFR of villages across Chhattisgarh. There is illegal interpretation of “Community Forest Rights” to restrict it to only Clause 3 (2) which provides for diversion of forests for basic infrastructure like schools, hospitals, etc. Illegal format of CFR form filled once again in villages where CFR titles had already been received.

**Case Presented:** In Chhattisgarh, the provisions of FRA are being torn and wrecked by the various government departments which are more interested in diversion of forest land for mining and other projects. One such issue is the circular issued by FD for

the conversion of forest village to revenue village. A circular dated July 17, 2013 was issued by Principal Chief Conservator of Forests to various collectors and corresponding Divisional Forest Officers regarding the process of implementation of FRA provisions in 420 villages whose status had converted from forest village to revenue village. This circular contains several provisions which marginalize and violate the individual and community forest rights of forest-dwellers of these 420 villages.

The circular orders FD officials to fill claim forms of only those individuals to whom the department had given temporary leases, and present it to GS for their approval. The annexure to the circular mentions the number of titles to be granted (11,000) and the area that has to be given as forest rights titles. Thus, it restricts the claimants and claimed area to a pre-defined number as per a dated FD record. It also restricts the maximum IFR title to be 2.5 hectares, and to be given to the head of the family as per the temporary lease issued by FD in the past. Only in cases where the household has more adults it provides for additional land, but up to 4 hectares per title.

It provides FRA recognition only for those villages that have been converted to forest villages by forest department as per its needs, ignoring the large number of unsurveyed, unrecorded, and other such villages on forest land. The circular provides for recognizing CFR for the village during the implementation process. But it also requires that community forest resources on which the forest villages are dependent should be kept outside the revenue village boundary and even after recognizing community rights over it, the forest shall be managed as per FD's working plan.

FD is making all these changes although it is beyond its jurisdiction, as it is the interested party. FD's changes make diversion of land in future easier. It is also making false survey of forests, especially in Hasdeo-Arand area, where the forests are natural and dense. Instead of cutting down dried and diseased trees, FD is felling lush green trees. After a time, it will declare the area degraded so that it can be diverted for mining. FD should be divided into two - Forest and Department.

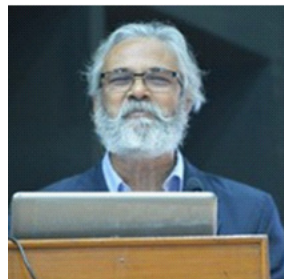
### Testimonial 32

**Organization:** Jharkhand Jungle Bachao Andolan (JJBA)

**Presenter:** Sanjay Basu Mallik

**State:** Jharkhand District:

**Affected villages/families:**



**Key issue:** Plantation in land claimed under CFR and in people's farmland

**Case Presented:** When Jharkhand was formed, it was being called Vananchal. People say the government turned it into "Baniya Anchal". Implementation of FRA has been negligible here. In the districts where JJBA works, people have even been given as less as 1 decimal land for IFR. The maximum that has been given is just 1 acre (0.4 hectare), and each year this number is decreasing. People have taken out rallies protesting this. Some of the forests are degraded and FD carries out plantation drives across the state from time to time. The organization has surveyed 241 cases in seven districts covering 11,153 acres (4,513.4 hectares). Two types of plantation drives are taking place here. One where FD is carrying out plantation work in people's land where they farm. If people protest, then they are falsely charged and put behind bars. The second type of plantation that is happening is in the CFR areas of these villages, where exotic species such as acacia, eucalyptus, chikodi (local name) etc. are being planted. Trees such as sesam, teak, bamboo are also planted, but they are non-NTFP tree species and do not provide any livelihood or sustenance to these people. These are the strategies that are being followed by FD to dispossess the people from their land and forests. Due to the implementation of CAMPA, for which the funds have started coming, FRA will not be followed. There is also news that in certain districts, including Ranchi and Singhbhum, gold has been found and several villages have already been given notice, including those where CFR has been approved. Other 30 villages in the surrounding area are preparing to get the notice.



### Testimonial 33

**Organization:** Lok Samanway  
Pratishthan

**Presenter:** Pratibha Shinde

**State:** Maharashtra District: Nandurbar

**Affected villages/families:** Chilya  
Gambhir Nayak, Legapaani village, Toranmaal panchayat



**Key issue:** FD imposing fee for grazing despite CFR, FD asks people to confess to encroachment in order to get rights

**Case Presented:** Numerous violations are being done by FD in the region. Despite FRA's process, which mentions that claims need to be jointly verified by FD, they do not comply with it. There are letters from at least 30 FRCs that they have asked FD six times for joint verification, but it has still not come. On the contrary, even if people have IFR, FD has come and destroyed the harvest. It has also filed false charges against people and put them in jail for 10-12 days. In CFR cases, it has rejected the working plans submitted by FRC (in Nandurbar district) and has gone ahead with its own plans.

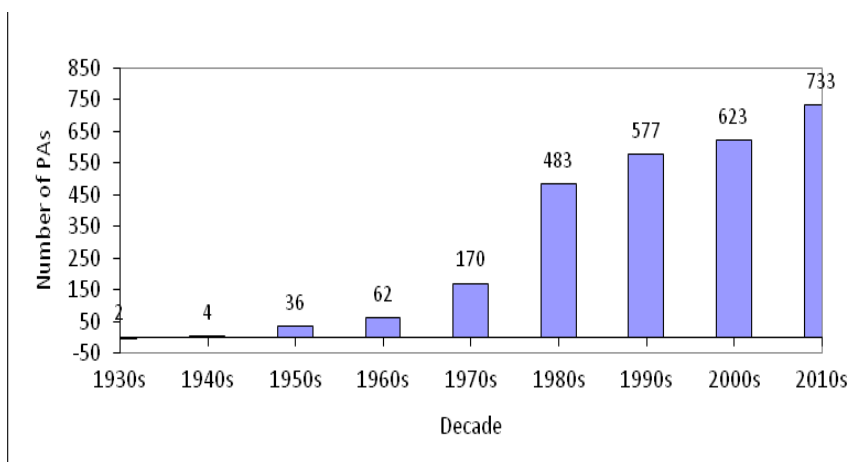
On October 25, 2010 Chilya Gambhir Nayak got individual land rights under FRA. After four years, his village also got CFR under FRA. Three years since, the village has been managing its forest which is now 'officially authorized' to the villagers. Still, there are instances when FD has ignored these rights and oppressed people by imposing fines with no legal validations. Chilya is one of the victims of this behavior of FD. On July 22, 2016 he got charged for grazing on his own land. He was charged Rs 2,000 against illegal grazing and Rs 3,100 against others columns of fine slip. He had to pay a fine of Rs 5,100 to FD to access his own land. Despite GS resolutions passed by 400 villages (which got CFR) on regeneration of the forests, FD has gone ahead with planting trees which are of no use to the communities. Plantations are done in such a way that most saplings die. The organization has been forced to file case of atrocities against FD due to all this.



## Theme 5: Status of FRA in protected areas/tiger reserves

### Expert Deposition: Dr. Nitin Rai

The map of India shows a high degree of overlap in areas that are economically backward, have large adivasi population, and high wildlife diversity. However, the government has implemented wildlife conservation efforts by notifying these very areas as protected, and ignored the adivasis who live in these areas as well as the economic depression that exists. Such protected areas have been established under the Wildlife Protection Act 1972. Today, we have over 700 protected areas, of which 633 are wildlife sanctuaries and national parks, which coincidentally also mirrors a global increase in protected areas.



Current data suggests that there are 103 national parks with 40,500 sq km area which is 1.23 per cent of total land area, 537 wildlife

sanctuaries with 118,005 sq km area which is 3.59 per cent of total land area, and 50 tiger reserves with 40,340 sq km (Core) and 30,686 sq km(Buffer) area which is 2.2 per cent of total land area. The tiger reserves are divided into two categories, as the area declared Core is supposed to have no habitation by humans. By 2013 it was estimated that over 50,000 household were identified to be relocated, of which 8,000 have been relocated. Therefore, this project of eviction from core areas is in progress and is being done deliberately. The basic premise behind protected areas is the separation of people from forests and this has had enormous social and ecological consequences. Despite the rise in the number of protected areas, this approach has not been as successful as claimed. One global analysis has shown that despite an increase in protected areas, the population trends of terrestrial and marine species are declining, showing that an increase in protected areas and eviction of communities is not the solution for conservation problems. In India alone, 3 to 4 million people will face eventual displacement and loss of access, while 0.6 million have already been displaced.

A study was undertaken to review implementation of FRA in Biligiri Rangaswamy Temple (BRT) Wildlife Sanctuary. BRT was declared a wildlife sanctuary in 1974 and then a tiger reserve in 2011. The ban on collection of NTFP as a result of the amendment to the Wildlife Protection Act has resulted in severe consequences for the Soliga tribe in terms of access to resources as well as livelihood. In BRT, 1,516 Soliga households were granted IFR, and CFR has been awarded to 25 GSs in October 2011. At the same time that rights were recognized, and conservation policies in these areas were strengthened. FD has increased surveillance in the forest areas through methods such as using camera traps which have put fear in the minds of people of being caught on camera and that they may be held responsible in case of fire etc. Other surveillance techniques such as drones are also now being deployed. Interventions that are seen as conservation centric have clear human right and social impact. It is also important to understand the reasons for the reluctance to give IFR and CFR in tiger reserves. The 2015 study "Economic valuation of tiger reserves in India: A value+approach" indicates that monetary values of flow benefits emanating from

selected tiger reserves range from Rs 8.3 to 17.6 billion annually. In terms of unit area, this translates into Rs 50,000 to 1,90,000 per hectare per year. The clear economic benefit might be one reason why there is such hesitation to providing CFR to forest-dwellers.

At an overall level, the track record of CFR and IFR recognition has been exceptionally poor. Even where rights have been granted people have not been allowed to exercise these rights fully. Protected areas are being strengthened and centralized to appropriate a variety of values that are being newly created.

*(Dr. Nitin Rai is a Fellow at the Ashoka Trust for Research in Ecology and the Environment. He uses a political ecology approach to understand the implications of state conservation policy and practice for people and landscapes. His field work has primarily been conducted in the Biligiri Rangaswamy Temple Tiger Reserve where he has explored issues ranging from historical patterns of forest use, cultural relationship to landscape, and rights-based conservation. More recently, he has been analyzing market-based interventions such as eco-tourism and corporate investments in biodiversity conservation. Nitin is editor of the journal Conservation and Society.)*

## Community Testimonials

### Testimonial 34

**Organization:** Agricultural Social Development Society

**Presenters:** Gandhi Babu, Venkatesh, Jyothi, Mohan Reddy

**State:** Andhra Pradesh **District:** Khammam, East Godavari



**Affected villages/families:** Abhicherla village, Kunavaram mandal, 15 families, 152 acres (61.5 hectares); and Pochavaram village, Tummleru panchayat, V.R. Puram mandal, 125 families, 245 acres (99.1 hectares)

**Key issue:** Farmers falsely implicated by FD for the lack of evidence of ownership of their land. In Pochavaram village, the government sanctioned pattas pursuant to the application made by 49 farmers, but later took back all the patta documents from them. Their villages are in Polavaram Dam submergence area.

**Case Presented:** Khammam has seven mandals. It was a part of erstwhile Andhra Pradesh, and is a Fifth Schedule Area with 95 per cent tribal population (mostly Koya and Kondal). Polavaram irrigation project would submerge more than 300 adivasi villages at an enormous social and economic cost to the oustees. Andhra Pradesh has asked for separation of the seven mandals of the Khamman area for easing the permission process. As many as 4,000 IFR claims were submitted since 2008, but there is no status on those claims till date. After the bifurcation of the state, each state passes the responsibility to the other.

In 2006, the area was converted into a National Park. Some claims which were sanctioned and even distributed by the then Chief Minister were taken back saying that since the area will be under submergence, the process cannot be taken forward. Land acquisition has started in the area (project to be completed by 2019), but with FRA compliance or GS knowledge and consent. The High Court had stayed the process asking FRA to be implemented in the region. However, the government says that they have not received any application so far. FD has even stopped people from taking NTFP from the forests. After a lot of advocacy with the tribal department, pattas have been given to VSS on the basis of a working plan, and not to GS.

In Jyothi's village, 92 households are tribal and have been farming in the region before 1950. FD forced them to grow grass there, and during FRA process, rejected the area as their farms. False charges have also been filed against people. In Mohan Reddy's village, 45 households had applied for and received IFRs. But they were taken back saying they are inside a National Park and hence the titles are illegal and cannot be given.

**Testimonial 35**

**Organization:** Vivekananda Girijana Kalyana Kendra (VGKK)

**Presenter:** Paran Gowda

**State:** Karnataka District:  
Chamrajnagar



**Affected villages/families: 400 families**

**Key issue:** 400 families yet to receive IFR, 1,915 families' land right received.

25 GSs received CFR rights, 79 FRCs applied for CR rights claim at SDC level

**Case Presented:** Due to VGKK's work with the Soliga tribe in BRT (Biliranga Temple) National Park, implementation of FRA has been smooth. A few issues are still present since all claims have not been approved. There are two issues of converting tribal land into revenue land in order to access government schemes, and coffee plantations being given to private parties instead of Soligas who have always conserved wildlife and forests for generations.

**Cases shared but not presented:**

Mrs. Maha Devamma, 50, is a member of Soliga AbhiVridi Sanga (Soliga Developmental Community) and belongs to Kullur village of Chamrajnagar taluk. The entire family of Maha Devamma depends on agriculture for which land has not been given to her. Only half of the land has been allotted in which they are constructing their residence while the other half, to which they are equally entitled to, has not been handed over. The family needs the land for cultivation, their only source of livelihood. The state government agencies at gram panchayat level have been a failure in the process of distribution of forest land rights to the Soliga tribal communities. This is not only in Maha Devamma's case but in many

other families in the entire district of Chamrajnagar comprising 400 tribal families. Ms. Achige Gowda is 64 years old, and is finding it extremely difficult to get the piece of the land she is entitled to. The department has not addressed these concerns as they do not fit into any prescribed legal framework.

### Testimonial 36



**Organization:** Navrachna

**Presenter:** Pritam Kumar Baiga

**State:** Chhattisgarh  
**District:** Bilaspur/Mungeri

**Affected villages/  
families:** Bakal, Sambahardasan,

Bokrakachar, and Amadop, Achanakmarg, Bindawal, Lamni, and Katami villages, 131 families; Achanakmarg Reserved Forest region

**Key issue:** The villages were displaced from the Core area when the area was declared a reserved forest. They again face the threat of displacement.

**Case Presented:** Achanakmarg, 914 sq km, was declared a tiger reserve in 1980. There are 42 villages in the core zone of this reserve, 95 per cent of which are inhabited by the Baiga tribe (PVTG). These villages are all forest villages, and hence do not have any revenue records. Way back in 1992, the government had given PoR to individuals, however, there are no records after that which took into account the increase in population. The matter is shunted from one DC office to another, as the area falls under two districts now, and was a part of another state in 1992. Till date, none of them has been given a caste certificate.

In 2009, five villages were relocated during election time. FRA compliance of conversion to revenue village, or providing land

titles under IFR and CFR was not done. They were haphazardly relocated under the relocation package (given by FD) without GS consent. Even then, only Rs 50,000 have been given to them till date and pucca houses. They are being denied access to NTFP from the forest even though their entire sustenance comes from them. Baigas do not do farming. Out of the five villages, three are being threatened with another relocation. There are different types of security forces which threaten them to leave the land the land on their own. Undue restrictions have been placed in their movement in the forest.

### **Testimonial 37**

**Organization:** Centre for Regional Education, Forest & Tourism Development Agency (CREFTDA)

**Presenters:**

**State:** Odisha District: Mayurbhanj

**Affected villages/families:** 38 families in Jamunagarh village, in Simlipal sanctuary area under Jashipur block, Mayurbhanj district of Odisha

**Key issue:** After getting entitlement on community and resource rights the village was relocated. They are deprived of their rights without any compensation and without livelihood option.

**Testimonial (shared but not presented):** In Simlipal sanctuary area, 35 families were relocated from Jamunagarh village in 2015, but did not follow the FRA procedure/guideline. The reason given was that their presence disturbed wildlife there, but for which no proof was given. Many violations have taken place during the relocation, including non-compliance of FRA. Some of these violations are:

- No joint agreement with the other village for co-habitation



- Copy of GS resolution regarding displacement was not provided to the village
- Those who agree for package 2 as per the relocation guidelines have not been provided with the necessary benefits
- 35 families of Jamunagarh village were relocated in Nambra village of Udala with only Rs 10lakh package and without any livelihood option.
- There is no access to government schemes, drinking water or health facilities yet in the relocated village
- Three families which opposed relocation have stayed back in their village, and are now facing harassment from FD. They have intimated the matter in writing to the concerned government officials like BDO, range officer, District Collector and Director, STR, who have proposed relocation post-compliance of FRA. However, they continue to face other restrictions such as collection of MFPs, grazing of livestock, activities under MGNREGA and health services.

### Testimonial 38



**Organization:** Seva Mandir

**Presenters:** Shailendra Tiwari, Jhalam Chand

**State:** Rajasthan District: Udaipur (Phulwari-ki-Naal)

**Affected villages/families:** Amda 300 families and 893.45 hectares; Dharawan-495 and 403.64 hectare

**Key issue:** IFR – complications in implementation; CFR –Struggle of forest-dwelling tribals in tackling challenges associated with realization of CFR within a sanctuary

**Case Presented:** Amda and Dharawan are tribal villages (Bhil) which fall within the boundary of Phulwari ki Naal Sanctuary. As a result, the communities have been facing harassment from FD which has stopped their access to firewood, livelihood resources through NTFP collection etc. There are also no development or infrastructure facilities in these villages, where people still use mules for transportation and/or accessing health facilities (especially for pregnant women). In 2012-13, the communities had submitted proposals for the realization of CFR under FRA. However, SDLCL rejected the claims saying CFR cannot be granted in sanctuaries. This did not change even after the 2013 amendment in FRA and trainings by the state government. The lack of awareness or understanding of FRA amongst the law enactment agencies has continued as well as their lack of sensitivity towards CFR. Moreover, inordinate delays in the process and many demands by various authorities to fulfil the formalities go against the spirit of FRA.

It is ironical that on the one hand the tribal communities are struggling to receive CFR title from the government, and on the other they are dealing with the problem of further privatization of the common forest resource by locals as well as people from nearby areas. The communities, however, stand firm in their commitment to organize themselves to protect, manage and govern their common forest resources, and their efforts so far have been overwhelming.

**Annexure: Note on CFR (Rajasthan)**

## Interim Report

Based on the testimonials, the jury shared its thoughts on the current status of FRA implementation.

- Even though a democracy is defined as 'for the people, by the people, of the people', in India, the ground reality of democracy is that laws are only 'for the people' not 'by the people'. However, FRA 2006 is an exception to other laws in India.
- This Act is truly democratic. It gives all the rights of the assigned forest land to GS, and all adults living on that land become a part of GS. Every adult, with no exception, is a member and has full control over the area.
- This government had not expected that it would give such powers to the people. Now, there is concerted effort at the Centre and the state level to dilute the Act and its provisions. This is the primary reason why IPT had to come together to bring the violations to the forefront.
- The IPT jury asked the community members, who presented their testimonials, whether FRA itself needs to be amended in any way. The community expressed that the Act in itself does not need (any) major modification, but the implementation of the Act is critical.
- The Act should be implemented in totality with the active participation of the Tribal Welfare Department.
- The interpretation of the 'Other Traditional Forest Dwellers' requires incorporation of the practical on-ground realities to be inclusive of all forest dependent communities.
- The IPT jury, based on the analysis of the 37 cases, highlights that the community forest rights continue to be ignored, the rights under PESA, and consent of GS are not being respected.

- Grievances of people who shared their stories are absolutely genuine. There are obvious efforts to dilute the Act by various external actors that will take away the traditional rights of the vulnerable groups.
- There is a dire need for the government to reorganize the forest department. As on date, the forest department acts as the lord (owner) of the land and exploits its authority by taking away rights of the people over their traditional forest land.

**The jury's findings:**

- There has been a lack of recognition of rights and unjustifiable withdrawals. This affects roughly 200 million people.
- There have been considerable efforts all over the country to not provide entitlements to the beneficiaries.
- There have been instances of deliberate misinterpretation of CFRs so as to not give rights and entitlements.
- There has been deliberate cancellation of CFRs especially in Odisha, Chhattisgarh, and Maharashtra.
- The interpretation of the Act has been biased towards the forest department.
- A majority of the beneficiaries are not aware of the Act or its provisions. Language plays a big role and people have become victims of forgery due to this, especially instances of forged signatures.
- Violations against women's rights under FRA are not officially recognized by any ministry. This is highly problematic considering the number of exploitation cases that have come to light as a result of this jury.
- There have been instances of physical violence to the communities by the state (FD and police) as well as a prolonged mental tension while getting the Act implemented.

- The forest department is exercising control over the implementation of the Act which is not in their scope of enforcement.
- Currently, there is no provision in FRA that punishes those who are denying the rights or violating the Act. Such a provision has the potential to stall abuse by the forest department and other departments.

### **Jury Recommendations**

- Every area that falls under the jurisdiction of FRA should have an independent complaint authority. Currently, there is no remedy or remedial process for tribal communities whose rights have been violated. The current process is complicated and needs considerable time. Hence, this independent complaint authority should comprise two representatives from the tribal community, three independent members, and one FD and one tribal department officials. There should be at least equal representation of women in the panel. The matter should be decided within six months. Cases presented have suggested that there are many legal cases against tribal groups (individual and community), hence the committee should look into these allegations as they are beyond the purview of the Act.
- CFR cover the entire landscape that a community uses for its livelihood, cultural and spiritual purposes while IFR fall within the larger landscape. At the community level, the state should encourage villages to file for CFRs and then work out their IFRs at a later stage. At the implementation level, CFRs should be given priority, particularly in areas where the forest dependent communities lack resources to claim their traditional rights. Any violation against CFR claims by FD should be considered as criminal injustice and strict action should be taken against the department officials.
- IFR need to include both men and women's name as equal right holders.

- All administrative officials, especially those from FD, should be trained on the legal dimensions of the Act and mandated to implement it without bias, confusion and resistance. This will mean that over time much of the reserved forests will be used and managed by the local communities which would entail that the duties and responsibilities of FD will change. Today, FD acts as the lord of the forest even though the forest actually belongs to the people who live there.
- The permission to extract resources from inside the forest area without appropriate environmental impact assessment and consent of forest-dwellers, particularly the tribal communities should be considered illegal.
- Any involuntary settlement without provision of the basic human rights, such as displacement due to tiger projects, would be regarded as FRA violation.
- MoTA has till now played negligent role in the implementation of FRA despite fact that it is the ministry's responsibility to ensure the well-being of the tribal people in the country. It needs to live up to its role and demand more authority in the implementation of FRA.
- The Governors in PESA areas have, till now, been passive observers of the non-implementation of FRA as well as encroachments into tribal people's land by corporate interests throughout the country. The Governors should be asked to be more proactive in protecting the interests of the tribal people in their jurisdiction.
- Currently, the onus lies on the tribals to prove that they've been living on the land. But the recommendation is to shift that onus on MoEFCC and MoTA.
- The state should periodically advertize/publicize FRA and the means to file claims, provide avenues within the local administrative offices where panchayat and GS members can clarify doubts and request assistance in filing their applications. The states should also demystify the Act and clarify rumours/misconceptions about the Act, especially

those regarding a “final date” for claims, claims in Protected Areas, etc.

- There is a need for transparency in the proceedings of the Act as the lack of it has a large role to play in consequent violations. It is imperative to make proceedings transparent through digital means and involve a third party for verifying documents. This should also include reasons given for refusing a claim, ways to rectify gaps and mistakes, and quick responses for any support sought.
- It should be mandatory that CAMPA activities do not encroach upon tribal lands without the informed consent of GS. In case GS gives its consent reforestation activities, it should be able to put forward their demands about the quality of reforestation, including the species selected, place of planting, etc.
- Lastly, a committee should be formed by the government to look at the laws that are contrary to FRA and other draft modifications. This is critical to address the conflict between FRA and other Acts such as the Wildlife Protection Act, and CAMPA. In particular, the state (MoTA and MoEFCC) should clarify that FRA is applicable in Protected Areas, including Tiger Reserves and National Parks, and that special rules are applicable only in special cases where some species are specifically threatened. This committee should have at least two woman representative and two members from the gram sabha.

### **Comments by community members on recommendations**

- On the recommendation where the onus of proof lies on the department, one foresees an issue since government institutions are not interested to show credibility. Actually, it is gram sabha that should decide.
- On the recommendation to study all conflicting Acts together, the government needs to acknowledge that there is a clear guideline by MoTA which states that FRA supersedes other



Acts in case there is a conflict. This provision needs to be stressed by the government through the media such as TV, and newspaper announcements, and implemented.

- Negligence and exploitation in IFR and CFR is deliberate. Legal action needs to be mandated for such cases.
- Sanctuaries should be added under protected areas falling under the purview of FRA.
- Laws which are conflicting to FRA have some provisions which are unconstitutional. There should be stricter action to review and revoke them.

### **Recommendations and questions on FRA by community members**

- There are two stakeholders when we talk about forest rights— FD and GS. However, nowhere in the Act does it state that FD should be nullified and full rights should be given to GS.
- This Act has put all kinds of forests under one definition. There should be distinctions based on nature and use of forest.
- The current focus needs to be on effective implementation of the law and not on a change in the law.
- There is a need to focus on creating committees that are powerful and have authority. All committees under FRA are useless.
- If decisions regarding FRA and related issues are made by the community and those affected, there will be no need to oppose it.
- FRA and PESA need to be studied together.
- Why do only OTFD have to produce a document to prove that three generations have been living and not the tribal groups? Why is there a distinction between forest-dwellers and tribal groups?

- There is a need to improve monitoring. Once the communities are given their rights, a mechanism should be put in place.
- Tiger conservation project is being used to drive communities out of the forest. How can that be addressed under FRA?
- There should be a provision in FRA to review rejected claims.

## Profile of the jury panel

### **Justice (Retd) Hosbet Suresh:**

Retired Justice H. Suresh is a former judge of the Bombay High Court who has led a number of commissions that investigated violations of human rights. He has investigated Kaveri riots in Bengaluru, Bombay riots of 1992 and 1993, the massive slum clearance drive in Mumbai with the purpose of preserving Sanjay Gandhi National Park, Public food distribution system in Mumbai. He was also a part of an Indian People's Tribunal (IPT) fact-finding team that went to Gujarat in March and April 2002 following the communal riots triggered by the Godhra train attack and the head of the Jury of the Tribunal organized by HRLN and ANHAD which investigated human rights violations in the Kashmir Valley.



**Purabi Bose:** Purabi Bose holds a Masters' degree from Tata Institute of Social Sciences, and holds a PhD degree from Wageningen University, the Netherlands with a book titled 'Forest rights: The micro-politics of decentralisation and forest tenure reform in tribal India'. She brings nearly 19 years of experience from

non-profit, think-tank, donor, academic and research institutes and has lived and worked in Indonesia, India, Nepal, Germany,

Netherlands, and Colombia. Most recently she was Gender Focal person of CGIAR's Forest, Trees and Agroforestry research in Latin America. Currently, she is self-funding an independent documentary film initiative 'Landing Together' about land and forest rights of indigenous peoples all over India. Purabi's recent publication includes a book titled 'Dryland Forests' (2016). She is also IUFRO's Deputy Coordinator for Gender and Forestry unit, and is affiliated with the Food Law of Wageningen University.

**Madhu Ramnath:** Madhu Ramnath is an ethno-botanist. He has spent about three decades in Bastar engaged with adivasi and Linnaean botany and other aspects of adivasi life. He is the author of *Plants of Bastar, Chhattisgarh: a field guide* and more recently *Woodsmoke and Leafcups: autobiographical footnotes to the anthropology of the Durwa*. For the past few years he has been occupied with wild forest foods in south and south-east Asia, and their conservation and rejuvenation in tribal life. At present, he is the coordinator of the Non-Timber Forest Products Exchange Programme, India.



**Amba Jamir:** With over 20 years of experience, Amba Jamir is well recognized as a development advisor, policy analyst, and a community convener. He is also the steering committee member and convener of the Indian Mountain Initiative since 2001. His work across the country has touched on several themes such as livelihood, eco-tourism, conflict and peace building, climate change, capacity building, development and communication strategy, strategic development. He also brings rich international perspective on the issues of agriculture development, rural reconstruction among many. He has also been the editor of "Rainfed Rice Cultivation in Eastern India", a resource material developed by International Rice Research Institute.



**Avinash Kumar:** Avinash is a Ph.D. in modern history from Jawaharlal Nehru University, New Delhi. He has also been a Charles Wallace post-doctoral Fellow at School of Oriental and African Studies, London University and has 14 years of work experience behind him. He has been a member of key national networks



on a range of development issues and has also been instrumental in founding some of the new networks around the right to education and governance. Avinash was previously associated with Oxfam and has extensive experience in basic services, governance, policy advocacy, research and campaigns. He is currently Director, Programmes & Policy at WaterAid India.



**Dr. Arvind Tiwari:** Arvind Tiwari is the professor and dean at School of Law, Rights and Constitutional Governance at Tata Institute of Social Sciences, Mumbai. He earned his M.A. and Ph.D in Criminology and Forensic Science from Dr. H. S. Gaur Vishwavidyalaya in Sagar, Madhya Pradesh. He has also completed his M.A. in Sociology from

Meerut University. Arvind Tiwari has played a significant role in imparting human rights education to the various stakeholders, including criminal justice functionaries such as police, prosecutors, judiciary and prison officers through various training and capacity building programmes. He has organized and participated in several national and international conferences and workshops on human rights issues. He is on the Board of Referees of many peer reviewed journals. More recently, he was elected President of the Indian Society of Criminology and Vice President of Indian Society of Victimology.

## Annexures

### 1) **Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006**

The Forest Rights Act (FRA) recognizes and vests forest-related rights in scheduled tribes (ST) and other traditional forest-dwelling communities, both of whom have traditionally been living in or depending on forest land for their livelihood needs. Members of ST (in states where they are scheduled) can claim rights under this Act if they have been residing in or dependent on forests prior to December 13, 2005. However, other traditional forest-dwellers can only claim rights if they have been in residence for at least three generations (75 years) prior to December 13, 2005. Notably, the rights conferred under FRA are heritable, but not alienable or transferable. The Act extends to all of India except the state of Jammu and Kashmir.

The various rights that are recognized and can be claimed are as follows:

- Right to hold and live in forest land under individual or common occupation for habitation or self-cultivation.
- Community rights such as nistar (user rights) used in erstwhile princely states (zamindari) or such intermediary regimes.
- Right to own, collect, use, and dispose of minor forest produce that has been traditionally collected within or outside the village. Minor forest produce includes all non-timber forest products of plant origin (including bamboo, brushwood, medicinal plants, herbs, roots, and tubers, among others), as well as products of animal origin such as honey and wax.

- Other community rights of use or entitlement such as rights to fish and other products of water bodies and grazing or traditional seasonal access to natural resources by nomadic or pastoralist communities.
- Community tenure of habitat for particularly vulnerable tribal groups and pre-agricultural communities.
- Rights in or over land under any categorization in any state where there are disputes over claims to such lands.
- Rights to convert leases or grants issued by any local authority or any state government on forest lands to titles (in essence, ownership deeds).
- Rights to settle and convert the forest villages, old habitations, un-surveyed villages, and other villages in forests into revenue villages.
- Rights to protect, regenerate, conserve, or manage any community forest reserves that the individual or community has been traditionally protecting and conserving for sustainable use.
- Rights recognized under state laws or laws of any autonomous district council, or accepted as rights of tribals under any traditional or customary law of the concerned tribes of any state.
- Right of access to biodiversity and community rights to intellectual property for traditional knowledge related to biodiversity and cultural diversity.
- Any other traditional rights enjoyed that are not mentioned above. However, this excludes the traditional right of hunting or trapping or extracting a part of the body from any species of wild animal (including outside of protected areas).
- Rights to rehabilitation on the individual's or community's currently occupied land or alternative land, in cases where they have been illegally evicted or displaced from forest land without receiving their legal entitlement to rehabilitation.

- Rights to development facilities. The Central government will use forest land to provide for development facilities (such as schools, health centres, irrigation, roads, and so on) to be managed by the government, and these lands and facilities will be exempted from the operation of the Forest Conservation Act 1980. However, the use of forest land can be allowed only if the forest land to be used in each case is less than one hectare, not more than 75 trees are felled per hectare, and the clearance of such developmental projects is recommended by the gram sabha (village assembly).

FRA also has special provisions for sanctuaries and national parks. Areas inside such protected areas can be declared 'critical wildlife habitats'. These are important wildlife areas that are to be kept inviolate, in other words, free of human activity that is scientifically and objectively shown to damage wildlife. Although this implies that some forest-dwellers could be resettled, or livelihood activities modified, the process through which this is to occur is transparent and consultative. Even the identification of the critical wildlife habitat is consultative, involving an expert committee that includes "experts from the locality".

However, one of the most crucial elements of this Act is that even in protected areas from which forest-dwellers are to be resettled, absolutely no resettlement can occur without the prior informed consent of the affected persons. Additionally, the Act states that the critical wildlife areas from where resettlement has taken place cannot be subsequently used for purposes other than wildlife conservation. Many environmentalists have enthusiastically supported this provision since it is a strong legislative measure to protect wildlife and forest areas from being taken over by industry.

## 2) **Note by Mahesh Raut on Village Forest Rules (Maharashtra)**

### **NOTIFICATION OF VILLAGE FOREST RULES UNDER THE INDIAN FOREST ACT<sup>1</sup>**

<sup>1</sup> The note is based on notes and petitions from civil society organizations, government letters and orders and news reports. Some portion from the government letters has been extracted and used as it is for clarity



### **Notification of Maharashtra Village Forest Rules 2014:**

The government of Maharashtra notified on May 13, 2014 the Indian Forests (Regulation of assignment, management and cancellation of village forests) Rules, 2014 in short, the Village Forest Rules 2014. Proposal for notification of VFRs in Maharashtra was under consideration for last few years.

**Opposition to Village Forest Rules:** Notification of VFRs was followed by a campaign by the Forest Department to implement the rules as part of which gram sabhas in Gadchiroli were approached to adopt resolutions on August 15, 2014<sup>2</sup>. The notification of the rules and attempts by the forest department to implement was widely protested by tribal communities and civil society organizations. ,

- Petitions were sent by Gram Sabhas from the district of Gadchiroli opposing notification and implementation of VFRs
- Petition was sent by civil society organizations to the Ministry of Tribal Affairs
- Protests and rallies were organized by local organizations and sanghathans

The key objections raised in the petitions are that FRA already recognizes and vests community forest resource rights including the right of use, management and conservation, which is applicable to all forest land where forest-dependent communities live. VFR 2014 fundamentally contradicts FRA by making provisions for management of the same forests which now come under the legal rights and authorities of gram sabhas as provided in FRA. VFR contradicts FRA by suggesting that there are forest lands where FRA may not be applicable and stating that the gram sabha can suo motu take a resolution to adopt these Rules even in Scheduled Areas and/or in areas where CFR rights are being/could be claimed by the local communities. VFR also has the provision to constitute Van

<sup>2</sup> How Maharashtra forest dept is trying to regain control over community forests - See: [http://www.thenewsminute.com/news\\_sections/1084#sthash.7s5sqLIX.dpuf](http://www.thenewsminute.com/news_sections/1084#sthash.7s5sqLIX.dpuf) , Maharashtra forest department gets flak for its August 15 diktat-See <http://www.downtoearth.org.in/content/maharashtra-forest-department-gets-flak-its-august-15-diktat-0>

Vyabasthapan Committees (Joint Forest Management committees) which directly encroach upon the rights and authorities of the gram sabha and the committees proposed under FRA for management and conservation of forests.

Petitions were also sent to the Governor of Maharashtra. Intervening in the matter, the Governor raised objections to the notification of VFR<sup>3</sup>.

In response to the concerns raised by local groups, principal secretary (forests) Praveen Pardeshi called for a meeting with CSOs where he said VFR will not dilute provisions of FRA. Pardeshi agreed to amend VFR further by inviting comments from the public. It was clarified that the rules will not be applicable in PESA and CFR areas, and that VFR would be implemented only by gram sabha's decision. A committee was set up to resolve VFR related issues under PCCF A.K. Saxena which included forest department officials and NGOs<sup>4</sup>. The key decisions taken in the meeting, however, were not followed.

In response to the petitions, MoTA issued a letter dated 13.08.2014 where it was stated that VFR is prima facie in violation of FRA and, therefore, should be kept in abeyance. Subsequently, MoTA received communication from the Ministry of Rural Development and the MoEFCC requesting that MoTA's letter dated 13.08.2014 be withdrawn as VFR does not violate FRA<sup>5</sup>. However, MoTA has stood ground and opposed VFR<sup>6</sup>.

MoTA issued another letter on December 5, 2014 to the Principal Secretary of Forests, Government of Maharashtra clarifying that

3 <http://www.loksatta.com/mumbai-news/governor-immediate-ordered-to-stay-maharashtra-village-forest-rules-2014-916216/>

4 <http://timesofindia.indiatimes.com/city/nagpur/Village-rules-not-to-dilute-FRA/articleshow/42837895.cms>

5 <http://www.thehindu.com/news/national/gadkari-tribal-ministry-at-loggerheads-over-dilution-of-forest-act/article6398309.ece>,  
<http://www.downtoearth.org.in/content/ministers-mount-pressure-dilute-forest-rights-act>

6 'Have right to intervene if FRA violated' - <http://indianexpress.com/article/india/india-others/have-right-to-intervene-if-fra-violated/>

VFR is irreconcilable with the provisions of FRA and PESA and suggesting withdrawal of the Rules. Instead of acting upon the letter from MoTA, the state government continued to support notification of VFR and the Chief Minister of Maharashtra sent a letter to MoTA on February 15, 2015 where the Chief Minister has requested the ministry to withdraw the instructions issued to the state government. Relying upon the MoEFCC letter in support of VFR, opinion of a tribal MP from Gadchiroli and the legal opinion of the Advocate General of the Maharashtra government and the ASG VFR does not abrogate the rights vested under FRA, 2006 of PESA, 1996<sup>7</sup>.

Upon receiving communication from the Chief Minister of Maharashtra and the legal opinion provided by the AG and ASG, MoTA further examined VFR. In the legal opinion shared through an official memorandum released by MoTA on April 16 2015, the ministry has contested the legal opinion shared by the Maharashtra government and has reiterated its objections to VFRs as follows.

- MoTA has reiterated that the provisions of VFR are in direct conflict with FRA, Rules made under and PESA. VFR encroaches upon the field of law already occupied by FRA, which is a Central legislation. VFR has not obtained the consent of the President, and as such are contrary to the mandate of Article 254 of the Constitution of India. Therefore, VFR should be withdrawn.
- Lapses in the legal opinion provided by ASG have been pointed out by MoTA.
  - ASG has not examined the draft gram sabha resolutions circulated by the Forest Department prior to 15, August 2014 prompting the gram sabhas to adopt VFR (See footnote 2).

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<sup>7</sup> Devendra Fadnavis, Union tribal affairs minister battle over forest rights-  
<http://www.dnaindia.com/india/report-cm-union-min-battle-over-forest-rights-2068093>, Legal opinion in, Gramvan on track-<http://indianexpress.com/article/cities/mumbai/legal-opinion-in-gramvan-on-track/99/>

- ASG has wrongfully relied upon a decision of the Allahabad High Court which is not connected to the situation under examination.
- ASG has wrongly concluded that VFR relates only to 'ownership, access to collect, use and dispose of timber forest produce' and, therefore, the subject matter is different from FRA.
- ASG has wrongly concluded that VFR categorically excludes the forest rights and areas covered by FRA and the Scheduled Areas. Implementation of FRA is in an early stage and the provisions for recognition of community forest resource rights are yet to be realized in a large part of the India. The process of claim making, verification of claims, examination at the SDLC and final decision by the DLC is still under way, and the process of recording of rights has not even commenced in most states. Therefore, it is clear that the process of determining which areas are governed by FRA and which areas are not thus governed, is still under way and the situation on the ground is dynamic and evolving. Therefore, it would be precipitate and premature for the state government to bring the 2014 Rules into force until such time as the process of recognition and vesting of forest rights under FRA, and in particular the recognition and vesting of community forest resource rights, is complete.

### **Specific areas of conflict between VFR and FRA**

The forest rights recognized under Section 3 read with Section 4 (1) of FRA include the forest right to ownership of MFP, the right to CFRs, nistar rights as well as rights to fishing, grazing, and other usufructuary rights. These rights, once recognized under the procedure provided under the Act and Rules, cannot be taken away by the state executive under any circumstances. They certainly

cannot be surrendered by the forest-dwellers, whether voluntary or otherwise. The 2014 Rules, however, provide that these very forest rights can be withdrawn by the state government under certain conditions, albeit after issue of notice to the concerned gram sabha and after providing it an opportunity to be heard. This is a major area of repugnancy.

Section 4 (1) of FRA recognizes and vests the forest rights notwithstanding anything contained in any other law for the time being in force. This non-obstante clause is a very important and categorical message from the Parliament that the rights recognized and vested by FRA shall override any legal regime or executive arrangement which is contrary to such right. This approach is mirrored in PESA as well. The 2014 Rules, which proceed on the basis that the gram sabha has access rights to MFP and not the right to ownership, are overridden by the aforesaid non-obstante clauses in the Central legislations. In any case, the approach to MFP is repugnant to the Central law and, therefore, invalid.

The 2014 Rules also fall foul of the definitions adopted by FRA of hamlet level gram sabhas for the purpose of vesting and recognition of forest rights, replacing it with the panchayat level gram sabhas, which are the norm under the State Panchayats Act.

The 2014 Rules attempt to override the institutional mechanisms provided under FRA particularly the CFR management committee and conservation and management plan by the gram sabhas. VFR proposes Resource Planning and Monitoring Committee (RPMC) to monitor access to MFP in consultation with the gram sabha. The 2014 Rules, however, provide that the gram sabha will divest itself of all its statutory powers and responsibilities in this regard and surrender them to the pre-existing Van Vyavasthapan Samiti or the JFM Committee under the JFM scheme.

There is subordination of the decision-making power of the gram sabha. The 2014 Rules demonstrated by the procedure for assignment of a village forest under Rule 3, requires that the gram sabha should establish its credentials for such assignment through fulfilment of the criteria: a) zero encroachment, b) positive rate of

natural regeneration, c) percentage of burnt area remaining below 5 per cent in previous three years etc. The assignment of village forest would be subjected to conditions specified in the assignment itself and also subject to the microplan, the working plan, the provisions of VFR and the Indian Forest Act. Violation of any of these conditions and prescriptions shall result in cancellation of the assignment and reversion of the village forest to the forest department. Rule 13 indicates that any right vested under the 2014 Rules can be overridden by a written order or exercise of any right created by grant or agreement.

Potential for future conflict: MoTA has pointed out that VFR has the potential to create present and future conflicts between JFM committees and the Conservation and Management Committees established under Rule 4 (1)(e) of the Forest Rights Rules. If a parallel process is initiated under Rules 2014, it would disrupt the process of conferring rights under FRA.

Notification of village forest rules has also been raised in the Lok Sabha where MoTA has shared its objections to VFR as being violative of FRA<sup>8</sup>.

Support to VFRs and the timber debate: Notification and implementation of VFRs has been pushed by the forest department with the strategic support and mobilization of a select group of NGOs, tribal MPs, PRI members and prominent activist like Anna Hazare. There is a concerted effort to project VFR as rules which provide superior rights such as timber rights, which are not provided under FRA. A group of NGOs have rallied support around this argument and have created confusion by writing to MoTA about timber rights<sup>9</sup>. Prominent social activist like Anna Hazare wrote a letter to the Prime Minister on November 3, 2014 hailing the effort of Maharashtra government to notify VFR and complaining against MoTA's interventions on VFR. On the timber issue, MoTA in its

8 <http://164.100.47.132/LssNew/psearch/QResult16.aspx?qref=10465>

9 FRA activists demand right over timber- <http://timesofindia.indiatimes.com/city/nagpur/FRA-activists-demand-right-over-timber/articleshow/43360390.cms>

OM issued on April 16, 2015 has tried to make clarification that forest rights conferred under FRA are comprehensive in nature and address rights over timber produce.

Current status of implementation of VFRs: Despite objections from MoTA, the Maharashtra government continues to implement VFR at the ground level in violation of FRA. Funds have been sanctioned by the forest department to prepare micro-plans under VFR in select villages of Gadchiroli<sup>10</sup>.

Village forest rules elsewhere: Provision for village forests under the Indian Forest Act, forgotten for a long time, has now been revived and consciously used by the forest department to regain authority and control over forests which now comes under the rights and authorities under FRA. The Madhya Pradesh government has recently taken decision to notify village forests under Section 28 of the Indian forest act, 1927 which has caused concern among civil society organizations<sup>11</sup>.

Implications and possible actions: Notification and implementation of VFR under the Indian Forest Act in Maharashtra and Madhya Pradesh have a direct bearing on the community forest resources rights vested under FRA and on the governance of CFR. MoTA has now issued clear guidelines on governance of CFR which require recording of CFR as a new forest category. The guidelines clarify that gram sabhas and the committees constituted under Rule 4 (1)(e) under FRA have the rights and statutory authorities to govern and manage CFRs. As pointed out by MoTA notification of the village forest rules in this context is likely to create potential conflicts on ground. Although MoTA has opposed VFR, but core support to VFR has come from the BJP leadership at the highest level with other Union ministers and the Chief Minister of Maharashtra

10 Village panchayats get more teeth to manage forests - See: <http://indianexpress.com/article/cities/pune/village-panchayats-get-more-teeth-to-manage-forests/#sthash.LeiyXjbM.dpuf>

11 Gram sabhas to get legal rights for forest produce from protected forests- <http://timesofindia.indiatimes.com/madhya-pradesh/Gram-sabhas-to-get-legal-rights-for-forest-produce-from-protected-forests/articleshow/47217352.cms>



lending political support. Political support is also mobilized by the forest bureaucracy which has found an opportunity in VFR and has launched a sustained campaign to implement VFR in the states. Unfortunately, a group of civil society organizations has aligned with the political government and the forest bureaucracy to support VFRs. Space for intervention is, however, available with the local sanghathans, campaign groups which oppose VFRs and with the Governor's office which is willing to intervene in the matter.

### **3) Implementation of Forest act in Kerala - Rajendra Prasad**

Measuring the development of a society depends on the accessibility and advancement of the marginalized people like Adivasi and Dalit on land rights, health, educational rights etc. Most of the Adivasi land right protests in Kerala are related to starvation death among the tribal community. The most renowned protest of tribes in Kerala conducted in front of the secretariat (in Thriuvananthapuram) and the muthanga strikes arisen out of the death of 33 members of Paniya tribe. In attapadi, when almost 200 infants died due to malnutrition, it led to 165 days of standing strike by the tribal members. It is through these protests, discussions on the Forest act and PESA act recurred in the State of Kerala.

Even though In terms of development indicators, Kerala has a position equivalent to a developed nation, the living standard of the communities of Scheduled Tribes, Scheduled Castes and Coastal communities is much lower than the mainstream indicators. Kerala consists of 1.45% of tribal members. While comparing the indicators of the average earnings, land ownership, literacy rate of this category with that of general population, the situation of the above stated categories of community is much lower than the mainstream communities in Kerala. According to the study conducted by Centre for Development Studies (CDS), 22,491 tribal members in Kerala do not own any land while 30,891 families own less than 1 acre of land. Even though official numbers mention that the adivasis own 6.68 hectares of land, but in reality they own much lower than that;

the CDS study itself reflected the same. The livelihood of 33.9% of adivasis depends on agricultural sector. The government which is the representation of the mainstream groups of the society has not succeeded in solving the problems of the marginalized sections including tribals. In last five years, about 200 infants died due to malnutrition in Attapady.

After the independence, the objective of the Forest Rights Act shows that it has been materialised for compensating the historical injustice shown towards the tribes. However, from independence till now, the tribals or the Ooru Sabhas have not received the transfer of possession of ancestral land to them or the rights and authority to collect minor forest products for the purpose of livelihood and/or to sell them independently and/or to do commercial transactions. From the British period onwards, the Tribal grama sabhas in north-eastern states had the right for the decision making. After the independence this area came to exist under the 5<sup>th</sup> and 6<sup>th</sup> schedule of the Indian Constitution, which is recognized as scheduled area with special authority.

The major points in Implementation of Forest act 2006 - Kerala

- The settlements where Adivasis solely live to be converted into Forest villages (section 2p ) and the elder members to be appointed as grama sabha (section 2g ), of which 10 -15 forest rights members of committee to be appointed as authorities( Rule 3 (1) ). Decision making and such activities relating to forest right are to be taken by these grama sabas.
- Before 13<sup>th</sup> December 2005, individual authority over the land is maximum 10 acres.
- Full Right to collect and sell the minor forest items like bamboo, eeta, honey, and other medicinal plants etc are allowed.
- Except hunting all other traditional Adivasi activities - community rights like fishing, cattle rearing, material property rights etc given to the adivasis.

- The areas where these forest items are collected are known as Community Forest Reserve collecting area or CFR section (section 2(A)). And this must be given to grama sabhas along with the community rights. Protection and maintenance over the forest area, wild animals, biodiversity, rivers etc were agreed (section 5 (3) (1) i).

Even though it's been 8 years after the Act has come into existence, apart from the distribution of the land into individuals, the stand of the government officials is that as if no other above mentioned points are important for Kerala. On 15<sup>th</sup> July 2008, the government as per the Forest Rights Act 2006, declared 579 grama sabhas (FRC) as Forest Rights gram sabhas, through an Ordinance and has been empowered through Panchayats, and Forest Right Committee members were also elected. However till now, nowhere in Kerala it is mentioned or proclaimed by the State government that these are statutorily constituted grama sabhas.

Even though in Maharashtra, the Revenue and Forest departments help the grama sabhas in auctioning the minor forest items in the markets and have started handling the transit permits, the same could not be implemented in Kerala. Forest Protection Committees are empowered to do the above work in Kerala. Even though The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 has come into force, no chronological changes as with shifting times have been made in the model of EDC (Eco Development Committee) made under the Forest Policy, 1988 and the old procedures are still followed.

In Kerala, Forest Rights Act 2006 has not been implemented by determining the Community rights. In Kerala, the Community rights have been made available only in Thrissur district, among the nine Tribal groups belonging to kadam tribes in Vazachal-Malakapara in Athiramubza panchayath. In Kerala even though the Scheduled Tribes Development Department proclaims that 172 Community rights have been formed by District level Committees headed by the District Collectors, the Community Rights are not

established anywhere other than in Thrissur District. With the fear of losing monopoly, the Forest department has never given any significance for the authority of Grama sabhas and continues its ongoing work with Vana Vigaas agency.

According to the report dated 30<sup>th</sup> June 2016 of scheduled tribes department which is a Nodal agency, about 24945 people have been given 33073 acres of land on the basis of individual rights. It is also recorded that 448 documents giving 217 acres of land were allowed for including them under developmental right issues.

The incident of death of infants due to malnutrition in Attapady has shocked the entire world. The population of members from kurumba Tribal group in Attapady region is below 2500. The study conducted by the The Kerala Institute for Research, Training and Development Studies of Scheduled Castes and Tribes (KIRTADS) claims that the infant mortality rate is very high among this group. In between 2012 and 2016, almost 20 infants died. However, if the Community rights and development rights were implemented in a timely manner, we could have prevented the death of these infants. If the laws were implemented accurately, the opening of Integrated Child Development Services (ICDS) centres, Primary Health Centres (PHC), Public Distribution System (PDS) centers etc over there could have been possible. The major problems faced by the Scheduled Tribes in Kerala as well as in other states are not because of the lack of laws protecting the Scheduled Tribes, but rather due to the lack of accurate and timely implementation of the law.

Without any individual gain, the struggle and protest for the land and right to life of Adivasi population who form the foundation of our culture and identity, is still going on in Kerala. Since the Forest Rights Act is a people's legislation, in future at least, we can hope that the rights of Adivasis can be achieved through court interventions. As in this period of neo capitalism wherein the representatives of people itself compete in parliament trying to bring forth laws contrary to the democratic values, the judiciary is our only relief.

**4) Representation to the Governor HP – Himalaya Niti Abhiyan**

From:

Date: 03/11/2016

Himalaya Niti Abhiyan  
Village Khundan  
PO Banjar, District Kullu  
HP 175123

To,

Hon'ble Governor,  
Government of Himachal Pradesh, Shimla

Sub: **Request to stop on illegal eviction of Schedule Tribes and Other Traditional Forest Dwellers**

Sir,

Himachal Government has started the drive to evict Schedule Tribes and other Traditional Forest Dwellers from forest land under the garb of HP High court order as stated under.

Hon'ble High court of Himachal Pradesh ordered on dated 18-10-2016 in CWPIL No.17/2014 a/w CWP No.3141/2015, COPC No.161/2012 and CWPIL No.9/2015 to remove encroachment on forest land/ revenue land, more than 10 Bighas and to report the progress of eviction on next date of hearing on 15-11-2016. We come to know that under this pressure forest and revenue departments are launching huge drive to evict forest dwellers in the state from 1<sup>st</sup> November 2016 for which internal directions has been given to local officials.

In this Matter Forest Department Stated in the High Court and presented status report of eviction of encroachment as below:

Sl. No.	District	No. of cases challaned before DFO-cum-Collector	No. of cases decided/eviction order passed	No. of cases in which land actually evicted	Balance cases
1.	Bilaspur	410	410	363	47
2.	Chamba	640	603	477	126
3.	Hamirpur	44	40	20	20
4.	Kangra	1755	1550	1382	168
5.	Kullu	2388	1527	497	1030
6.	Kinnaur	130	76	47	29
7.	Lahaul Spiti	10	3	0	3
8.	Mandi	1216	1159	989	170
9.	Shimla	3057	2911	982	1929
10.	Solan	120	119	67	52
11.	Sirmour	533	510	315	195
12.	Una	4	4	4	0
	<b>G.Total</b>	<b>10307</b>	<b>8912</b>	<b>5143</b>	<b>3769</b>

### **Revenue department stated in the court as below:**

In all 12 revenue districts of the State of Himachal Pradesh, total number of 4299 cases of revenue challan were filed before various revenue authorities, out of which 1277 cases stand decided and remaining 3022 cases are pending before various revenue authorities, out of 1277 such cases, encroachments in respect of 908 cases stand removed and process for eviction with respect to remaining 369 cases is in progress.

### **Court Directions**

Court directed the Principal Chief Conservator of Forests, (HoFF), Himachal Pradesh to personally monitor and ensure that all cases of at least Districts Shimla and Kullu be firmly

dealt with and encroachments over government/forest land removed within the period so undertaken by him.

Further, both Mr. Anup Rattan, learned Additional Advocate General and Mr. J.K. Verma, learned Deputy Advocate General assure that in future, they shall personally vet all the affidavits/pleadings filed in these proceedings. List on 15.11.2016. Status report of the action(s) taken be filed before the next date of hearing. Principal Chief Conservator of Forests, (HoFF), Himachal Pradesh, Conservator of Forests, Shimla, Rampur and Kullu, including all D.F.Os. of Districts Shimla and Kullu shall also personally Remain present on next date of hearing to answer reply the queries, if any, on the action taken by them.

Himachal High court in Cr.MP(M)No. 1299 of 2008, in its order on dated 27.02.2016 has earlier directed eviction proceedings against those in possession of forest land having even less than 10 Bighas and FIRs shall be filed against them within six week. The same order was passed by court last year on April 6, 2015 in CWPIIL No.17 of 2014 for those in possession of more than 10 bighas.

Under this pretext, forest department has cut down more than 40 thousand fruit bearing Apple and other trees and destroyed orchards and farm land of several small farmers having even less than ten Bigha occupation. Many residential houses were demolished in many parts of state, water and electricity connections were also disconnected in all parts of states even in tribal areas.

Unfortunately attorney general of Himachal government has not presented before the court the restriction to evict such possessions under the provisions of FRA nor referred to the Supreme Court judgment on Niyamgiri which has confirmed that no eviction can take place till the verification and recognition under Forest Rights Act is completed.



**Himalaya Niti Abhiyan is of the view in the light of law**

This order is in direct contravention to protection provisions under Forest Rights Act 2006. Whereas this was clarified in the Judgment of SUPREME COURT WRIT PETITION (CIVIL) NO. 180 OF 2011 dated April 18, 2013 in a case Orissa Mining Corporation Ltd. Versus Ministry of Environment & Forest & Others (Niyamgiri Judgment) which confirmed the provision of FRA Section 4(5) "Save as otherwise provided, no member of a forest dwelling Scheduled Tribe or other traditional forest dweller shall be evicted or removed from forest land under his occupation till the recognition and verification procedure is completed."

Double bench of Himachal High court on dated 4.03.2016 clubbed all three cases Cr.MP(M)No. 1299 of 2008, CW PIL No. 17 of 2014 and CWP No. 3141 of 2015 in the same matter of encroachment over forest land and FRA. Ministry of Tribal Affairs (GoI) has also filled affidavit in the same matter under CWP No. 3141 of 2015 to the court.

Himachal Pradesh government very beginning from 2008, tried to evade implementation of the forest rights act and issued many such orders claiming that rights have been settled by the British through the imperial settlement process and hence recognition under FRA was not necessary. Under the constant pressure of the Ministry of Tribal Affairs, state government started the process in 2008 in tribal region in first phase. Feeble attempts were made in tribal areas with several illegal riders such as claimant should not be a Government employee, Income tax payee and even as some were considered encroachers. Forest dwellers were not provided information, nor was there wide publicity. Training to Gram Sabhas or local officials was never properly imparted. In fact in several places, Forest department threatened and pressurised dwellers not to file claims.

In tribal district of Kinnaur, FIRs under H.P. Public Premises & Land (Eviction & Rent Recovery) Act, 1971 on encroachment were

registered against those people who filed individual claims is in clear contravention to Forest Rights Act 2006.

Ministry of tribal Affairs issued clarification to government of Himachal Pradesh on dated 14 December 2015 and categorically explained that recorded rights in settlement record needs to be recorded and recognized under FRA. Even as of date in the updates of the MoTA, 5409 individual claims and 283 Community claims of rights had been filled in the till date of which 238 individual claims and 108 community claims were settled providing a ridiculous 0.35 acres (376.74 Sq feet only in both Individual and community claims cases ) of land. However in an affidavit presented by MoTA in the HP High Court states, that the State Government has claimed that it has constituted FRCs in 14206 out of the 18055 revenue villages.

National Green Tribunal in its judgement on dated 4 May 2016 in a petition filled by Parayawarn Sanrakshan Sangharsh Samiti Lippa (Kinnaur) V/S Union of India, HP state and HPPCL in the matter of Kashang-II,III Hydro Power Project, ordered that Gram Sabha under FRA of village Lippa, Rarang, Pangi and Telangi shall be conducted under the supervision of district judge. Gram Sabha shall consider community and individual forest rights claims under FRA after that gram sabhas will consider diversion matter for the project. HPPCL appealed against this order in Supreme Court but with the intervention of Congress Vice President Mr. Rahul Gandhi, government withdrew the case.

As of date 5409 individual claims and 283 Community claims of forest rights had been filed in tribal areas where as in non tribal areas 1091 habitations through 112 FRCs have been filed community claims by OTFD till today to SDLCS. No further action of recognition has been taken up to the date by the Government.

Himachal Pradesh farmers are traditionally dependent on Forests and rightfully come under the definition of "Forest Dwellers". The eviction proceedings intentionally initiated by the forest department/authorities against forest dwelling scheduled tribes or

other traditional forest dwellers has hampered the implementation of FRA and conferring rights..In fact, Forest department and HP High court issued such orders which pressurised dwellers not to file claims. FIRs under H.P. Public Premises & Land (Eviction & Rent Recovery) Act, 1971 on encroachment were registered by forest department against those people who filed individual claims in clear contravention to Forest Rights Act 2006. Whereas the process of verification and recognition has to be taken up before declaring them encroachers under the Act but this was evaded.

Ministry of tribal Affairs (GoI) has also submitted its affidavit to the HP high Court on 20-11-2015 in the matter of CWP No.3141 of 2015 on the same issue under Para No. 49, 50 and 51 mentioning clear cut injunction against the removal or eviction of forest dwellers until the entire process of recognition and verification of forest rights is complete. Supreme Court has also confirmed the same and so as recent order of NGT in the matter of Kashang HEP.

Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 has also provided protection to forest dwellers belonging to Scheduled caste and Scheduled Tribes. Amendment in the act inserted the provision of protection of Forest Rights under FRA, under section 3 (g) of the principal Act, on 31st December, 2015, which came to in force form 14 April 2016.

Supreme Court in its Judgment date 5 January 2005, in the matter of Iridium India Telecom Vs Motorola has specifically stated that: It is well settled law, that in the event of a conflict between a special law and General law the special law must always prevail. Forest Right Act is a Special law hence looking into the above mentioned fact; state government cannot evict forest dwellers under any state acts such as H.P. Public Premises & Land (Eviction & Rent Recovery) Act, 1971 and section 163 of land revenue act 1954 till the verification and recognition of rights under the Forest Rights Act-2006.

This eviction move has put farmers in a strange position from being right holder cultivators to now, encroachers, particularly those who

come under the category of scheduled tribe and other traditional forest dwellers. The forest dwellers in such situation are helpless to initiate the process of "Undoing the Historical injustice".

We request to you to intervene to the matter immediately and protect Schedule Tribes Forest Dwellers of Himachal Pradesh from illegal eviction under State laws which are not in force if there prevails centre act.

**We further request:**

- Eviction of Schedule Tribes and Other Traditional Forest Dwellers from forest land shall be stop immediately.
- Implementation of FRA in letter and spirit and build a fearless atmosphere so that tribal's and other traditional forest dwellers are encouraged to file claims under the Act.
- Legal Action shall be taken under section 7 of FRA and Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 against those officials who legally evicted forest dwellers without following the process laid down under FRA.

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Reckong Peo, Kinnaur

HP

### **5) Efforts of Seva Mandir and Van Uthan Sansthan towards implementation of the Forest Right Act (FRA) for actualization of Community Forest Right (CFR) at the grassroots.**

By Shailendra Tiwrai, Seva Mandir, Udaipur

In the Forest Right Act (FRA) 2006 of the Government of India, there is a provision to provide Collective Forest Right (CFR) to the tribal communities who have been traditionally protecting, managing and using the forestlands in the vicinity of their village or habitation. The CFRs are vital in building community solidarity for protection and conservation of forests as shared communal resources. Thus CFRs have a potential of sustaining both ecology and livelihoods through local civic action.

Seva Mandir with local tribal communities and Van Uthan Sangh (a federation of > 100 local FPCs-Forest Protection Committees of Udaipur district) got involved in actualization of CFR claims in Udaipur district. After completing all the required formalities, these cases were submitted to the Sub-Divisional Level Committee (SDLC) of Jhadol and Kherwara blocks almost four years ago.

#### **Current status of CFR Proposals (April 2016)**

Block	DLC level	SDLC level	Panchayat level	Village level	Preparatory level	Total
Jhadol	38	26	59	2	85	210
Kherwara	0	7	5	2	6	20
Kotra	0	0	7	0	21	28
Girwa	0	0	0	0	31	31
Badgaon	0	0	0	0	20	20
Kumbhalgarh	0	0	0	0	3	3
<b>Total</b>	<b>38</b>	<b>30</b>	<b>71</b>	<b>4</b>	<b>166</b>	<b>312</b>

Both Seva Mandir and Van Uthan Sangh constantly followed up on pending CFR proposals. However, there was no action taken at the SDLC/block level hence, the progress towards CFRs was nil. Workers of Van Uthan Sangh (VUS) and Seva Mandir persuaded the Government officers at Jhadol block level time to time. Seven CFR cases of Phulwari ki Nal Sanctuary were rejected by the Jhadol block authorities assigning the reason that CFR is not applicable in protected areas. However, in the same Sanctuary area, the authorities have conferred individual titles to the families. Here, it is also to be noted that, the FRA guidelines do not discriminate in an area for conferring Individual Forest Right (IFR) or CFR. It shows a sheer lack of clarity at implementation level.

The authorities kept on returning most of the proposals saying that, these were incomplete. It meant on many of such cases the local government functionaries like revenue or forest officials did not put their comments or signature. It was again not in tune with the spirit of the law. It has clearly been instructed in the guidelines that the authorities have to help the communities in fulfilling the formalities. Thus, preparing and persuading CFR proposals has been a very frustrating experience for the communities.

Without getting disheartened, a joint team comprising Seva Mandir and Van Uthan Sangh monitored every proposal on monthly basis. We also kept approaching the block authorities of Jhadol & Kherwara blocks with a request to expedite forwarding of the proposals to the DLC, Udaipur. Fortunately we got good cooperation from the government block authorities of Jhadol and we could get 46 proposals moved to the DLC, Udaipur in the second half of the year 2013. However, seven proposals were rejected as the concerned villages did not have forest area within their boundaries. One proposal was lost at the end of DLC.

The amended rules of the Forest Rights Act were published by the government in 2013. The government also expressed concern over lack of progress on the front of Community Forest Rights (CFRs). The process of Community Forest Rights (CFR) was further

simplified so that more communities can benefit from its provision. The government organised trainings/ consultations both at the district and block level to make government functionaries and NGOs workers aware of newly amended rules of FRA. Our workers too, attended such trainings. However, the process to facilitate realization of CFRs, so far has not changed. Government authorities have not acted in required spirit to expedite the pending CFR claims; therefore, the actualization of CFRs has remained nil.

In view of above, Seva Mandir and Van Uthan Sangh's movement to save communal nature of local forest resources has entered in to a new phase. Driven by the spirit of non cooperation and truthful persuasion or Satyagraha, the communities and workers have given a new dimension to this peaceful movement. The members of the village communities, workers of VUS and Seva Mandir discussed this deadlock. It was decided to sensitize the larger society and build pressure on the administration for the plight of CFRs. People conceptualised a persuasive peaceful movement with a strategy of holding a series of events. In compliance to this, villagers and social workers organised a peace march on 12<sup>th</sup> February 2013. This peace march was attended by more than 350 people. It calmly moved through various streets of Fatehpura drawing attention of the public. The peace march culminated at the office of Tribal Commissioner Government of Rajasthan. All the people of the procession staged a dharna for half an hour at the office and submitted a memorandum to the Tribal Commissioner and Chief Conservator of Forests for expediting action on pending proposals of CFR. After the march, Van Uthan Sangh and Seva Mandir planned to organise meetings in a number of villages to strengthen ongoing socio-political movement for making the idea of CFR work at the grassroots.

The communities which gave up their individual claims and preferred to go for the collective claims are getting disappointed due to this status quo. It is indeed becoming increasingly difficult to hold these communities to overlook privatization of the forests. But the steady and firm engagement of committed communities and their institutions for commons is carrying this saga forward.



### **Current position of CFR and SM's strategy**

The CFR work after a pause of many years could get a fresh breath. Upon pursuance on the part of Seva Mandir (SM) and Van Uthan Sansthan (VUS), the new District Collector in 2015, took a lead to expedite the process of acting on pending proposals under Forest Right Act (FRA) including CFR. The Collector directed Forest Department (FD), to submit report of 38 proposals of CFR, which were lying for almost two and half years with the department. It was expected that, the FD would provide comments on each of the individual CFR proposal. However, the FD submitted a general report indicating discrepancy in all the CFR proposals. This was quite disappointing for the workers of SM and VUS. They knew that, most of the proposals were complete in all respects and the concerned officers of the FD simply wanted to further delay the matter. We did not lose patience over it and continued our efforts of persuading the plight of CFR at the level of the administration. The district administration also expressed its apprehensions over CFR because so far, no claim for the purpose of community protection and management has been conferred in Rajasthan. We approached the Sub Divisional Magistrate (SDM) Jhadol who informed us that the government wants to be cautious on the front of CFR. Nevertheless, the administration wants to try and test CFR in one village. Accordingly, block authority asked us to present a model CFR proposal of a village which could be complete in all aspects. This village should be protecting managing and sustaining its forestland for last many years. As directed by the authority, we had completed and submitted a CFR proposal of village Madla in second week of September 2015.

It was indicated by the district and block administration that a committee may visit the selected villages to know opinion of the people on 38 lodged CFR claims at the district level. Accordingly, we organized seven cluster level meetings to assess the status of protection and management being done by the community. In these meetings, villagers informed how they are protecting their forest areas. People also talked about their traditional rights over

grazing collection of grass and other NTFP (Non Timber Forest Produce), use of water resources and religious shrines. In all the cluster meetings people asserted their ability and confidence about taking responsibility of protection and management of their forest resources.

We expected a positive action on the part of the government; however, we failed to listen anything. At the field level too, whatever little cooperation we were receiving from the Forest Department came to an end. The Foresters and Range Forest Officers simply refused to sign on the new CFR proposals. It was a totally frustrating experience for Seva Mandir, Van Uthan Sansthan and communities who want to protect forests as a common resource.

Looking to this impediment at the end of state, Seva Mandir and Van Uthan Sansthan continued their efforts at grassroots to strengthen the spirit of collective ownership and management of forest with the local communities. In all the villages where communities have submitted CFR proposals and also in the villages where CFR work is under preparation, 36 village meetings were held. These village meetings were organized in the form of gram sabha. The idea behind these meetings was to start formal discussions to establish normative governance mechanism in the villages. It is being greatly recognized at the end of the community that even if the government does not confer them the CFR title they should discharge their duty to protect and conserve the forestland of their village. Concerned communities also firmly expressed their commitment to prevent further privatization of the forests. Thus, the struggle of these forest dwelling tribal communities to protect and conserve their life supporting common forest resource continues.

Note – Views expressed are personal of the author.