

2015-17



COMMUNITY FOREST RIGHTS AT A GLANCE

An output of



COMMUNITY FOREST RIGHTS
LEARNING & ADVOCACY PROCESS

This report is an outcome of the Community Forest Rights-Learning and Advocacy Process (CFR-LA) which was initiated in 2011 to facilitate exchange of information and experiences to reinforce national level efforts for evidence-based advocacy on Community Forest Resource Rights (CFRs) under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (Forest Rights Act or FRA). The process involves organizations and individuals working at local, national and international level on facilitating and understanding CFRs. As part of the process, a website

<http://fra.org.in/> and email group

<https://groups.google.com/forum/#!forum/cfr-la.com> have been initiated. As part of the ten year anniversary of the enactment of the Forest Rights Act, a series of status reports of the implementation of the Act in different states has been undertaken. The reports can be found at <http://cfrla.org.in/>

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A.

Introduction

Introduction

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights Act), 2006 (hereafter Forest Rights Act or FRA), came into force in 2008. It aspires to undo the 'historic injustice' meted out to forest dependent communities due to curtailment of their customary rights over forests which resulted in their marginalization and displacement. The Act recognizes and vests the right to use, manage and conserve forest resources, and to legally hold forest land that these communities have used for cultivation and residence in forest dwelling communities. It also recognizes the integral role that forest dwellers play in the survival and sustainability of forests and in conservation of biodiversity.

The FRA recognises a number of pre-existing rights of forest dependent communities which have been unrecorded in the past. These rights include:

- (a) community rights such as *nistar*, by whatever name called, including those used in erstwhile Princely States, *zamindari* or such intermediary regimes;
- (b) right of ownership, access to collect, use, and dispose of minor forest produce which has been traditionally collected within or outside village boundaries;
- (c) other community rights of uses or entitlements such as fish and other products of water bodies, grazing (both settled or transhumant) and traditional seasonal resource access of nomadic or pastoralist communities;
- (d) rights including community tenures of habitat and habitation for primitive tribal groups and pre-agricultural communities;
- (e) rights of settlement and conversion of all forest villages, old habitation, unsurveyed villages and other villages in forests, whether recorded, notified or not into revenue villages;
- (f) right to protect, regenerate or conserve or manage any community forest resource (CFR) which they have been traditionally protecting and conserving for sustainable use;
- (g) rights which are recognised under any State law or laws of any Autonomous District Council or Autonomous Regional Council or which are accepted as rights of tribals under any traditional or customary law of the concerned tribes of any State;
- (h) right of access to biodiversity and community right to intellectual property and traditional knowledge related to biodiversity and cultural diversity; and
- (i) any other traditional right customarily enjoyed by the forest dwelling Scheduled Tribes or other traditional forest dwellers, excluding the traditional right of hunting or trapping.

The provisions under Sec 3(1) of the Act are particularly empowering as they recognize community forest rights of the gram sabhas¹ (GS) of forest dwelling communities. The right to protect, regenerate, conserve or manage any community forest resource (CFR²) which they have been traditionally protecting and conserving for sustainable use, under Sec 3(1)(i) along with the rights mentioned above has the potential to change the top-down centralized style of governance of forests to enable greater site-specific management by communities, and provide collective livelihood security to communities.

¹Under Sec 2(g) of the FRA, the Gram Sabha is defined as 'a village assembly which shall consist of all adult members of a village and in case of states having no Panchayats, padas, tolas, or any other traditional village institutions and elected village committees, having the full and unrestricted participation of women.'

²CFR is defined as "the customary common forest land within the traditional or customary boundaries of the village or seasonal use of landscape in the case of pastoral communities, to which the community had traditional access". The rights over CFRs as well as other CRs can be recognized over any forest land including reserved forests, protected forests and protected areas such as Sanctuaries and National Parks.

SIGNIFICANCE OF COMMUNITY FOREST RIGHTS

Forest conservation, management, and governance

Sec 5 of the Act empowers communities to "protect forests, wildlife and biodiversity, and to ensure protection of catchments, water sources and other ecologically sensitive areas". When read with Section 3(1)(i) of the Act and Rule 4(1)(e) and (f) of the Amendment rules of 2012, (which elaborate on the constitution of a committee which can perform these functions as well as prepare conservation and management plans for its CFRs), Sec 5 creates a space for forest dwelling communities to practice forest management and governance by using their own knowledge systems and institutions and integrating them with modern scientific knowledge.

Ensuring livelihood security

Sec 3 (1)(c) of FRA, vests the rights over collection and sale of Non-Timber Forest Produce (NTFP) i.e. Minor Forest Produce (MFP) as the Act refers to it, in the hands of communities. Vesting rights over commercially important MFP, which has been under the monopoly of state and contractors thus far, in the communities, has great significance. The Act clearly defines MFP in Section 2(i) and provides elaborate guidelines under the Amendment Rules, 2012, for their sale, for a change in the transit permit regime, etc. Rule 16 of the Amendment Rules, 2012, provides for government schemes related to land improvement, land productivity, basic amenities and livelihood measures of various government departments to be provided to communities whose rights over CFR have been recognised, paving a way for convergence of governmental schemes towards village development, according to their own needs.

Influencing decision-making on developmental projects

While acknowledging the forced relocation of forest dwelling communities due to State developmental interventions, Section 4(5) of the Act attempts to prevent further relocation and displacement of forest dwellers by providing that "no member of a forest dwelling scheduled tribe or other traditional forest dweller shall be evicted or removed from the land under his occupation till the recognition and verification process is complete". Thus, according to this Act, in areas where the process of recording of rights under FRA has not started, forest dwellers cannot be evicted. Additionally, Sec 5 empowers the village GSs to ensure that the habitat of forest communities is preserved from any form of destructive practices affecting their cultural and natural heritage, and to take decisions to regulate access to community forest resources and stop any activity that adversely affects wild animals, forest and biodiversity and to ensure that these decisions are complied with. These provisions have the potential to significantly democratise the decision-making process for various developmental projects in the country.

I. About the CFR-LA process

Despite the potential of the CFR provisions of the Act, few communities have been able to utilize them, since there is a widespread lack of awareness regarding these provisions, and the implementation of the Act is still focused on recognition of individual forest rights³. Where communities have claimed CFR rights, they face several challenges in implementing and bringing into operation, the provisions of the Act.

In 2011, a national meeting was organized by a group of civil society organizations, grass roots level movements and few community leaders involved in issues relating to forest rights, which led to the emergence of Community Forest Rights Learning and Advocacy Process (CFR-LA)⁴. This process was envisaged to provide support for collective learning and advocacy towards better and effective implementation of CFR under FRA. As a part of the process, a website (<http://fra.org.in/new/>) and a list serve (to join visit: <https://groups.google.com/forum/#!forum/CFR-la>) have been initiated to provide regular updates and facilitate advocacy on various issues related to CFR. The process today involves grassroots level organizations, people's movements, supporting civil society groups, legal advisors and researchers.

The process has led to sharing and consolidation of experiences from the ground, with those involved providing need-based inputs to each other's sites. Theme based national, state and regional consultations, have to a certain extent led to continuous monitoring of implementation of CFR by these movements and civil society organizations, their respective sites, regions or states. Together, those involved in the process have at times come up with recommendations for policy and procedural changes with respect to CFR provisions of the Act, resulting in associated circulars and government orders that have simplified implementation mechanisms.

II. About the Report

Since 2012, an attempt has been made by CFR-LA to evaluate the progress of CFR implementation and to discuss, consolidate and analyze the policy changes directly affecting the implementation of the Act for helping on ground research, advocacy and effective implementation of the Act, in the form of a Citizens' Report⁵.

This report is the fourth in the series, attempting to build on the previous reports by consolidating information on the processes and policies aiding and abetting the implementation of the CFR process in different states of India that took place between April 2015 and April 2017. The report also draws from the newsletters created on behalf of CFR-LA between April 2015 and March 2016⁶.

³ Sec 3(1)(a) provides for the right to hold and live in the forest land under the individual or common occupation for habitation or for self-cultivation for livelihood by a member or members of a forest dwelling Scheduled Tribes or other traditional forest dwellers.

⁴ Report available at: http://www.fra.org.in/new/CFR_brainstorming_report_%20delhi.pdf

⁵ See previous reports at:

<http://fra.org.in/document/A%20National%20Report%20on%20Community%20Forest%20Rights%20under%20FRA%20-%20Status%20&%20Issues%20-%202012.pdf>;

<http://fra.org.in/document/Community%20Forest%20Rights%20under%20FRA%20Citizens%20Report%202013.pdf> and

<http://fra.org.in/document/CITIZENS'%20REPORT%202015%20COMMUNITY%20FOREST%20RIGHTS%20UNDER%20THE%20FOREST%20RIGHTS%20ACT.pdf>

⁶ 'Community Forest Rights at a Glance': Newsletters are available at: <http://fra.org.in/>

In December 2016, CFR-LA published a report called Promise and Performance: 10 years of the Forest Rights Act in India. The report can be found here: <http://fra.org.in/document/Promise%20and%20Performance%20Report.pdf>. It seeks to highlight the potential of FRA, assess its achievements, identify the bottlenecks, and find the ways forward. The report makes a quantitative estimate of forest land that has the potential to be recognized as CFR area, and compare it to the actual forest area recognized as CFRs across the country; compiles the progress of recognition of other major rights under FRA, such as IFR, CR and habitat rights and identifies the major institutional and procedural bottlenecks in FRA implementation, and the way forward. Similarly, state specific reports have also been made and some are in the process of finalization⁷. The specific updates of FRA from different states have therefore not been compiled in this report.

1. Methodology

The report has been consolidated through a combination of varied research approaches and sources such as:

- Review of information received through groups, researchers and civil society organizations on the CFR-LA list serve and of secondary literature like articles and reports in magazines, newsletters, newspapers, websites, etc;
- Collection of regional information by members of the CFR-LA process through field visits, telephonic conversations and oral discussions through a pre-designed format for procuring information on CFR,
- Consolidated information received during updates given by community members or CSOs in various consultations, meetings and public hearings.

2. Limitations

Although attempts have been made to represent accurate and reliable information, there may be gaps and weaknesses in the report, since there is a diverse range of situations pertaining to CFR rights across India, and because information from all states could not be collected. We shall be happy to receive suggestions and criticism from readers and will try our best to keep the same in mind for future reports. We also urge readers to join the CFR-LA process and share their experiences and studies, thereby strengthening the process. The format used for the state level studies can be shared with interested individuals, local communities and organizations on request⁸.

⁷ See <http://fra.org.in/> for all the state reports.

⁸ Write to Neema Pathak Broome (neema.pb@gmail.com) and Shruti Ajit (shrutiajit16@gmail.com) of Kalpavriksh or Tushar Dash (tushardash01@gmail.com) and Sanghamitra Dubey (sanghamitra@vasundharaorissa.org) of Vasundhara.

B.

National

Overview

National Overview

I. Policy Updates

This section provides a basic overview of developments at the policy and implementation level pertaining to CFR provisions that took place between April 2015 and April 2017.

The months of June and July 2015 saw a rush of circulars and government resolutions being passed by the Centre (Ministry of Tribal Affairs, MoTA) and schemes and policies being announced by a few state governments which could have an immediate bearing on the implementation of the Forest Rights Act, 2006. Many of these were direct outcomes of the Prime Minister's review of the progress of FRA during the 'Pro-Active Governance and Timely Implementation' (PRAGATI) meeting on the 22nd of April 2015, during which state governments were instructed to take up implementation of the FRA on a 'campaign mode' and in a 'time-bound' manner. Several circulars have been issued by MoTA throughout the year to guide the process of implementation of the Act.

However, along with these, several policies, notifications and legislations have also been passed by various ministries that could have an adverse impact on the implementation of FRA. All these policy level changes have been described briefly below.

1. Letters, circulars, guidelines, orders and memorandums having an impact on FRA

1.1. Issued by MoTA

Date	Subject	Addressed to	Contents
2015			
13 th February	Clarification on interrelation between FRA and PESA on issues relating to Minor Forest Produce (MFP).	Secretary to the Governor of Maharashtra	The FRA and PESA are supplementary to each other, since power of ownership over NTFP is given to gram sabha in both acts. The FRA also allows for individual rights over MFP to be nestled within the rights of the gram sabhas.
10 th April	Letter on issues related to non-implementation of the FRA	Chief Secretaries of all states	State governments should take action on issues such as non-recognition of CFR rights, rejection of claims, record of rights not being updated, meetings of State Level Monitoring Committees (SLMCs) and submissions of reports of implementation, violation of FRA in cases of relocation from protected areas, continued state monopoly on Minor Forest Produce (MFP) etc.
16 th April	Office Memorandum on Maharashtra Village Forest Rules(MVFRs)	Secretary, Department of Legal Affairs	The MVFRs, 2014 are in direct conflict with the FRA as well as the Panchayats (Extension to Scheduled Areas) Act, 1996 and if implemented will relegate the powers of gram sabhas to subordinate positions and lead to conflicts between JFM committees under the rules and CFR conservation and management committees under the FRA.

Date	Subject	Addressed to	Contents
23rd April	Guidelines under Sec 12 of FRA for management of CFRs	Chief Secretaries of all states	Gram sabhas along with the Rule 4(1)(e) committee to be the authority to conserve and manage CFRs, modify working plans or management plans or micro plans of the forest department, routing agency for funds coming from tribal sub-plan, MGNREGA, forestry and CAMPA. Forest land claimed as CFR to be a new category of land and to be recorded as such in record of rights.
23rd April	Clarification on recognition and vesting of habitat rights of Particularly Vulnerable Tribal Groups (PVTGs)	Chief Secretaries of all states	'Habitat' translated as 'awaas' in the Hindi version of the Act does not mean housing facilities under Indira Awaas Yojna but rights as defined under Sec 2(h) and 3(1)(e) of the FRA. FRCs are mandated under Rule 12 (1) (d) to ensure that claims received from members of such communities are verified in the presence of the representative of the community. DLCs are mandated under Rule 8 and Rule 12(b)(1) to ascertain that claims are received from all PVTGs and that their rights are ascertained in consultation with their traditional institutions.
28th April	Letter on training and use of technology for the implementation of the FRA	Chief Secretaries of all states and union territories	State governments should prepare a geo-referenced data base in collaboration with other sources of information within a year, as evidence to be used for filing claims under Rule 13, so that wrongful rejection of claims is ruled out. State governments should prioritize training of all officials, ward members, DLCs for implementation of FRA.
10th June	Letter identifying states lagging behind in the implementation of FRA.	Chief Secretaries of West Bengal, Uttarakhand, Kerala, Karnataka, Jharkhand, Himachal Pradesh, Bihar, Telangana, Uttar Pradesh	Outlining a time-bound action plan for implementation of FRA in these states.
27th July	Guideline for use of geo-referencing for assessing potential areas and rejected claims under FRA	Chief Secretaries of all state governments	Stressing on use of technology, in particular, geo-referencing, for assessment of potential areas and re-examination of rejected claims under the FRA.
10th and 12th August	Direction issued to Chhattisgarh and Jharkhand in light of the letter issued by Tribal Development Department of Chhattisgarh on 27th July, asking all DCs to ensure that gram sabhas on the 15th of August 2015 give in writing that the final disposal of individual/community forest rights claims have been carried out in their villages.	Additional Chief Secretary, Government of Chhattisgarh and Jharkhand and Principal Secretaries/ Secretaries of Tribal Welfare Departments of all states	Emphasis on implementation of the FRA in a time bound and pro-active manner should not be interpreted to mean bypassing the provisions and required processes of the FRA and its rules.
20th August	Letter asking Government of Odisha to withdraw the decisions passed by the State Level Monitoring Committee (SLMC) on giving out titles to VSS, and to co-opt the Superintendent of Police and the Sub-divisional police officers as members of the District Level Committees and Sub-Divisional Level Committees respectively.	Chief Secretary, Government of Odisha	Under Rule 8(i) of the FRA, titles can be conferred to the gram sabha and not to the VSS. The FRA Amendment Rules, 2012 have clearly laid out the composition of members of the SDLC, DLC and the SLMCs, hence co-option of additional members into these committees would make the processes of determination of rights vulnerable.

Date	Subject	Addressed to	Contents
22nd September	Letter reiterating the need for the recognition of CFR rights across the country in 'campaign mode'.	Chief Secretaries of all states and union territories	DLCs should be involved in assessment of 'potential' CFR areas according to the 2009 State of Forest Report, the 2009 census report of the Forest Survey of India and the Census reports on 2001 and 2011.
8th October	Office memorandum clarifying about competent authorities to implement the FRA in the Gorkhaland Territorial Administration (GTA) area of Darjeeling	Chief Secretaries of West Bengal and Sikkim	'Mouza' defined in Sec 2(13) of the West Bengal Panchayat Act, 1973 can be adopted as the gram sabha under the FRA; and elected representatives of the GTA can be substituted for block and district panchayat officials for the formation of the SDLCs and DLC.
27th November	Office memorandum on the implementation of the Maharashtra Village Forest Rules, 2014	Chief Conservator of Forests, Maharashtra and the Ministry of Environment Forest and Climate Change	
8th December	Office memorandum stating that it has no objection to the Maharashtra Village Forest Rules, 2014	To the Chief Secretary of Maharashtra	MoTA reiterated that it has no objections to the rules provided that land over which titles have been granted, rights of those whose claims are pending and those who are likely to file claims in the future will be protected under FRA; and MoTA and MoEFCC should initiate codification of rules for co-management of CFRs.
14th December	Letter with clarifications on Sec 3(2) of the FRA and recognition of pre-recorded rights in the context of Himachal Pradesh	Additional Commissioner, Tribal Development Department of Himachal Pradesh	To carry out activities mentioned in Sec 3(2) of the Act, procedures under the Forest (Conservation) Act, 1980 need not be followed, since the FRA lays out detailed procedures for the same; that diversion for activities mentioned in Sec 3(2) of the Act can be carried out in over any forest land where forest dwelling STs and OTFDs are present and in parallel to or independently of the processes of vesting of rights under Sec 3(1); FRA provides for the already existing rights. Under Sec 3(1)(j), the FRA provides for the recognition and recording of rights/concessions recognised under state laws or customary laws. Over and above these, the FRA also provides for ownership of MFP, and the right to protect, manage, conserve or regenerate traditional community forest resources. These rights need to be recorded/modified in the record of rights.
2016			
23rd February	Direction asking to ascertain whether the Ama Jungle Yojna is in conflict with the provisions of the FRA	Commissioner cum Secretary ; Government of Odisha	Reiterating that as per FRA Rules 4(1) (e), the Gram Sabha is to constitute a Committee for protection and management of CFR and thus, the gram sabha is central to taking any decisions on Community Forest Resources and where FRA is to be implemented.
For the circulars see: http://fra.org.in/			

1.2. Issued by MoTA and MoEFCC on Forest Diversion and FRA

Over the years, there have been repeated attempts by the MoEFCC to dilute the provisions of the August 2009 circular. From time to time, MoTA has through circulars emphasized that exemptions cannot be made to the provisions of the FRA while following procedure for obtaining forest clearance⁹. However, a recent circular issued by MoTA, has contradicted the MoTA's own long term position.

On the 24th February 2015, MoTA has issued a circular stating that for forest clearance in cases involving diversion of forest land for strategic defense project in the north eastern states, a certificate from the District Collector, certifying that, 'no further procedure with regard to the FRA is required', can be given as documentary evidence for FRA compliance; since most forest land in north eastern states is already under the control and ownership of communities and in areas declared as Reserved Forests, and rights have already been settled.



Open Cast mine in Angul, Odisha;

Photo: Meenal Tatpati

This justification by MoTA is in violation of the FRA because the FRA is a central statute providing for the recognition and vesting of forest rights for all forest dwelling communities, especially, with regards to developmental projects. The MoTA circular takes away the right of the community members in the north east to 'prior informed consent' over any developmental activity taking place on their customary forest land.

⁹ For a list and brief report of previous circulars See:
<http://www.kalpavriksh.org/images/LawsNPolicies/CITIZENSREPORT2015.pdf>

1.3. Issued by other Ministries and Departments

In a circular¹⁰ brought out on the 28th of March, 2017 the National Tiger Conservation Authority (NTCA), has ordered the directors of all tiger reserves to refrain from recognizing the rights of forest dwellers within Critical Tiger Habitats (under Sec 38 V(4)(1) of the Wildlife (Protection) Act, 1972 as amended in 2006). The circular reasons that since there have been no guidelines laid down for notification of Critical Wildlife Habitats (CWH)¹¹, rights should not be conferred in Critical Tiger Habitats.

The order has been met with widespread criticism from tribal groups¹² since the circular not only violates the FRA but also the WLPA¹³.

2. Developments impacting the implementation of the Act

2.1. Afforestation related policies

i) In a news report that appeared on the 13th of September 2015, it came to light that the Ministry of Environment Forest and Climate Change had prepared a **draft guideline for the participation of the private Sector in afforestation of degraded forests**¹⁴. The draft guidelines envisaged the opening up about 40% of the 69 million ha of forest cover in the country, classified as 'degraded forests' to private industries, through joint agreements between the private corporations, states and forest departments. The guidelines reasoned that it is imperative to involve the private sector in improving and restoring private landscapes and meet the vital requirement of various forest products for industries. The draft guidelines aim to provide 85-90% of the leased forests to be used by private industry for plantations. Some of the features of these guidelines are:

- The guidelines suggest that there is an urgent need to invite private corporations to invest in afforesting degraded forest land, primarily for improving the quality of 'degraded forests', while suggesting that the fuel wood and grazing requirements, among other things, of the nearly 300 million forest dependent people (including scheduled tribes and other traditional forest dwellers) are responsible for the 'unsustainable exploitation' of natural forests leading to their degradation. Thus, while ignoring the large amount of forest land that has been diverted for non-forest use (including mining, infrastructure projects, building roads etc) the draft guidelines place the blame solely on the forest dwelling communities. The FRA has however recognized that forest dwelling communities are integral to the survival and sustainability of forest ecosystems through a complex associations they have historically forged with forests (Preamble of the FRA, Sec 3(1)(i) and Sec 5 of the FRA). Therefore, the premise of the draft guideline itself is in complete violation of the FRA.

¹⁰ Order can be assessed here: http://fra.org.in/ASP_OrderCiculars_UploadFile/%7B87628850-a404-4179-b843-aba8f1b37c2e%7D_Conferring%20rights%20under%20FRA%20in%20critical%20tiger%20habitats_28th%20Mar17.pdf

¹¹ The Critical Wildlife Habitat is defined in Sec 2(b) of the FRA as '...such areas of National Parks and Sanctuaries where it has been specifically and clearly established, case by case, on the basis of scientific and objective criteria, that such areas are required to be kept as inviolate for the purposes of wildlife conservation as may be determined and notified by the central government in the Ministry of Environment and Forests after open process of consultation by an Expert Committee, which includes experts from the locality appointed by that government wherein a representative of the Ministry of Tribal Affairs shall also be included, in determining such areas...'

³ See: <http://www.thehindu.com/todays-paper/tp-national/tp-tamilnadu/tribal-welfare-organisations-incensed-by-ntca-directive-on-fra-in-critical-tiger-habitats/article18150665.ece>; http://www.rediff.com/news/interview/are-advasis-being-driven-out-to-save-the-tiger/20170421.htm?sc_cid=fbshare; <https://forestrightsact.com/statements/>. See CFR-LA's petition against this order here: <http://www.kalpavriksh.org/images/LawsNPolicies/PetitionagainstNTCAOrder.pdf>

³ According to the WLPA, the CTH is to be declared only when a *detailed, scientific and objective study* is carried out to ensure that the area to be declared CTHs need to be kept inviolate. This is to be done *without affecting the rights of the Scheduled Tribes and Other forest dwellers*.

⁴ See: <http://www.hindustantimes.com/india/govt-to-allow-pvt-sector-to-manage-40-of-forests/story-yOIG4T04kA2kvykxXNTEBK.html>

- Private corporations can engage in 'competitive bidding' for assignment of forest land on lease after which of joint agreements/contracts are signed with states and the state forest departments. The FRA clearly states that forest rights are conferred free of all encumbrances and procedural requirements (Sec 4(7)). However, given that forest rights of most villages across the country have not yet been recognised and vested under the FRA, the guidelines could potentially parcel away forests to private corporations without CFRs rights under the FRA being recognized over a vast area of forests in the country.
- 85-90% of the area leased to the private corporations will be used by the corporations, while 10-15% will be developed for the use of local communities. Further, while the communities will have full access to grass and fodder on 100% of the area, their entitlement to other Non Timber Forest Produce (NTFP, also Minor Forest Produce or MFP) shall be confined to the 10-15% area earmarked for them. Under the FRA, only the gram sabhas of forest dwelling communities are the authority to initiate processes of determining the nature and extent of rights within its jurisdiction (Sec 6 (1)). Thus, their access being restricted to 85-90% of forest land through an agreement between a private agency, the state forest department and the MoEFCC amounts to curtailing and violating the FRA. Further, both the PESA and FRA confer 'ownership of NTFP' to gram sabhas of forest dwelling communities. The FRA has envisaged this right over all land classified as forest land and also expands the right to collect, use, and dispose MFP which the community has traditionally collected within or outside its village boundaries (Sec 3(1)(c)).
- The guidelines further state that the agreement reached on the rules of access and benefit sharing between the private agency and the state forest department will be included in the working plans of the forest areas. However, the FRA already provides for the gram sabhas to constitute committees for the protection of biodiversity which will be responsible for preparing conservation and management plans for their community forests, and the gram sabhas are responsible for integrating the microplans or working plans or management plans to conform to the conservation and management plan of the forest departments (Rule 4(1)(e)). The draft guidelines however, restrict the right of the gram sabha to protect and manage its CFR while handing the power back to the forest department, in complete violation of the FRA.

(ii) The Compensatory Afforestation Fund Act, 2016 was notified in August 2016. The Act provides for mechanisms and institutions to be established for the disbursement of funds that have accumulated from funds for compensatory afforestation, additional compensatory afforestation, penal compensatory afforestation, net present value and all other amounts, recovered from user agencies under the Forest (Conservation) Act, 1980⁵.

⁵ Under the Forest (Conservation) Act, 1980 compensatory afforestation needs to be carried out over equivalent area of non-forestland, which is identified and transferred to ownership of the State Forest Department and declared as Protected Forests. Where non-forest land is not available, compensatory afforestation may be carried out over degraded forest twice in extent to the area diverted or to twice the difference between forestland being diverted and available non-forestland. The Supreme Court of India in its order in T.N Godavarman Thirumulpad vs. Union of India and Others [Writ Petition (Civil) No.202 of 1995] had observed that a Compensatory Afforestation Fund be created in which all funds from user agencies seeking diversion of forestland for non-forest purposes would be deposited; and Compensatory Afforestation Management and Planning Authority (CAMPA) be set up to manage these funds. In May 2006, the SC noted that CAMPA had still not become operational and ordered the constitution of an Ad hoc body till CAMPA became operational. This ad-hoc body was constituted at the national level. The CAF Bill 2015 was introduced with the objective of using the funds accumulated over the years in Ad hoc CAMPA. (See: A compromised compensation: The CAF bill 2015 and PSC report: Available at: <http://cseindia.org/userfiles/campa-factsheet-final-2015.pdf>)

The Act makes provisions for the funds to be utilized for undertaking artificial regeneration (plantations), assisted natural regeneration, protection of forests, forest related infrastructure development, Green India Programme, wildlife protection and other related activities. It provides for the utilization of 90 per cent of the funds by respective states/UTs (through a Governing Body, Steering Committee and Executive Committee), with the remaining 10 per cent is to be deposited to the National Fund where the Centre will have full control over the amount (through a Governing Body assisted by an Executive Committee, Monitoring Group and administrative support mechanism). Compensatory afforestation as envisaged in the FCA, actually means creating artificial plantations on a piece of land so that the loss of original forest land which has been diverted for non-forest purposes (including building of infrastructure, mining, construction of roads etc) is 'compensated'. Fundamentally, it does not encourage control/reduction over the actual area of forest land diverted for such activities. Besides, reports show that the CAMPA regime before the passing of the Act had many shortcomings including, abysmally low rates of actual afforestation efforts on the ground, while the funds received were invested in a non-transparent and arbitrary manner⁶. Besides, in many cases of forest diversion as well as identification and takeover of land for compensatory afforestation, the recognition and vesting of rights under the Forest Rights Act has been ignored, and neither has the consent of communities dependent on these lands been sought, as mandated by the August 2009 circular of the Ministry of Environment Forests and Climate Change. Specifically the Act has some of the following issues that have not been addressed:

- This Act does not allow for the consent of gram sabhas of forest dwelling communities to be taken into account where the State seeks to implement compensatory afforestation projects on forest land.
- The structure of funding and implementation under the Act is entirely opposed to the structure of forest governance established by the FRA. Under the act the forest bureaucracy dominates the National and State level CAMPA Authorities with no representation to tribals and forest dwellers.
- Due to the very slow implementation of the FRA in the country, a majority of gram sabhas have either not had an opportunity to file claims or their claims are pending over which no decisions have been taken. Since the Act does not seek consent of gram sabhas over compensatory afforestation measures, it can further deprive the forest dwellers and tribals of their livelihoods.

⁶Compensatory Afforestation in India (21 of 2013): Comptroller and Auditor General (CAG); Government of India. Available at: http://www.cag.gov.in/sites/default/files/audit_report_files/Union_Compliance_Civil_Compensatory_Afforestation_21_2013.pdf

2.2. Draft Wildlife Action Plan

In February 2016, the MoEFCC called for comments on the Draft Wildlife Action Plan for 2017 to 2031¹⁷. The plans are adopted by the Indian Board for Wildlife. The draft plan acknowledges that people's support for conservation is very important, while recognizing that exclusionary conservation policies have led to tenurial insecurity amongst communities dependent on resources. However, instead of recognizing the role that laws like FRA and PESA can play in integrating these concerns, it supports Forest Department dominated initiatives like Eco-Development Committees and Joint Forest Management Committees (JFMCs) to take on the role of conservation. While the draft plan talks of creating more conservation reserves and community reserves under the WLPA which have lesser impacts on community rights than wildlife sanctuaries and national parks, it fails to mention that the process of recognition and vesting of rights needs to be carried out under the FRA, now that the law supersedes the WLPA. While it highlights that greater participation of people is needed in conservation, it does not mention the CFR provisions of the FRA, which if implemented could help in people based conservation¹⁸. The draft closed for comments in February 2016.

2.3. Review of the Indian Forest Act, 1927

On the 23rd of September 2016, a ten member committee has been constituted by the Ministry of Environment, Forest and Climate Change to look into the amendment of the Indian Forest Act, 1927 and various other aspects regarding the amendment.

2.4. Review of the National Forest Policy

The Ministry of Environment, Forest and Climate Change held workshops and consultations in different parts of India to review and revise the National Forest Policy of 1988. The Centre for Policy Change under the Indian Institute of Forest Management (IIFM), Bhopal was selected by the Ministry of Environment, Forest and Climate Change under the 'Strengthening the Natural Resource Management Project of the United Nations Development Programme (UNDP) for the review¹⁹. Two national workshops and six regional workshops were held between August 2015 and March 2016, to consult with various stakeholders to review the policy²⁰. While a number of retired forest officials, researchers, industry representatives and some Non Governmental Organizations participated in these consultations, there was absence of local community representatives, nor were separate consultations organized to seek inputs from concerned local communities.

¹⁷ http://envfor.nic.in/sites/default/files/NWAP%20-COMMENTS_0.pdf

¹⁸ Pathak Broome, N. (2016, October 1). Draft Wildlife Action Plan: National Laws and International Obligations. *Economic and Political Weekly*, LI (40). Pp-16-20.

¹⁹ <http://www.freepressjournal.in/needtoreviewforestpolicyinlightofnewdevelopments/>

²⁰ The reports of these consultations are available at <http://iifm.ac.in/node/642>

2.5. CFR management and governance guidelines

A document titled, 'National Forest Policy 2016: Empowered Communities, Healthy Ecosystems, Happy Nation'²¹ was put out on the MoEFCC website for comments but was taken down by the MoEFCC shortly, stating that a study of the IIFM was inadvertently put up on the MoEFCC website as the draft policy²². The final draft of the policy has not been circulated yet.

In an office memorandum issued by Ministry of Tribal Affairs to the MoEFCC and Chief Conservator of Forests of Maharashtra (GoM) on the 27th of November 2017²³, MoTA suggested that a joint process between the MoEF and MoTA should be started to develop model rules to facilitate better functioning of village level CFR conservation and management committees. The memorandum was actually regarding the implementation of the Maharashtra Village Forest Rules, 2014 (MVFR). Subsequently, both MoTA and MoEFCC have come up with various drafts of CFR management and governance guidelines. However, none have been made public yet.

It is important to note here that MoTA has already come up with a brief guideline regarding CFR management under Sec 12 of the FRA on the 23rd of April, 2015 (See: Letters, circulars, guidelines, orders and memorandums issued by MoTA, above).

3. New laws bearing influence on CFRs

3.1. The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 2016

The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 2016 was notified on the 21st of December 2015. It specifies that 'wrongful dispossession, of a member of scheduled caste or scheduled tribe, of his land or premises, or interfering with his enjoyment of rights including forest rights (under Sec 3(1) of the FRA) over land, or premises or water or irrigation facilities and destruction of crops or produce thereof" shall be punishable with jail term from 6 months up to 5 years along with a fine.

3.2. The Indian Forests (Maharashtra) (Regulation of assignment, management and cancellation of Village Forest) Amendment Rules, 2016

The Indian Forests (Maharashtra) (Regulation of assignment, management and cancellation of Village Forest) Amendment Rules, 2016 have been notified by the government of Maharashtra on the 18th of June 2016. These rules have two major amendments including:

- The rules are not applicable to Scheduled Areas as referred to in Article 244 of the Indian constitution to which the provisions of the Panchayats (Extension to Scheduled Areas) Act, 1996 are applicable.
- The rules shall not abridge the forest rights already recognized and vested and rights claimed that may eventually be recognised and vested henceforth under the provisions of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 and Rules.

²¹<http://www.moef.nic.in/sites/default/files/Draft%20National%20Forest%20Policy%2C%202016.pdf>

²²http://pib.nic.in/newsite/PrintRelease.aspx?relid=146495&utm_source=twitterfeed&utm_medium=twitter

²³This memorandum was obtained through an RTI filed by Mahesh Raut of Bharat Jan Andolan. It has not been made available on public domain by MoTA.

See:[http://fra.org.in/ASP_OrderCirculars_UploadFile/%7B34962757-68d0-46a1-88dc-3b51b3b9b18e%7D_Memorandum%20to%20Maharashtra%20Government%20regarding%20VFR_27th%20Nov15\).pdf](http://fra.org.in/ASP_OrderCirculars_UploadFile/%7B34962757-68d0-46a1-88dc-3b51b3b9b18e%7D_Memorandum%20to%20Maharashtra%20Government%20regarding%20VFR_27th%20Nov15).pdf)

3.3. The Madhya Pradesh Village Forest Rules, 2015

The Madhya Pradesh Village Forest Rules, 2015 were notified by the Madhya Pradesh Forest Department. Under these rules, degraded forests will be notified as 'Village Forests'. In all villages where the Joint Forest Management Committee (JFMC) has been constituted, the gram van samities (village JFMCs) will be accorded legal rights over minor forest produce. Some of the provisions are:

- The Gram Van Samiti constituted by the gram sabha (as defined in the Madhya Pradesh Panchayat Raj avam Gram Swaraj Adhiniyam 1993) shall be responsible for the management, protection and development of the village forest.
- Residents of the village shall be permitted to obtain *nistar* and *paidawar* requirements, either free or through payment to the gram van samiti. The DFO shall in consultation with the gram sabha specify the area from which Nistar can be obtained each year.
- Each year, between 1st June and 15th October, removal of timber and fuel wood will remain be closed, and between 16th June to 15th August, fishing in water bodies of the village forest will be closed.
- The gram van samiti in consultation with the RFO may close the collection of certain forest produce in the village forest.

3.4. The Mines and Minerals (Development and Regulation) Amendment Act, 2015

*The Mines and Minerals (Development and Regulation) Amendment Act, 2015*²⁴ was enacted in March 2015 to replace the Act of 1957. The Act is meant to regulate mining and lay down procedures to obtain and grant mining leases. Some of the provisions of the new act include:

- A new category of licenses called the 'prospecting-cum-mining' lease has been introduced by the amendment act. It is a 2 stage concession which will be granted for undertaking prospecting operations followed by mining operations.
- The maximum area that can be granted per mining lease has been set up to 10 sq km. However, the central government can increase this area for mining operations using its discretionary powers.
- All mining leases will now be provided for 50 years instead of 30 years, mandated by the previous act. All mining leases given before the amendment act was enacted have been provided an extension lease of 50 years. On expiry, the leases have to be auctioned.
- The Act has mandated setting up of two institutions: The District Mineral Foundation (DMF) and the National Mineral Exploration Trust (NMET). The DMF is a trust to be set up by the notification of state governments in mining affected

²⁴<http://www.indiacode.nic.in/acts-in-pdf/2015/201510.pdf>

districts with an objective to work for the interest and benefit of persons and areas affected by mining. Every mining lease holder or a prospecting license-cum-mining lease holder has to in addition to the royalty, pay 10% of the royalty for licences and leases granted on or after 12th January 2015, and 30% of royalty for licences and leases granted before 12th January 2015 to the District Mineral Foundation. The NMET is to be set up by notification of the central government for the regional and detailed exploration of minerals. Lease holder are expected to pay 2% of the royalty to the trust.

While the Act introduces a type of 'benefit-sharing' kind of opportunity through the setting up of the District Mineral Foundation, the actual granting of leases continues to be centralized and top-down, with no real measure of ground-up decision making. The granting of and expansion of mining leases lies entirely in the hands of the government, with no room for discussion with the community to be affected by such mining operations.

Secondly, the new prospecting cum mining lease could pose as a serious impediment to the FRA on forest land. As mandated by the MoEFCC in its letter dated 4th July 2014²⁵, proposals seeking prior approval under the Forest (Conservation) Act, 1980 for prospecting of minerals are exempted from the requirement of submitting documentary evidence to show that processes of FRA are being followed on the ground, as per the August 2009 circular of the Ministry of Environment and Forests²⁶. It is unclear if the processes under the FCA would then apply for the 'mining' component of the lease. If not, expansion of the area for mining could very well commence without any attention to fulfilling the processes under FRA, thereby displacing communities.

On 16th September 2015, the Ministry of Mines directed Chief Secretaries of all states to set up a District Mineral Foundation (DMF)²⁷ for districts affected by mining. The Ministry of Mines has announced the Pradhan Mantri KhanijKshetra Kalyan Yojna (Prime Minister's Mineral Area Welfare Scheme) to be implemented by these DMFs in order to implement various developmental and welfare projects and to minimize the adverse impacts of mining on the people and environments in mining affected regions²⁸. However, as the responsibility of creating DMFs and notifying rules for their operationalisation has been entrusted with the state governments, it remains to be seen how these bodies will work and how rights of forest dwellers under these acts will be upheld.

²⁵ Letter No. F.No. 11-96/2009-FC: Guidelines for diversion of forest land for non-forest purposes under the Forest (Conservation) Act, 1980-Special provisions for prospecting of minerals in forest areas-reg; dated 4th July 2014, sent by Director (Forest Conservation Division), Ministry of Environment, Forests and Climate Change to the Principal Secretaries of Forests, all states and union territories
²⁶ http://envfor.nic.in/mef/Forest_Advisory.pdf

²⁷ Every mining lease holder or a prospecting license-cum-mining lease holder has to in addition to the royalty pay 10% of the royalty for licences and leases granted on or after 12th January 2015, and 30% of royalty for licences and leases granted before 12th January 2015 to the District Mineral Foundation. The royalty is decided according to the Second Schedule of the Mines and Minerals (Development and Regulation) Act, 1957. (See:
<http://mines.nic.in/writereaddata/UploadFile/DMF%20rates%20notification.pdf>)

²⁸ <http://mines.nic.in/writereaddata/UploadFile/Order%20-%20PMKKKY.pdf>

4. Judgements on FRA

4.1. In the Supreme Court

(i) Immediately after the FRA was enacted, many writ petitions were filed against the Act in the High Courts of Andhra Pradesh, Odisha, Tamil Nadu, Maharashtra and Madhya Pradesh (mostly by retired forest officials) and in the Supreme Court (by a group of prominent wildlife NGOs). These petitions apart from stating that the FRA was unconstitutional, that there were adequate provisions to protect local communities in the Indian (Forest) Act, 1927 as well as the Wildlife (Protection) Act, 1972, and that the Act was passed in a hurry without adequate attention being given to the impact recognition of rights would have on the wildlife, also stated that the recognition of rights of forest dwellers would increase the encroachment on forest land due to false claims. While most petitions have been dismissed by the High Courts, the Supreme Court has transferred the remaining cases to itself and is currently hearing the cases together. Most recently, the Supreme Court in February 2016 vacated the interim order of the Madras High Court dated 30th April 2008 in which it had issued a stay on the distribution of titles under the Forest Rights Act in the state of Tamil Nadu, also stating that no title could be distributed without the permission of the high court. The apex court passed the order while hearing the writ petition and special leave petition filed by the Ministry of Tribal Affairs against the order of the Madras High Court²⁹.

(ii) The Supreme Court in May 2016 scrapped the petition of the Odisha Mining Corporation (OMC) to consider Gram Sabhas being held again to decide on bauxite mining on Niyamgiri hills. The court directed the OMC to appropriate forums against the decision of the Gram Sabhas³⁰. Earlier, the state government of Odisha had written to the Ministry of Environment, Forests and Climate Change (MoEFCC) to reintroduce the proposal for bauxite mining of the Niyamgiri hills in Kalahandi and Rayagada districts, proposing to rehold gram sabhas. The state government has stated that since the previous proposal was a joint venture between Vedanta and OMC (which was rejected by the MoEFCC following the Supreme Court order in April 2013 following the rejection of the proposal by 12 gram sabhas)³¹; it will seek to re-launch the proposal only through Orissa Mining Corporation (OMC) since the gram sabhas had rejected the mining by the joint venture between OMC and Vedanta Industries Limited³². The Odisha Mining Corporation subsequently filed a petition in the Supreme Court.

The DongriaKond tribals in the hills subsequent to the order reiterated the demand that the hills be declared as a 'no-mining zone', to safeguard them against future mining attempts³³.

²⁹ See: <http://pib.nic.in/newsite/PrintRelease.aspx?relid=135998>

³⁰ http://www.business-standard.com/article/current-affairs/supreme-court-quashes-odisha-s-plea-on-niyamgiri-116050601256_1.html

³¹ See: <http://www.downtoearth.org.in/coverage/niyamgiri-answers-41914> and http://www.businessstandard.com/article/printerfriendlyversion?article_id=115101500923_1

³² http://www.businessstandard.com/article/printerfriendlyversion?article_id=115101500923_1

³³ <http://www.thehindu.com/news/national/other-states/declare-niyamgiri-nominating-zone/article8694785.ece>

(iii) The Supreme Court is also hearing an interim application (IA 5) filed in 2014 under a writ petition (109/2008 (Wildlife First and Ors. vs. Union of India and Ors.)) by some Wildlife NGOs (Wildlife Trust, Nature Conservation Society and The Tiger Research and Conservation Trust) against the FRA. The writ petition was filed in 2008, primarily stating that the FRA was unconstitutional and beyond the competence of the parliament. Some of the prayers in the interim application filed in 2014 include³⁴:

- Setting up of an independent committee or a Comptroller and Auditor General committee to inquire into the implementation of the Act, especially with regard to the extent of forest land illegally occupied by encroachers and the extent to which it has been able to be recovered by the forest department.
- Allowing for the voluntary resettlement of people from national parks and sanctuaries without insistence on settling rights under the FRA.
- Directing state governments to use satellite imagery for verification of claims under the FRA.
- Staying the commercial extraction of all NTFP from national parks and sanctuaries.

In March 2016, a letter³⁵ was sent to the Principle Chief Conservators of Forests (PCCF) of several states, by the Special Secretary to the Government of India, in response to the hearing in this case that took place on the 15th of February, 2016 in the Supreme Court (For details of the case see: Petitions against the FRA in the Supreme Court above). The court had given additional time to the states to furnish details of actions taken by the respective forest departments to evict illegal encroachers on forest land. The circular asked the states to furnish responses on actions taken for eviction of encroachers. In a subsequent hearing on 31st March 2017, the Supreme Court has declined to hold that the FRA was beyond the legislative competence of the parliament. The court has asked the petitioners to continue with the other arguments³⁶.

4.2. In the High Courts

(i) While hearing an appeal against encroachment on forest land in Himachal Pradesh, the High Court (HC) on the 6th of April 2015, ruled that all 'encroachments' on government forest land should be removed within the next six months (CWPIIL No. 17 of 2014, dated 6th April 2015). The judgement was passed on the premise that 'pristine forests' were being degraded due to unchecked encroachments. Following this judgement, the forest department started uprooting apple trees, cutting off electricity and water connections and issuing eviction notices to several thousand farmers cultivating forest land in Upper Simla district, Gohar, Kangra district and Kinnaur districts³⁷.

³⁴ <https://forestrightsact.com/2014/04/06/dont-facilitate-corporate-loot-open-letter-to-anti-fra-petitioners/>

³⁵ [http://fra.org.in/ASP_OrderCiculars_UploadFile/%7B66450b3a-23c8-4e37-a29e-64f50d63feb1%7D.FD%20letter_SC%20Order%20\(1\)%20\(1\).pdf](http://fra.org.in/ASP_OrderCiculars_UploadFile/%7B66450b3a-23c8-4e37-a29e-64f50d63feb1%7D.FD%20letter_SC%20Order%20(1)%20(1).pdf)

³⁶ <https://forestrightsact.com/2017/03/31/281/>

³⁷ See: <http://indianexpress.com/article/explained/why-himachals-forest-officials-were-hacking-at-fruit-laden-apple-trees/> and http://zeenews.india.com/news/eco-news/himachal-hc-refuses-to-modify-forest-encroachment-order_1637369.html

4.3. *In the National Green Tribunal*

(ii) While hearing the Writ Petition (PIL) No. 54 of 2016 In the matter of Protection of Forest, Environment, Ecology and wildlife etc. from forest fires, the High Court of Nainital on the 19th of December 2016, in its judgement mandated that Van Gujjars who have encroached on forest land be evicted from the land within a year's time. Previously in February 2017, while hearing a PIL filed by the Van Gujjar community of Rajaji National Park who were issued eviction notices by the park authorities, the court had specifically stated that Van Gujjar evictions cannot take place without recognition and vesting of rights under the FRA³⁸.

On the 4th of May 2016, the National Green Tribunal while hearing an appeal filed by the Paryavaran Sanrakshan Sangharsh Samiti, Lippa Village, Kinnaur District of Himachal Pradesh against the diversion of forest land for the Integrated Kashang Hydroelectric Project gave its final judgement. The appeal challenged the final forest clearance granted to the project in March 2011 on the grounds that it violated the provisions of the FRA and the August 2009 circular by not seeking the consent of affected gram sabhas. The judgement directed the Ministry of Environment, Forest and Climate Change and the government of Himachal Pradesh to ensure that:

- the entire proposal for forest clearance is placed before the gram sabhas of Lippa, Rarang, Pangji and Telangi as prescribed in the FRA and as per the conditions of the forest clearance
- the gram sabha considers all individual and community claims including religious and cultural claims under the FRA and the impact of the project on places of worship, streams caused by silt load, livelihoods caused by diversion of forest land, landslides and loss of water sources
- the gram sabha takes up the mitigation measure with the project proponent.

The state power corporation filed an appeal before the Supreme Court challenging this order, contending the gram sabha is a group of unskilled people who are incapable of taking a technical decision. Eventually, the Indian National Congress lead state government withdrew this petition.

³⁸<http://www.radicalsoci alist.in/articles/environment/388-the-van-gujjar-struggle-for-traditional-rights-women-in-the-leadership>

III. Implementation Update

1. MoTA status report analysis

The Ministry of Tribal Affairs (MoTA), (nodal agency responsible for the implementation of the FRA), has been publishing status reports on the claims filed and distributed under the Act since May 2008. These reports are based on reporting by state governments. It has been observed that the data presented in these reports does not present any analysis of trends, progress and challenges in claiming and distribution of titles over CFRs. In most states, figures for claims and titles for public utilities under Section 3(2) of the Act are confused with CFRs under Sec 3 (1) and reported as 'community rights' alongside CFRs. The reports do not give disaggregated figures for rights over *nistar*, rights over MFP collection, and the right to conserve and manage the Community Forest Resource (CFR), etc. This is despite the fact that on 3rd December 2012, in a National Consultation organised by MoTA, with relevant officials from all state governments, the reporting format for states was revised to provide detailed and disaggregated information with respect to CFRs.

In this report, we have analysed the reports from May 2015-January 2017 for the status of community rights claims and titles. As can be seen from Annexure I below, there are many anomalies in the report.

In the number of claims reported from different states, in Andhra Pradesh, the number of claims filed has reduced from 10, 959 to 4493 in June 2016, and then increased again to 4711 in December 2016. The number of titles distributed however has reduced from 2107 to 1319 in June 16 and then increased to 1415 in December 2016. There is a discrepancy of 9544 claims. There is no data to show if these claims have been rejected. Similar reports have come from Gujarat, Himachal Pradesh, Jharkhand, Madhya Pradesh, Telangana and Tripura.

For the extent of forest land over which titles have been distributed, it can be seen that in Goa, 3 'community' titles have been distributed over an area of just 4.35 acres! Odisha has reported a decrease in the total extent of forest land over which titles have been given. In October 2016, the extent of forest land has total area of forest land distributed decreased to 2,83,884 acres from 335599.07 acres; whereas the total number of titles given has actually increased from 5513 in October 2016 to 5891 in January 17!

Thus, the figures given show many discrepancies showing that states are not reporting the correct details of claims filed, titles received and extent of forest land over which titles have been distributed.

C.
**Major Issues
Emerging at
the National
Level**

Major Issues Emerging At The National Level

1. Evictions and loss of livelihoods of forest dwelling communities due to 'encroachment notices' being issued by the forest department

A spate of 'anti-encroachment' drives of the forest department began in different states of India in 2015 and continued through 2016 and 2017 as well. Forest dwellers in Himachal Pradesh, nomadic pastoralists in Jammu Kashmir, and particularly vulnerable tribal groups (PVTG) in Karnataka have been at the receiving end of the resurgence of this debate. The effects are widespread, ranging from eviction of forest dwellers, to severe damage to the vital livelihood practices of these communities, to willful non-recognition of rights. Sec 4(5) of the Act, states that *no member of the forest dwelling schedule tribe or other traditional forest dweller shall be evicted or removed from forest land under his occupation till the recognition and verification process is complete*. Thus, the process of recognition and verification laid out in the rules of the FRA is currently the only legal process to recognize the rights of the genuine rights holders, in letter and spirit.

Despite such clear procedures laid out in the law, following the Himachal Pradesh High Court judgement of 6th April 2015 (See: FRA in the High Courts above), the forest department started uprooting apple trees, cutting off electricity and water connections and issuing eviction notices to several thousand farmers cultivating forest land in Upper Simla district, Gohar, Kangra district and Kinnaur districts. Despite appeals against this order to the Chief Minister from various grass-root organizations like the Himalaya Niti Abhiyan, Him Lok Jagriti Manch, Renuka Dam Sangharsh Samiti and others, evictions continue.

In Jammu and Kashmir, the General Administration Department has ordered the constitution of a committee under the chairmanship of the Chief Conservator of Forests, Jammu to delineate forest land from other lands and to demarcate forest land in Sunjwan, Bathindi, Raika and Sidra areas of Jammu District. This was to be done in consonance with the Jammu and Kashmir Forest (Conservation) Act, 1997, within two months from April 2015 following a communication by the Forest Department. Subsequently, several settlements belonging to the Gujjar and Bakarwal nomadic tribal community have been destroyed and the families evicted from their traditional migratory routes³⁹. Owing to the special Constitutional status under Article 370 (providing for central laws to be applicable to the state only through their ratification in the state's assembly) of the state of Jammu Kashmir, the FRA has not yet been implemented in the state. The Gujjar-Bakarwal community has been demanding the extension of the FRA to Jammu and Kashmir, so that their cultural, traditional and forest rights could be recognized under the Act and rights pertaining to forest are secured.

³⁹ <http://www.greaterkashmir.com/news/kashmir/eviction-drive-row-meet-at-forest-ministers-house-bjp-ministers-extend-support/189292.html>



Farmers in a rally organised by Himalaya Niti Abhiyan in Rekongpeo, Himachal Pradesh;

Photo: Gaurav Madan

The Karnataka State forest department, acting on the decision of the state government to identify and remove any 'encroachment' on forest land, identified forest land under encroachment and has filed an affidavit before the High Court (HC) to take a decision on these cases⁴⁰. The forest department has submitted a time-line to the HC, giving details on the method of removing the encroachment and the time required for each case. The HC has allowed for all encroachments above 3 acres to be removed in the first phase following which 42 such cases of encroachment over 750 acres in Dakshina Kannada, Udupi and parts of Chikkamagaluru and Shivamogga districts have already been removed. While the forest department has said that people who have claimed land under the FRA will not be removed, it is not clear from the news report if the process of filing claims under the FRA has been initiated in these districts.

These updates emerging from the ground clearly reveal that forest rights have been severely violated and the FRA has been completely bypassed while taking over lands under these programs.

⁴⁰<http://economictimes.indiatimes.com/news/environment/florafauna/reclaimingencroachedforestlandin-karnataahasstartedpccf/articleshow/49694039.cms>

2. Afforestation or plantation programmes and resulting evictions

In Odisha, the state government is carrying out afforestation drives on forest land to be claimed, already claimed and even recognized under the FRA. These include teak plantations on shifting cultivation fields of the KutiaKondh, a Particularly Vulnerable Tribal Group (PVTG) community in Kandhamal district. The drive is being carried out in Rangapar, Pandamaska, Kusumunda, Madalkuna, Deogada, Guchuka, Tidipadar, Kadapana and Burlubaru villages in Belghar gram panchayat which fall under the Tumudibandh block, of Baliguda sub-division⁴¹. A recent news report pointed out that plantations were carried out on paddy and cotton land coming under unsurveyed villages of Turekela and Khaprakhhol Block of Bolangir District. In some of these cases, individual land pattas had already been granted to the land owners under the FRA. This was done with the help of Joint Forest Management Committees (JFMCs) of surrounding villages, thereby fuelling inter village conflicts⁴².

Under the flagship 'Haritha Haraam' programme inaugurated in Telangana, preparations are underway for the massive afforestation to be taken up⁴³. However, livelihoods of nearly 5000 farmers belonging to the Koya, Konda Reddy and Lambadi tribal farmers in Karepali, Yellundu, Tekulapalli, Bayyaram, Garla, Mulakalapalli, Dammamet, Aswaraopet, Chandragonda, Enkur, Julurpadu, Dummugudem, Konijerlamandals in the schedule five Khammam District have been affected⁴⁴. To prepare for the massive afforestation programme, the government had prioritized the joint survey of forest land by Forest Officials and Revenue officials. During the survey itself, the forest department began digging trenches on podu fields, to demarcate what they consider forest land. Any opposition to this operation from the local people is being countered through seizure of tractors and ploughs, arrests, and filing of forest offence cases in complete violation of the FRA. It is important to note that the afforestation programmes like Haritha Haraam, are being funded through the Green India Mission (GIM)⁴⁵ which in turn receives funds through the Mahatma Gandhi National Rural Employment Guarantee Scheme (MGNREGS) and the Compensatory Afforestation Management and Planning Authority (CAMPA). The irony of the situation is that a fund set up for compensatory afforestation, has funds received from diversion of forest land for 'developmental' activities leading to displacement of forest dependent communities and their livelihoods is being used to evict more forest dependent communities and destroy their livelihoods in the name of guaranteeing their employment⁴⁶. Since its announcement, GIM has faced objections from civil society organizations and tribal groups who have expressed concerns about its impact on land and forest rights of tribal and non tribal forest dwellers⁴⁷.

⁴¹ Behera, S. Documentation on deprivation of forest rights through plantations on KutiaKondh (PTG) villages of Tumdibandh Block, Kandhamal District. Bhubaneswar

⁴² News shared by Campaign for Survival and Dignity (CSD) Odisha (csdorissa@gmail.com) on the 27th of July 2015.

⁴³ This is a massive afforestation drive planned across the state, aimed at improving the forest cover of the state from 25% at present to 33%. An estimated Rs 500 crore is required for demarcation of forest land itself. See: <http://harithaharam.telangana.gov.in/>

⁴⁴ <http://www.deccanchronicle.com/150616/nationcurrentaffairs/article/foreststafffarmersareoddsverpodu>

⁴⁵ http://www.moef.gov.in/sites/default/files/GIM_Mission%20Document-1.pdf

⁴⁶ http://zeenews.india.com/news/sci-tech/green-india-mission-converged-with-mgnrega-to-reclaim-forest_1561829.html; <http://www.moef.nic.in/sites/default/files/MGNREGS-GIM.pdf> and <http://www.moef.nic.in/sites/default/files/GIM-CAMPA%20Convergence%20Guidelines.pdf>

⁴⁷ <http://www.forestrightsact.com/statements-and-news/90-dangers-of-the-green-india-mission>

3. Arbitrary and hurried implementation of the FRA

The emphasis on time-bound implementation of FRA by MoTA resulted in the Tribal Department of Chhattisgarh issuing a series of circulars to all District Collectors (DCs), drawing out a time-bound action plan towards 'fast-track' implementation of FRA. One of these circulars instructed all DCs to ensure that in gram sabhas to be organized on the 15th of August 2015, each gram sabha give in writing that the final disposal of individual/community forest rights claims have been carried out in their villages; no claim is pending for consideration, decision or distribution; and no rightful claimant from the gram sabha has been denied his rights. The circular does mention that this has to be done only after the DCs have carried out the process of recognition and vesting of rights. Although well intentioned, these circulars are facing strong opposition from civil society organizations on the ground since complex issues like the determination of land and forest rights cannot be dealt with in a rush. Hurried processes cannot follow appropriate procedures and are likely to lead to further injustice for forest dwelling communities by denying their rights or inappropriately recognizing them. While under strong opposition from civil society, the state government withdrew this deadline. It is of paramount importance that FRA implementation is taken up on mission mode, but with reasonable timelines which will allow for processes to address concerns of the rights holders.

4. Conversion of forest villages into revenue villages

The Ministry of Tribal Affairs in the Rajya Sabha on 2nd February 2016 has reported the numbers of forest villages in some states and the status of conversion of forest villages into revenue villages according to the provisions of the FRA.

State	Number of Forest Villages ⁴⁸	Status of conversion to as per the FRA reported by states
Andaman and Nicobar Islands	169	No information
Andhra Pradesh	3	No information
Assam	897	No information
Chhattisgarh	658	421 forest villages converted to revenue villages
Gujarat	162 (Identified by MoTA); 196 (recorded by the State)	175 identified for conversion to revenue villages
Jharkhand	14	No information
Madhya Pradesh	1165	925 to be converted to revenue villages
Maharashtra	73	All villages in Nandurbar District. Not converted yet.
Odisha	47	22 identified for conversion to revenue villages
Sikkim	51	No information
Tamil Nadu	736	No information
Uttarakhand	421	No information
Uttar Pradesh	89 (Identified by MoTA), 12 recorded by the State	6 converted to forest villages.
West Bengal	170 (Identified by MoTA)	86 converted to revenue villages

⁴⁸ The number of forest villages/settlements/habitations as reported by the states and as per the records of the Ministry of Tribal Affairs are not consonant. This also shows that there is no concerted effort at compiling data on the number of such settlements both at the level of the states as well as at the National level.

5. Areas facing forest land diversion

In several states which have recorded forest villages, the process of conversion has not even begun. Several grass roots organizations working with such villages have reported inconsistencies in figures reported by the state governments for these villages. In Chhattisgarh, the state government has claimed that 431 villages from Chhattisgarh converted to revenue villages, but this has not been reported to MoTA as clearly seen from the figures above. Meanwhile, according to census 2011 data, Chhattisgarh has 658 forest villages⁴⁹ whereas the annual report of the CG Forest Department records 423 villages in its 2014-15 record and the state government records 431 villages as forest villages. Where the villages have been converted to revenue villages, there is no information as to which gram panchayat the villages have been merged with.

Apart from the circulars issued by the MoEFCC and MoTA that clearly indicate dilution of the processes of FRA implementation, in a shocking move, the District Level Committee of Surguja district of Chhattisgarh has cancelled the community forest rights title of Ghatbarra village. In a letter jointly issued by the District Collector, Divisional Forest Officer and the Assistant Commissioner of Tribal Development Department, the title given to the community over nearly 1800 ha of forest land was cancelled in January 2016, stating that the community was opposing coal mining related activities over the Parsa East and KenteBasan coal blocks, which was not a part of this title. The title that the community received excluded the compartments falling under the leased coal blocks, which the village had claimed as its traditional CFR area in the claim submitted in 2013. In the villages where the Rowghat project is being implemented in Kanker (Antagarh block) and Dantewada (Katekalyan block) districts, RTIs have revealed that decisions have been taken at the level of the district administration to not grant rights because of the ongoing railway and Raoghat mining project over the area. The legality of this 'cancellation' has been challenged by many activists. The FRA does not lay out a process of 'cancellation' of rights. Moreover, under Sec 5 of the Act, the gram sabha is responsible for protecting its forests and biodiversity and preventing any destructive activity if it harms the traditional forests. Therefore, the premise on which the rights have been cancelled is itself faulty.

In states like Chhattisgarh, Himachal Pradesh, Jharkhand, Uttarakhand, Odisha, it can be gathered from testimonials from the field that there is a great reluctance to process claims of villages over areas being diverted for developmental projects both from the lowest governmental functionaries right up to the district level. In many places where villages have tried to file claims, the claims are being rejected illegally by tehsildars by stating that the forms filled are wrong. The forest department and different arms of the state, like the BSF have been curtailing the right of the villagers to protect, conserve and manage their forest resources in such areas. In some cases, the SDLC has pre decided that large tracks of land cannot be given under FRA. In many cases, there have been forging of gram sabha resolutions.

⁴⁹Statement referred to in reply to parts (a) to (c) of Lok Sabha Starred Question No. *104 (Fourth Position) for answer on 02.05.2016 tabled by SHRI VIJAY KUMAR HANSDAK regarding "FOREST VILLAGES"

6. Protected Areas

FRA continues to be violated in protected areas especially in tiger reserves. Relocation of villages, without completing processes under FRA, has been reported from Similipal Tiger Reserve in Odisha and Panna Tiger Reserve in Madhya Pradesh.

On the 27th of August, a writ petition has been filed in the Jabalpur High Court against attempts of the forest department to evict Umraivan village from Panna Tiger Reserve, stating that their rights under FRA have been violated by the forest department. The writ petition has been filed by three residents of the village along with a local activist, against the PCCF, District Collector and Field Director of the TR. The forest department has been trying to relocate the village for the past three years. All livelihood means of the villagers have been disrupted, they have been prevented from carrying out any farming operations, their electricity supply has been cut and villagers allege that elephants have been let loose in the village to terrorize people into leaving the village. On 26th June, a public hearing was conducted in the village by the District Collector, in the presence of a large police deployment and forest department officials. The collector asked if people wanted to relocate or not by the show of hands, and in the absence of many villagers, majority of people present for the public hearing supported the relocation. On 30th June, 7 lakh, 60 thousand rupees were transferred to the accounts of the villagers and since then the forest department has begun pressurising the villagers to leave the village. 51 families have already left the village, however the remaining 57 families are demanding proper land for land rehabilitation. The villagers had filed 36 IFR claims, community forest rights claims and are in the process of completing their CFR claim. 13 IFR titles have been distributed already in the village and hand pumps have been given under *nistar* rights. Meanwhile, the HC has accepted the petition to be heard in the High Court.



Tribals at the gate of Periyar Tiger Reserve, Kerala;

Photo: Ashish Kothari

On the 11th of September 2015, the forest department has relocated 35 families of Jamunagarh village located in the core of the Similipal Tiger Reserve (STR). These families were shifted to Nabra rehabilitation colony outside the TR, under the Udala police limits of Mayurbhanj district.. Each relocated family have been given 10 decimals of land for constructing a permanent shelter. According to the relocation plan formulated in 2008, the last remaining villages Kabatghai and Bakua, spread over 2750 sq km in the core are also to be relocated. The ongoing relocation is part of the plan to free the core of the reserve from human presence. Jamunanagar is the same village where in September 2014, a pallisabha was held in which CFR title was handed over to the villagers by the Forest Department. The District Forest Officer had also informed the village about the department's plan to relocate the village in the meeting. Kabatghai and Bakua, have also filed CFR claims but are yet to receive titles. Amid continuing evictions from the core of the Tiger Reserve, 42 villages within the STR have received CFR titles recently . It is not clear at this stage what would these titles mean for the villagers within the TR after their relocation, and what would be their significance in the area where they have been relocated to. Meanwhile, rights of communities still living inside protected areas continue to be violated. In the Sarda Gram Panchayat of the Jamankira block of Badram Wildlife Sanctuary, Sambhalpur district in Odisha, the 2002 order of the SC, banning collection of NTFP from protected areas is still being wielded by the Forest Department to prevent local villagers to exercise their livelihood. The communities are facing serious impediments while collecting Mahua flowers and fruit, Chironjee (Char), Kendu leaf and Sal seed, Amla, Bahada and Harida, Sargi and Siali leaves; due to which most have turned to wage-labour.

On the other hand, the government of Maharashtra has issued guidelines for establishing 'Community Nature Conservancy' with an objective to provide greater protection of ecosystems and develop eco-tourism around protected areas. Farmers around protected areas will be encouraged to give up farming in return for compensation and carry out schemes like plantations, meadow development, protection of existing water bodies and construction of new water bodies on this land, either individually or as cooperatives. The guidelines allow for private companies or corporate groups to undertake such projects on private lands inside tiger reserves and adjoining areas of national parks and wildlife sanctuaries. Corporations can avail of financial support from Tiger Conservation Foundations provided such projects are implemented in partnership with local individuals and 80% jobs are provided to local people. The initiative has been launched in Umred-Karhandla Wildlife Sanctuary. The funds for the scheme are likely to come through global developmental banks.

The Revenue and Forest Department of the state has also mandated that families affected by projects undertaken by the forest department including creation of national parks and sanctuaries will get additional compensation along with the rehabilitation package if they give full, voluntary consent to relocate. Such families will be entitled to get entire cost of their land as well as the state rehabilitation package. The funds required over and above the relocation package will come from state CAMPA funds.

7. Habitat rights of PVTGs

There is slow progress in recognition and vesting of rights of PVTG communities throughout the country. The District administration of Dindori has claimed to have distributed the first 'habitat rights' titles to seven Baiga villages in BaigaChak area of Madhya Pradesh⁵⁰. However, examination of the titles received reveal that they are CFRs titles (these villages had received titles over CFR in 2009, but the titles were faulty and contained a list of conditions under the Indian Forest Act, 1927). The title does not specify the cultural, traditional and religious sites and spaces and other distinguishing bio-geographical features of the habitat of the Baigas. On the other hand, in an encouraging move, nearly 60 Madia Gond adivasi villages from Dhanora taluka of Gadchiroli district in Maharashtra came together to claim habitat rights over their traditional territory of Khutgaon. The claim has been collectively prepared by the community and submitted to the Sub Divisional Level Committee (SDLC)⁵¹. The claim includes:

- habitation and cultural rights of the madiagond community
- cultural and religious rights over the traditional geographic area
- the right to use, protect, manage and conserve the natural spaces, natural things, and sacred spaces associated with their religious and cultural traditions
- the right to protect spaces of religious, cultural and traditional importance from any kind of change or destruction
- the right over spaces currently in use for the community programmes and traditional festivals and also the right to find new places for such events as decided by community consensus as and when the community requires
- the right to practice traditional/customary forms of farming, and the right to use, protect, manage and conserve forests that they have been seasonally using for livelihood needs
- the right to protect, manage and conserve their community resources in their traditional area
- the right to collectively use all the above mentioned rights with other STs and OTFDs, through recognition of their pre-existing rights.
- Any other rights which may arise out of further study of the habitat

⁵⁰ <http://www.downtoearth.org.in/news/baiga-tribals-become-india-s-first-community-to-get-habitat-rights-52452>

⁵¹ http://fra.org.in/document/CFR-LA-Newsletter_Dec15-Jan16.pdf



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