

SUMMARY REPORT OF THE NATIONAL CONSULTATION ON RELEVANCE OF FOREST RIGHTS ACT IN FOREST DIVERSION

Organised by Community Forest Rights-Learning and Advocacy Process
5th-6th March, 2014
Xavier Institute of Social Action (XISA), Raipur, Chhattisgarh.

Community Forest Rights-Learning and Advocacy Process (CFR-LA) organised a consultation on the relevance of the provisions of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights), Act, 2006 also called the Forest Rights Act (FRA) in forest diversion on the 5th and 6th of March at XISA in Raipur, Chhattisgarh. The consultation brought together various civil society organisations, researchers and people involved on the ground in trying to stop the takeover of forest land for various “developmental” activities by the state and private players.

CONTEXT

Along with severe ecological costs, the diversion of forest land has in the past and continues to affect a large population of people dependant on forests for their livelihood and sustenance. Since independence, estimates indicate, nearly 60 million people have been displaced due to developmental activities in India¹. In 1980, the Forest (Conservation) Act (FCA) was enacted with a view to conserve forests and to regulate the diversion of forest land for “non-forest” purposes². However, the Act has done little to check diversion of forest land and does not have space for local participation in decision-making on such projects.

The enactment of the Scheduled Tribes and Other Traditional Forest Dweller’s (Recognition of Forest Rights) Act, 2007 (FRA), has empowered forest dwellers with the power to safeguard their forests against destructive developmental practices. Apart from recognising and vesting forest rights with forest dwelling communities, it has recognised that forest dwellers were forced to relocate from forests due to state development interventions. It states that there can be no eviction or removal of forest dwellers from their occupation of forest land till their rights are recognised and verified according to the procedures outlined in the FRA [Sec 4(5)]. It empowers gram sabhas of forest dwellers to ensure that their habitat is preserved from any form of destructive practices that affect their culture and heritage and to stop any activity that adversely affects wild animals, forests and biodiversity [Sec 5].

August 2009 circular³

Even after the FRA was enacted in 2007, diversions continue unabated and violate these provisions of the FRA. **Highest diversion** of forest land has taken place between the years 2007 and 2012, with

¹ Mathur, H.M., 2008. Development and Displacement: Introduction and Overview, In: *India Social Development Report: Development and Displacement*, Council for Social Development, Oxford University Press, Delhi, as cited in Kothari, A. Shrivastava. A., 2012. *Globalisation in India: Impacts and Alternatives*. Pune: Kalpavriksh.

² Refer to the legislation brief, *Exploring the role of FRA within the processes of Forest Diversion under FCA*, Pune: Kalpavriksh, pp. 3-6, for details on the provisions of diversion of forest land as outlined in the FCA. Available at: [http://www.kalpavriksh.org/images/Documentation/Advocacy/FRA-FCA%20policy%20brief%20\(1\).pdf](http://www.kalpavriksh.org/images/Documentation/Advocacy/FRA-FCA%20policy%20brief%20(1).pdf)

³ <http://www.sruti.org.in/sites/default/files/FRA%20and%20FCA%20circular%20by%20MoEF,%2030.7.2009.pdf>

about 2 lakh ha of forest land being diverted for developmental projects⁴. After many representations by local communities facing diversion and civil society action, the MoEF issued a circular in Aug 2009 which linked the provisions of forest clearance under the FCA to the FRA to ensure unconditional forest clearance. According to the circular, the state governments have been charged with the responsibility of submitting certain documentary evidences pertaining to the implementation of the FRA, which include the written consent or rejection of the diversion of forest land by *all the affected* gram sabhas.

Continued violations of the FRA

Even after this circular was passed, it was noted that the highest diversion of land in one year since 1980 (about 88,000 ha) was carried out in 2009 itself⁵. Analyses of the minutes of the Forest Advisory Committee⁶ show that the provisions of this circular were not put into practice, and no documentary evidence under FRA was provided, nor asked for, under any proposal being scrutinised for forest diversion till April 2012, when it was resolved by the FAC that Stage-I forest clearance would be given to projects only after documentary evidences as mentioned in Aug 2009 were submitted along with the proposal for diversion. However, this decision of the FAC is continues to be violated by states, the FAC itself as well as the Ministry of Environment and Forests (MoEF).

It is important to also note that economic policies of the government have since the economic reforms of 1991, been aimed at growth of infrastructural, industrial and developmental projects as a means of attaining rapid economic growth to increase/create employment opportunities and to help eradicate poverty among other things. It has been reported that pressure on such diversions and clearances has been increasing through the direct intervention of the central government mechanism. Thus, macroeconomic policies are fuelling the circumvention of legal procedures in diverting forest lands for non-forest uses and the rights of people living in and near such forests, even after the enactment of the historical Forest Rights Act, are being ignored in this process.

The consultation was organised in light of this context, by bringing together community members and CSOs concerned with the issue of forest land diversion, to share their experiences and to enhance the overall understanding of the violations taking place with regards to the provisions of the FRA and to plan strategies to check the circumvention of the FRA through advocacy and engaging with the local and central governmental mechanisms.

ISSUES DISCUSSED

The consultation was attended by civil society groups from the states of Andhra Pradesh, Chhattisgarh, Jharkhand, Madhya Pradesh, Maharashtra, Manipur, and Odisha. People involved in the struggle against Polavaram dam in Andhra Pradesh, Balco and Dainik Bhaskar Power coal mines in Chhattisgarh, Thoubal Multipurpose project in Manipur, POSCO and Niyamgiri struggles, Astaranga port struggle in Odisha and Karo mine struggle from Jharkhand presented their

⁴ Centre for Science and Environment. 2011. Forest Clearance
<http://www.cseindia.org/userfiles/Forest%20clearance.pdf>

⁵ Ibid

⁶ The Forest Advisory Committee (FAC) has been set up under Sec 3 of the FCA to advise the central government on forest clearances to be given under FCA and in other matters related to conservation which the central government will bring to its notice.

testimonies and gave a record of violations that had taken place in these states. Discussions were held on the stage of forest clearance process of each project, status of claims under FRA, violations in process of FRA compliance as per provisions of the 2009 circular and the communities' response towards these violations. Along with violations in FRA compliance, the representatives also gave accounts of violations of other laws like the Panchyats Extension to Scheduled Areas, 1996 (PESA), Forest (Conservation) Act, etc.

Compliance to August 2009 circular

Verification and recognition of rights under FRA

In most parts of the country, awareness generation about the FRA and its provisions is being poorly handled by the nodal agencies in charge of its implementation. This apathy is reflected in forest areas to be diverted for developmental projects, where communities have next to no knowledge about the act, its provisions which allow them to claim rights over forest land, and the Aug 2009 circular that allows gram sabhas to have decision-making power in the case of diversion of forest land for projects.

In cases where the Act has reached (either through civil society action or through official mechanisms), the stress has been on individual rights and not on community rights. Thus, very few community rights [Sec 3(1)] have been filed in such areas. In the case of villages where CFRs were filed, there have been problems in their distribution. In some villages affected by Polavaram dam, CFR titles were distributed but they were in the name of the Van Suraksh Samiti (under Joint Forest Management) instead of the gram sabha. These titles were later revoked but have not yet been redistributed. Habitat rights [Sec 3(1) (e)] in case of PVTGs and pre-agricultural communities have not been addressed in most cases of forest diversion on lands under the occupation of these groups. In Rayagada and Kalahandi districts of Odisha a joint verification team, involving only district revenue and forest officials had prepared a report of community claims. This report was then put before the gram sabhas held to decide on mining in the region, for verification. This is in clear violation of the process of verification and recognition of claims as provided for in the FRA.

Gram sabha meetings and resolutions

States are allegedly providing resolutions which are either forged, unclear or being obtained from JFM committees and forest rights committees instead of gram sabha resolutions. In the case of villages which will be affected by mining in the Mahan coal block, the local communities have alleged that gram sabhas were carried out without fulfilling the quorum required; resolutions had fake names and also included names of dead community members.

In the case of some of the villages in Raipur district's Dharamjaigarh region where forest land is in the process of being diverted for coal mining by Dainaik Bhaskar (DB) power, villagers had sourced a certificate issued by the district collector which stated that a meeting of the gram sabha was held to discuss the diversion of forests and forest rights over the land. However, the panchayat revealed that no meeting was held on the date specified in the collector's letter and no resolution was made. Thus the records of the meeting were forged.

In the case of the POSCO steel plant at Jagatsinghpur, the community had attempted to pass gram sabha resolutions thrice but each time the resolutions were misplaced by district authorities.

In case of Manipur's Mapithel dam, stage II forest clearance has been given without any meeting being held with the affected gram sabhas.

Human Rights violations

Representatives from the states of Chhattisgarh, Jharkhand and Odisha reported that processes under FRA were difficult to initiate in areas facing forest land diversion due to pressure from project proponents and cases being filed on community members and activists who plan to implement the FRA in these areas. Apart from threats received from project agencies, the state also is instrumental in booking charges on the people who are protesting with the help of repressive state laws and paramilitary forces. In such a situation it becomes extremely difficult to work towards building consensus on CFRs which is a prerequisite in terms of filing claims within the FRA.

Provisions of FRA that can be used in communities to take action against diversion

Provisions of Sec 7, 8 and as well as July 2012 guidelines by MoTA were discussed and a need was felt to make use of these provisions in cases of repression in areas of forest diversion.

- Sec 7: Any authority in charge of performing functions under the FRA can be held guilty in case the provisions of the Act are contravened.
- Sec 8: The gram sabha can proceed against the authority who has contravened the provisions of the act by forwarding a resolution to the SLMC and the SLMC has to act on the resolution within 60 days.
- Sec 9: The gram sabha members are deemed public servants under the FRA.
- July 2012 guidelines: In case diversion has taken place before the 2009 circular was imposed, but after the FRA came into force in 2007, and members of forest dwelling communities have been evicted without taking gram sabha consent, the DLC is advised to bring to notice such cases to the SLMC for violation of Sec 4(5) of the act.

FUTURE COURSE OF ACTION

1. ***Filing of claims under the FRA***- Many groups are fighting legal battles and have been unable to file claims due to repression, lack of awareness about the provisions of the FRA and the non-implementation of FRA by the district officials in areas facing forest land diversion. It has thus become imperative to spread greater awareness not only about the 2009 circular but also the procedure to file claims. It was thus decided that CSO members who had come from different states would conduct training programmes for filing claims and greater emphasis would be given to filing CFR and habitat right claims in such areas. For this, help would be provided to communities in terms of technical support as and when requested by the communities.

2. *Forest Diversion related support-*

- (i) Collection of information:
In case of projects coming up for forest diversion, it was decided that information would be collected from FAC agendas and factsheets every month and would be circulated to

relevant groups in the respective states where these projects were coming up. This would be done by Kalpavriksh.

It was also decided that mapping of potential sites of forest diversion through news paper reports, information on state government sites, petition letters etc. needed to be carried out as soon as possible.

It was also necessary to carry out ecological assessments of these areas.

(ii) Dissemination to information to groups and CSOs:

Most communities are not aware about the possibility of their forests taken up for diversion until gram sabhas are held to discuss diversion, or public hearings are held under the EIA notification. From experiences shared by CSOs, many communities remain unaware till work actually begins in their traditional forest areas and their access is restricted. It has also been noted that gram sabhas are not being held and resolutions are being forged by district officials.

To avoid this, it is important to disseminate information about a potential project coming up in these areas to communities beforehand. Information collected by Kalpavriksh should be taken up by CSOs working in each state and duly conveyed to local communities.

Trainings on process of forest land diversion and various legal mechanisms that communities have to resist such diversion including PESA, Public hearings through EIA, FRA and the 2009 circular etc, need to be carried out on ground as well.

3. Active advocacy

In cases where the process of forest diversion as already begun and there are serious violations reported by communities, immediate help should be provided in terms of filing petitions to MoTA, SLMCs etc.

In case communities want to take legal recourse, potential lawyers need to be identified in each state to carry this forward.

There is a need to actively engage with MoTA to monitor cases of forest diversion where FRA and PESA is being violated. There is a need for monitoring these projects and status reports need to have this information available.

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