

# Forest Rights and Conservation in India

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## 1. Background

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Forested landscapes of India have long been arenas of contestation, but this has especially been the case in the last couple of centuries. Ancestral lands and territories of Indigenous peoples and local communities were encroached upon by the state in the form of consolidation of state forests by the British government, during which the commons were enclosed and rights over community resources were curtailed or extinguished.<sup>1</sup>

Independence did not make much of a difference; the legacy of exclusion continued with even more alienating laws such as the Wild Life (Protection) Act 1972 and Forest Conservation Act 1980, which, despite laudable environmental objectives, advanced the process of consolidation and centralisation of forest governance and the process of rights deprivation. Estimates of eviction suggest that between 100,000 and 300,000 people have been evicted from protected areas at different times,<sup>2</sup> and several million more deprived fully or partially of their sources of livelihood and survival. The National Forest Policy of 1988 and subsequent Joint Forest Management program, which were intended to address the issues of livelihoods and participatory forest management, have often ended up being instruments for extending the forest bureaucracy further into the commons and community life.<sup>3</sup> Introduction of the neo-liberal economic policies in the 1990s accelerated the rights deprivation process to an unprecedented level by focusing heavily on resource extraction and land-grabbing development projects that threatened (and continue to threaten) the existence of forest communities.<sup>4</sup>

The response to the process of rights deprivation and political marginalisation lies in the movements of Indigenous peoples<sup>5</sup> and local communities, often with the support of civil

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<sup>1</sup> To learn more about the history of rights deprivation in the forested landscapes of India, see: Guha, R., and M. Gadgil, 1992. *This Fissured Land; An ecological history of India*. Oxford University Press: Delhi; Rangarajan, M., and K. Sivaramakrishnan (eds.), 2011. *India's Environmental History*. Orient Blackswan: Delhi.

<sup>2</sup> Lasgorceix, A., and A. Kothari, 2009. "Displacement and relocation of protected areas: A synthesis and analysis of case studies". *Economic and Political Weekly*, 44(49): 37-47.

<sup>3</sup> For more information about the impacts of Joint Forest Management on self-initiated community forest protection, see Sarin, M., 2001a. "Disempowerment in the name of 'participatory' forestry: Village forests joint management in Uttarakhand India". *Forests, Trees and People Newsletter*, No. 44. World Rainforest Movement: Uruguay; and Sarin, M., 2001b. *De-democratisation in the name of devolution? Findings from three states in India*. CIFOR: Bogor, Indonesia.

<sup>4</sup> Shrivastava, A., and A. Kothari, 2012. *Churning the Earth: The Making of Global India*. Viking Press: Delhi.

<sup>5</sup> The term 'Indigenous peoples' is not officially accepted by the Government of India, which maintains that due to the country's long history of assimilation, it is not possible to distinguish such peoples from others. The official

society organisations, who have fought appropriation of community resources by the political state and have tried to regain lost rights and ownership over commons and community regimes. It is in this historical context that the enactment of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006 (FRA) is understood as a legal and political instrument to undo the process of deprivation of forest communities by securing their rights over their ancestral lands, community forest resources, and customary territories.

Unfortunately, the potential of the FRA in securing livelihoods, enhancing forest conservation, strengthening local self-governance, and opening political space has hardly been met in the six years of its implementation. This article will examine the FRA's potential, the systemic failures in its implementation, and the few positive examples where the Act is leading to changes on the ground.

## 2. An Introduction to the Forest Rights Act

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The FRA recognises and vests forest-related rights in scheduled tribes and other traditional forest-dwelling communities, both of whom have traditionally been living in or depending on forest land for their livelihood needs. Members of scheduled tribes (in states where they are scheduled)<sup>6</sup> can claim rights under this Act if they have been residing in or dependent on forests prior to 13 December, 2005. However, other traditional forest dwellers can only claim rights if they have been in residence for at least three generations (75 years) prior to 13 December, 2005. Notably, the rights conferred under the FRA are heritable but not alienable or transferable. The Act extends to all of India except the state of Jammu and Kashmir.<sup>7</sup>

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

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

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term used for what could be considered such peoples is scheduled tribes; the more common usage is tribes or tribals, or *adivasis* ('original dwellers'). In this article, these terms are used interchangeably.

<sup>6</sup> Some tribal groups listed in the Indian Constitution are accorded differential status in different states, being scheduled tribes in one state but not in another. For example, the Paharia community (also known as Kamars) is a scheduled tribe in the state of Chhatisgarh, but just across the border in Odisha, it is not recognised as a scheduled tribe and is officially categorised as a "socially and educationally backward class/other backward class".

<sup>7</sup> Scheduled Tribes and Other Traditional Forest-Dwellers (Recognition of Forest Rights) Act 2006. Last accessed 30 March, 2013, at: <http://www.forestrights.nic.in/>. Some states have declared that the Act will not be implemented in their state since all forest land is already community or privately owned (as in Nagaland) or because there are no resident traditional forest-dwellers (as in Haryana).

- plants, herbs, roots, and tubers, among others), as well as products of animal origin such as honey and wax.
4. Other community rights of use or entitlement such as rights to fish and other products of water bodies and grazing or traditional seasonal access to natural resources by nomadic or pastoralist communities.
  5. Community tenure of habitat for particularly vulnerable tribal groups and pre-agricultural communities.
  6. Rights in or over lands under any categorisation in any state where there are any disputes over claims to such lands.
  7. Rights to convert leases or grants issued by any local authority or any state government on forest lands to titles (in essence, ownership deeds).
  8. Rights to settle and convert the forest villages, old habitations, un-surveyed villages, and other villages in forests into revenue villages.<sup>8</sup>
  9. Rights to protect, regenerate, conserve, or manage any community forest reserves that the individual or community has been traditionally protecting and conserving for sustainable use.
  10. Rights recognised under state laws or laws of any autonomous district council, or accepted as rights of tribals under any traditional or customary law of the concerned tribes of any state.
  11. Right of access to biodiversity and community rights to intellectual property for traditional knowledge related to biodiversity and cultural diversity.
  12. Any other traditional rights enjoyed that are not mentioned above. However, this excludes the traditional right of hunting or trapping or extracting a part of the body from any species of wild animal (including outside of protected areas).
  13. Rights to rehabilitation on the individual's or community's currently occupied land or alternative land, in cases where they have been illegally evicted or displaced from forest land without receiving their legal entitlement to rehabilitation.
  14. Rights to development facilities. The central government will use forest land to provide for development facilities (such as schools, health centres, irrigation, roads, and so on) to be managed by the government, and these lands and facilities will be exempted from the operation of the Forest Conservation Act 1980. However, the use of forest land can be allowed only if the forest land to be used in each case is less than one hectare, not more than 75 trees are felled per hectare, and the clearance of such developmental projects is recommended by the *gram sabha* (village assembly).

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

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<sup>8</sup> A revenue village is a settlement with defined boundaries that has a legal status in revenue records for the purposes of administration, governmental support, etc. One revenue village may contain many hamlets.

consultative, involving an Expert Committee that includes “experts from the locality” (Section 2(b)). However, one of the most crucial elements of this Act is that even in protected areas from which forest-dwellers are to be resettled, absolutely no resettlement can occur without the prior informed consent of the affected persons. Additionally, the Act states that the critical wildlife areas from where resettlement has taken place cannot be subsequently used for purposes other than wildlife conservation. Many environmentalists have enthusiastically supported this provision since it is a strong legislative measure to protect wildlife and forest areas from being taken over by industry.

The actual implementation of the FRA (or more specifically, the recognition of rights via claims) is to occur through a multi-layered process of various authorities (see Figure 1 below). These authorities range from the *gram sabha* to committees consisting of government officials and elected representatives at the sub-district, district, and state levels. The *gram sabha*'s primary role is to receive, consolidate, and physically verify the claims on individual and community forest rights in the village. The role of the sub-district and district committees is to examine and maintain records of the claims, while the state-level committee is responsible for monitoring implementation at the state level. Implementation of the FRA is thus a unique step towards decentralisation of governance. The *gram sabha* is vested with the primary authority to drive the claims process forward. Although the power of the final decision on the validity of a claim lies with the district committee (headed by the Collector, the top bureaucratic position of the district), it is the *gram sabha* that starts the process to determine the nature and extent of individual or community forest rights. However, if the district committee does not agree with the recommendations of the *gram sabha*, it is required to record and share the detailed reasons for not accepting the recommendations with the *gram sabha*. Therefore, there is a check on any otherwise arbitrary action that could be taken by the district committee.



**Figure 1:** Primary roles of authorities at the local, sub-district and district, and state levels in implementation of the FRA.



**Figure 2:** Public hearing on the Forest Rights Act in Rajasthan. © Ashish Kothari

### 3. The Revolutionary Potential of the Forest Rights Act

Taken together, the FRA's provisions have the potential to radically transform forest governance. Aside from several parts of north-east India where forest ownership has always remained with communities, the few long-standing community governed forests with legal backing include *Van Panchayats* (locally elected committees) in Uttarakhand and forests under the Chhota Nagpur Tenancy Act in Jharkhand. In the vast majority of India, forests have been under the control and management of the Forest Department. While the Department has done its job with a mix of commitment and callousness, one clear result of such centralised governance has been the alienation of tens of millions of forest-dwellers from their surroundings, constant harassment and suffering, and the erosion of their own customs, institutions, and knowledge related to forests. This is a recipe for disaster; as every country in the world is beginning to realise, forests simply cannot be conserved in the midst of hostile and dispossessed communities.

The FRA could help avert such disaster. For several hundred million people, secure tenure and access to forest produce would be a much-needed boost to livelihood security. It could also provide the crucial incentive for them to invest their time and effort into long-term conservation of the forests. The potential for this is shown at the several thousand sites where communities have shown that they can conserve forests, either on their own or through official schemes like Joint Forest Management (JFM). Odisha alone has over 10,000 such self-initiated efforts; official figures put the spread of JFM at 22 million hectares managed by over 100,000 committees. The JFM figures are most likely an exaggeration with many committees existing

only on paper, and the JFM scheme suffers from highly inequitable relationships between the Forest Department and communities (as indicated above). Nonetheless, if even one-fourth of these efforts are working effectively in practice, it shows the potential widespread impact and utility of community-based forest management.

The potential of the FRA is beginning to be felt wherever there have been proactive organisations or officials. Some of the many examples include the following:

- Rights over customary territories have been claimed by communities across the major ecosystems of India, including Dongria and Juang in Odisha (Eastern Ghats), Soliga in Karnataka (Western Ghats), Maldhari in Gujarat (Banni grasslands), Baiga in Madhya Pradesh, and Maria in Bhamragarh, Maharashtra;
- About 600 villages in Vidarbha, Maharashtra, have community forest rights over about 700,000 acres. Several such villages are planning conservation and sustainable use initiatives. The villages of Mendha-Lekha and Marda in particular are amongst the first to have discussed possible management strategies and what kind of role they would like agencies such as the Forest Department to play. Overall across India, over 1 million acres have been recognised as community forest resource rights, much of this in Maharashtra, Madhya Pradesh, Andhra Pradesh, and Odisha;
- Dozens of villages in the districts of Dangs and Narmada in Gujarat have formed committees for protection even before securing community forest rights, and some have already caught truckloads of stolen wood and stopped bamboo felling by the Central Paper Mill. Villagers in Gadchiroli district of Maharashtra have removed encroachments by outsiders on their claimed community forest rights areas, and moved to take control over several wetlands forcing the government to withdraw fish contracts to outsiders;
- Communities are beginning to use the community forest rights provisions to stop or resist destructive 'development' projects and processes such as industries, dams, mining, and logging; for instance, the FRA was used to resist the POSCO steel plant and Vedanta mining proposals in Odisha, governmental timber logging in the Baiga chak area of Madhya Pradesh, and paper mill felling of bamboo in Vidarbha of Maharashtra.
- The potential conflicts that could arise by several villages claiming the same patch of forest have been resolved in several states by *gram sabha* representatives coming together to collectively map and coordinate their respective claims. At several sites such as villages in Dediapada (Gujarat) and Ahmednagar (Maharashtra), they have also made room for the use of the community forest rights by nomadic or seasonal users who would otherwise have been left out of the process; and
- Community forest rights are also being claimed in several protected areas. In Badrama and Karlapat Sanctuaries (Odisha), Biligiri Rangaswamy Temple Wildlife Sanctuary (Karnataka), Shoolpaneshwar Sanctuary (Gujarat), and Mudumalai Sanctuary (Tamil Nadu), among others, communities are discussing possibilities of undertaking wildlife conservation efforts either on their own or in collaboration with the Forest Department. Community forest rights have so far been recognised in Biligiri and Shoolpaneshwar, as well as in Simlipal Tiger Reserve (Odisha).



**Figure 3:** Baiga adivasi women in Madhya Pradesh. © Ashish Kothari

The FRA's potential is further illustrated by three specific case studies from the states of Odisha, Karnataka, and Maharashtra.<sup>9</sup>

### 3.1. Defending Rights over Customary Territories against Multinational Corporations: Niyamgiri, Odisha

The Indigenous Dongria Kondhs' initiative to save Niyamgiri, their sacred landscape, from a proposed mining project by a multinational company is arguably the most inspiring story of how the FRA can be a rights-based tool to effectively ensure protection of Indigenous peoples' and local communities' rights and strengthen community governance over natural resources.

Niyamgiri is a hill range of the Eastern Ghats, spanning about 250 square kilometres in the districts of Kalahandi, Rayagada, and Koraput of Odisha. Both culturally and ecologically, the Niyamgiri Hills are extremely rich and globally significant. Eight distinct types of vegetation exist there, varying with local microclimates and a range of biotic and edaphic factors, and deciduous forests cover more than 75 percent of the landmass. Two major rivers (Vamsadhara and Nagavali) and more than 100 mostly perennial streams originate from the Niyamgiri Hills. The

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<sup>9</sup> Vasundhara and Kalpavriksh, 2012. *A National Report on Community Forest Rights under Forest Rights Act: Status & Issues*. Vasundhara: Bhubaneshwar, and Kalpavriksh: Pune. Last accessed 15 February, 2013, at: <http://fra.org.in/new/document/A%20National%20Report%20on%20Community%20Forest%20Rights%20under%20FRA%20-%20Status%20&%20Issues%20-%202012.pdf>.

floral diversity includes 602 plant species distributed over 114 families of angiosperms, gymnosperms, and pteridophytes, including 15 high altitude plants, 50 species of medicinal plants, 31 species of orchids (including 15 rare species with medicinal uses), and 20 species of wild ornamental plants. The faunal diversity of the Hills includes 25 species of mammals, most of which are enlisted under different categories of the International Union for Conservation of Nature Red List of Threatened Species, 20 species of amphibians, 19 species of lizards, and 22 species of snakes.<sup>10</sup>

The Dongria Kondhs are one of the particularly vulnerable tribal groups of the State. According to the 2001 Census of India, the total population of this tribe is limited to only 7952 people. Dongrias have derived their name from *Dongar*, which means dweller of hills (*'donger'*, in Odia). The community enjoys a critical and symbiotic relationship with the Niyamgiri forests, upon which their major sources of livelihoods depend, and believes that the hill country belongs to Niyam Raja Penu, a deity they worship. The uppermost hill of the Niyamgiri range is regarded as his abode and hence is sacred to them. The Dongrias consider that the right to cultivate hill slopes has been conferred to them by Niyam Raja and that unless the hills are tilled, one can hardly call oneself a Dongria. The right to swidden agriculture can never be confiscated or changed since each *dongar* (hill) is haunted by an ancestral spirit who helps with the growth of bumper crops.<sup>11</sup>

Curtailment of the customary and traditional rights of the Dongria Kondhs in Niyamgiri started with the consolidation of forests, first as a game reserve (declared by the erstwhile King of Kalahandi) and later as Niyamgiri Reserve Forests. However, the biggest shock to the Indigenous peoples began in 2005, when a proposal was forwarded by the State Government of Odisha for diversion of just over 660 hectares of forest land for mining of bauxite ore by the Odisha Mining Corporation in the districts of Kalahandi and Rayagada.

The Forest Advisory Committee<sup>12</sup> in the Ministry of Environment and Forests (MoEF) met thrice thereafter and recommended its approval 'in principle' on 27 October, 2007, stipulating certain conditions like concurrent reclamation, minimum tree felling in a phased manner, a modified wildlife management plan, and so on. The Supreme Court delivered its first judgment on this matter on 23 November, 2007, in which it set out certain conditions to be fulfilled by Vedanta before forest clearance could be granted. The Supreme Court delivered a second judgment on 8 August, 2008, in which it granted clearance to the proposal for diversion of over 660 hectares of forest land to undertake bauxite mining on the Niyamgiri Hills in Lanjigarh and suggested that the MoEF grant its approval in accordance with law. Subsequently, the MoEF formally issued the 'in principle' approval to the state government on 11 December, 2008.

<sup>10</sup> Environmental Protection Group, Odisha, 2007. *A Brief Report on Ecological and Biodiversity Importance of Niyamgiri Hill and Implications of Bauxite Mining*. Last accessed 15 February, 2013, at: <http://www.cseindia.org/userfiles/Report%20on%20Niyamgiri.pdf>.

<sup>11</sup> Daspattnaik, P. S., 1984. "Ownership Pattern, land Survey and Settlement and Its Impact on the Dongria Kondhas of Orissa". *Adibasi Journal*, 23(4): 26.

<sup>12</sup> The Forest Advisory Committee is an expert committee of the Ministry of Environment and Forests established under the Forest Conservation Act that advises it on proposals for diversion of forest land for non-forest purposes.

Although the case was considered by the MoEF, Forest Advisory Committee, and Supreme Court, the community continued opposition to the diversion of forest land and the mining project with support from civil society groups. The local movements pointed out the negative impact of the project on the unique ecology, forests, and wildlife, as well as on livelihoods and traditional rights. On 7 April, 2004, in response to the razing of Kondh villages in the area proposed for Vedanta's refinery, Niyamgiri Suraksha Samiti (the Committee for the Protection of Niyamgiri, a forum of the local tribals and affected villages) was formed to protect the area's forest, land, and water. Civil society groups and intellectuals later joined the movement as well, which eventually gained support from international human rights groups such as Survival International and Amnesty International that criticised the role of the company and the state government. This people's movement has been ongoing in this area since 2004.

In the midst of this struggle, the FRA emerged as a legal tool for the community to assert rights over the sacred forests and habitats of Niyamgiri Hills. Despite administrative resistance, the Dongria Kondhs filed claims in 2009 and 2010 to land, community forest resources, and habitat rights over Niyamgiri. In particular, the community movement in Niyamgiri was strengthened by the prospect of and process to claim these rights and the empowered authority vested in the community to protect the forests and habitats.

While this claims process was underway, the State government applied to the MoEF for final clearance for the mining project on 10 August, 2009. The Forest Advisory Committee considered the matter on 4 November, 2009, and recommended that final clearance be considered only after ascertaining community rights on forest land and after establishing such rights under the FRA. The Forest Advisory Committee also decided to constitute an expert group to carry out a site inspection.

On 1 January, 2010, a three-member team consisting of Drs. Usha Ramnathan, Vinod Rishi, and J. K. Tiwari was formed to consider and make recommendations to the MoEF on the proposal submitted by the Orissa Mining Corporation and state government. The team carried out site visits in January and February, after which it submitted three individual reports to the MoEF on 25 February, 2010. These reports provided valuable field information and revealed the need for further detailed examination on various counts as well as the need to consider different issues of relevance in an integrated manner. On 16 April, 2010, the Forest Advisory Committee met to consider these three reports. It recommended that a special committee under the Ministry of Tribal Affairs (MoTA) be constituted to look into the issues relating to the violation of the FRA.

On 29 June, 2010, the MoEF constituted another committee, composed of specialists and headed by Dr. N. C. Saxena, to explore questions surrounding the violation of the FRA. The committee submitted its report to the MoEF on 16 August, 2010, which included facts about the ecological and human costs of mining, violations of the FRA, Forest Conservation Act, and Environmental (Protection) Act 1986, and more.



**Figure 4:** Village and civil society consultation in Odisha on community forest rights. © Ashish Kothari

The following violations of the FRA were raised in the committee's findings. The area proposed for mining lease and the surrounding thick forests are the cultural, religious, and economic habitat of the Kondh (known as particularly vulnerable tribal groups). The report found that there has been resistance by the administration to implement the FRA in the project area and underscored that discouraging and denying the claims of the particularly vulnerable tribal groups without due process is illegal, with the district or sub-divisional committees being liable. It further mentioned that since the provisions of the FRA were not been followed by the state government and the legitimate and well-established rights of the Dongria Kondh particularly vulnerable tribal groups were deliberately disregarded by the district administration and the state government, the only course of action open before the MoEF was to withdraw the Stage 1 clearance given under the Forest Conservation Act for the said area. It concluded that the statutory requirements for implementation of the FRA and provision of informed consent of the *gram sabha* had not been fulfilled.<sup>13</sup>

On 23 August, 2010, the Saxena committee's report was placed before the Forest Advisory Committee, which, having found compelling and significant evidence of *prima facie* violations of

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<sup>13</sup> 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 Corporation for bauxite mining in Niyamgiri*. Submitted to the Ministry of Environment and Forests, Government of India. Last accessed 15 February, 2013, at: [http://moef.nic.in/downloads/public-information/Saxena\\_Vedanta.pdf](http://moef.nic.in/downloads/public-information/Saxena_Vedanta.pdf).

the FRA, Forest Conservation Act, and Environmental (Protection) Act, recommended that any clearance would thus be in contravention of this legislation. The Forest Advisory Committee recommended temporary withdrawal of the 'in-principle' Stage I approval that had been previously accorded in 2007.<sup>14</sup> On the basis of the findings of the Saxena committee, Forest Advisory Committee recommendations, and other MoEF records, the MoEF rejected the Stage II forest clearance and also ordered that with this rejection, the Environmental Clearance for the mine was thereafter inoperable.<sup>15</sup> The Forest Advisory Committee has since questioned the way in which forest clearance was previously granted in Niyamgiri, in essence, ignoring the facts about its impact on rights. In a 2011 letter to the Minister of Environment and Forests, the non-official members of the Forest Advisory Committee pointed out serious irregularities in the evaluation of projects and in particular pointed out the case of Niyamgiri.<sup>16</sup>

The Niyamgiri struggle established a precedence that can be used to guide democratic decision-making regarding governance of forests and natural resources in India. It strengthened the legal application of the FRA for protection of rights over forests and habitats by asserting that recognition of the rights of communities over forests and habitats and of *gram sabhas* to provide or deny informed consent are statutory requirements under the FRA. However, significant barriers remain. According to a report shared by local organisations and activists, Dongria Kondhs from 36 villages have claimed community forest rights and habitat rights since enactment of the FRA.<sup>17</sup> While the district administration has recognised forest rights in other areas, it has provided no responses to the claims in Niyamgiri. Local government officials have reportedly indicated that higher authorities in the government have instructed them not to consider and process community forest rights in the Niyamgiri area.

In a case relating to the diversion of forest land for mining in Niyamgiri, the Supreme Court of India delivered a landmark judgment on 18 April, 2013. The judgment upholds the customary and cultural rights of local communities over Niyamgiri in accordance with the Forest Rights Act, Panchayat (Extension to Scheduled Areas) Act, and provisions of the Constitution, and upholds the authority of the *gram sabhas* to protect and preserve the customary habitats and cultural rights.<sup>18</sup> While it has given new impetus to the local community and *gram sabhas* to assert their rights under the FRA and Panchayat (Extension to Scheduled Areas) Act, concerns

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<sup>14</sup> Ministry of Environment and Forests, Government of India, 2010. *Recommendations of the Forest Advisory Committee in its Meeting Convened on 20.08.2010*. Last accessed 15 February, 2013, at: <http://moef.nic.in/downloads/public-information/Agenda%20Item24082010.pdf>.

<sup>15</sup> Ministry of Environment and Forests, 2010. *Decision on grant of forest clearance in Kalhandi and Rayagada Districts of Orissa for the Proposal submitted by the Orissa Mining Corporation Ltd. (OMC) for Bauxite Mining in Lanjigarh Bauxite Mines* (24 August, 2010). Last accessed 15 February, 2013, at: <http://moef.nic.in/downloads/public-information/Vedanta-24082010.pdf>.

<sup>16</sup> Chakravartty, A., 21 September, 2011. *Forest officials slammed for shoddy evaluation of project sites*. Last accessed 15 February, 2013, at: <http://www.downtoearth.org.in/content/forest-officials-slammed-shoddy-evaluation-project-sites>.

<sup>17</sup> See article in local language (Odia) on Niyamgiri at: <http://bichitrabiswal.blogspot.in/2011/10/article-on-niyamgiri-and-fra-in.html>.

<sup>18</sup> Supreme Court of India, 2013. *Writ Petition (Civil) No. 180 of 2011: Judgment*. Last accessed 20 June, 2013, at: <http://judis.nic.in/supremecourt/imgs1.aspx?filename=40303>.

have been raised by the Ministry of Tribal Affairs<sup>19</sup> and civil society organisations<sup>20</sup> about improper implementation of the Supreme Court order by the state government.

### 3.2. Towards Rights-based Conservation: The Biligiri Rangaswamy Temple Wildlife Sanctuary and the Soligas, Karnataka

The Biligiri Rangaswamy Temple (BRT) Wildlife Sanctuary is located in the district of Chamarajanagara, Karnataka, and is a confluence of the Western and Eastern Ghats. The Soligas are an indigenous tribal community; approximately 6000 people live in the BRT Wildlife Sanctuary. Traditionally, the Soligas were hunters and shifting cultivators and collected a wide range of non-timber forest products. When the BRT area was designated a wildlife sanctuary in 1972, shifting cultivation and hunting were completely banned and the Soligas were forcibly settled into *podus* (tribal settlements). Some were given small plots of land to practice settled agriculture and others had to turn to manual labour and other occupations, including gathering forest produce such as *amla* (Indian gooseberry, *Phyllanthusemblica*) and honey from the rock bee (*Apis dorsata*).

In 2004, pursuant to a Supreme Court order, the state government prohibited the collection of non-timber forest products for sale. When the ban order was put into effect in the BRT Wildlife Sanctuary in 2006, it impoverished several thousand Soligas. Until that point, the Soligas had mostly cooperated with the Forest Department, but they then became hostile and agitated.<sup>21</sup> Furthermore, the state government notified the area as a tiger reserve in January 2011, ignoring protests by Soligas and civil society groups<sup>22</sup> and without even obtaining the final approval of the National Tiger Conservation Authority.

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<sup>19</sup> See, for example, the following directions and letters issued by the Ministry of Tribal Affairs to the state government for implementation of the Supreme Court order in letter and spirit: MoTA, 2013a. *Directions under Section 12 of the FRA*. Last accessed 23 June, 2013, at:

<http://tribal.gov.in/WriteReadData/CMS/Documents/201306070428075257247DirectiontoOdishaGovtl.pdf>;

MoTA, 2013b. *Letter pointing out non-compliance of the directions from the Ministry of Tribal Affairs*. Last accessed 23 June, 2013, at: <http://tribal.gov.in/WriteReadData/userfiles/file/lettertoodisha.pdf>; and MoTA, 2013c. *Letter pointing out the improper implementation of the Supreme Court order*. Last accessed 23 June, 2013, at:

<http://tribal.gov.in/WriteReadData/userfiles/file/letter%20vibha%20puridas.pdf>.

<sup>20</sup> See, for example, the following news reports about concerns raised by local groups on the response of the State government on the implementation of the Supreme Court order: Odisha Diary, 27 May, 2013. "CSD Alleges Open Violation of Forest Rights Act in utmost sphere by Odisha Government". Last accessed 23 June, 2013, at: <http://www.orissadiary.com/CurrentNews.asp?id=41484>; and The Hindu, 13 June, 2013. "Dongaria and Kutia Kondh leaders seek Governor's intervention". Last accessed 23 June, 2013, at: <http://www.thehindu.com/todays-paper/tp-national/tp-otherstates/dongaria-and-kutia-kondh-leaders-see-governors-intervention/article4809338.ece>.

<sup>21</sup> Kalpavriksh, 2007. *Forest Fires and the Ban on NTFP Collection in Biligiri Rangaswamy Temple Sanctuary, Karnataka: Report of a Field Investigation and Recommendations for Action*. Kalpavriksh: Pune. Last accessed 10 February, 2013, at: [http://www.kalpavriksh.org/images/Investigations/BRTInvestigation\\_finalreport.pdf](http://www.kalpavriksh.org/images/Investigations/BRTInvestigation_finalreport.pdf).

<sup>22</sup> See, for example: Gandhi, D., 28 October, 2010. "Soligas against making BRT sanctuary a tiger reserve". Last accessed 10 February, 2013, at: <http://www.hindu.com/2010/10/28/stories/2010102864010900.htm>.



**Figure 5:** Biligiri Rangaswamy Temple Wildlife Sanctuary. © Ashish Kothari

In this context of rights deprivation and conservation conflicts, Soligas have claimed rights over sacred areas and community forest resources under the FRA. The process has been facilitated by the local indigenous organisation Soliga Abhivrudhi Sangha with support from the civil society organisation Ashoka Trust for Research in Ecology and the Environment (ATREE), which have together mapped out the communities' traditional areas of access and customary rights. Accordingly, the Soligas' claims focused on community forest rights to the traditional areas of access.

They also mapped sacred natural sites in the BRT Wildlife Sanctuary to better understand the historical and cultural ecologies of the Soligas who have inhabited the landscape for centuries. This was the first effort by Soligas to re-engage with the landscape after the displacement and curtailment of rights induced by the establishment of the protected area. They perceive the map as a reassertion of their rights within that landscape. Indeed, the mapping of sacred sites was used as part of the evidence to claim rights to access and protect places of cultural importance.<sup>23</sup>

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<sup>23</sup> The map used by the Soligas to assert rights over traditional access areas and community landscape is available at: [http://www.atree.org/sites/default/files/brt/brtmap\\_eng.pdf](http://www.atree.org/sites/default/files/brt/brtmap_eng.pdf).

To date, community forest rights of 25 Soliga *podus* have been recognised, covering about half of the Sanctuary's total area.<sup>24</sup> With support from civil society groups (including ATREE, Vivekananda Girijana Kalyana Kendra, and Kalpavriksh), the Soligas have also initiated a process to prepare community conservation plans for the management of the BRT Wildlife Sanctuary as per their rights and authorities provided under the FRA and to explore collaborative management with the Forest Department.<sup>25</sup> The key constraints in the process have been the continuance of the exclusionary approach to conservation, as illustrated by the aforementioned 2011 declaration of the area as a tiger reserve.

### 3.3. Rural Prosperity and Self-rule through Forest Rights: Vidarbha, Maharashtra

Amongst the first communities to receive community forest rights under the FRA were villages in the Gadchiroli district of Maharashtra, with Mendha-Lekha and Marda as the first ones. Subsequently, about 2700 community forest rights claims have been accepted, mostly in the districts of Gadchiroli and Gondia, on over 700,000 acres (the largest forest area of any state so far in India).<sup>26</sup>

The village of Mendha-Lekha has subsequently moved to establish not only full community control over its titled forest, but also gain the right to issue transit permits for forest produce to be taken out of the village for sale. Before then, such permits were the prerogative only of the Forest Department. Since 2010, the village has been harvesting and selling the bamboo in its forest (which was previously leased to a paper mill) and has earned about 10 million Indian Rupees (approximately 200,000 US Dollars). It is planning to use this money to ensure water, energy, and livelihood security for all families and other village amenities such as training of youth for jobs. It is also working with villages in other parts of the region to establish similar processes.

Other villages in the region such as Murumbodi have secured rights to bodies of water in their forest land area and successfully fought to establish the *gram sabha's* right to conduct and manage fisheries in them. This was previously the prerogative of only the state fisheries

<sup>24</sup> Sambhav, K., 31 October, 2011. "Finally, community forest rights". Last accessed 10 February, 2013, at: <http://www.downtoearth.org.in/content/finally-community-forest-rights>.

<sup>25</sup> For articles and reports on community conservation initiatives in the BRT Wildlife Sanctuary under the FRA, see: Das, D., 10 August, 2011. "NGO helps adivasis with alternative plan for forest conservation". Last accessed 10 February, 2013, at: [http://articles.timesofindia.indiatimes.com/2011-08-10/pune/29871662\\_1\\_forest-rights-act-biligiri-rangaswamy-conservation](http://articles.timesofindia.indiatimes.com/2011-08-10/pune/29871662_1_forest-rights-act-biligiri-rangaswamy-conservation); Desor, S., A. Kothari, and N. Rai, 2011. "Conservation through democratic governance". Last accessed 10 February, 2013, at: <http://www.trinet.in/?q=node/733>; Kothari, A., N. Rai, and C. Madegowda, 2012. "An alternative conservation model for the BRT Sanctuary is a step closer to becoming a reality". Last accessed 10 February, 2013, at: <http://www.hindu.com/fline/fl2901/stories/20120127290109900.htm>; and Vasundhara & Kalpavriksh, 2012.

<sup>26</sup> Sagar, R. C., 2012. *Action Plan for the Implementation of the Forest Rights Act 2006 in View of the Amendments Made in the Forest Rights Rules 2008*. Powerpoint presentation by Principal Secretary, Tribal Development Department, Government of Maharashtra, at the National Workshop on Forest Rights Act, Ministry of Tribal Affairs and UNDP, 3 December 2012, Delhi.

department. A number of villages are also exploring the potential of combining the FRA, the Biological Diversity Act 2003, and the Mahatma Gandhi National Rural Employment Guarantee Act 2009 (and related scheme) to optimise conservation and enhancement of livelihoods using multiple strategies.<sup>27</sup>

The precedence set by these villages has had important consequences across India. For instance, the *gram sabha's* right to issue transit permits for forest produce to be taken out of the village and sold is now recognised for all villages that obtain community forest rights, as per new rules issued by the MoTA. Community resistance to cutting of bamboo by a paper mill and fishing by contractors has led to the suspension of related industrial leases across the district of Gadchiroli, with the District Collector issuing the following order:

“ *Therefore, those villages got community rights under clause 3(1)(c) and 3(1)(d) of FRA, within their areas, the lease granted / allowed by Zilla Parishad, Forest Department or any other department to any private company or organization or individual for felling of Bamboo, and auction products from water bodies or otherwise made any agreement to this effect, is set aside and stands cancelled till further instruction of the State Government.* ”<sup>28</sup>

These developments have led to demands across the country for taking away leases on bamboo and other non-timber forest produce from industry in favour of recognising *gram sabha* ownership over the same. Similarly, the precedent set by several villages in claiming rights of management and use of bodies of water is likely to be used by others with livelihoods based on conservation and sustainable use of fisheries.

Like the above examples, many of India's forested landscapes and other major ecosystems are presently witnessing initiatives by communities and civil society groups to assert rights over customary territories that hold significance for conservation, governance, and livelihoods. Amongst these are pastoralists, who have long been amongst the most disprivileged of forest land users in India. For example, the Maldharis, who are pastoralists living in the Banni grasslands of the Kutch district of Gujarat, have initiated a process for claiming community rights over the customary territories accessed by them for grazing. The local Panchayats (governance institutions) of Maldharis have recently petitioned the State government, pointing out violation of forest rights by the Forest Department, which has implemented a working plan for the Banni grasslands that violates their customary rights.<sup>29</sup> Similar rights claims have been undertaken by the Raika in Rajasthan, the Gujjars in Uttarakhand and Uttar Pradesh, and other pastoral groups in other states.

<sup>27</sup> These and subsequent observations are from Vasundhara and Kalpavriksh, 2012.

<sup>28</sup> Office of the Collector, Gadchiroli, No. Kava/Aaka/Vanaka/Kavi/483/2012, dated 23 April, 2012.

<sup>29</sup> Halliday, A., 3 February 2013. "The lie of a grassland". Last accessed 17 February, 2013, at: <http://www.indianexpress.com/news/the-lie-of-a-grassland/1068443/0>.



Figure 6: Mendha elder with news on community forest rights. © Ashish Kothari

#### 4. Hurdles and Issues in Implementation of the Forest Rights Act

The examples given above are amongst the very few in India where the implementation of the FRA has been relatively successful or is proceeding well. The illustrated potential of the law has not reached the target communities across most of the country, where the situation is much bleaker and implementation stymied by a range of systemic hurdles. This has been repeatedly raised not only by a range of civil society groups, but also by official bodies such as the National Advisory Council, the Parliamentary Committee on Social Justice and Empowerment, and the Joint MoEF-MoTA Committee on the FRA.<sup>30</sup>

Implementation of the FRA is marked by a selective process that has excluded many of the important and empowering provisions of rights. As of 31 December, 2012, more than 3.2 million claims have reportedly been filed in various States and Union Territories and more than 1.27 million titles have been distributed under the Forest Rights Act in the States and

<sup>30</sup> Government of India (no date). "National Forest Rights Act Committee". Last accessed 17 February, 2013, at: <http://fracommittee.icfre.org/>.

Union Territories.<sup>31</sup> There have been severe problems in the claims processed so far, the vast majority of which have been for individual plots of land.

What is an even bigger issue is the abysmal status of community forest rights claims. In India, according to the Forest Survey of India, about 170,000 villages have forests within their boundaries, covering about 32 million hectares (half of the total forest land<sup>32</sup> of the country). Logically, there should be at least as many community forest rights claims. However, a December 2012 report of the MoTA shows that only 60,730 community claims have been received, of which 16,026 community forest rights claims have been recognised and titles distributed. Moreover, many or most reported community forest rights claims are to development projects allowed under the FRA (for example, roads, transmission lines, and health and educational centres) and not to the use and management of forest resources.<sup>33</sup> The diversity of community forest rights of Indigenous peoples and local communities, including rights over minor forest produce, customary forest and territories of particularly vulnerable tribal groups and pre-agricultural communities, traditional seasonal access of pastoralist and nomadic communities, rights of governance and management, community rights of access to biodiversity, intellectual property and traditional knowledge, and other customary and traditional rights, remain excluded. The claims of villages with a predominance of non-scheduled forest dwellers are also being denied or put on indefinite hold because state governments have decided to grant rights only to scheduled tribes or are insisting on proof of 3 generations (75 years) of occupation of the land, whereas the FRA simply requires proof of residence for this period.

The lack of full implementation of community forest rights is a result of several factors, with the dominant political system serving as a major cause. The political objective of the FRA to restore forests and customary territories to local communities and to establish community governance regimes has been undermined by the government to the extent that the Act is reduced to a 'beneficiary scheme', which aptly suits the present political and development discourse guided by the neo-liberal economic agenda. Much of the focus of the implementation of the FRA has thus been on individual land rights, with both state governments and civil society organisations believing that this will generate much greater political support than community forest rights.

Such a limited conceptualisation of the FRA is not going to help achieve the law's broader objective of establishing rights of Indigenous peoples and local communities over forests and customary landscapes and community governance, and may actually further limit the *de facto* rights otherwise enjoyed by communities. In many cases, due to lack of proper understanding of community rights and the FRA, government agencies have tried to deal with landscapes and forests accessed under community regimes as individual or private rights. For example, whereas the nature of rights and access of particularly vulnerable groups and pre-agricultural

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<sup>31</sup> Ministry of Tribal Affairs, Government of India, 2012a. *Status report on implementation of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 [for the period ending 31 December, 2012]*. Last accessed 15 February, 2013, at: [http://fra.org.in/new/document/FRA%20Status India Dec,%202012.pdf](http://fra.org.in/new/document/FRA%20Status%20India%20Dec,%202012.pdf).

<sup>32</sup> 'Forest land' is what is legally classified as such and does not necessarily have actual forest cover.

<sup>33</sup> Vasundhara and Kalpavriksh, 2012.

communities over forest lands and customary territories are mostly communitarian in nature, primarily only individual tenure is recognised in these areas. In addition, communities and officials in many parts of India simply do not know about these provisions or how to use them. In the hills of Uttarakhand, where the community-forest interface is intense and age-old, ignorance of the FRA and reluctance of the state government to start the process has translated into not a single claim being filed.

The predominant emphasis on individual forest rights in the implementation of the FRA has also led to its misuse in some parts of India, including in Andhra Pradesh, Maharashtra, and Assam, where political vested interests and livelihood desperation have combined to clear forests in the hope of getting individual titles.<sup>34</sup> However, in some cases of reported misuse, more detailed investigation has shown the forced political circumstances under which the misuse has taken place and that some may even have been misreported as such.

While recognition of community rights remains a challenge in and of itself, the FRA process is further constrained by an unsupportive governance regime for forests and continuance of many laws, policies, and institutions that run counter to the objectives of the FRA. Firstly, there has until recently been a complete dearth of enthusiasm and interest in the MoTA and in the state tribal departments, which have the primary responsibility to implement the Act. In many places, they seem to have *de facto* handed over decision-making to forest officials in the various committees intended to support implementation. Secondly, there is active resistance within the present governance and political system to initiate the required forestry sector reforms to establish a rights-based and community-based or collaborative governance framework.

Since the enactment of the FRA, the government has been claiming recognition of large amounts of cultivated or occupied forest land on the one hand, while granting permissions for non-forest use of forest land (for industry, mining, and so on) at an unprecedented rate on the other.<sup>35</sup> During this period, 8284 projects were granted forest clearance and 204,000 hectares of forest land were diverted; as much as 50,000 hectares was diverted for mining projects alone. Reports of government committees and information collected through the Right to Information Act 2005 reveal that most of the diversion of forest land in the states has taken place without compliance with the FRA, in essence, without completing the process of recognition and vesting of rights and without obtaining the consent of the *gram sabhas*. A circular issued by the MoEF in July 2009 requires state governments to complete the FRA process and obtain consent of the *gram sabhas* prior to diversion of the forest lands for any project.

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<sup>34</sup> See MoEF-MoTA Joint Committee, 2010. *Report: National Committee on Forest Rights Act*. Manthan: National Committee on Forest Rights Act. Last accessed 17 February, 2013, at: [http://moef.nic.in/downloads/public-information/FRA%20COMMITTEE%20REPORT\\_FINAL%20Dec%202010.pdf](http://moef.nic.in/downloads/public-information/FRA%20COMMITTEE%20REPORT_FINAL%20Dec%202010.pdf).

<sup>35</sup> Down To Earth, 2011. "Environment ministry creates a record in forestland diversion". Last accessed 17 February, 2013, at: <http://www.downtoearth.org.in/content/environment-ministry-creates-record-forestland-diversion>; Centre for Science and Environment, 2011. "Forest and Environment Clearances". Last accessed 17 February, 2013, at: [http://www.downtoearth.org.in/dte/userfiles/images/1Overview\\_Forest\\_Environment.pdf](http://www.downtoearth.org.in/dte/userfiles/images/1Overview_Forest_Environment.pdf); Kohli, K., M. Menon, and V. Samdariya, 2010. "Crouching data, hidden forest". Last accessed 17 February, 2013, at: <http://d-sector.org/article-det.asp?id=1331>.



**Figure 7:** Adivasis at the gate of the Periyar Tiger Reserve. © Ashish Kothari

In other words, even as the process of recognition and vesting of rights is underway, rights of the local communities are violated by diverting forests and forest lands for development projects. This reveals the contradiction in the government implementation of the FRA (pointed out by the government’s own statutory bodies) and raises questions about the indicators of progress. In a recent letter to the Minister of Environment and Forests, the non-official members of the Forest Advisory Committee raised questions about lack of due diligence in the consideration of forest clearance issues, particularly those pertaining to the Forest Rights Act and other related legislation. The MoEF-MoTA Joint Committee set up to examine the implementation of the Act in 2010 pointed out that the FRA was being consistently violated in the case of forest land diversion.<sup>36</sup> Similarly, in a report on implementation of FRA submitted to the Parliament, the Standing Committee on Social Justice and Empowerment on implementation of the FRA made the following important observation on diversion of forest land in the case of Niyamgiri:

“ *The Committee, while deprecating the inaction on the part of the Ministry of Tribal Affairs in guarding the interests and rights of these aboriginal people due to which the project could move ahead to such an advanced stage, advise the*

<sup>36</sup> The final report of the Joint MoEF-MoTA Committee on the FRA and reports of its state-level visits and consultations are available at: <http://fracommittee.icfre.org>.

***Ministry to be watchful and keep a constant vigil in ensuring that rights and interests of such people are always looked after, safeguarded and protected.***<sup>37</sup> ”

Some conservation agencies and the forest bureaucracy are strongly resisting reforms to the existing framework for forest conservation and governance to better complement new rights frameworks. Detailed recommendations and suggestions for such reforms, particularly in the context of the FRA and the Panchayat (Extension to Scheduled Areas) Act 1996, have been issued by the MoEF-MoTA Joint Committee on the FRA in 2010<sup>38</sup> and the National Advisory Council,<sup>39</sup> but the recommendations are pending with the concerned Ministries. In addition, the forest bureaucracy has shown strong resistance to the findings of the MoEF-MoTA Joint Committee. Not only has the Director General of Forests sent letters to the MoEF contesting such findings and particularly challenging the recommendations for changes in the laws, policies, and forestry programmes, but he has also described rights as ‘burdens’ on forests, revealing the conventional thinking that still pervades the forest bureaucracy.<sup>40</sup>

Implementation of the existing forest laws, policies, and programs without taking into account the FRA has effectively constrained assertion and exercise of forest rights at the grassroots level. For example, the JFM program has been found to be obstructing the recognition of community forest rights particularly in areas where there are community conservation groups. In Odisha, community forestry groups and their federations who have long been seeking legal recognition have used the FRA to claim and assert management rights and have strongly opposed the existing JFM program. In 2011, despite opposition by networks of community forestry groups and civil society organisations, the Odisha government passed a new JFM resolution that directly clashes with the objectives of the FRA. In several states, particularly in Andhra Pradesh, the Forest Department has artificially restricted the claims to boundaries set under JFM or related schemes, even though the FRA recognises a community’s rights over its entire customary use area.

<sup>37</sup> Lok Sabha Secretariat, Ministry of Tribal Affairs, 2011. *Standing Committee on Social Justice and Empowerment (2011-2012), Fifteenth Lok Sabha, Eighteenth Report* (emphasis added). Last accessed 17 February, 2013, at: [http://164.100.47.134/lssccommittee/Social%20Justice%20&%20Empowerment/18th\\_Report\\_22-12-11.pdf](http://164.100.47.134/lssccommittee/Social%20Justice%20&%20Empowerment/18th_Report_22-12-11.pdf).

<sup>38</sup> For issues and recommendations on implementation of the Forest Rights Act, see: MoEF-MoTA Joint Committee, 2010.

<sup>39</sup> National Advisory Council (no date). *Summary of Recommendations: Scheduled Tribes & Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006*. Last accessed 10 February, 2013, at: [http://nac.nic.in/pdf/fra\\_recommendations.pdf](http://nac.nic.in/pdf/fra_recommendations.pdf).

<sup>40</sup> See, for example: Sambhav, K., 15 February, 2011. “Forest rights act under scrutiny”. Last accessed 13 February, 2013, at: <http://www.downtoearth.org.in/content/forest-rights-act-under-scrutiny>; Sethi, N., 13 February, 2011. “NAC member to lecture babus on forest rights”. Last accessed 13 February, 2013, at: [http://articles.timesofindia.indiatimes.com/2011-02-13/developmental-issues/28542305\\_1\\_forest-officials-forest-rights-act-forest-bureaucracy](http://articles.timesofindia.indiatimes.com/2011-02-13/developmental-issues/28542305_1_forest-officials-forest-rights-act-forest-bureaucracy); and Sethi, N., 25 October, 2011. “Natarajan seeks top official’s explanation for questioning FRA”. Last accessed 13 February, 2013, at: <http://m.timesofindia.com/PDATOI/articleshow/10491006.cms>.



**Figure 8:** Chaukhuta and surrounding *Van Panchayat* forests, Uttarakhand. © Ashish Kothari

In several villages (such as Brahmanikumbei in Ranpur block, Nayagarh district, Odisha) the area over which community forest rights have been recognised is much less than what the village has protected and had claimed. In Chhattisgarh, tiny patches are being given as community forest rights, with the Forest Department retaining control over most of the forest land. Community forest rights in many states are recognised with conditions imposed on the rights, as in the villages in the Gadchiroli district of Maharashtra. The conditions imposed on the rights are not as per the FRA. For example, titles issued on community rights in Maharashtra require the right-holders to follow the existing working plans of the forest department, which contravenes the FRA, particularly community management rights.

Protected areas are another example where divergent approaches and resistance of the Forest Department have obstructed the recognition of rights under the FRA. Aside from a few exceptions, the FRA is not implemented in the vast majority of India's protected areas and tiger reserves. Moreover, villages are relocated from tiger reserves in many states before recognising forest rights of the communities.<sup>41</sup> This is happening despite clarifications issued by MoTA and MoEF regarding application of the FRA in such areas.<sup>42</sup>

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<sup>41</sup> See: Gupta Bhaya, S., and A. Kothari, 30 November, 2010. "In the name of the tiger". Last accessed 18 February, 2013, at: <http://www.downtoearth.org.in/node/2269>; and Kalpavriksh (no date). *Legislation Brief: Recognition of Rights and Relocation in relation to Critical Tiger Habitats*. Last accessed 18 February, 2013, at: <http://www.kalpavriksh.org/images/Documentation/Advocacy/Recognition%20of%20Rights%20and%20Relocation%20in%20relation%20to%20CTHs.pdf>.

<sup>42</sup> Ministry of Tribal Affairs, Government of India, 2012b. *Guidelines regarding implementation of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006*, Page 6. Last accessed 18 February, 2013, at: <http://tribal.nic.in/WriteReadData/CMS/Documents/201212031202044013671File1416.pdf>.

## 5. The Way Forward

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Several official and civil society organisations have pointed to the crucial actions needed to deal with these problems. Some of the most important ones discussed below are based on the reports and recommendations of the Joint MoEF-MoTA Committee on the FRA, National Advisory Council, and Parliamentary Standing Committee on Social Justice and Empowerment, as well as reports of national consultations on community forest rights organised by Vasundhara and Kalpavriksh in 2011 and 2012.<sup>43</sup>

The FRA requires institutional support and long-term commitment from the government and necessary convergence between the concerned agencies. At present, the FRA is dealt with on an *ad hoc* basis without any proper planning, technical, or institutional support and monitoring. The Joint MoTA-MoEF Committee and the National Advisory Council have suggested the establishment of a national FRA council as a support and monitoring body for implementation of the FRA, and the Standing Committee of the Parliament has suggested a standing cell at the MoTA to monitor the Act. Such mechanisms have the potential to increase attention and emphasis on key provisions regarding community forest rights, rights of particularly vulnerable tribal groups and vulnerable groups, management rights and authority, and rights of other traditional forest dwellers. In response to recommendations made to the MoTA, including for framing rules, issuing clarificatory circulars, orders, and instructions, and guidelines on the procedures, the Ministry issued guidelines and made amendments in rules in 2012.

The guidelines and amendment rules have done the following:

- i) Clarified some provisions,
- ii) Provided clear procedures for recognition of rights over community forest resources and for conversion of the forest villages into revenue villages,
- iii) Made the implementing agencies (like the district-level committees and state-level monitoring committees) accountable to facilitate and ensure recognition of rights of vulnerable communities and excluded groups such as particularly vulnerable tribal groups, pastoralist and nomadic communities, and communities displaced due to state interventions, and
- iv) Stressed protection of rights of communities in the process of diversion of forest lands for various projects and in relocations from protected areas.<sup>44</sup>

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<sup>43</sup> Vasundhara and Kalpavriksh, 2012.

<sup>44</sup> Ministry of Tribal Affairs, Government of India, 2012b; Ministry of Tribal Affairs, Government of India, 2012c. Notification of 6 September 2012: *The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Rules, 2012*. Last accessed 18 February, 2013, at: <http://tribal.nic.in/WriteReadData/CMS/Documents/201305010539563338636ammendmentrules.pdf>.

In relation to the fourth point, the MoTA has written letters in the past to the MoEF to ensure compliance with the FRA in the diversion of forest land for projects.<sup>45</sup>

Since the potential of the law and the important provisions are still not known by the target communities, civil society organisations, and implementing authorities, it is necessary to carry out massive legal awareness on the FRA, involving governmental and non-governmental research and training institutes. Application of the FRA across major ecosystems of India, which intersect with the customary territories and areas of countless Indigenous peoples and local communities, can greatly strengthen conservation governance and ensure locally appropriate livelihoods.

The completion of the process for recognition of rights and of obtaining informed consent of the *gram sabha*, as required by the 2009 MoEF circular, should be made legally binding through inclusion as rules under the FRA and/or Forest Conservation Act. This is in line with the globally accepted norm requiring free, prior and informed consent of Indigenous peoples and local communities for activities that affect their lands and livelihoods. There needs to be regular monitoring of forest land use such as diversion of forest land, implementation of forestry programmes, plantations, and land acquisitions in order to ensure protection of the rights guaranteed under the FRA; such monitoring can be done at the ground level by *gram sabha* committees set up under the FRA, and going up to state-level monitoring mechanisms and a proposed national-level FRA Council (as suggested in the MoEF-MoTA Joint Committee report). In essence, this monitoring and reporting process should include information on forest land use and diversion for various purposes, as well as compliance with the FRA.

There is a need to devise guidelines on the governance and management of community forest rights after titles have been issued, including clarity on the relative powers, roles, and responsibilities of communities, the Forest Department, and others at the village, landscape, district, state, and national levels.

A number of other processes that impinge upon forests and forest-dwellers also need to be oriented towards the spirit and letter of the FRA. For instance, proposed climate change mitigation measures such as Reducing Emissions from Deforestation and Forest Degradation in Developing Countries (REDD) and the Green India Mission, which is modelled on the REDD framework, are feared to target community forest lands and to undermine and counteract decentralisation of forest governance under the FRA and Panchayat (Extension to Scheduled Areas) Act. The government must review these programmes through a participatory process, especially involving forest-dwelling communities, in view of the apprehensions expressed by Indigenous communities and campaign groups in India.<sup>46</sup>

<sup>45</sup> Letters from Minister of Tribal Affairs to Minister of State Environment and Forests on 19 November, 2012, and 7 December, 2012. Last accessed 18 February, 2013, at: <http://www.forestrightsact.com/resources-for-activists/item/download/84> and <http://www.forestrightsact.com/resources-for-activists/item/download/85>.

<sup>46</sup> See statements and background notes on REDD by Campaign for Survival and Dignity (no date). Last accessed 13 February, 2013, at: <http://www.forestrightsact.com/climate-change/item/10-redd-a-new-danger-for-ativasis-and-forest-dwellers>. Also see: Forest Movements' Joint Statement (no date). "A Formula for More Land and Resource

The political regime and bureaucracy has to realise and come to terms with the fact that exercise of rights and establishing community governance over forests under the FRA requires a complete overhaul of the present forest governance system, including the laws (Indian Forest Act, Wildlife Protection Act, Forest Conservation Act), policies (National Forest Policy, JFM), programmes (forestry interventions and projects), institutions, and the forest service, and to make changes accordingly. This requires political will and openness within the very bureaucracy that is resisting such change.