

**Summary Report<sup>1</sup> of the  
National Consultation on Forest Rights Act and Protected Areas,**

*Organised by Future of Conservation Network<sup>2</sup>*

*On 12-13 August 2012 in New Delhi*

*With support from ActionAid India*

## **Background**

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Rights) Act (more commonly referred to as the Forest Rights Act or FRA) was enacted in 2006 and came to force in 2008. To a certain extent the provisions of FRA provide an opportunity to overcome some of the major problems facing forest governance if interpreted in its true spirit and implemented accordingly.

Reports on the status of implementation of FRA from Protected Areas (PAs) of various states indicate a mixed situation:

- The relationship between the state and the people continues to be viewed as that of give and take; and forest use for livelihoods is still being considered by many as a contradiction to conservation objectives, especially since most of the earlier forest policies in National Parks, Wildlife Sanctuaries and Tiger Reserves have focused on conservation by exclusion.
- While in some protected areas community forest rights are being recognised (e.g. Biligiri Rangaswamy Temple Sanctuary, Karnataka), in most others they have not yet been recognised.
- There are allegations that relocation is also taking place without FRA implementation (especially recognition of rights) at many sites, a situation that prompted both MoEF and MoTA to issue circulars asking states to ensure the full and proper implementation before undertaking relocation.
- The protocol for relocation from CTHs of Tiger Reserves has been finalised without taking into account many concerns raised by civil society and conservationists.

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<sup>1</sup> This report summarises the main issues and suggestions discussed in the Consultation. It has been prepared by Shiba Desor and Neema Pathak with inputs from Rucha Ghate, Ravi Chellam, Tushar Dash, Ashish Kothari and many other participants.

<sup>2</sup> A network of ecological and social organizations and individuals committed to effective and equitable conservation of biodiversity. FoC's objective is to foster dialogue and engagement in complex conservation issues, and help tackle the increasing threats that both biodiversity and people's livelihoods face.

- The guidelines on Critical Wildlife Habitat have not yet been finalised, and it becomes important that such guidelines when finalised, attempt to sufficiently reconcile the social and ecological issues.

Keeping these issues in mind 'Future of Conservation Network (FoC)' organised a 2 day meeting on the 12<sup>th</sup> and 13<sup>th</sup> of August WWF Auditorium, New Delhi which was attended by a some community representatives, academics, civil society organizations, and conservationists. Some of the main issues and recommendations for future course of action that emerged from the deliberations are given below:

### **A. Implementation of FRA in PAs**

1. FRA is not being implemented in PAs, particularly CFR provision, only a few states like Odisha and Karnataka have implemented FRA in some PAs. FRA is also not being implemented in non scheduled areas and for communities such as pastoralists, nomadic, shifting cultivators, fisherfolk and other especially vulnerable groups.

Examples:

- Non implementation in Kachchh region of Gujarat where Maldharis and others are demanding the FRA process to be initiated including for areas falling within the Kachchh Wildlife Sanctuary.
- Non implementation in Uttarakhand where Van Gujjars have traditionally used areas of Rajaji National Park and Govind Pashu Vihar National Park for seasonal grazing.
- Non recognition of seasonal access areas in Simlipal Tiger Reserve in the CFR titles issued in Mayurbhanj district of Odisha to people belonging to Mankadia and Khadia community of PTGs.
- Non recognition of rights of fisherfolk communities of Bhitarkanika and Gahirmatha in Odisha, Sundarbans in West Bengal and Gulf of Mannar in Tamil Nadu despite demands from the communities living there.
- Some forest officials continue to believe e.g. in Tadoba-Andhari Tiger Reserve, that FRA is not applicable in Tiger reserves already declared as 'inviolate'.

2. State nodal agencies and other FRA related institutions do not have consolidated information in the public domain on FRA implementation, number of claims filed and granted in PAs.

### **Suggestions**

1. CFR forms need to be made available again in PAs where FRA process has seemingly been completed (and individual claims have already been filed and granted).
2. MoTA should issue directions under Section 12 for ensuring implementation of FRA in PAs, in non scheduled areas, and for nomadic, pastoralist, PTGs, shifting cultivators and

other especially vulnerable groups. Though this has been clarified in a letter dated 24-May-2012 by MoTA but it needs to be re-emphasised under section 12.

3. MoTA must constitute a committee to review implementation of FRA (in particular CFRs and issues related to rights recognition before relocation) in PAs.
4. Official websites and documents must reflect information on status of FRA in PAs and other special areas. The monthly status update on FRA issued by MoTA should separately reflect status of FRA implementation (especially CFRs claimed and recognized under section 3(1)) in PAs.
5. Special awareness generation campaigns and training programmes are required for recognition of Community forest rights of PTGs and OTFDs (including pastoral communities) in protected areas and buffer areas. This will require coordinated efforts of MoTA, MoEF and local civil society organisations.

## **B. Violation of WLPA and FRA processes in creation of CTHs as 'inviolable' areas**

1. The term "inviolable" is being interpreted by the forest department and the conservation groups to mean "human use free". This is despite Section 38V of WLPA mentioning that people's rights must not be affected while creating inviolable zones and that no relocation or rights' modification can take place unless 'other reasonable options of co-existence are not available' and there is informed gram sabha consent to the relocation. Consequently, in all CTHs total focus of the PA authorities is on relocation, rather than exploring possibilities for co-existence. NTCA bringing out only relocation protocol rather than a combined protocol on CTH declaration, co-existence and relocation clearly indicates the intention of the state to focus on relocation alone in Tiger Reserves ignoring co-existence as a possibility.

While creating Critical Tiger Habitats/ cores of Tiger Reserves, the procedures followed by many state governments are violating WLPA and FRA provisions (such as no prior rights recognition before relocation for creating 'inviolable' spaces, no proof in the public domain of irreversible damage and absence of possibility of co-existence) making the process illegal. There seem to be lack of detailed site specific scientific and social studies prior to prescribing relocation in that area, and lack of concrete evidence that the specific relocation has necessarily led to conservation of that area.

2. In the ongoing process of notification of cores and buffers of tiger reserves, most of the area which had earlier been declared as a buffer under Project Tiger has also become a part of the core, while a lot of non forested area is being included in the buffer. These new areas constitute lands under multiple ownership including private lands, community lands, and revenue lands. These have not necessarily been under the control

of the forest department. As the Act specifies the new buffer zones are to be under the unified control of the CTH Director, these areas now come directly under Project Tiger.

As per WLPA the buffer zones are to be declared after gram sabha consultations, are aimed at promoting co-existence between wildlife and human activities, and are to recognize livelihood, developmental, social and cultural rights. In actual practice however restrictions of various kinds are already being imposed in buffer zones across the country e.g.restrictions on collection of *tendu* leaves, bamboo, *mahua* flowers, barring of access of CSOs and researchers to engage in a dialogue with local communities in Tiger Reserves like Tadoba Andheri Tiger Reserve. Co-existence is still not being talked about or worked towards.

3. The recent order of the Supreme Court (AJAY DUBEY VERSUS NATIONAL TIGER CONSERVATION AUTH.& ORS dt 24.07.2012) complicates the situation further as it directs the state governments to declare buffer zones within three weeks, which is too short a time period to follow any procedure of proper identification and gram sabha consultation.

### **Suggestions**

1. Stress on consolidated guidelines for PA governance: MoTA must intervene in the Supreme Court in the matter of Ajay Dubey vs. NTCA & Others stressing the need for a democratic process of consultations and laying down of scientific procedures with a stress on co-existence, for guidelines on cores, buffers and tourism, in relation to conservation and management of Tiger Reserves. Guidelines are needed for enabling PA governance by gram sabhas and forest department. Such guidelines should be issued through joint discussions by MoEF and MoTA in consultation with community representatives, researchers and civil society organisations.
2. Need of teams for long term ecological and social studies in each Protected area: For in-depth information, analysis of efficacy (in terms of ecological and social justice) of different conservation models and ecological studies related to relocation, independent fact finding teams need to conduct long term studies, especially in areas (like cores of many tiger reserves) where access of researchers and CSOs is presently severely curtailed by Forest Department.

### **C. Issues related to relocation in CTH and FRA**

Even while relocating people out of CTHs a proper process as per FRA is not being followed, questioning the legality of the process itself, e.g. before initiating relocation,

- a. Recognition of rights is not being carried out.
- b. Communities are not being informed about possibility of claiming rights and continuing to stay within the PA.
- c. Relocation process is being started with talking about the relocation packages, and in some states only the cash option is being made available and not the land option (apart from other irregularities in relocation procedures).
- d. Relocations are being encouraged/done before the relocation site is ready with the basic provisions mandated by legislation.

Specific examples of relocation related irregularities<sup>3</sup>:

- In Tiger Reserves such as such as Tadoba, Nagarhole, Sariska Tiger Reserve and Melghat Tiger Reserve, there is no prior recognition of rights. When asked about this in Sariska Tiger Reserve in January 2012, the Forest Department officials responded that the nodal agency for FRA is MoTA and they have to follow relocation schedules as per their working plans. Also, the NTCA 2010 relocation committee reports for Achanakmar and Panna Tiger Reserve state that rights were not identified and 'effectively extinguished' prior to relocation.
- It is not clear what evidence is being used or procedure is being followed to determine that co-existence is not possible in CTHs from where relocation is going on.
- In many tiger reserves like Sariska, Nagarhole, Achanakmar, consent from individual families is being obtained rather than discussions with the entire gram sabha.
- The option of land rehabilitation or the option of compensation based on actual value of assets is not being offered in most cases, giving instead only the option of Rs. 10 lakh package. In Sariska Tiger Reserve, unavailability of alternative land for rehabilitation, was cited by Forest Department officials as the reason for not presenting that option.
- There are many other irregularities, eg: In Panna Tiger reserve, half the villagers of Jhalar were given the old (Rs. 1 lakh) package, and the rest were given the new (Rs. 10 lakh) package. There are also issues such as two forest divisions within a single reserve following two different relocation plans (Ranthambore Tiger Reserve), and exclusion from compensation package to female divorcees

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<sup>3</sup> The following information is based on field observations from Sariska Tiger Reserve by Shiba Desor, and a review of NTCA 2010 monitoring reports on progress of village relocation by Persis Taraporevala and Shiba Desor.

and widows (Panna Tiger Reserve) and males above 18 years of age (Achanakmar Tiger Reserve) due to outdated lists.

- Furthermore, there have been reports of relocation from Panna and Achanakmar Tiger Reserve without making available adequate water and sanitation facilities and ensuring source of livelihood in the relocated site in violation of Section 38(V)iv and vi of WLPA and Section 4(2) d and e of FRA.
4. There is no independent and ongoing process for monitoring compliance with legally prescribed procedures in relocation in particular and FRA in general by MoTA.

### **Suggestions**

1. MoTA and MoEF must organize joint public hearings in PAs where relocation is being carried out.
2. The process of rights recognition under FRA needs to be strictly completed before relocation from Critical Tiger Habitats. There must also be compliance with other conditions given in FRA and WLPA like determination of irreversible damage & context-based ruling out of options of coexistence, and consent of local communities. This needs to be supported by objective documentation (including criteria and indicators used to make judgments) and have involvement of independent social scientists and ecologists.
3. Post relocation, there has to be a continued engagement of forest department to support livelihoods in the site of relocation. For at least a few selected sites, there needs to be long term ecological monitoring of both sites (vacated and relocation site) and scientific analysis of the data obtained.

### **D. Voluntary vs induced relocation**

While maintaining on paper that the relocation should be voluntary in reality it is also being induced through various means, such as by:

- a. Threatening the community that if they do not opt for relocation they may never get an opportunity to move out with compensation and may face severe difficulties while staying inside.
- b. Access to basic health, education and developmental facilities and implementation of government schemes is negligible in some tiger reserves. For example in Achanakmar

Tiger Reserve there has been no implementation of children immunization programmes or food supply in anganwadi<sup>4</sup>.

- c. Direct human rights violations such as booking forest offences, accusing the victims and those working with them as Maoists, physically threatening and so on.
- d. Creating divisions within the village leading to a divided opinion on relocation.

## Suggestions

1. MoTA to be requested to conducted independent public hearings in all Protected Area sites from where there are complaints of violation of FRA and curtailment of basic amenities and social welfare schemes.

## E. Post CFR management

1. It was clear to all present and has also been specified in the FRA section 5 and rule 4e that committees formed by Gram Sabha should be the governing and managing body for the CFRs.
2. However, there is a lack of clarity on what should be the support structures for this institution. Related to this a number of questions came up which include:
  - a. How can the state be made more responsible for its role in supporting CFRs and also accountable for its actions.
  - b. Whether there should be and if yes then what would be the role of FD, Revenue department, and other departments in providing support to CFRs?
  - c. Should the CFR institutions be linked with the existing PRIs? If yes, how?
  - d. What should be the mechanism for financial support, if needed for CFRs?
  - e. How can CFRs being linked at landscape level, rather than functioning as independent units?
  - f. conflict could arise in a situation where the management practices/beliefs of the village committee are in contradiction with the management practices of the forest department or the other way round, on issues such as traditional use of fire, shifting cultivation, extractive use for commercial purposes and so on. How such conflict is resolved?

## Suggestions

1. Amendments to WLPA: The WLPA needs to be amended to harmonise the rights settlement process with that of rights recognition of the FRA, and acknowledge that once rights under the FRA are obtained, the authority for management will have to be shared by the forest department and gram sabhas while keeping in mind conservation goals.

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<sup>4</sup> 31 dec 2011:reported by Anil Bamne from Bilaspur, Chhattisgarh <http://www.cgnetwara.org/index.php?id=8855>

2. Temporary suspension of working plan activities which contradict FRA: All departments, including forest department should suspend all working plans and management plans within the areas where CFR claims have been filed and where claims have been granted until a broad framework in consultation with communities is developed on post CFR institutions of governance and management.
3. Encouraging conservation mosaics within and outside PAs: For achieving a larger landscape level approach, it is essential that conservation in areas that fall within and outside the Protected Area network, through measures such as community conserved areas (CCAs) is also encouraged by making use of a number of different legal provisions such as community forest resource under FRA, Ecologically sensitive area under EPA, Biodiversity Heritage Site under BDA depending on the ecological, cultural and socio-economic context and with consultation and consent of the local communities.

### **Other policy related issues**

Ongoing declaration of Tiger Reserves without gram sabha consent: Whether after FRA, the settlement of rights can be viewed as separate and distinct from recognition of rights is unclear, though it would appear that as FRA is the later law, and its Section 4(I) states that rights have to be recognized and vested 'notwithstanding anything contained in any other law for the time being in force', the settlement process under WLPA should be superceded by the recognition process in FRA. In the present situation of ambiguity, there have been protests against declaration of Tiger Reserves without any consultation or consent from gram sabhas as has been happening in Sathyamangalam in Tamil Nadu and Kawal Wildlife Sanctuary in Andhra Pradesh.

### Concerns regarding CWH guidelines

The Draft CWH Guidelines were made public on 4 May 2011. No finalised guidelines have been made available in the public domain. The draft CWH Guidelines are a significant improvement over MoEF's earlier (2007/2011) guidelines, including in its greater emphasis on public consultations and on acknowledging the possibility of co-existence within Critical Wildlife Habitats (as mandated by the Forest Rights Act). However, there are still some serious issues of concern<sup>5</sup> regarding the guidelines such as:

The balance of power in the National Steering Committee is heavily with the Forest Department in the present draft guidelines.

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<sup>5</sup> A few organisations (on behalf of FoC) had submitted comments on the draft CWH Guidelines to MoEF on 3 June 2011.



The guidelines do not sufficiently stress that identification of CWH needs to include both modern and traditional knowledge from the beginning and identify potentials for conservation through co-existence, and not just threats posed by local use.

### **Concerns regarding the CTH relocation protocol**

A document titled 'Draft protocol/ guidelines for voluntary village relocation in notified core/ Critical Tiger Habitats of Tiger Reserves' was put up in the public domain for comments on 26 May 2011. After a couple of months, a finalised protocol, not very different from the draft protocol, was uploaded on the NTCA website<sup>6</sup>. A review of the finalised CTH relocation protocol points towards several problematic areas. Eg:

- there should have been a joint protocol on CTH notification and relocation from CTHs of tiger reserves. This protocol only covers the relocation issues.
- the guidelines don't explain what happens where there is a scope for co-existence.
- While the protocol mentions that recognition of rights of STs and OTFDs should precede relocation, how such rights, and their record in official documents, would be useful to the villagers in the place to which they are relocated is unclear.
- A distinction has been made in cash compensation package for people with and without tenurial rights. The rationale for making such a distinction is unclear..
- It is unclear which Village Relocation Committee and State Level Monitoring Committee is being referred to in the protocol for monitoring the progress of village relocation as details are not given.

### **Suggestions**

The final CTH protocol should be withdrawn as it completely ignores the many serious concerns raised and suggestions made by different stakeholders including FoC. A new one should be drafted based on widespread consultation and focussing on both co-existence and relocation.

National Consultation for finalising CWH guidelines: For finalising the draft CWH guidelines, there is a need for MoEF to hold a national consultation and engage in dialogue with civil society, conservationists and community representatives and take on board various raised concerns before finalising the guidelines.

Making requirement of gram sabha consent for forest diversion legally binding: Amendment of FRA and/or FCA for ensuring that gram sabha consent is obtained before forest diversion.

Clarification on 'inviolate': It should be clarified that the term 'inviolate' does not mean only 'no-use' or 'human-free', but also includes 'compatible uses' that do not violate conservation

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<sup>6</sup> FoC had submitted comments highlighting some concerns regarding the draft protocol in June 2011, most of which have not been addressed.

objectives. This would help in the conservation of a larger area of wildlife habitat, given that in the Indian context, no-use areas would necessarily be few and mostly isolated fragments.

### **Other Implementation related issues**

Diversion of forest land in/ around protected areas for 'development' activities: Forest land continues to be diverted for non forestry purposes and activities such as mining and power projects without rights recognition and gram sabha consent. Many such instances are also within or around protected areas. An example is the forest clearance granted to the windmills project of Enercon-India in 2009 to reserved forests falling within the boundaries of 14 villages in Pune District and situated within 10km radius of Bhimashankar Wildlife Sanctuary<sup>7</sup>. These forests are not only ecologically fragile but are also important for the Scheduled tribes and other forest dependent communities such as the Mahadeo Kolis, Katkaris (STs) and Dhangars (pastoralists) for subsistence and cultural reasons. Gram sabha consent from all 14 villages was not obtained which is the requirement as per the Act and related circular issued by MoEF in July 2009. Since the company has already started construction activities and restricted entry to the sites, the processes of claiming rights under the Forest Rights Act 2006 is unlikely to be completed, and rights of the local people will not be recognized and granted under these circumstances. This is a direct violation of Section 4 (5) of FRA which obligates the government to ensure that rights of STs/OTFDs are protected till recognition process is complete.

### **Suggestion for MoTA**

Ensuring that gram sabha consent is obtained before forest diversion in protected areas: For stricter compliance of July 2009 circular requiring gram sabha consent for forest diversion, MOTA should put in place an institutional mechanism to track and report compliance of FRA in diversion of forest land. For this information and reports on the compliance status should be asked from the State Level Monitoring Committees set up under FRA and also from MOEF and reflected in the monthly report shared by MOTA on status of implementation of FRA in the states. Where necessary MOTA should institute inquiry into the reports of violation of FRA in the diversion of forest land and take steps accordingly.

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<sup>7</sup> Source: Letter submitted to MoTA minister on 19 September 2011 by members of Kalpavriksh (Neema Pathak, Saily Palande and Pradeep Chavan) on the subject "Permission granted to Andhra Wind Power Project Enercon-India, Maharashtra, based on misrepresented facts and in violation of provisions of the Forest Rights Act 2006".