

MoEF/MoTA Committee on Forest Rights Act

Consultations and field visits in Orissa, 22-26 July 2010

Summary report

(A longer report on the state-level consultation will follow; separate reports on the visits to the proposed POSCO project area and Simlipal Tiger Reserve are also available)

Note: This report is written for the purposes of the Committee's ongoing work; any views contained in this are not necessarily those of the entire Committee and are not to be taken as final views or recommendations by the Committee

1. The programme

Four members of the Committee, Ravi Chellam, Ashish Kothari, Ravi Rebbapragada, and Arupjyoti Saikia, visited Orissa on 22-26th July 2010, for consultations and field visits relating to the implementation of the FRA. Different members were present for different durations, as follows:

Ravi Chellam: 22-23rd July

Ashish Kothari: full duration

Ravi Rebbapragada: 23-24th July

Arupjyoti Saikia: 22-25th July

The visit was facilitated by the Tribal and Scheduled Caste Development Department, with the Director of the SC/ST Research and Training Institute being the nodal officer. The state government extended all possible cooperation and help to the team. The NGO Vasundhara was also instrumental in the planning and arrangements, and provided inputs for this report.

The visit involved the following:

i. State-level public consultation

Organised at the Tribal Exhibition Ground in Bhubaneswar for the full day of 22nd July, hosted by the SC/ST Research and Training Institute, the state-level consultation was attended by over 400 people from 28 of Orissa's 30 districts. Most participants were from local tribal (including PTG) or other traditional forest-dwelling communities, in addition to which there were several NGOs. Many networks active across the state or across several districts, such as the Orissa Jungle Manch, Ekta Parishad, Orissa Adivasi Manch, Orissa Protected Area Network, and several community forest protection Mahasanghas, also participated.

Senior officials of the SC/ST Department and Forest Department were present during the introductory session, and some forest officials for various durations. A few media persons

were present throughout, and others joined for a media briefing towards the end of the consultation.

Over 60 oral submissions, and about 50 written submissions, were presented, mostly from communities and some from NGOs. Senior officials spoke at the beginning of the consultation. One political party (Samajwadi) gave a written submission.

ii. Meetings with state and district officials

On two separate occasions the team met senior officials, including the Chief Secretary, and Principal Secretaries or Secretaries of the Departments of Forest and Environment, Tribal and Scheduled Caste Development, Revenue, Development, Agriculture, and Mines. One meeting was after the public consultation, and another (with the Chief Secretary and heads of all other departments) at the end of the full visit.

Meetings were also held with district officials during the field visits, described below.

iii. Field visits and local consultations

Visits were conducted in two districts:

1. *Jagatsinghpur*: field investigations were held in the area proposed to be acquired or to be affected by the proposed POSCO steel plant. This involved walks through the forest land proposed to be diverted for this project, and discussions at 6 sites covering 5 villages (Dhinkia/Patna, Govindpur, Nuagaon, Nolia Sahi, and Gadkuchang) in 3 panchayats (Dhinkia, Nuagaon and Gadkuchang).
2. *Mayurbhanj*: field investigations were carried out in two villages (Bakua and Kabatghai) in the core of Simlipal Tiger Reserve (which is also inside the Critical Tiger Habitat), and one village outside (Kendujiani of Thakurmunda Block). A meeting with some NGOs and community leaders was also held at Ramtirth, on the outskirts of the Simlipal Tiger Reserve. Ambadiha, the resettlement colony of people displaced from Jenabil within the Simlipal Tiger Reserve core, was also visited. The forests of Budhikhamari panchayat, where community forest protection groups have been active since the early 1980s, were visited, and a public consultation held at Budhikhamari in which over 100 people from over a dozen villages participated.

At both districts, meetings were also held with the Collectors and other senior officials of all relevant departments.

iv. Written submissions

Apart from oral presentations, the team received over 50 written submissions, mostly from communities and NGOs, and two from political parties.

2. Key issues / findings

(For every issue pointed to, there are examples in the individual submissions given to the team; these will be named/described in the detailed report, and only a few are given below).

State-level findings (including field visits other than Jagatsinghpur and Simlipal, reported separately below)

1. *State overview:* Orissa claims to be the second best state in India as far as FRA implementation goes (after Chhattisgarh). It has conducted extensive awareness programmes, translated the FRA in over 10 adivasi languages, approved or given out over 2 lakh titles out of about 4 lakh claims (for individual land rights), paid special attention to the rights of PTGs (related to individual land claims), taken the community rights process further than most states, initiated the ‘remanding’ of claims (sending back for re-examination) rather than rejecting when not found tenable in the first round, issued a number circulars to clarify various points of confusion or differential interpretations, and conducted fortnightly video teleconferencing with all districts to assess progress. Indeed the team found distinctly more progress and a more active state machinery than in most other states so far visited. Some of the above mentioned practices would be good to document as ‘best practices’ or innovations that other states could benefit from. Nevertheless, there are serious deficiencies, including distortions in the above-mentioned achievements as also lack of progress on other fronts. The key issues are laid out below.
2. *Individual forest rights:* Orissa has done much more than most other states on recognizing and titling individual forest land rights (with over 2 lakh having been accepted or titled). In many cases individuals are also satisfied with the results. However, there are also widespread complaints of (i) vaguely worded titles, without clear maps or any boundaries, area etc, which could lead to conflicts or exclusions later; (ii) less land than had been claimed (in some cases less than a tenth), being recognized without any explanation; (iii) rejection of claims without explanation or notice to the claimants, denying them the right of appeal; (iv) non-acceptance of claims by women.
3. *Community forest rights:* Again, Orissa is ahead of most other states in encouraging and accepting community rights of various kinds like MFP, fishing, protection, grazing (with 514 claims approved and 443 titles issued as of July 2010). Also, the widespread problem that occurs in other states, of Section 3(2) being passed off as CFRs, is not as common here; people and officials are much more aware of the CFRs in Section 3(1). However, compared to IFRs, and in an absolute sense, there is widespread neglect, delays, or denial of CFRs. Specifically, the following problems were cited by communities or officials: (i) lack of clarity on what CFRs can be claimed and how; (ii) confusion on who CFRs are to be given to in the case of villages that have mixed population of both eligible claimants and ineligible residents; (iii) titles for CFRs being given in the

- names of some individuals (at times, only the FRC members or JFMC members); (iv) imposition of JFM/VSS boundaries on the CFR claims, which may or may not match the boundaries claimed by the community (see below, separate point on this); (v) confusion on the extent to which a customary boundary could be claimed, e.g. in the case of grazing grounds that may be very far from the village (vi) conditions imposed on community rights.
4. *Other Traditional Forest Dwellers:* As in other states, OTFDs in Orissa are facing a serious problem getting evidence of their occupation/dependence for 75 years (especially given that the state itself was formed in 1936). There is little proactive move by the district administration to help find such evidence, even where it may exist in old working plans, gazetteers, settlement records, princely state or zamindari records, etc.
 5. *Rights in protected areas:* Experience from several PAs (Karlapat, Badrama, Sunabeda, Satkosia, Kotagarh, Simlipal) as narrated by participants at the state-level consultation, or observations of the team members from Simlipal Tiger Reserve, indicate the following. Unlike most other states, Orissa has begun to accept claims in most PAs, and even issued titles in some (e.g. Badrama, Kotgarh, Simlipal, Sunabeda). However, this has been significantly delayed because for a long time the Forest Dept resisted, and in some PAs (especially tiger reserves) told the people that rights could not be claimed inside. In Satkosia Tiger Reserve, reportedly even FRCs have not been formed. CFRs are being delayed or denied inside most PAs; in some like Badrama WLS, communities have claimed CFRs and informed the SDLC that they would protect the entire sanctuary under Section 5, but have not received a response. In some areas, like the tiger reserves (especially where Critical Tiger Habitat has been declared), there remains an implicit or explicit proposal to relocate villages, leading to confusion on whether they can claim rights or not (see more on Simlipal, below).
 6. *Primitive Tribal Groups:* The state government has given special focus to making the FRA available to PTGs, and has issued titles to 14,000 of the identified 19,000 PTG households (of which 18,000 have filed claims). However, not much has been done for the CFR and 'habitat' rights of PTGs; in some cases where CFRs have been given, they are determined by government agencies rather than by the community itself. In several places (e.g. Simlipal), PTGs have been resettled, or where they were nomadic, forcibly settled into permanent villages, and in such situations their traditional territories may no longer be accessible to them. Some NGOs have however helped a few PTGs to begin the process of claiming their customary/traditional 'habitat' boundary (e.g. for Juang PTG in Keonjhar district). There remains confusion on what 'habitat' rights would entail, especially in situations where the tribe is no longer actually using the entire traditional territory, or where other communities have settled in it or 'development' projects have come up inside.
 7. *Seasonal Access of Nomadic tribes and Shifting Cultivation:* There appear to be problems with such groups being able to access the FRA process to claim rights. For instance Mankadias from Mayurbhanj mentioned about non-recognition of their rights of seasonal access spread across districts and even other states.

8. *JFM and FRA*: Across the state there seems to be an imposition of the JFM model on the FRA process. Communities are being told, or being given, boundaries that have been fixed under JFM; these may or may not match the boundaries that the community may be claiming, or the boundary of the self-initiated community forest protection process that is widespread in Orissa. Secondly, communities are being told that the Van Suraksha Samitis, formed under government programmes, would continue to operate to manage the CFRs. This denies the chance of the gram sabha (in Orissa's case, the palli sabha) to make its own institution under Section 5 and Rule 4e. Till recently (and at least in the case of Mayurbhanj till the day we met the District Collector) a readymade format (in place of Form B attached to the FR Rules) was being given to people to fill in, which made communities accept conditions that are not in the Act/Rules, and accept the JFM/VSS model. In the field visit to Budhikhamari community forest protection area of Mayurbhanj, the team found all the above to be common complaints. The DCF here had made maps for 140 VSS areas and provided them to communities; from his perspective he was pro-actively helping them to make CFR claims, but communities pointed out that the boundaries had not necessarily been drawn involving them. On the other hand officials also pointed out that palli sabhas are at times dominated by people who are not truly dependent on the forests, and may not take into account the needs of hamlets where the VSS have been formed because only those hamlets are dependent on the forest. This was also told to us by NGOs working on community forestry, and needs to be factored into further guidance on what level the processes should be carried out at.
9. *FRCs and gram sabhas*: From a number of areas came the complaint that the FRCs were formed without due process, and were not necessarily representative of those most dependent on the forest. Also FRCs in most of the cases were formed at the revenue village level, and not in the hamlets and forest villages. There was also a doubt on whether the required gram sabha (palli sabha) process, e.g. of 2/3rds quorum, were being followed; an official alleged that many claims were collected by NGOs and passed onto the SDLC. This needs further investigation.
10. *SDLCs and DLCs*: In general the various agencies set up for implementing the FRA are functioning across the state. However, there were several complaints of arbitrariness in accepting claims, delays in verification, lack of transparency (with decisions and records not being publicly available), lack of access to villagers, and poor coordination amongst various departments (e.g. in carrying out field verifications or harmonizing records). Forest rights recognized so far are not incorporated in any government records. Some positive examples of pro-active district officials were described and could be good case studies to follow; these include Saroda Block of Ganjam district, and Mayurbhanj and Malkangiri districts, where Collectors or other officials have sought NGO help in sensitization, facilitating evidence gathering, and monitoring. A general complaint in the relevant departments was of severe shortage of staff (and its capacity) to carry out what is a mammoth exercise.
11. *Plantations and mining leases on lands having claims/rights*: A very widespread complaint (e.g. from Koraput district) was that lands that were under occupation

- or being used for community needs, were being planted over under JBIC, CAMPA, or other projects, or being allocated for mining (e.g. Mahanadi Coalfields Ltd in Sundergarh district), *jawan* resettlement (e.g. Deogarh district), etc. Villagers were therefore being denied the opportunity to claim rights to these or claims on such lands are either objected to or rejected.
12. *Forest and unsurveyed villages*: State officials were not able to give a precise number of forest villages (they are to send us the information), but stated that the process of their conversion was underway through procedures under the state's revenue laws. One issue that needs to be sorted out (but is beyond the scope of the present Committee) is how to deal with the needs of ineligible residents in such villages? If these are from the pre-1980 period, they could be regularized through the normal process under Forest Conservation Act, but for others, it is not clear. There was also a complicated situation with regard to unsurveyed villages (again, we could not get an official estimate), since land records and maps do not exist for these, so the process of claims was taking longer.
 13. *Critical Wildlife Habitats (CWHs)*: Orissa is apparently the first state to send CWH proposals to the central government; three so far (Bhitarkanika, Nalabana, and Chandaka). The process of identification etc has been initiated in all other PAs. There is however confusion on whether CWHs have to be notified over CTHs also, and if so, whether the procedure has to be gone through again, since it is almost the same as that of CTHs?
 14. *Corruption*: Very widespread complaints were made of corruption amongst the ground staff involved in accepting claims or verifying them. Several specific instances were given to the team, including one where the complaint from villagers and NGOs resulted in charges being filed against a RI. The state government has issued a circular in April 2010 (we have not yet received it), providing an allowance to RIs so they are not tempted to ask claimants for costs, and directing criminal proceedings against any official found guilty of such corruption.
 15. *Hill lands*: An issue peculiar to Orissa is that of 'pahad kisan', or 'hill type', lands that have forest on them, but are revenue lands. Claims to these have been turned down as this is not legally forest land (the state government has indicated however that these claims should be treated under revenue law procedures). However if the interpretation of the FRA use of the term 'forest' includes area that is physically/biologically forest (using also the Supreme Court's definition), such lands should be eligible for claims under FRA. The Committee needs to discuss this.
 16. *Fresh encroachment*: A couple of cases of fresh encroachment, with titles under the FRA as a lure, were reported (one from Bolangir by communities/NGOs and another in Ganjam district by senior forest officials). More details have been sought for both. In the first case, with reportedly over 500 acres freshly encroached, there appears to be a conflict between two villages, one with an established forest protection group and another where non-STs have sought claims on 'encroached' forest land. This case has been reported on some listserves also, but the facts are not clear as there are widely varying versions. Some civil society groups are considering an independent investigation.

17. *Leveraging other departments (convergence)*: A couple of cases of active inter-departmental coordination to help people who have got land rights, were described. For instance in Nabarangpur district, officials and NGOs worked together to facilitate linkages with irrigation, horticulture, rural development and other departments under laws and programs like MGNREGA to enable rights-holders develop forest land and community resources, enhance livelihoods and obtain new facilities and infrastructure.
18. *Displacement and FRA*: A number of cases of previous displacement were brought up, where those displaced have had to resettle on forest land (e.g. in the case of Rourkela steel plant, Sundergarh district). In the case of non-STs, since this is all less than 75 years ago, they are not eligible as OTFDs, but can Section 3(1)m be used for them? State officials were requested by the team to look into this. In turn they asked if we could intervene with the central government to provide compensation for the very many central public sector projects that had caused displacement?
19. *Inter-state claims*: An interesting question that arose (in the context of a case in Sundergarh district) was how could someone who cultivates/uses forest land across the state boundary (in this case, Jharkhand), make a claim? Incidentally the draft Rules (10c) had provided for SLMCs to deal with inter-state claims, but this was left out of the final Rules.
20. *FRA and development projects*: Orissa has issued a circular requiring the completion of FRA procedures and gram sabha consent for diversion of forest land for development projects, following up on MoEF's July 2009 circular to this effect. It is not clear how seriously this is being taken, though (see Jagatsinghpur report below). There is clearly a major clash between the state's 'development' programmes (widespread mining, industries, ports, etc) and the continuation of forests and forest rights. The team was asked by senior officials about how CFRs could be extinguished for projects of 'national interest', and about whether the FRA really required gram sabha consent for projects on forest land? The team's response was that the FRA needs to be seen within the overall context of decentralised governance; and additionally that MoEF in its circular of July 2009 had clarified that gram sabha consent was required for non-forest use of forest land on which they had rights or claims.
21. *Future role of FD, policy changes*: When asked by the team about the future role of the Forest Department, and any policy level changes, participants had the following to say. The FD should become a facilitating organization, helping in livelihood and development opportunities, providing planning and technical inputs, and carrying out monitoring. One suggestion from CFM groups was to facilitate the co-management of contiguous, large blocks of forest together by several villages. Another was to review the process of making forest working plans, based on planning by village committees. A strong plea was made to review JFM policy as a whole. Participants also urged that MFP laws like those for kendu leaf and bamboo, needed to be reviewed and harmonized with FRA.

Several of the above problems were brought to the notice of senior officials including the state's Chief Secretary T.K. Mishra. They provided explanations for some (recorded

above), and agreed to take action on a number of others. They also had a number of queries regarding matters of interpretation, which the team tried to clarify as best it could, or agreed to refer to the relevant central ministries for clarification. Concerns were also raised about the risks of losing forests if there is wholesale transfer of control to communities, especially for instance in ‘disturbed’ areas; the team explained that the issue of gram sabha and forest department relationship, and the role of other departments, in ensuring both livelihood security and forest conservation, was a mandate the Committee would be looking into.

Jagatsinghpur (proposed POSCO project site)

A two day visit was carried out to Jagatsinghpur district, to look into the FRA implementation in the district in general, and the villages to be affected by the proposed POSCO project in particular. A separate report on this has been prepared, so here we only include the key conclusions.

1. *There are Other Traditional Forest Dwellers (OTFDs) in the area*, contrary to what the district administration is saying. Both documentary and oral evidence exists to this effect. A sample of the documentary evidence is attached with the separate report.
2. The FRA process has not been completed, in fact it has not proceeded beyond the initial stages, for various reasons. *It is therefore incorrect and misleading for the district administration to conclude that there are no OTFDs “in cultivating possession of the land since 3 generations” in the area.* Firstly, this cannot be concluded without having gone through the process of claims; secondly, the FRA provides for dependence on forest land also as a criteria for eligibility, not only “cultivation possession of land”. It is also not adequate for district officials to say that no claims have been received; Government circulars require the authorities to proactively share necessary evidence on forest rights existing in the area to the Gram Sabhas which could be used by the claimants.
3. Some palli sabhas have given *resolutions refusing to consent to diversion of forest land* on which they are dependent. To the best of our knowledge these palli sabha resolutions have not been sent by the state government to the MoEF, which is tantamount to deliberate withholding of relevant information/documents.
4. Any work related to the project in this area, would be a violation of the FRA, and of the conditionality laid down by the MoEF in its forest clearance 29 December 2009.
5. The MoEF “final approval” of 29 December 2009 is itself a violation of its circular No. F. No. 11-9/1998-FC (pt), of 30 July 2009 (and therefore of the FRA), requiring FRA completion and gram sabha consent for forest diversion.

The team’s findings were reported to the district administration on 24 July, and the state Chief Secretary (along with secretaries of all relevant departments) on 27 July 2010. It appears from news reports, however, that the district administration is proceeding with land acquisition and demolition of the *paan* cultivation of people on forest land which is a violation of section 4 (5) of the FRA.

Simlipal Tiger Reserve

Visits to two villages (Bakua and Kabatghai) inside the Core and Critical Tiger Habitat area and to the village resettled outside (Ambadiha) revealed the following key issues:

1. The FRA process was begun in the villages inside in 2008, with formation of FRCs. But in Bakua, actual filing of claims (individual rights) only began in June 2009, and no verification has so far been carried out (officials said there were elections and then 'Maoist' trouble preventing them from working). CFR forms began to be filled only two days before the visit of our team; similarly in Kabatghai, filling of IFR forms began two days before our visit! Villagers in Kabatghai said that claims forms were supplied to them just two days before the committee's visit. IFR claims in Bakua were vaguely filled in, with no specific areas; in Kabatghai, only 3 forms were filled though there are 19 households. The Bakua CFR forms, which villagers said were supplied to them and filled for them by officials, violate the FRA or are improper in many ways, e.g. in denying firewood and nistar rights, not mentioning the right to manage and protect forests, not giving the area of the forest in which MFP rights are applicable, and so on.
2. At both villages, the predominant impression amongst villagers is that they have to move out of the reserve and that they cannot have rights in the core area (they were not aware of the designation as Critical Tiger Habitat). The fact that the FRA allows them to stay inside with various rights, has not been explained to them. Nevertheless villagers of Bakua quite categorically stated they did not want to move out, even if no facilities are given to them (this is on video of a local videographer). At Kabatghai villagers took compensation for their revenue lands in 1995, but since they have not yet been relocated, and now realize that they could claim rights inside, they are uncertain if they still want to move out.
3. At both villages, we explained to them that they have all options available to them: if they choose to stay inside they have to work out ways of ensuring forest and wildlife protection by themselves or in collaboration with the FD, and if they choose to move out they can avail of the Rs. 10 lakhs package offered by the tiger authorities. In any case, we impressed upon both villagers and officials (including at a subsequent meeting with the District Collector and the Simlipal Field Director), the need to complete the FRA process before any relocation discussion, decision, or processes are carried out.
4. Forest officials (the Deputy Director of the tiger reserve was with us) stated that the villages needed to be moved out to complete the notification of the national park, and also because there were reports of the people helping poachers from outside. However, they admitted that there is no specific study showing that there is irreversible damage due to these villages.
5. At Ambadiha, the team was given evidence of claims having been filed by villagers when they were in their original settlement (Jenabil) inside the Simlipal TR core. These were filed in 2008, but were never processed as villagers were told they have to move out anyway. The fact that the families are moved out pending verification and recognition of the claims constitutes a violation of

- section 4 (5) of the FRA. Officials explained that the relocation in 2010 was a continuation of a process begun in 1998 (with another phase in 2003 before this, the 3rd phase), and that therefore it was not considered necessary to go through the FRA process. This is however not a tenable argument, since people should be entitled to rights under a new law if they have not been moved out before that. For instance, a number of people claimed they had more land (revenue lands and forest land under occupation) inside than they were given or could buy at the relocation site. Additionally, like the remaining villages inside the core, they were never told they had the right to stay on inside if they wanted; for the last 20-30 years, they said, they had been told they would have to move out, and no facilities (schools, wells, etc) had been allowed inside their Jenabil. Some also claimed they had been threatened that they would be arrested as 'Maoists' if they refused to move out.
6. The relocation experience has been mixed. People complained vociferously about lack of water, poor quality of some of the land, absence of pattas, shortage of land, and broken promises of various kinds. The housing, now pucca, was however done as they wanted, and officials were trying to extend to them benefits under NREGS and other schemes, including subsidized rations as BPL families. Officials also stated that pattas would be issued within a few days, that a liftwater project was coming in soon, and the DC had ordered development of the stony land. They also said they were working under severe constraints because NTCA had not released the central assistance for relocation that was due. (Some other issues that came up as part of the relocation pluses and minuses, will be brought out in the more detailed report).
 7. Officials of forest, revenue, land, and other departments who were with us were requested to ensure that all relevant facilities are provided urgently. They promised to do so. They reported that the District Collector was monitoring the situation closely, visiting the site every month.

Discussion with Mayurbhanj District officials

Issues relating to Simlipal Tiger Reserve as also community forestry sites in Mayurbhanj district were shared with the District Collector Aswathi Sivadas, and various departmental officials in the Collector's office. It was explained to the officials that the process of recognition of rights under FRA has to be followed in the core and other villages of the protected area and that the process of relocation has to be in compliance with FRA. On the relocation process the collector informed that necessary discussions have been undertaken in the RPDAC meetings prior to relocation of the villages. Imposition of JFM/VSS on the CFR process through formats developed by the FD and through pre-listing of the JFMCs was pointed out as violation of FRA. The Collector then instructed officials to withdraw any such forms which violate FRA. The issue of rights of PTG and Nomadic communities Khadias and Mankadias was discussed and the authorities were requested to facilitate processing of such claims. Officials wanted clarification regarding processing of CFR claims from heterogeneous communities (STs and OTFDs) and what could be the format for community titles that can be given. The District Collector was informed that there are more number of community claims which

are not included in the official reports (NGOs claimed that there are 500 community claims but the government report does not include them). The issue of rejection of claims and appeal process was discussed and the Collector was requested to ensure that claimants are duly informed about the status of their claims. Some officials asked if it is possible to claim forest rights in urban areas; it was clarified that if it was not forest land, or if there were no STs/OTFDs, the Act would not apply (apart from the problem of not having any panchayats/gram sabhas in urban areas).

The District Collector provided some information about the status of progress with regard to implementation of FRA in the district. She informed that the district administration has initiated campaign on FRA over the last month which has resulted in increase in the number of claims being filed. The key issues shared by her were: i) process like mapping is constrained by lack of human resources and logistics, ii) maintenance of records is insisted upon causing delay in the process, iii) problems due to imposition of targets by the state level authorities. It was suggested to the Collector to put in place mechanism for coordination of GOs and NGOs, and constituting an independent team to do regular consultations in the field, for better implementation of the Act.

3. Some reflections on process and follow up

1. There is an urgent need to clarify who CFRs should be given to, in the case of villages with mixed population (eligible and ineligible residents); the team has offered the opinion to the state government that it should be titled in the name of the village (or its palli sabha), but this may need a circular from MoTA. Also important is a direction that CFR titles should not be accompanied by conditions that do not emanate from the FRA itself (the FRA has conservation provisions that could be emphasized in the titles, and other conservation-related actions emanating from other relevant Acts that are not in contradiction to the FRA could be stressed in discussions with the communities).
2. Another direction is needed from MoTA that claims (IFR or CFR) cannot be denied simply because the forest land being claimed is being proposed for some other purpose (in Orissa, *jawan* resettlement, coal mining, plantations, etc).
3. MoEF needs to issue a direction that plantations on forest lands, under any program/scheme, should only happen after the FRA process for those lands is complete; this would be parallel to the circular (July 2009) requiring that all forest land diversion be undertaken only after compliance with the FRA.
4. As everywhere else, PTG rights to 'habitat' are a source of confusion, and in the process the government is determining CFR rights based on boundaries of its own convenience. This requires an urgent clarification (hence the need for the Committee to convene a national workshop on this).
5. The problems facing OTFDs need urgent resolution. One aspect the Committee could request MoTA to look into is pro-active steps by district officials to dig up all available records and provide them to each village (as has been done by a DC in Gadchiroli, Maharashtra). But this will not solve the problem of those who really are not from 3 generations back, but are say from 2 generations back; this is beyond the scope of the Committee, but should we discuss whether we want to

- make any recommendation on amending the FRA to reduce the 3-generation requirement?
6. The issue of non-ST displaced people who have had to occupy forest land, but do not now qualify as OTFDS, needs to be resolved, possibly through a circular from MoTA suggesting that Section 3(1)m be used flexibly for them, and/or through pro-active processing under FCA for those who have occupied lands before 1980. Also section 3 (1)(g) needs to be clarified to suggest that the criteria of three generation for OTFDs is not applicable to claims under this provision.
 7. The MoEF should be requested to issue a circular to all states that JFM boundaries and institutions cannot be imposed on the process of claiming and working CFRs, and that right of communities to draw their own customary/traditional boundaries and establish forest management/protection committees through the gram sabhas has to be respected. However this circular needs also to deal with the issue of gram sabhas (in Orissa's case, palli sabhas) often being comprised of several hamlets, not all of which may be dependent on or interested in protecting the forest. The Committee needs to discuss this.
 8. A crucial issue brought out by officials in Mayurbhanj was, what to do when 2/3rds quorum of the palli sabha is not ensured, even after 2-3 attempts, because many of the residents are not interested in the FRA process? The minority of forest-dependent or forest land occupying persons are then not able to get their claims forwarded. The District Collector of Mayurbhanj, Ashwati, wondered if MoTA could issue a circular to the effect that in such a situation, a 2/3rds quorum of only the claimants would suffice? There could be other solutions too, but this needs discussion and resolution.

Report written by:

Ravi Chellam and Ashish Kothari

7 September 2010