

The Status of the Forest Rights Act (FRA) in Protected Areas of India A Draft Report Summary

Background and Objectives of the study

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Rights) Act (more commonly referred to as the Forest Rights Act or FRA) was enacted in 2006 and came into force in 2008 with the drafting of its Rules. The Act aims at addressing the “historic injustice” that was meted out to the forest dwellers by recognising forest land, resources, and resource management and conservation rights of the forest dwelling communities. However, the implementation of the Act in general and especially in Protected Areas (PAs) has been negligible and tardy. The objective of this report is to enhance and contribute towards understanding the status of implementation of FRA in Protected Areas (PAs), particularly to assess:

- a) Extent to which Individual Forest Rights (IFRs) right to live in and cultivate, Community Forest Rights (CRs) or right to use, harvest and sell forest produce and Community Forest Resource (CFR) Rights or right to protect, regenerate, or conserve or manage forests within the customary boundary of a village (Section 3 (1)i of FRA);
- b) Extent to which have the provisions of co-existence as per Section 38V(4)ii of Wild Life Protection (Amendment) Act (WLPA) 2006 has been implemented. To what extent have communities been able to formulate strategies for wildlife protection under section 5 of FRA and drafted conservation and management plans as per Rule 4e. Extent to which these plans and strategies have been incorporated in the overall PA management plans;
- c) Extent to which the provisions related to relocation under the WLPA Section 38 V 5 (i to vi) and Section 4 (2) a to f of FRA have been implemented in PAs.

Methodology

The report analyses the status of implementation and violation in implementation of the FRA across more than 30 PAs in India, including National Park (NP), Wildlife Sanctuaries (WLS) and Tiger Reserves (TR). The report has also looked at some Eco-Sensitive Zones and Wildlife Corridors.

The report is based on primary and secondary data. Primary data was collected from eight Protected Areas visited during three months of field work. Of these sites, five have been developed as more in-depth case studies, vis. Achanakmar TR, Kaziranga TR, Sundarban TR and Simlipal TR and Nagarhole TR. Visits to Jaldapara NP, Manas TR and Wayanad WLS were for shorter duration. Secondary data was used to substantiate information in the case studies, as well as to compile information for other PAs mentioned in the report. These included, reports, journal and newspaper articles, information provided by civil society groups working in many of the PAs, among others.

Give below is the summary of various sections in the report:

Status of Implementation of Forest Rights Act in PAs

Process of recognition of rights tardy and almost non existent

As per the data that we have been able to collate, including primary secondary sources, it is clear that overall the Forest Rights Act, 2006 is far from being implemented in PAs. Where it has been implemented following required legal procedure under Section 6 of the FRA, it has been because of the efforts and struggles of the local people. In most other cases the Forest Department had initiated the process, largely in violation of Section 6 of FRA. In case of latter the focus has been on *suo moto* recognition of IFRs **only**. In many such cases people were not aware about why and under which law had they been given “pattas” for their lands. In some areas, with the help of local *sangathanas* and NGOs, the gram sabhas have now started the process afresh, by reconstituting Forest Rights Committees (FRCs) and filing CFR claims. Few PAs where CFRs have been

recognised include Biligiri Rangaswamy Temple TR (25 CFRs), Shholpanshewar WLS (58 CFRs), Simlipal TR (44 CFRs), Parambhikulam TR (10 CFRs), Nagarhole TR (14 in Mysore district), Melghat TR (12 in buffer), Tadoba (5 in buffer) and in Kanha TR (16 in core and 131 in buffer)¹.

Illegal NTCA order leads to stoppage of rights recognition

The already negligible efforts at implementing the FRA came to a complete halt in Tiger Reserves by an illegal order issued by the National Tiger Conservation Authority (NTCA) on 28 March 2017 (Order No 1-7/93.PT), stating that ‘in absence of guidelines for notification of critical wildlife habitats, no rights shall be conferred in Critical Tiger Habitats notified under section 38V(4) of the Wildlife protection Act 1972’. Already reluctant TR authorities have now found a reason to reject the claims. In Tadoba TR the process of claiming and recognition of CFRs had gained some momentum in 2016 after much local struggle, 5 CFRs were recognised in the buffer when the process was abruptly stopped as NTCA issued its order. RTI filed by the local gram sabhas reveals that the claims have already been accepted at the district level but are not being distributed because of the said order. This however has not been given in writing to the villagers, which they have demanded. Same had been reported from other TRs, such as in Simlipal, where the district level committee of Mayurbhanj rejected the Habitat Rights claims filed by the Mankidia Tribe-a Particularly Vulnerable Tribal Group (PVTG)- on the ground that their HRs fall into the core area and as per NTCA order forest rights cannot anymore be granted. In Palamau TR the claims of 61 families belonging to the Nakesia Adivasi –another PVTG community inhabiting the core area-were rejected multiple times. On the last appeal the FD replied that as per NTCA order the forest rights cannot be recognized in core areas. The order has been already contested by many scheduled tribes living in tiger reserves, as the Jenu Kuruba PVTGs living in Nagarhole TR that protested before the District Collector to withdraw the NTCA order immediately.

Delays in processing claims

In many, claims under FRA including community rights for use of forest resources (CRs) and CFRs are pending for many years, some since 2009. These include Nagarhole TR, Buxa TR, Jaldapara NP, Melghat TR, Tadoba TR, Bhimashankar WLS, Yawal WLS and Dudhwa TR.

Co-existence (Section 38V(4)ii of WLPA), and protection, regeneration, conservation and management of CFRs by gram sabhas (Section 5 and Rule 4e of FRA)

Despite CFRs having been recognized, CFR Management Committees (CFRMCs) and in some cases CFR management plans having been drawn up by the gram sabhas, there have been few efforts from the state forest departments to move towards co-existence and supporting and recognizing protection, regeneration, conservation and management of CFRs by gram sabhas. We could find only three cases where some efforts in this direction have been made and in two of these, this has been possible only because of the sustained efforts of the gram sabhas and support from civil society actors and in one the initiative was taken by the district administration supported by civil society. In Shoolpaneshwar WLS, till November 2016, CFR rights of 58 villages had been recognised on about 40,000 hectares of forest lands (65% area of the sanctuary), many of these villages have formed CFRMCs and atleast 12 villages also earned a very substantial income by harvesting dead and dried bamboo. In these villages people are engaged in forest development and conservation activities. All this however is with the support from ARCH VAHINI - a local sangathana. While the forest department has not created hurdles yet, they have also not actively tried to incorporate these plans in the overall management plan of the Sanctuary.

In 2013, after the recognition of 25 CFRs within BRT Tiger Reserve, a community based tiger conservation management plan was drafted by 200 members of the Soliga tribe from 61 *podus* of

¹From the data it is not clear if these are community rights over forest resources i.e CRs or CFR rights, also it is not clear to what extent people are able to assert these rights within these PAs.

B.R.Hills. This was supported by ATREE, VGKKK, ZBGAS, SAS, and some other individuals and civil society organizations. This plan was taken back to all the 61 *podus* to get feedback. In the meanwhile after a long wait in 2016, 39 additional CFRs belonging to the remaining Soliga villages (including in BRT, Cauvery WLS and Mahadeswara WLS) were also passed at the DLC level. However the District Conservator Forests of Mali Mahadeswara WLS, Cauvery WLS and BRT TR did not sign the titles. Consequently all the 39 CFRs have gone back to the SDLC for clarification because forest department raised objections on collection of NTFPs, grazing rights, among others. As a result the community tiger conservation and management plan remains unaccepted and unimplemented.

In Simlipal TR of the 60 villages inside the TR, CFR rights have been claimed and recognized in 44. These include the villages in the core zone. CFR Management Plans have been prepared by the gram sabhas with help from NGOs and the district administration in 21 villages located in the buffer zone. Ten of these plans have also been accepted by the FD and implementation of many CFR plans have started. This is one of the rare examples where the district administration has taken an active role in moving towards co-existence and collaboration. However as given below this is no indication that there is a co-existence plan and collaborative governance for the PA as a whole as we see below under the section on relocation, many of these villages where CFR rights were recognized have also been relocated or are planned to be relocated both from the core and buffer areas.

Violation of the FRA

Some of the violations of FRA in PAs based on available information have been listed below:

Notification of critical Tiger Habitat (CTH)

In almost all TRs, the process of notification has not been clear. There was no involvement, consultation or consent of the local gram sabhas in the identification or declaration of these CTH. As per section 38 (V) of the WLPA and sec. 4 of the FRA, the process of notification of a CTH (or Critical Wildlife Habitat under the FRA) require the involvement of local people, as well as a scientific assessment to prove that co-existence is not a possible and exercising rights would lead to irreversible damage to the habitat or species. For the creation of the CTH in the 7 tiger reserves which were visited during the study there was no report or evidence to say that the required scientific studies and consultation with the Gram Sabhas had been carried out.

Discrepancies in the process of recognising claims

The process of filing claims and recognizing IFRs was found to be and also reported to be illegal and faulty in many PAs. In Buxa, Achanakmar, Wayanand and Jaldapara, filing of individual claims was started *suo motto* by the FD. To do this, FRCs were constituted at the Panchayat level and in many cases even though people had received IFR titles they had no knowledge of how and why they received these titles. The motivation behind doing this remains unclear but some local actors suggested that it could be linked to completing processes under FRA which is a legal requirement for relocation. Other discrepancies such as titles received over much less than what was claimed, were also reported. In many areas it was found the PVTG communities were in particular denied their rights, e.g. in Nagarhole TR, IFRs are mostly recognized to the Yerawal community but not to the Jenukurabas PVTGs; similarly in Achanakmar, IFR claims of the Baigas a PVTG community were rejected. In Nagarhole TR, conversion of forest villages to revenue villages filed under sec. 3(h) of FRA was rejected.

Violating FRA by not allowing exercise of rights even where they have been recognised

Recognition of rights however has not necessarily meant actual access to these resources in all

cases. While gram sabha members in Shoolpaneshwar have been able to harvest and sell the bamboo which had dried naturally in the year 2016, in many of the above mentioned PAs local people were continuing to be stopped from asserting their rights (including right to manage and conserve). These included villages in Tadoba TR and Nagarhole TR. In case of the latter the 14 CFRs that have been recognized are reportedly only on paper without any boundary demarcation on the ground. In Nagarhole TR, although the IFRs were recognised the land owners are being physically prevented from cultivating the lands where they now have a legal right to cultivate.

Relocation in violation of FRA

Of the 30 PAs analysed for the study, we found references of relocation being planned for 23 either in TR management plans or local newspaper reports. Of these in 20 there was evidence of relocation already being carried out for last 10 years. These included 15 TRs and 5 WLSs. As an example, in Simlipal, in 2007, when the CTH was declared there were 60 villages inside the TR, including 5 in the core. In 2013 the process of recognition of CFRs started with the help of the district administration and civil society actors. Between 2013 and 2016, 44 CFR titles were recognized, including 3 inside the Core area (one village Jenabil was relocated in 2010 before their rights were settled). Of the remaining 4 villages inside the Core, the other three where CFRs were recognized were relocated in 2013, 2015 and 2016 respectively. There is now only one village i.e. Bakuahas (and a few families from Jamungarh who did not move when it was relocated in 2015). In addition to these villages from the core one village i.e. Khejuri village inhabited by 47 families of PVTG tribe Kharia and 32 families of Kholo tribe (where CFR rights had been recognized) was relocated in 2016. There is now a proposal to relocate Bakuahas from the core in addition to two more villages from the buffer area and four from the fringe area (it is unclear why villages from the fringe area are being relocated).

It is clear from these reports that relocation is not happening just in CTH but also in buffer areas where co-existence is expected to be prioritised over relocation. Relocation from buffer zone has been reported from many TR apart from Simlipal, including Madumalai. This shows that no co-existence in buffer areas has been practiced in violation of the FRA and WLPA. Relocation has also been reported from WLS such as in Wayanad in Kerala, Barnawapara and Boramdeo in Chhattisgarh, Chandaka-Dompara and Debrigarh in Odisha, among others. Considering that there are no guidelines for Critical Wildlife Habitat (CWH), it is unclear how and why these relocations are being carried out.

In addition to the above mentioned 20 PAs (which are part of the 30 that we have analysed for this study), we also found evidence of relocation happening in other PAs such as Amchang WLS in Assam, Satkosia TR in Odisha and Madumalai TR in Tamil Nadu.

Funding for relocation

Of the 15 TRs from where relocation is being carried out, NTCA had allocated funds for 12 TRs between 2011 to 2014. Out of the five WLS where relocation is taking place in two, viz. Wayanad and Barnawapara the funding for relocation has come from the central government under the 'Integrated Development of Wildlife Habitats', between 2009/14. As reported by local activists CAMPA funds have also been used for the relocation from Boramdeo, Debrigarh and Barnawapara WLS and in Tadoba-Andhari Tiger Reserve.

Process of relocation

For this study we tried to analyse the process of relocation being carried out in these PAs. This could only be done for 8 of the PAs, viz. Kaziranga TR, Manas TR, Simlipal TR, Debrigarh WLS, Chandaka WLS, Achanakmar TR, Nagarhole TR, Wayanad WLS. It was found that in place like Kaziranga and Achanakmar 'prior informed consent for relocation' was not taken from the Gram

Sabhas before relocation/eviction. Where consent had been taken, it was reported that it was mostly under pressure or threat or was induced in other ways. These include, taking signatures of the individuals on blank papers, as in Simlipal TR; or signatures were taken by going from house to house instead of together in the gram sabha like in Achanakmar TR. Human rights violation such as forest offences, physical threats; denial of access or basic health and education facilities, or implementation of schemes such as MNREGA, or children immunization programmes like *angawadi*, are some of the ways in which consent for relocation has been induced. Such induced consent was particularly reported from Achanakmar TR, SimlipalTR, Chondaka and Debrigar WLS. In some circumstances villages have also been evicted without any notification or relocation plan such as in Kaziranga and Manas TR.

Dissatisfactory rehabilitation

Rehabilitation and compensation was often reported to be not satisfactory. Rehabilitation based on monetary compensation has been often prioritized without offering the land for land option. Other reported violations included false promises of land, distribution of inadequate funds and resources, lack of facilities at the relocated sites such as toilets, electricity and health facilities e.g in Achanakmar, Simlipal and Nagarhole. This has forced people to live in pathetic, hot, disease filled circumstances. Often discrepancies in the distribution of compensation packages was also reported e.g single women, or single men recently turned 18th have sometime been denied compensation.

Human Rights Violations and Militarization

In many PAs local people and civil society actors reported atrocities on the local people, particularly when they demanded that their rights be legally recognised under FRA or where in absence of such recognition they have started asserting their rights. Various forms of harassment such as physical torture, lathi-charge, false cases, accusations of being Maoists, etc were reported from Sundarban, Dudhwa, Kaziranga, Corbett, Buxa, among others. Kaziranga and Buxa TR reported many killings of local tribal people as suspected poachers. People have been demanding fair and transparent judicial enquiry claiming that most such cases are false cases, where local people are being implicated for various reasons.

Increased militarization was reported from many PAs, particularly Kaziranga TR (where local people claim that a shoot-at-sight policy has been ordered). Since 2009 a Special Tiger Protection Force (STPF) has also been created, aiming to control poaching activities from tiger reserves. Since 2012 to 2017, the STPF has also been constituted in some PAs of Tamil Nadu and Karnataka (Nagarhole, Madumalai, Bandipur, etc), in Odisha (Simlipal and Satkosia, etc), in West Bengal (in Buxa and Sundarban), in Melghat, in Uttarakhand (Corbett), in Maharashtra (Tadoba and Pench, in Assam (Kaziranga and Manas) and is proposed for Arunachal Pradesh.

Policy towards militarisation instead of processes towards dialogue and co-existence according to local people and activists is creating a divide between the local people and wildlife when no such divide exists. Conflicts at the local level are further intensifying creating non conducive environment for the wildlife and injustice for local people.

Conclusion

Over all the report finds that there few attempts, if any of implementation of FRA in PAs. Those that exist are because of the local struggles. The process of claiming and recognising rights is routinely obstructed by the PA authorities. Even where rights have been recognised, exercising those rights is a struggle for the concerned communities. Relocation continues from TRs and other PAs in violation of sections under the FRA and WLPA. Relocations are more often through direct and indirect coercion and seeking signatures as individuals instead of a gram sabha consultation and without free prior informed consent. Processes of FRA are being completed (if at all) in tardy

manner to be able to facilitate relocation. There are almost no efforts towards using the provisions of FRA and WLPA to develop co-existence and community conservation plans, which was one of the significant potentials of implementing FRA in PAs. Particularly, rights are being denied for vulnerable groups such as PVTGs and nomadic pastoralist communities. It is evident from the data thus generated that conservation practice in India continues to be top down, using guns and guards policy, forcing relocation, through violations of human rights, and through criminalisation and atrocities on those who resist such efforts.

Note: This Summary has been written by Eleonora Fenari (e.fanari86@gmail.com) and Neema Pathak Broome (neema.pb@gmail.com), Kalpavriksh, with inputs from activists and local people from many PAs mentioned in the report. This has been done as part of CFR- Learning and Advocacy Process with support from Vasundhara and Right and Resources Institute. A detailed report on Status of Implementation of FRA in PAs is currently being finalized. (November 2017).