

THE FOREST RIGHTS ACT: REDEFINING BIODIVERSITY CONSERVATION IN INDIA

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Abstract

There are many field experiences with the implementation of the Forest Rights Act in the state of Orissa in India. By addressing issues of tenure security and access rights of forest communities, the Act builds a rights-based conservation framework around the recognition of forest rights, the process of determination of such rights, and the empowerment of local community institutions. The Act has the potential to recognize the diversity of use, access, and conservation practices and traditional knowledge of forest communities that have contributed to the conservation of forests and biodiversity. The empowerment of local community institutions and increased recognition of rights have enabled communities to better deal with external threats to community resources and to chart out their own management systems. Although there are certain issues and challenges impeding the implementation of the Act, it should be considered an essential part of current and future law, policy, and practice of forest management in India.

The last two decades have been eventful for conservation policy, with rights over resources and community conservation initiatives gaining more focus in academic debate, policy, and practice around the world. Many countries have now adopted forest tenure reforms to secure rights of Indigenous peoples and local communities over forests and natural resources¹. Forest tenure reforms are happening against the backdrop of growing evidence of the importance of rights-based approaches to conservation, particularly in contrast to the conventional conservation approach that is exclusive of rights and community participation². These reforms are also occurring within the context of conflicts around the impacts of globalization and a neo-liberal model of development based on resource extraction, both of which have threatened and continue to threaten the lands, forests, and livelihoods of Indigenous peoples and local communities around the world³.

The Forest Rights Act is the culmination of a protracted struggle by forest-dependent communities to gain legal rights and recognition.

In India, the federal government has enacted the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006 (hereafter referred as the Forest Rights Act) to recognize and vest rights of forest communities. The enactment of the law is the culmination of a protracted struggle by communities for forest rights and conservation⁴ that spanned the greater part of the 19th and 20th centuries and continued into the 21st. This struggle emerged from issues like insecurity of land tenure and access rights, lack of recognition of community conservation initiatives in forest management, lack of recognition of traditional governance and resource ownership in tribal areas, and threats to community lands and forests from development projects. The Planning Commission of India has also highlighted the importance of resolving these issues through protective legislation such as the Forest Rights Act and the Panchayat Extension to Scheduled Areas Act to deal with the growing discontent, unrest, and extremism in tribal and forest areas⁵. Since the beginning of implementation in January, 2008, the Forest Rights Act, in particular, has

1 Sunderlin, W. D., J. Hatcher, and M. Liddle, 2008. *From exclusion to ownership?* Rights and Resources Initiative: Washington, D. C.

2 Campese, J., T. Sunderland, T. Greiber, and G. Oviedo (eds.), 2009. *Rights-based approaches: Exploring issues and opportunities for conservation*. CIFOR and IUCN: Bogor, Indonesia.

3 United Nations, 2009. *State of the World's Indigenous Peoples*. United Nations Department of Economic and Social Affairs, Division for Social Policy and Development, Secretariat of the Permanent Forum on Indigenous Issues: New York.

4 For more about the history of forest rights, community struggles, and enactment of the Forest Rights Act, see Guha, R., and M. Gadgil, 1992. *This Fissured Land: An ecological history of India*. Oxford University Press: Oxford; and Campaign for Survival and Dignity, 2003. *Endangered Symbiosis, Evictions and India's Forest Communities*, Report of the Jan Sunwai (Public Hearing) held from July 19-20, 2003: Delhi. For more about the Forest Rights Act, see Campaign for Survival and Dignity (no date). "The Forest Rights Act". Last accessed August 30, 2010, at: <http://www.forestrightsact.com>; Asher, M., and N. Agarwal, 2006. *Recognizing the Historic Injustice, Campaign for the Forest Rights Act*. National Center for Advocacy Studies: Pune, India; Springate-Baginski, O., M. Sarin, S. Ghosh, P. Dasgupta, I. Bose, A. Banerjee, K. Sarap, P. Misra, S. Behera, M. G. Reddy, and P. T. Rao, 2009. *Redressing 'Historical Injustice' through the Indian Forest Rights Act, A Historical Institutional analysis of contemporary forest rights reform*. Last accessed September 18, 2010, at: <http://www.ippg.org.uk/papers/dp27.pdf>; and Vasundhara (no date). "Forest Rights Act". Last accessed August 30, 2010, at: <http://fra.org.in>.

5 Government of India, 2008. *Development challenges in Extremist Affected Areas*, Report of an Expert Group to Planning Commission. Last accessed September 18, 2010, at: http://planningcommission.gov.in/reports/publications/rep_dce.pdf.

enlivened the conservation debate around two contesting arguments: one is represented by the conservation orthodoxy that holds forth that rights cannot co-exist with conservation; the other echoes the otherwise marginalized voice of the forest communities, as well as the current international discourse that recognition of forest rights and forest tenure reform are an essential part of a just and effective conservation process. In this context, this paper discusses the trends in implementation of the Act, the rights claimed, and how it is contributing to conservation by drawing on case studies and field experiences from the state of Orissa, India.

THE ECOLOGICAL AND LEGAL CONTEXT OF FORESTS IN ORISSA

The state of Orissa's actual forest coverage is about 31 percent of its geographical area.⁶ There are two national parks, two tiger reserves, one biosphere reserve⁷, and 18 wildlife sanctuaries, covering 5 percent of Orissa's geographical area. The state is home to 62 types of tribes, 13 of which are categorized as particularly vulnerable tribal groups (PTGs)⁸. Out of nearly 47 000 villages, there are about 29 300 forest fringe villages with a forest area of about 1 780 000 ha and population of nearly 15 935 000⁹. The forested districts are homeland to the tribes and PTGs and the forest cover in 12 tribal districts is about 38 percent of their total geographical area¹⁰. One-third of Orissa's population depends on forests, which provide livelihood and food security for 4 to 6 months per year and contribute 20 to 50 percent to annual household income¹¹.

As in other parts of India, the process of consolidation of state forests and creation of protected areas in Orissa has not done justice to the rights of the forest communities. The forests recorded under the Indian Forest Act of 1927 and Orissa Forest Act of 1972 were declared as such without following the procedure for settlement of rights as provided under these laws.¹² In addition, rights of communities in protected areas, declared under the Wildlife (Protection) Act of 1972, remain unsettled and the Supreme Court order banning collection of non-timber forest products from these areas has negatively impacted the livelihoods of local communities¹³. Furthermore, rights of community conservation groups are not recognized, but the government has adopted and actively promoted the Joint Forest Management policy¹⁴, which has subsequently often conflicted with existing community conservation initiatives¹⁵. Rights and community conservation are also affected by the ongoing process

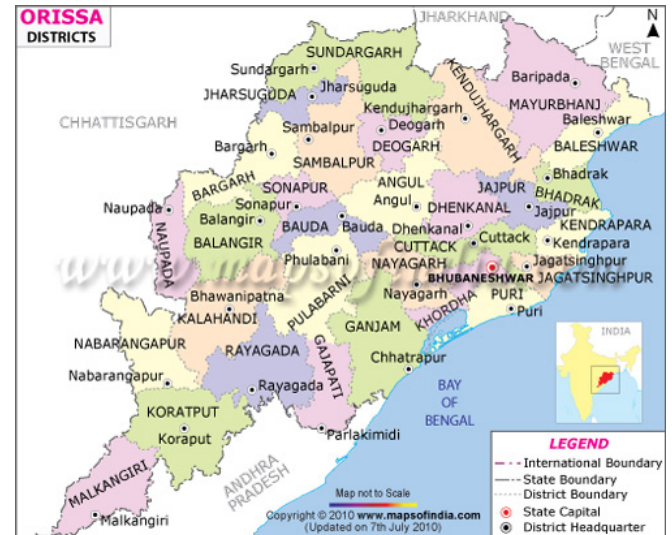


Figure 1. Districts of the province of Orissa, India.

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6 Government of India, 2009. *India State of Forest Report, 2009*. Forest Survey of India, Ministry of Environment & Forests: India. Last accessed August 20, 2010, at: http://www.fsi.nic.in/sfr_2009.htm.

7 The Government of India declared *Simlipal* as a biosphere reserve in 1994. UNESCO added it to its list of Biosphere Reserves in May, 2009.

8 Primitive tribal groups (which are now referred to as particularly vulnerable tribal groups or PTGs) were identified by the government from among the Scheduled Tribe groups for the first time in 1975-76 and thereafter in 1993. These groups are regarded as the poorest of the poor amongst the Scheduled Tribes. Criteria fixed for identification of such PTGs include pre-agricultural level technology, very low level of literacy, and declining or stagnant population.

9 Government of India, 2009. *India State of Forest Report, 1999*. Forest Survey of India, Ministry of Environment & Forests: India. Last accessed July 15, 2010, at: http://www.fsi.nic.in/sfr1999/sfr_1999.pdf.

10 Government of India, 2001. *India State of Forest Report, 2001*. Forest Survey of India, Ministry of Environment & Forests: India. Last accessed July 15, 2010, at: http://www.fsi.org.in/sfr_2001.htm.

11 Government of Orissa, 2004. *Human Development Report Orissa 2004*. Planning and Coordination Department: Orissa. Last accessed July 20, 2010, at: <http://www.orissa.gov.in/p&c/index.htm>.

12 Kumar, K., 2005. "Dispossessed and Displaced: A brief paper on tribal issues in Orissa". Last accessed September 1, 2010, at: http://www.vasundharaorissa.org/DiscussionPaper_eng/Dispossessed%20and%20displaced.pdf.

13 Vasundhara, 2006. *Impacts of Wildlife Policy on the Lives and Livelihood of Poor Tribal and Other Marginalized Communities living in and near the Protected Areas*, Discussion Paper. Last accessed July 10, 2010, at: http://www.vasundharaorissa.org/DiscussionPaper_eng/Impacts%20on%20Lives%20and%20Livelihood%20of%20People.pdf.

14 Following the 1988 National Forest Policy, the Ministry of Environment and Forest initiated a process called Joint Forest Management in 1990. The programme seeks to establish management 'partnership' agreements between local forest-dependent communities and the state for the sustainable management and sharing of benefits and responsibilities of forests. The village community is represented through a body specifically formed for the purpose.

15 The Joint Forest Management framework has often worked as an extension of the forest bureaucracy and has led to conflicts with community groups on account of its failure to address issues of rights, community conservation initiatives, and actual representation of resource-dependent

of development that focuses on large-scale resource extraction¹⁶. It is within this legal and policy context that the Forest Rights Act is implemented in Orissa. The case studies discussed here aim to show how the forest rights, the procedures for the determination of such rights, and empowered local authorities for protection and management are improving tenure security and building a right-based framework for conservation.

THE CONTRIBUTION OF FOREST RIGHTS TO CONSERVATION

The Forest Rights Act secures individual and common tenure over forest lands and forests. The Act recognizes territorial rights of PTGs, rights of pre-agricultural communities, and rights over community conservation initiatives. Since the beginning of implementation in 2008, forest communities have used the provisions under the Act to claim a wide variety of forest rights (see Box 1¹⁷). In addition, the Act provides rights for the conversion of forest villages into revenue villages¹⁸, rights of communities displaced due to state development interventions, and rights for creation of development

Box 1. Examples of rights enshrined in the Forest Rights Act, 2006.

The Act contains rights to:

- forest land for habitation and self-cultivation
- minor forest produce
- fish and other products of water bodies
- grazing
- seasonal resource access of nomadic or pastoralist communities
- protect, regenerate, conserve, and manage community forest resources
- intellectual property and traditional knowledge relating to biodiversity
- traditional and customary rights such as right of way, collection of soil for household purposes, and access to religious sites

facilities in the forest villages such as schools, health centres, roads, electricity, and irrigation. The provision of such a diversity of rights to traditional resource access, use, and interactions reflects the strong conservation ethic of the diverse communities the Act intends to protect. Examples of some of the rights and claim processes from Orissa are discussed below.

The history of community forest protection and management in Orissa dates back to pre-independence¹⁹. There are about 12 000 self-initiated and legally unrecognized forest protecting groups throughout Orissa that protect around two million hectares of forest²⁰. Community conservation areas cover some of the most important ecosystems such as forests, wetlands, and coastal/estuarine and mangrove ecosystems, all of which have high ecological value and form the basis of local communities' livelihoods. Some of the rare, endangered, and vulnerable flora and fauna species like tiger, elephant, sea turtle, black buck, peacock, and migratory birds come under such protection initiatives. Community conservation areas also cover most of the protected areas, tiger reserves, and elephant reserves in the state, despite government attempts to free protected

areas of human presence. There is a rich network of sacred groves in Orissa, which are havens of important species and are mostly protected and conserved by communities²¹. The provision of the right to protect, conserve, regenerate, and manage community forest resources under Section 3(1)(i) of the Forest Rights Act has created a scope for the legal recognition of these traditional community conservation initiatives in forest land (including wetlands and mangroves). Many community conservation groups have already claimed and obtained legal rights over their community forests since implementation of the Forest Rights Act began.

communities. See Panigrahi, R., 2006. *Democratization of Forest Governance: Myths and Realities: An analysis of implications of decentralized forest policies and processes in Orissa, India*. Paper presented at the Eleventh Biennial Conference of the International Association for the Study of Common Property held June 19-23, 2006, in Bali, Indonesia. Last accessed August 25, 2010, at: http://www.indiana.edu/~iascp/bali/papers/Panigrahi_Rekha.pdf; Singh, N., 2000. *Community Forest Management vs. Joint Forest Management in Orissa; Need to look beyond JFM*. Paper presented at the International Workshop on a decade of Joint Forest Management in India, held in New Delhi in June, 2000. Last accessed July 20, 2010, at: http://www.vasundharaorissa.org/DiscussionPaper_eng/CFMVsjfm.pdf; and Sahu Subrat, K., 2010a. *The protectors are thieves in disguise*. Infochange News & Features: August, 2010. Last accessed August 10, 2010, at: <http://infochangeindia.org/Environment/Community-forests-of-Orissa/The-protectors-are-thieves-in-disguise.html>.

16 Sahu Subrat, K., 2010b. *Destroyed by development*. Infochange News & Features: April, 2010. Last accessed August 20, 2010, at: <http://infochangeindia.org/Environment/Community-forests-of-Orissa/Destroyed-by-development.html>.

17 For detail on rights see Chapter II, Section 3 of the Forest Rights Act. Last accessed August 30, 2010, at: <http://tribal.nic.in/index1.asp?linkid=360&langid=1>.

18 A Revenue Village is a small administrative region in India, a village with defined boundaries. One revenue village may contain many hamlets.

19 India gained independence in 1947.

20 These two million hectares include forest land recorded by the government, but the government does not recognize protection initiatives by these groups.

21 For more information on the typologies of community conservation initiatives and the related issues, see Vasundhara, 2007. "Community Conservation Initiatives". Last accessed August 30, 2010, at: <http://cciori.org>; and Mishra, Sweta, 2010. "Green Warriors: Conserving Local Biodiversity through Community Conservation Initiatives in Orissa, India", pages 142-148 in this issue of Policy Matters.

21 For more information on the typologies of community conservation initiatives and the related issues, see Vasundhara, 2007. "Community Conservation Initiatives". Last accessed August 30, 2010, at: <http://cciori.org>; and Mishra, Sweta, 2010. "Green Warriors: Conserving Local Biodiversity through Community Conservation Initiatives in Orissa, India", pages 142-148 in this issue of Policy Matters.



Figure 2. Community map of the area inhabited by the Chuktia-Bhunjia, created during a training programme on the Forest Rights Act held from 2009 to 2010. © Vasundhara

Another example involves the 13 PTGs in Orissa, who have a total population of around 78 500²². Many of these communities have well-defined territories (referred to as habitats under the Act) that are geographical-political-cultural-ecological landscapes. Prior to the Forest Rights Act, the customary rights of the PTG communities over these territories had not been recognized by the government. The communities with customary territorial rights are now using Section (3)(1)(e) of the Act, which provides for communal tenure rights for the PTGs over their habitats.

To further exemplify, the *Chuktia-Bhunjias* are a PTG living on the Sunabeda plateau of the Nuapada district in western Orissa. The customary habitat of this community, known as *Gudarajia*, is spread across a larger landscape covering areas in the neighbouring states of Orissa and Chattishgarh. Two protected areas, the Sunabeda Wildlife Sanctuary in Orissa and the Udanti-Sitanadi Tiger Reserve in the state of Chhattisgarh, overlap with the cultural landscape and territory of the *Chuktia-Bhunjia* community. Clan groups within the community are traditionally organized around resources that are managed by a community institution. With support from civil society groups and micro-project²³ officials, community leaders have initiated a process for the determination of their rights. In this process, they have identified rights that include the habitat areas, the socio-political organizations around the resources (each clan group has a separate area within the larger habitat), and areas for collection of minor forest products, water bodies, sacred areas, and areas of worship²⁴ (see Figure 2). The community is now in the process of making claims over the customary habitat and other traditional rights over the forest and resources²⁵.

Another example of claims to habitat rights is found in the Keonjhar district (also known as Kendujhargarh, as in Figure 1). The *Juangs*, another PTG, have claimed rights over the *pirha* (habitat of the *Juangs*), which is organized around a cluster of habitations, community forest resources, and sacred areas and is traditionally governed by a community institution. Similarly, the *Dongria Kondhs*, a PTG living in the Kalahandi district, have claimed community tenure rights over the Niyamgiri hill ranges, all of which are considered to be their habitat²⁶. In both of these areas, the sacred areas and habitats of the communities are under threat from mining and industrial projects and the claim process is directed towards securing the forest and its biodiversity.

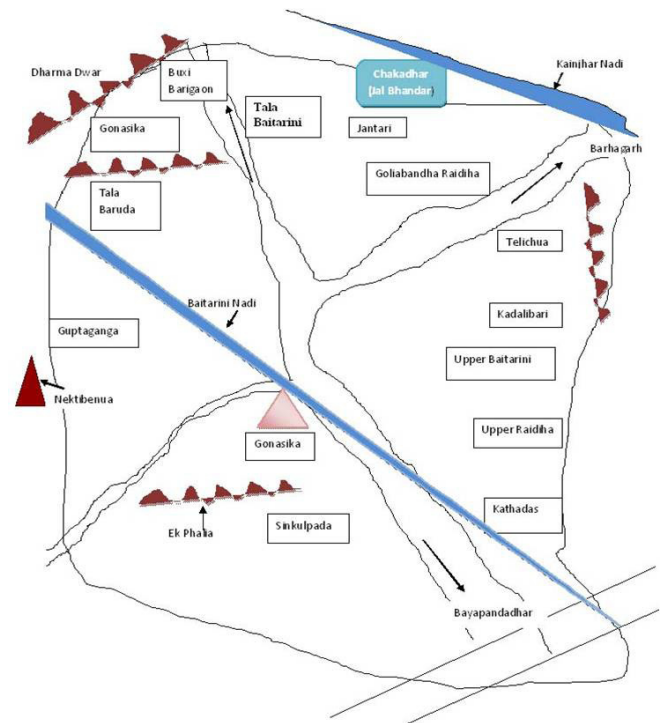


Figure 3. Map of Satkhand *pirha* (habitat) prepared by the Juang community. © Vasundhara

22 The estimated population of PTGs in Orissa is from the Base Line Survey conducted by the State Government in 2007.

23 Micro-projects are government agencies set up in PTG areas for carrying out development activities for the community. There are micro-projects for the 13 PTGs in Orissa.

24 This community worships the tiger. Interestingly, tigers are found in the entire habitat area.

25 The information is based on training programmes with the community and micro-project officials.

26 The information is based on interaction and training programmes with the community on Forest Rights Act in 2009-2010.

Under the Act, many communities have also identified rights over traditional knowledge and agricultural biodiversity to make claims on traditional agriculture practices, medicinal practices, and sacred areas, among other things. The unique agro-biodiversity and terrace cultivation maintained by the *Lanjia Souras*, a PTG in the Raigada and Gajapati districts, is planned to be protected using Section 3(1)(k) of the Forest Rights Act, which provides the right of access to biodiversity and a community right to intellectual property and traditional knowledge²⁷. This includes rights over Indigenous knowledge systems, seeds, medicines, health practices, medicinal plants, agriculture, and knowledge of fauna and flora, none of which had legal protection prior to the Act.

DETERMINATION OF RIGHTS AS AN EMPOWERED PROCESS TO SUPPORT SOCIAL INSTITUTIONS FOR CONSERVATION

The Forest Rights Act vests authority in the *Gram Sabha* (village assembly) to initiate the process of determination of rights, which includes receiving, consolidating, and verifying the claims. The *Gram Sabha* carries out these activities through Forest Rights Committees²⁸. Rules under the Forest Rights Act provide for representation and adequate participation of forest-dependent communities such as scheduled tribes, other forest-dwelling communities, and women in the *Gram Sabha* and Forest Rights Committee. Determination and claim of rights is a collective exercise that requires the concerned

villages and communities to decide collectively on the nature and extent of the rights. For example, in the Kalahandi district of Orissa, the work of a local federation in the Karlapat Wildlife Sanctuary has ensured representation and participation of different users groups, including minor forest product collectors, grazers, traditional medicine practitioners, and women, in the *Gram Sabhas* and Forest Rights Committees²⁹. In the *Juang* community discussed above, the effort to organize the traditional institution and cluster of villages to claim rights over their customary territory has rebuilt the socio-political organization. Similarly, the *Chuktia Bhunjias*, through the claim process, are reconstructing the habitat area that was fragmented by political boundaries that divided the community and the wildlife in the area. Thus, the process involved in the determination of rights has helped revive community institutions, build social capital, and ensure collective visualization of ecological landscapes and establishment of the institutional foundation for management of the community forest resources. It has also helped resolve conflicts and overlaps of claims, address issues of social justice and equity, and provide space for the participation of women.



Figure 4. Determination of forest rights at Ranpur, Orissa. © Vasundhara

The procedure of recognition involves a three-tier process. First, the *Gram Sabha* initiates the process for determination of rights and claims. The sub-district-level committee then examines the claims and prepares the draft record of forest rights, which is recommended to a district-level committee that examines the claims and prepares the record of forest rights. The committees at the district and sub-district levels are represented by government officials from the forest, revenue, and tribal welfare departments and members of the *Panchayati Raj* institutions. Involvement of people from the various departments has opened up opportunity for adding multiple disciplines and dimensions to the process of recognition of forest rights.

Furthermore, the Act empowers local authorities through Section 5, which empowers the holders of any forest right and *Gram Sabha* and village-level institutions to protect the community forest resources and habitat areas from any activity that adversely affects the forest, wildlife, or biodiversity. The provisions for rights and empowered authority are used by communities to strengthen community conservation initiatives and to control external threats affecting community forests. For example, in the Badrama Wildlife Sanctuary of Sambalpur, district villages have formed committees and have started

27 Workshop on Forest Rights Act organized by the Tribal Research Institute in 2010.

28 Forest Rights Committee is elected by the *Gram Sabha* (village assembly) and consists of ten to fifteen members. Members include scheduled tribes, other traditional forest dwellers, and women.

29 Process of determination of community forest resources at the village of Tentulipadar in the Karlapat Wildlife Sanctuary in Kalahandi district, Orissa. Documented by Vasundhara in 2008-2009. Last accessed July 20, 2010, at: http://fra.org.in/Tentulipadar_Eng.pdf.

developing management plans for the community forest resources³⁰. In the Lakhari Wildlife Sanctuary, the local community has sent a petition to the district authorities to stop stone quarrying and crushing activities in the community forest and wildlife areas. In other areas, communities have tried to use the empowered authority to stop commercial plantations such as *Jatropha* and exotic horticulture plantations³¹.

ISSUES OF IMPLEMENTATION AND RECOMMENDATIONS FOR WAYS FORWARD

The Forest Rights Act presents immense possibilities for communities to gain recognition and respect for their conservation initiatives and customary rights. However, the practical efficacy of the legal framework of rights and empowered local authorities discussed above depends largely on how the Act, particularly its provisions on community rights, is perceived and implemented by government agencies.

In terms of coverage, the Act has yet to reach the majority of forest communities in Orissa. By June, 2010, less than 44 percent of over 426 200 individual claims filed were recognized for titles. Less than 17 percent of approximately 2 500 community claims filed were recognized.³² Comparing these figures to the existing forest-dependent communities in the state, which represent about 40 percent of the total population, the status shows that the implementation process has yet to achieve its mark. The national status is not promising either. As of May, 2010, only 32 percent of over 2 822 000 claims filed were distributed³³. Within this, less than 3 percent of nearly 49 000 community claims filed were distributed. Considering that the population of forest-dependent people in India is 275 million³⁴ and the number of forest fringe villages is nearly 170 400³⁵, the claims and recognition status to date paints a discouraging picture. The *Gram Sabhas*, which have the authority under the Act to determine rights, arguably lack the information and capacity in the form of documents, maps, evidence, and technical support necessary for the determination and verification of claims. Ensuring that the Act is effectively utilized by forest communities will require a massive and concerted effort to raise awareness about the Act and its procedures and to develop the capacity of the implementing agencies.

Another issue is that forest communities who are not scheduled tribes remain excluded from the implementation process, due to the restrictive criteria of three generations (or 75 years) of habitation and the insistence of the authorities on documented evidence. Even though the list of evidence accepted under the Rules of the Forest Rights Act includes oral and physical evidence, authorities insist on documented evidence when considering claims, which is often not available, particularly for customary rights. In this case, the government authorities should be proactive in adhering to the existing provisions of the Act that allow for the processing of unrecorded rights with the help of oral and physical evidence.

The tendency to privatize commons and exclude rights still persists in forest reserves and protected areas. This exclusionary conservation approach needs to be redefined in line with the Forest Rights Act.

In addition, the lack of awareness and understanding of all levels of government authorities of customary rights themselves and of the process for their recognition under the Forest Rights Act has led to their disregard. For example, in the tribal districts of Orissa, the traditional practice of shifting cultivation is not recognized by implementing agencies as a right. This is due to their faulty interpretation of the Forest Rights Act, stipulating (incorrectly) that it only recognizes rights over forest land under continuous occupation, not under seasonal occupation (which is the practice in shifting cultivation), as well as the general prejudice within government conservation agencies against the practice of shifting cultivation as being detrimental to forests. Other important community rights of the PTGs over their habitats and sacred areas are similarly ignored. This knowledge deficit can be overcome by focusing on capacity building of the authorities and implementing

30 Dash, T., 2010. *Forest Rights Act Strengthening Community Conservation in Badrama Wildlife Sanctuary in Sambalpur District of Orissa*, Vasundhara discussion paper. Last accessed September 17, 2010, at: http://www.ncasindia.org/fra/documents/badrama_07_10.pdf.

31 Basant Biswal, Bibinika Pradhan working in Kotgarh Wildlife Sanctuary in Kandhmal district, and Arun Prasad Dehudi of Aviyon, an NGO working in Koraput district of Orissa, personal communication via telephone, February, 2009.

32 Government of Orissa, 2010. *Status of implementation of the Forest Rights Act, 2006 in the State of Orissa as on 29.06.2010*. Scheduled Tribes and Scheduled Castes Development Department: Orissa. Last accessed August 20, 2010, at: [http://fra.org.in/Status%20Report%20\(29.6.2010\).pdf](http://fra.org.in/Status%20Report%20(29.6.2010).pdf).

33 Government of India, 2010. *Status report on implementation of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 [for the period ending 31st May, 2010]*. Ministry of Tribal Affairs: India. Last accessed August 10, 2010, at: <http://www.tribal.gov.in>.

34 World Bank, 2006. *India Unlocking Opportunities for Forest-Dependent People in India*. Agriculture and Rural Development Sector Unit: South Asia Region. Last accessed July 15, 2010, at: http://siteresources.worldbank.org/INDIAEXTN/Resources/Reports-Publications/366387-1143196617295/Forestry_Report_volume_I.pdf.

35 Government of India, 1999. *State of Forest Report, 1999*. Forest Survey of India, Ministry of Environment & Forests: India.

agencies at the federal, state, district, and sub-district levels.

Furthermore, the tendency to privatize commons and exclude rights, a legacy of past conservation policies, still arises in the implementation of the Forest Rights Act. Rights in reserve forests and protected areas (including wildlife sanctuaries, national parks, and tiger reserves), although recognized by the Act, are not considered by the authorities. Seventy-five percent of the forest lands recognized under the Act so far are located in revenue forests (forests within a village boundary) and many claims on reserve forests are rejected by the forest authorities. Rights in protected areas and tiger reserves are also not recognized in many cases. In the Simlipal Tiger Reserve, tribal families were relocated, contradicting the rights of the local communities of Khadia, Mankadias, and Kolha and ignoring the fact that their traditional rights are beneficial to the conservation of the forests³⁶. This exclusionary conservation approach therefore needs to be redefined along the rights-based framework mandated by the Forest Rights Act for the benefit of local communities and conservation aims alike.

The potential of the Act may be lost in the narrow perspective through which many implementing agencies currently view it. In addition, some laws and policies contravene the Forest Rights Act; what is needed is a complete overhaul of the existing forest governance system.

Overall, it is evident that the potential of the Act may be lost in the narrow perspective through which it is currently viewed by many implementing agencies. Their common perception is that the Act is for one-off settlements of cases of so-called encroachment in forest land. As a consequence, deadlines are set by governments to complete the process of recognition of rights (which is against the provisions of the Act), causing widespread confusion among the forest communities and disturbing the implementation process³⁷. This perspective needs to change to one that understands and is confident in the given rights framework's

inherent potential to ensure biodiversity conservation and restoration of ecosystems. The Forest Rights Act has to be looked at as an approach; as such, it requires a long-term plan to implement it and to ensure that the rights-based framework that underpins it informs and guides conservation governance, planning, and programmes throughout the country. The Act involves multiple disciplines in the process of determination and recognition of rights through the participation of the government departments of Tribal Affairs, Forest and Environment, and Revenue, as well as the *Panchayati Raj* institutions³⁸. This multidisciplinary approach should guide future institutional arrangements of forest management in order to ensure that social, cultural, environmental, and economic concerns and opportunities are adequately represented.

It is also becoming increasingly evident that in addition to the challenges facing the recognition of rights under the Act, the process of forest tenure reform demands a complete overhaul of the existing forest governance system. There are still laws, policies, programmes, and structures in place that run counter to the framework of rights and empowerment of local authorities enshrined in the Forest Rights Act. Thus, the full recognition and exercise of rights under the Act is actually constrained by other existing laws. For example, even though community forestry groups get recognition under the Forest Rights Act, the state policy of Joint Forest Management remains unchanged, causing confusion and conflicts at the community level³⁹. Similarly, development and extractive projects in forest areas have ignored the Forest Rights Act and have targeted community land and forests, which are protected under the Act as inalienable rights⁴⁰.

In view of these issues, it is necessary to create an enabling legal and policy environment by amending existing laws and

36 Satpathy, P., and G. Jain, 2010. "Tiger Protection, Maoism and Forest Rights Act, the story of Jenabil". Last accessed August 20, 2010, at: <http://www.fra.org.in/Jenabil%20displacement.pdf>.

37 The Forest Rights Act does not set a time limit for claims and recognition process but the government and authorities have set deadlines from time to time to complete the process. This has led to confusion at the community level and in many cases, discouraged people to claim.

38 *Panchayati raj* institutions are set up under the 73rd amendment of the Constitution of India for decentralization of governance system and devolution of power to the grassroots.

39 For example, there is the problem of collection and marketing of certain minor forest products such as the Kendu Leaf (*Diospyros Melanoxylon*), Bamboo, and Mahua (*Madhuca longifolia*) due to existing laws such as the Orissa Kendu Leaves (Control of Trade) Act, an excise law that remains unchanged. Similarly, forestry programmes and plantations such as those under the Compensatory Afforestation Fund Management and Planning Authority are undertaken in land and forests claimed as community resources. Climate change mitigation plans like the Green India Mission and mechanisms such as Reducing Emissions from Deforestation and Forest Degradation in Developing Countries (REDD) propose structures and institutions that also threaten to affect the community forests, traditional rights, and community institutions.

40 Saxena, N. C., S. Parasuraman, P. Kant, and A. Baviskar, 2010. *Report of the four member committee for investigation into the proposal submitted by the Orissa mining company for bauxite mining in Niyamgiri*, submitted to the Ministry of Environment and Forests, Government of India. Last accessed September 2, 2010, at: http://moef.nic.in/downloads/public-information/Saxena_Vedanta.pdf. The forest clearance for the project has been cancelled by the Ministry of Environment and Forest in response to the findings of violation by the Saxena committee and recommendation of the Forest Advisory Committee.

policies to ensure that they do not counteract or negate the Forest Rights Act and instead are mutually reinforcing. For example, the National Forest Policy needs to be amended to reflect the current discourse on and understanding of the inter-linkages between recognition of rights and effective conservation. At the same time, convergence needs to be sought with existing complementary laws and programmes (such as the Panchayat Extension to Scheduled Areas Act, Mahatma Gandhi National Rural Employment Guarantee Act, and Watershed Development Programme) in order to further strengthen legal and policy provisions to ensure the realization of community rights and empowerment and just conservation in practice⁴¹.

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41 For example, The 12th Five Year plan exercise that has recently been started by the Planning Commission needs to focus on the Forest Rights Act and the Panchayat Extension to Scheduled Areas Act.

RIGHTS AND REDD: CAN THEY BE MATCHED?

Simone Lovera

Abstract

International and national policies to reduce emissions from deforestation and forest degradation in developing countries (REDD) have serious implications for the rights of Indigenous Peoples enshrined in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), the rights of women enshrined in, amongst others, the Convention on the Elimination of all Forms of Discrimination Against Women, and the human rights of local communities, including land rights and substantive rights like the right to life, personal security, health, and an adequate standard of living. An important right enshrined in UNDRIP is the right of Indigenous Peoples to free, prior and informed consent, which has already been violated by international and by most national REDD initiatives; Indigenous Peoples have not given their prior consent to any of the major REDD-related initiatives to date. REDD also has many potential impacts on biodiversity and related rights. As a top-down forest governance model that is driven by powerful economic actors, REDD clashes with rights-based approaches to conservation. Continued support must be ensured for successful, rights-based, and community-driven forest conservation and restoration initiatives, which are a more locally appropriate and just alternative to REDD.

Since 2007, international negotiations towards a programme on reducing emissions from deforestation and forest degradation in developing countries (REDD) have been taking place under the United Nations Framework Convention on Climate Change (FCCC). Not only is it still uncertain what kind of compromises and outcomes might result, but it is also increasingly unlikely there will be a comprehensive agreement on climate change and REDD established in the near future, as the current negotiations are completely stalled.¹ Despite this lack of an agreed international legal and policy framework, a few dozen countries have already started to elaborate national REDD policies, triggered by multilateral donors like the World Bank Forest Carbon Partnership Facility, the UN-REDD programme, and bilateral initiatives. A coalition of

1 Third World Network, 2010. *Análisis de los textos de negociación revisados en Bonn*, Third World Network briefing papers, June, 2010.