

**Sensitization Workshop for Forest Officials on  
*‘The Scheduled Tribes and Other Traditional Forest  
Dwellers (Recognition of Forest Rights) Act, 2006’***

**Date: 07<sup>th</sup> May 2019**

**Venue: State Forest Training Institute, HIZLI,  
Kharagpur, West Bengal**



## **Introduction**

Legal Initiative for Forest and Environment (LIFE) in collaboration with the West Bengal Forest Department organised a State Level Sensitization Workshop for Forest Officials on Scheduled Tribes and Other Traditional Forest Dwellers (*Recognition of Forest Rights*) Act, 2006 on 07<sup>th</sup> May 2019. Shri. S. Barari, Principal Chief Conservator of Forest (PCCF) General and Shri Ravi Kant Sinha, PCCF (Wildlife) and Chief Wildlife Warden, West Bengal Forest Department presided over the workshop. Participatory officials included Divisional Forest Officers (DFOs) having territorial jurisdiction, Assistant Divisional Forest Officers (ADFO), Conservators of Forest (CFs) and Chief Conservators of Forest (CCFs).

## **Welcome Address and Introductory Session**

**Tapas Das, CCF, West Bengal Forest Department**



Tapas Das, Chief Conservator of Forest, West Bengal Forest Department welcomed the participants and highlighted that the purpose of conducting the workshop was to understand the provisions of the The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition

of Forest Rights) Act, 2006 (FRA) specifically with respect to the role of the forest department in the implementation of the Act.

**Ravi Kant Sinha, PCCF (Wildlife) and Chief Wildlife Warden, West Bengal Forest Department**

The Chief Wildlife Warden of West Bengal Forest Department highlighted the need to work on the issues of FRA. West Bengal has had the experience of working with forest dependent community right from the inception of the Joint Forest Management in the country and therefore, the Forest Department with their unique training and experience should guide communities towards management of forests in a more scientific manner. Further, with respect to implementation of FRA, it was highlighted that it is important to build the capacity of the Forest Department right from the PCCF level to the forest guard, so that when the forest rights are being decided upon, every forest officer should know what are his roles and responsibilities and most importantly, every officer should be able to counter false claims on forest rights. It is important to support the forest department so that they do not have any fear in recording their objection (if any) to the grant of forest rights.

## **Technical Sessions**

**Tushar Dash, Community Forest Resource Learning and Advocacy Group**



Presentation by Tushar Dash focussed on the Origin of the FRA, its Salient Features and Objectives.

The Forest Rights Act, 2006 was enacted by the Indian Government to address the critical issue of recognising the traditional rights of forest dwelling communities and questioning the exclusionary forest management practised by the forest department since independence. The FRA aims to undo the historical injustice that forest dependent communities faced at the hands of the forest department in terms of disregarding their customary rights on the forest land and treating them as 'encroachers' on their ancestral lands. The Act not only gives recognition to individual claims for habitation or cultivation over forest land and community rights over non-timber forest produce but also community rights to manage and protect customary forest land.

### **Origin of Forest Rights Act**

The FRA originated amidst the backdrop of centralized and exclusionary forest management in India since the Colonial Rule in 19<sup>th</sup> Century. The Colonial Forest Policy in India was based on the assumption of State's eminent domain over forest and initiated large scale reservation of locally used and managed forest. The focus of this forest policy was to maximise timber production and revenue from these and other forest. Post-independence, the Indian Government furthered the colonial practice by vesting in state large areas of non-private un-surveyed forest land. These lands were appropriated without carrying prior ecological/socio-economic survey and taking consent of the forest communities. Most of these forest lands were declared as reserved forest or protected forest and were brought under the exclusive jurisdiction of the forest department.

Post 1980s, reforms were made in the form of National Forest Policy of 1988. The National Forest Policy took into consideration the fact that tribal people and forest have a symbiotic relationship and envisaged the involvement of tribal people in the protection and development of forest. Following this Policy, the Government of India introduced Joint Forest Management (JFM) in India. The core idea of the JFM programme was formation of village level user groups who would enter into a conceptual arrangement with the Forest Department to protect and

regenerate a degraded forest patch in return for a share in the final harvest. It is important to note that though JFM marked a shift from the centralised and exclusionary system of forest management practised by the Forest Department to a more participatory approach based on collaboration between the Forest Department and the village forest communities; it suffered from the problem of unbalanced power relationship between forest department and local communities.

The conflict between the tribals and forest department was brought to the government's notice by the Commissioner for Scheduled Castes and Scheduled Tribes in his 29<sup>th</sup> Report (1978-79) to the President of India. The Report recommended a framework for resolving disputes related to the forest land between tribal people and the state. Based on these recommendations, Ministry of Environment and Forests (MoEF) issued a set of six circulars on 18.09.1990. These circulars dealt with the following: regularisation pre-1980 encroachments on forest land; resolution of disputed claims over forest land arising out of incomplete or faulty forest settlements; recognition of pattas, leases or grants issued under due legal authority by the revenue department for land recorded as forest land; conversion of forest villages into revenue villages and last one dealing with payment of compensation for loss of life and property due to predation by wild animals. However, not much was done by MoEF to ensure implementation of these circulars, which more or less went into oblivion, as admitted by the MoEF itself in its affidavit filed in the Supreme Court in T.N. Godavarman Thirumulpad Vs. Union of India & Ors. (Writ Petition No 202/1995). The position of MoEF became glaringly obvious in May 2002 when it directed all states to evict 'encroachers' from forest lands. Based on this order, the forest department brutally carried out eviction drives and according to MoEF figures, 1.52 lakh hectares of encroachments from forest lands were removed over a span of 18 months. This order was preceded by, and supposedly based on, a series of Supreme Court orders in the famous Godavarman case. The Supreme Court through its order only directed the state and U.T governments to report the various measures they had taken to prevent the pre-1980 encroachments, however, misinterpretation by the forest department led to a brutal spate of evictions which led to a massive uproar and erupted conflicts between the tribals and the Forest Department. These were finally brought to a halt with MoEF's admission that during consolidation of state forests in India, the forest dwelling communities were deprived of their

customary forest rights. By this time, forest rights had become a national political issue and a grassroots movement emerged in the name of Campaign for Survival and Dignity which undertook massive nationwide political mobilization. There was intense pressure on the government to grant a statutory recognition to the pre-existing rights of the forest dwelling communities on both cultivated lands and communal forest resources along with empowerment of village level assemblies to manage such resources. After multiple contestations between stakeholders, the FRA was passed by the parliament in 2006 and came into force in 2008.

### **Basic Constitutional Principles and Salient Features of Forest Rights Act**

The FRA is based on three constitutional principles:

- I. Right to Equality
- II. Special Provisions for Disadvantaged Communities
- III. Constitutional Mandate on Local Self Governance

The important features of FRA are mentioned below:

- I. The FRA recognises the rights of both forest dwelling scheduled tribes (FDSTs) and other traditional forest dwellers (OTFDs). The FDSTs are defined as members or communities of STs who primarily reside in and who depend on forest land for bona-fide livelihoods. This includes Scheduled Tribes pastoralist communities.  
OTFDs are members or communities who for at least three generations prior to 13.12.2005 primarily resided in and who depend on forest land for bona-fide livelihood needs. It is important to note that within FRA, the term 'generation' means 25 years.
- II. The FRA applies to forest land of any description and includes unclassified forests, undemarcated forests, existing or deemed forest, protected forest, reserved forest, sanctuary and national park.
- III. The rights recognised under FRA are heritable, however they are not alienable or transferable i.e. the right holder cannot sell or lease the right to another individual or group.

- IV. Protective Clause under FRA: According to this clause, “*Save as otherwise provided, no member of a forest dwelling Scheduled Tribe and other traditional forest dwellers shall be evicted or removed from the forest land under his occupation till the recognition and verification procedure is complete*”. **Section 4 (5)**
- V. Non-Obstante Clause under FRA: This clause states that “*Save as otherwise provided in the Act and the Provisions of Panchayats (Extension to Scheduled Areas) Act, 1996, the provisions of Forest Rights Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force*”. (**Section 13**) This means that forest rights vested under the Act will override previous legislations, rules, guidelines and even judicial orders to the contrary, and will have effect in suppression of these other laws/orders/guidelines.
- VI. Forest land cannot be diverted for non-forestry purposes under Forest (Conservation) Act, 1980 without completing recognition of rights under FRA.
- VII. The forest rights recognised under FRA shall be conferred free of all encumbrances and procedural requirements. These requirements include clearance under Forest (Conservation) Act, 1980, compensatory afforestation and payment of net present value.

### **Typology of Rights under Forest Rights Act**

The Act specifies 13 claimable rights providing individual and/or community tenure. Claimable rights over forest land include rights over forest land under occupation, land disputed between forest dwellers and Forest Department due to faulty forest settlements, land for which other governmental departments have issued pattas not recognised by forest department and rights for conversion of forest/un-surveyed villages into revenue villages. Claimable community forest rights include rights to nistar (traditional harvest rights); non-timber forest produce; water-bodies; community tenures over customary habitat in the case of pre-agricultural communities; seasonal resource access for nomadic and pastoral communities; other traditional rights; and most importantly, the right to protect, regenerate or conserve or manage any community forest resource which they have been traditionally protecting and conserving for sustainable

use. Simultaneously, the FRA protects all existing customary rights and rights recognised by state laws or Autonomous District Councils in Schedule VI areas in the Northeast.

### **Authorities Constituted under Forest Rights Act**

The process of recognition of rights under FRA occurs through a multi-layered process of various authorities (see Figure 1 below). These authorities range from gram sabha to committees consisting of government officials and elected representatives at the sub-district, district, and state levels.



Figure 1: **Primary Authorities and their Roles in FRA Implementation**

The village level gram sabha (the assembly for all resident adults) is the authority to initiate the process for determining the nature and extent of individual and community rights. The claims verified and approved by gram sabha are to be consolidated, examined, considered, and approved by committees at the sub-divisional and district levels. The State level committee is responsible for monitoring implementation at the state level.

It is important to note that although the final decision power with respect to the validity of a claim lies with the district committee, it is the gram sabha that starts the process to determine the nature and extent of individual or community forest rights. Further, 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.

**Dr. Arvind Kumar Jha, Retd. PCCF and DG (Social Forestry),  
Maharashtra Forest Department**



Presentation by Dr. Arvind Kumar Jha focussed on the roles and responsibilities of the Forest Department in the implementation of FRA. In addition, he also shared the experience of implementing the FRA in Maharashtra using Geo-informatics (GIS).

The Forest Department plays a critical role in the implementation of FRA and the areas where their intervention is necessary is mentioned in the preamble itself. Specifically, the broad areas are: recognition and vesting of forest rights in FDSTs and OTFDs; Fixing the nature of evidence needed for recognising rights; Making right holders responsible and empowering them for conservation of biological diversity, its sustainable use and maintenance of ecological balance and lastly, Forest Department has an important role to play in strengthening conservation regime of forests, ensuring livelihood and food security.

To substantiate the above, it was highlighted that it is important for the forest department to note the Act recognises rights of only two categories of populations: FDSTs and OTFDs. No

other category is eligible to claim forest rights. Further, there is an element of conditionality associated with every rights. For example, right over forest land for self-cultivation can only be recognised for those FDSTs/OTFDs who have been cultivating the land themselves, not those who own the land but are based somewhere else and somebody else is managing the land for them. It was further specified that in each type of right, the title to the forest right needs to specify the nature of the right as well as the extent. For example, the FRA recognises the rights of the forest dwelling communities to own, collect, use and dispose minor forest produce. In this case when title to the right is given, it needs to specify the nature of the concerned minor forest produce say, tendu patta or bamboo. Further, it needs to specify the quantum of the minor forest produce that can be harvested from the forest so as to ensure the sustainability of the minor forest produce as well as the continuity of the right itself. The right must be granted keeping in mind the sustainable harvest levels of the minor forest produce.

Lastly, while FRA recognises the right of conservation and management of traditional community forest resources, it is the duty of the forest right holders to protect local biodiversity and adjoining catchment areas and to ensure that habitat of forest dwelling communities is preserved from any destructive practice that threatens their cultural and natural heritage. Therefore, the management right over common forest land over comes with the duty towards protecting the same.

### **Roles and Responsibilities of Forest Department in Implementation of Forest Rights Act**

The responsibilities of the Forest Department are detailed below:

#### ***i. Recognition of ineligible claims***

The most important responsibility of the Forest Department is to recognise ineligible claims or claims recognised in favour of ineligible people. For example, right over forest land for habitation or self-cultivation comes with the condition that the forest land in question should be under occupation before 13.12.2005. Further, such forest land should be under occupation as on date of the commencement of the Forest Rights Act (i.e. 31.12.2007) and that right over the

forest land shall be restricted to area under actual occupation and shall not exceed 4 hectares. In this case it is the duty of the forest department to ensure that firstly, the right is claimed either by FDSTs or FDSTs. Once this condition is fulfilled, the forest department has to see that land was under occupation before 13.12.2005 and was under occupation on 31.12.2007 and finally, the forest land over which is recognised should be less than or equal to 4 hectares. It is important to note that recognition of ineligible claims is not just a violation of FRA but is also an injustice to genuine claimants. Further, recognition of ineligible claims has implications for conservation. For example, if a right is recognised over forest land which was under tree cover in 2005 but cleared for vegetation only after 13.12.2005, this leads to loss of many ecosystem services such as carbon sequestration, soil and water conservation and non-timber forest produce. Further, recognition of ineligible claims on forest will also violate provisions of Forest (Conservation) Act, 1980 when these claims pertain to individual forest rights for habitation and self-cultivation. This is because breaking/clearing of forest land (for purposes other than conservation) will take place without obtaining a clearance under Forest (Conservation) Act, 1980.

### ***ii. Adjudicatory Role***

Being a member of the Sub-Divisional Level Committee (SDLC), it is the duty of the Forest Department to hear petitions from persons aggrieved by decisions of the gram sabha. Further, it is their duty in capacity of a SDLC member to resolve disputes between gram sabhas on account of conflicting claims or on account of use of common forest areas. Similarly, being a District Level Committee (DLC) member, it is the duty of the Forest Department to hear petitions from persons aggrieved by decisions of the SDLC. Further, it is the duty of the DLC to resolve disputes between SDLC on account of discrepancy between orders.

### ***iii. Creation of Critical Wildlife Habitats***

The FRA provides for creation of critical wildlife habitats within National Parks and Wildlife Sanctuaries. These are demarcated on the basis of scientific and objective criteria that these

areas are to be kept inviolate for wildlife conservation. In case it is unavoidable but to resettle the forest rights holders from critical wildlife habitats, a resettlement package will be prepared. The package will provide for a secure livelihood for the affected individuals and communities. It is the duty of the gram sabha to consider these packages and pass appropriate decisions. No resettlement will take place without the written prior informed consent of the gram sabha. Lastly, the FRA also mandates that critical wildlife habitats from where right holders are relocated for the purposes of wildlife conservation shall not be subsequently diverted by the State or Central Government or any other entity for other uses. It is the duty of the Forest Department to ensure that the above conditions are fulfilled while creation of Critical Wildlife Habitats.

**iv. *Mandatory Presence during Site Inspection***

After the claims to forest rights are received by the Forest Rights Committee (FRC), it will visit the site and physically verify the nature and evidence on the site. It is mandatory for the Forest Department to be present during the site verification. It is the duty of the Forest Department to sign the verification proceedings with their designation, date and comments, if any.

**v. *Assistance to Sub Divisional Level Committee (SDLC)***

It is the duty of the Forest Department to attend the SDLC Meeting and help them in providing information to each gram sabha and forest right holder about their duties towards protection of wildlife, forest and biodiversity, especially with reference to critical flora and fauna which needs to be conserved and protected. Further, in capacity of being a SDLC member, it is their duty to help gram sabha by providing them with forest maps.

**vi. *Assistance to District Level Committee (DLC)***

It is the duty of the Forest Department to attend the DLC meeting and ensure that forest maps have been provided to the gram sabha. Further, in capacity of being a DLC member, it is the

duty of the forest department to ensure that forest rights relating to conservation and management of traditional community forest resources are recognised in all villages with forest dwellers and that titles are issued to them.

**vii. *Active Participation in State Level Monitoring Committee (SLMC)***

It is the duty of the Forest Department to attend the SLMC Meeting and help them devise criteria and indicators for the process of recognition and vesting forest rights. Further, in capacity of being a SLMC member, it is the duty of the forest department to monitor the process of recognition, verification and vesting of forest rights in their State.

**Challenges for the Forest Department w.r.t Forest Rights Act Implementation**

With respect to implementation of FRA, there are multiple challenges for the Forest Department. These are listed below:

**i. *Removal of rejected claims***

The FRA comes with a protective clause according to which no member of forest dwelling scheduled tribes and other traditional forest dweller will be evicted or removed from the forest land under their occupation till the recognition and vesting of forest rights is complete. However, in cases where the claims made to forest rights have been rejected, the Forest Department to examine that how such cases will be dealt with at the ground level.

**ii. *Specifying the nature and extent of Community Rights and Community Forest Resource Rights:***

An important concern is with respect to specifying the nature and extent of community forest rights. For example, with respect to rights over minor forest produce, the title needs to specify the minor forest produce over which right is given. Further, the title also needs to specify the quantity of the forest resource that can be harvested from the forest so as to ensure sustainability of the forest as well as the right itself.

**iii. Conflict between Forest Rights Act and Biological Diversity Act**

One Important challenge is to integrate the provisions of FRA and Biological Diversity Act. The FRA gives gram sabha (constituted at the village level) the authority to manage their common forest land and empowers them to conserve forest, wildlife and biodiversity. In order to carry out the same, the gram sabha will prepare a conservation and management plan. Further, the Biological Diversity Act mandates constitution of Biodiversity Management Committees (BMCs) (at the local body level) which are responsible for conservation and sustainable use of biological resources within the jurisdiction of the local body. The primary function of the BMC is to prepare People Biodiversity Registers (PBRs) which comprehensively document the biological resources found within the jurisdiction of the local body. Further, based on the PBR prepared, every BMC will prepare an Action Plan which will outline steps for local biodiversity conservation.

Therefore, it needs to be detailed that how the conservation and management plan prepared by the gram sabha and the Action Plan prepared by the BMC for the same forest land will be merged with each other.

**iv. Merger of Micro Plan with Working Plans**

With respect to CFR rights, gram sabha has the authority to develop its own simple format for conservation and management plan for community forest resources which its members can understand easily. However, while these micro plans are restricted to common forest land within the traditional/customary village boundaries, the working plans prepared by the Forest Department are for a particular forest division. Therefore, it needs to be detailed that how on the ground level the working plans which are much larger in scope will be integrated with the micro plans.

## **Implementation of Forest Rights Act in Maharashtra using Geo-informatics**

The Government of Maharashtra developed a GPS-based system for forest land measurement and integrated it with satellite imagery software for verification of forest rights claims under FRA. The Tribal Research and Training Institute (TRTI), Pune facilitated the operationalization and functioning of this system.

There are 14,944 Forest Rights Committees (FRC) across 14,000 villages and 3.82 lakh claimants in Maharashtra, out of which plots in 2.04 lakh cases were measured using GPS. Rest close of 1.80 lakh plots could not be measured due to issues raised by the Ministry of Tribal Affairs on use of GPS. The GIS system for forest rights consists of three stages of requesting, verifying and approving or rejecting land claim requests which are carried out across the village, block and district levels. The TRTI, Pune had organised 4,591 trainings and trained 9,146 government personnel (revenue department, forest department, tribal department, GPS/GIS operators). Further, a total of 99,695 village level functionaries were trained.

### **Step I: Claim Request and Field Measurement**

The first and foremost step is identifying the claim request and measuring the claimed land. The FRC at the village level receives a written request for a forest rights from the claimant along with supporting documents. Once the request is accepted by the FRC, a case file is prepared which consists of all information related to the request made by the claimant. This is followed by measuring of the claimed land using GPS machines in the presence of the FRC. Each claimant is then assigned a 13 digit alpha-numeric unique ID in which first two digits represent the district, the next two the taluka, the following five the villages and last four for the name of the claimant. The field measurement data along with digitally created polygon on the GPS machines is then submitted to the SDLC. This digitally created polygon is converted to GPX file for generating a measurement report at the Sub-Divisional Office. Both the file and the data is stored online on the webserver of TRTI. Lastly, a print out of the measurement report is attached to the case file by the SDLC and is sent across to District Level Committee (DLC) for verification.

### **Step 2: Claim Verification**

After receipt of the case file (along with the measurement report), the DLC will check the same and download the GPX File. This GPX File is then superimposed on to the Cartostat-I satellite images of two time series (2005-2006 and 2007-2008) and Google Earth through the TRTI-VGIS for a comparative analysis of vegetation cover, cultivation and land use proof. Based on these analysis forest right claims are approved or rejected. In cases where the satellite images indicates either a clearance of vegetative cover for cultivation after December 2005 and continued vegetative cover after December 2005 or no signs of cultivation on or before December 2005, the forest right claims on the land is dismissed. On the other hand, in cases where the satellite images indicates the evidence of cultivation on or before December 2005, the claim is then approved.

### **Step 3: Final Decision Making**

At the final stage of the process, the report prepared after the comparative analysis is printed and attached to the case file. The claim is then approved or disapproved after the District Collector examines the case file. A certificate of possession is then given to the claimant once the claim gets approved.

The above explained GIS/GPS Model is a transparent and evidence-based objective scrutiny and monitoring system. The forest land on which forest right is claimed is fixed both in terms of location and reasonably accurate extent. The decision making authorities at the sub division and district level become fearless and confident of their decisions. This is important because wrong decisions allowing use of forest land for non-forestry purposes amount to violation of FR Act as well as Forest Conservation Act 1980. Further, it is easy to detect and thereby reject the ineligible claims and therefore, the forest land is saved from encroachment.

## Rahul Choudhary, Advocate and Trustee, LIFE



Presentation by Rahul Choudhary focussed on the Judicial Decisions on Forest Rights Act, 2006

Rahul Choudhary highlighted that how FRA can be a powerful tool to save forest from ecologically destructive projects such as mining, hydel, infrastructure etc. which not only threaten life sustaining ecosystems but also livelihoods of local communities. In this context it is important to note that the MoEF&CC in 2009 had issued Guidelines on *Ensuring Compliance of Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006 in cases of Diversion of Forest Land for Non-Forestry Purposes under the Forest (Conservation) Act, 1980* dated 8<sup>th</sup> August. As per the Guidelines, before a forest clearance is granted under the Forest (Conservation) Act, 1980 for diversion of forest land for non-forestry purposes such as mining, dam, infrastructure facilities etc. it is mandatory for the State Government to submit a letter which certifies that the complete process for identification and settlement of rights under FRA has been carried out for the forest land area proposed for diversion. Along with this certificate, the record of all meetings and consultations held at the SDLC and DLC level needs to be submitted. The Guidelines further require the State Government to submit a letter which certifies that the proposal for forest diversion (with full details of the project and its

implications, in vernacular/local languages) has been placed before each of the concerned gram sabha of forest dwellers who are eligible under FRA. This will be accompanied by a letter from each of the gram sabha indicating that all formalities/processes under FRA and that they have given their consent to the proposed diversion and the compensatory and ameliorative measures if any, having understood the purpose and details of proposed diversion.

Advocate Rahul Choudhary gave multiple examples of litigation cases where the provisions under FRA (as mentioned in the Guidelines dated 03.08.2009) were used by local communities to challenge ecologically destructive projects affecting not only local forest but also local livelihoods. These cases are detailed below:

**I. Odisha Mining Corporation Vs. Ministry of Ministry of Environment, Forest and Climate Change (MoEF&CC) & Others; Writ Petition No 180 of 2011; Judgment of the Supreme Court dated 18.04.2013**

The first case was with respect to the petition filed by the Odisha Mining Corporation in Supreme Court to quash the order passed by MoEF&CC rejecting the grant of final forest clearance for their bauxite mining project in Niyamgiri Hills, Odisha. The bauxite mining project required 660.749 hectares of forest land. Spread over Kalahandi and Raygada districts of Odisha, the biodiversity rich forests of Niyamgiri not only form part of vital elephant corridor but is also the residence of primitive tribes such as Dongria Kondhs. It is important to note that FRA recognises the community tenures of habitat and habitation for primitive tribal groups such as Dongria Kondhs and these tribes have the right to grazing and collection of minor forest produce from the Niyamgiri forests. Most importantly, the Dongria Kondhs have the religious right to worship the mountains as their deity Niyam Raja resides in the hill top of Niyamgiri Range. This religious right would be affected if bauxite mining is permitted in Niyamgiri hills.

The MoEF&CC had rejected the forest clearance on the grounds that the State Government did not consider the customary rights of the Dongria Kondhs while seeking project clearance. The stand taken by the State Government was that since the Dongria Kondhs did not particularly reside on the hills, they had no rights over the same. However, it was contended by

MoEF&CC that even if the tribals do not reside in Nityamgiri Hills, their de-facto dependence on the same cannot be ignored.

The Supreme Court in this case extended the definition of forest rights to include sacred rights and took into consideration the fact that the Indian Constitution guarantees religious freedoms to scheduled tribes and other traditional forest dwellers. The Constitution guarantees them the right to practice and propagate not only matters of faith or belief, but all those rituals and observations which are regarded as integral part of their religion. Therefore, the right of the Dongria Kondhs to worship their deity Niyam Raja has to be protected and preserved. The Supreme Court further observed that under FRA, gram sabha has a role to play in safeguarding the customary and religious rights of the of the forest dwellers. Moreover, under Panchayat Extension to Scheduled Areas (PESA) Act, every gram sabha shall be competent to safeguard and preserve the traditions and customs of people, their cultural; identity and resources. Therefore, as per FRA read with PESA Act, it is the obligation of gram sabha to safeguard and preserve the traditions and customs of the forest dwellers, their cultural identity and community resources.

The Supreme Court in its judgment directed that the gram sabhas of Kalahandi and Rayagada districts have the right to question that whether the FDSTs and OTFDs like Dongria Kondhs have got any the religious right, i.e. the right to worship their deity Niyam Raja which resides on the top of Niyamgiri Hills. The Court observed that this aspect of religious rights has not been placed before the gram sabha for active consideration and directed that gram sabha has the power to examine whether the proposed bauxite mining project will in any way affect the abode of Niyam Raja. In case the project affects their religious rights to worship their deity, this right will be protected and preserved.

**2. Paryawaran Suruksha Sangarsh Samiti Lippa Vs. Union of India & Ors. (Appeal No 28 of 2013) Judgement of National Green Tribunal dated 04.05.2016**

This case was with respect to the petition filed by the villagers of Lippa Village in Kinnaur district, Himachal Pradesh challenging the grant of forest clearance to 130 MW Integrated Kashang Stage-I and Stage-II Hydroelectric Project proposed over Kashang River in the district. The project seeks to divert 17.6857 hectares of forest land in four panchayats of Kinnaur district: Lippa, Pangi, Telang and Rarang. The Integrated Kashang Project has four stages in total with the overall installed capacity of 243 MW. The project will in total require 119.6 hectares of forest land from the cold desert region lying on the tree line at an elevation of 2,000 to 3,155 meters and that during the past decade, there has been a gradual decrease in forest cover in Kinnaur which now constitutes only 10% of geographical area of the district. It is important to note that the project lies in the Chilgoza pine belt (an endangered species) which will be threatened by the proposed hydel project and will further jeopardize the livelihood of the community which heavily depends on Chilgoza for their sustenance.

The primary ground of challenge to the forest clearance was non-compliance with the provisions of FRA. The Act recognises the customary rights enjoyed by the residents of the villages including Lippa village; however, these were not taken into consideration while granting forest clearance to the hydel project. One of the conditions stipulated in the Stage-I forest clearance required the User Agency to settle the claims to forest rights under Forest Rights Act (as mandated in the MoEF&CCs guidelines dated 03.08.2009). It is important to note that though the State Government of Himachal Pradesh had initiated the process of filing claims under FRA; however, not even a single claim was recognised. To the contrary, the Himachal Pradesh Government took the stand that rights and concessions over the forest land involved in the proposal were already settled as per Forest Settlement of Satluj Valley Bushahar State of 1921 AD. It is important to note that while the entitlements provided under the Forest Settlement of 1921 were merely concessions and dependent upon the exercise of discretionary powers of the State, the concessions under Forest Rights Act are conferred as legal rights.

The National Green Tribunal in its judgment directed MoEF&CC and Himachal Pradesh Government that the entire proposal pertaining to the grant of forest clearance to 130 MW

Kashang Integrated Hydro Electric Project will be placed before the gram sabhas of Lippa, Rarang, Pangi and Telangi Villages in Kinnaur District of Himachal Pradesh. Further, while the matter is referred to the gram sabhas, they will consider all community and individual claims including religious and cultural claims. The Tribunal further directed that gram sabhas would further consider the impact of the proposed hydel project on the places of worship, livelihoods of the villagers and loss of the water sources due to the project.

**3. Themrei Tuithung & Ors. Vs. Union of India & Ors. (Review Application No. 46/2016/Eastern Zone and Appeal No. 04/2014/ Eastern Zone) Judgment of the National Green Tribunal dated 06.12.2017**

This petition was filed to challenge the grant of forest clearance for diversion of 595 hectares of forest land for construction of Thoubal Multipurpose Project proposed over River Thoubal in Mapithel Valley, Ukhrul district, Manipur. The project envisages construction of a 66m high and 1,074 m long earthen dam, canals of length 57 Km and a power house for generating 7.5 MW installed capacity. Once commissioned, the project will displace over 12,000 people from 17 villages such that six of them will be completely submerged and other 11 will have their homesteads and agricultural land partially submerged. The project was granted Stage-I forest clearance on 11.10.2011. It is important to note that construction of the dam began in 1989 without obtaining required forest clearance from MoEF&CC. One of the conditions stipulated in the clearance was that provisions of Forest Rights Act would be complied with. However, the State Government of Manipur did not comply the provisions of FRA on the grounds that same was not applicable. It was the contention of the State Government that the project land was already acquired by the State Government in 1993 in accordance with the Memorandum of Agreement signed with the villagers which included the Rehabilitation & Resettlement packages. The project was further granted Stage-II forest clearance on 31.12.2013 and this was followed by the final State Government order on 15.01.2014. The State Government order itself stipulated that the provisions of Forest Rights Act will be taken in to consideration. However, this was not complied with.

The National Green Tribunal observed that while acquisition of the land in question had been made in the year 1993 under the Memorandum of Agreement and that all rehabilitative measures had been provided and compensation was duly paid to the persons whose lands were acquired, the same does not suffice the compliance with FRA. Moreover, compliance with FRA was a condition stipulated in the Stage-I Forest Clearance which had to be complied with. Further, with respect to the contention made that the State of Manipur had already obtained due clearances for the transfer of forest land from village authorities of the affected villages, the Tribunal explicitly raised a doubt on whether it was a willing clearance and as to whether the compensation and the rehabilitative measures provided were to the satisfaction of the displaced persons.

Putting on record that rights prescribed under FRA are obviously statutory in nature which requires compliance both in letter and spirit, the Tribunal directed the State Government of Manipur and the project proponent (Irrigation and Flood Control Department, Manipur Government) to ensure that the provisions of the FRA are duly complied with. It was further directed that all efforts should be made to bring actions taken thus far while carrying out the project in accordance with the FRA. Lastly, the Tribunal directed that the gram sabha of the area or its equivalent will be consulted as required under the Act.

### **Exemptions to Linear Projects from Gram Sabha Consent**

In addition to the above cases, Rahul Choudhary shared an order by the MoEF&CC with respect to the Guidelines dated 03.08.2009. Given that the August 2009 guidelines require compliance with FRA before forest land is approved for diversion under Forest (Conservation) Act, 1980; the 5<sup>th</sup> February 2013 order exempts linear projects (projects which require linear diversion of forest land such as railways, roads, transmission lines, pipelines, canals, tunnels etc.) from obtaining gram sabha consent. However, settlement of rights under FRA will still be mandatory. Further, the gram sabha consent is required if the rights of Primitive Tribal Groups/Principal Agricultural Communities are affected. There is a litigation ongoing in the Supreme Court in the name of Hira Singh Markam & Ors. Vs. Union of India & Ors. (Civil Appeal) with respect to the exemption being given to linear projects from compliance with

FRA. The case is with respect to diversion of 83.12 hectares of forest land in East Bhanupratapur Forest Division in Bilaspur district of Chhattisgarh for construction of Phase-I of Dalli-Rajhara-Rawghat Railway Line. The primary concern raised by the applicant was that settlement of rights under FRA which is a mandatory condition for the grant of forest clearance, has not been carried out. The forest clearance was first challenged in the National Green Tribunal, however the Tribunal refused to adjudicate upon the merits of the case on the grounds that the FRA does not fall in the schedule of Acts upon which Tribunal has jurisdiction. In doing so the Tribunal ignored the fact the Forest (Conservation) Rules, 2003 mandates that pre-settlement of forest rights as a pre-requisite for the grant of a forest clearance. It is important to know that Forest (Conservation) Act, 1980 falls in the scheduled Acts and therefore matters related to Rules made under the Forest (Conservation) Act, 1980 need to be adjudicated by the Tribunal. The Tribunal in its judgment observed that in accordance with the Office Memorandum dated 05.02.2013 issued by the MoEF&CC, linear project such as construction of railways do not require prior consent from the gram sabha, without paying attention to the fact that settlement of rights under FRA is still mandatory. This judgement of the National Green Tribunal is now under challenge in the Supreme Court.

### **Tushar Dash, CFR Learning and Advocacy Group**



Presentation by Tushar Dash focussed on CFR Rights and experiences on the same from Odisha with a special focus on recognition of CFR Rights in Similipal Tiger Reserve in Mayurbhanj district.

### **Overview of Community Forest Resource (CFR) Rights**

The FRA recognises the right of the forest dwelling communities to protect, regenerate or conserve or manage any community forest resource which they had been traditionally protecting for sustainable use. The term community forest resource (CFR) means customary common forest land within the traditional or customary boundaries of the village. This includes reserved forests, protected forests and protected areas such as wildlife sanctuaries and national parks to which community had traditional access. The Forest Rights Rules further mandate that it is the duty of District Level Committee (DLC) to ensure that CFR Rights are recognised in all villages with forest dwellers and that are titles are issued to them. While the FRA recognises the CFR Right of the forest dwellers, it is the duty of the gram sabha to protect forest, wildlife, biodiversity, water catchment areas and the cultural and natural heritage of the forest dwellers. In the CFR area, the gram sabha has the authority to develop its own simple format for conservation and management plan for CFR which its members can easily understand. It has the authority to modify the micro plan or working plan or management plan of the Forest Department to the extent necessary in order to integrate the same with the conservation and management plan for CFR passed by the gram sabha.

Claims for rights over CFR have been filed by gram sabhas in many districts of Odisha, supported by civil society organisations and federations of community forest management groups such as the Odisha Jungle Manch. Examples of CFR rights recognition and mapping are found in the districts of Mayurbhanj and Kandhamal where the district administration and Integrated Tribal Development Agencies (ITDAs) have set up support mechanisms in collaboration with local organisations to facilitate CFR claims. In these districts, CFR areas are mapped using GPS and mobile based application (used on a pilot basis in Mayurbhanj). These mechanisms include special FRA Cells in Tehsil and district offices, contracting more land

surveyors and facilitators, contracting local civil society organisations for facilitating rights recognition process under the Forest Rights Act, etc.

## **Implementation of CFR Rights in Similipal Tiger Reserve, Mayurbhanj**

### **Overview of Similipal Tiger Reserve**

Similipal Tiger Reserve is located in Mayurbhanj district in North Odisha and also forms part of Mayurbhanj Elephant Reserve. Similipal was brought under Project Tiger in 1973 and was notified as a tiger reserve under Wildlife Protection Act, 1972 in December 2007. Similipal was recognised as a Biosphere Reserve under UNESCO's Man and the Biosphere Programme in 1994 in order to promote conservation and sustainable use of natural resources and for the improvement of the overall relationship between people and their environment.

Similipal is rich in biodiversity which includes 94 species of orchids and about 3000 species of other plants out of which 2 species of orchids are endemic. 8 species of plants are endangered and 8 are vulnerable. The identified fauna of Similipal includes 12 species of amphibians, 29 species of reptiles, 264 species of birds and 42 species of mammals. The Hill, Forest, Grassland and Wetlands ecosystems constitute the composite 'Similipal Ecosystem' with indicator species like the tiger, elephant, giant squirrel, mugger crocodile and turtles. Apart from its biodiversity, Similipal forest is home to a variety of tribes. Prominent among these are Kolha, Santhala, Bhumija, Bhatudi, Gondas, Khadia, Mankadia and Sahara. The tribal and non-tribal inhabitants of Similipal subsist largely on the collection on non-timber forest produce such as honey, gum, arrowroot, wild mushrooms. Communities also collect bark of paja tree (*Litsea monopetala*) of the laurel family; the flowers and seeds of mahua (*Madhuca longifolia*) and seeds of sal (*Shorea robusta*). These forest products form a vital part of people's livelihoods.

The Similipal Biosphere Reserve (SBR) consists of three zones: Core Zone, Buffer Zone and Transition Zone. There are 65 villages within SBR out of which 4 villages are situated entirely in the core area and the rest are located in the buffer area. Administratively, these 65 villages come under three tehsils i.e. Jasipur, Bangriposi and Thakurmunda.

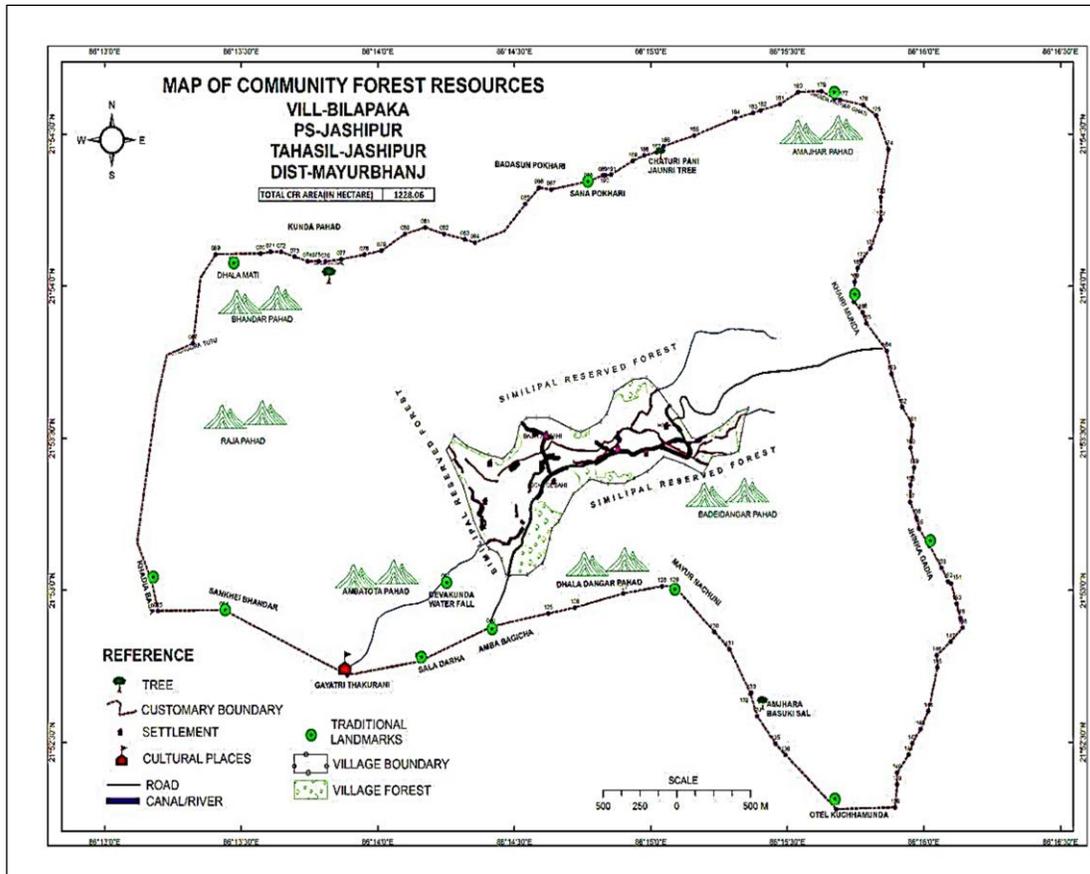
### **Process of Recognition of CFR Rights in Similipal, Mayurbhanj**

A dedicated institutional structure for recognition of forest rights was established in Mayurbhanj district. The District Collector entrusted the Project Administrator of Integrated Tribal Development Agency (PA ITDA), Baripada (a town in Mayurbhanj) to coordinate the implementation of FRA at the district level. As the recognition of rights relates to land, the Tehsildar was designated as the nodal authority of implementation at the tehsil level. Looking towards the scale of work, District Collector engaged 79 ex-Revenue Inspector (RI) and Assistant Revenue Inspector (ARI) along with 139 newly recruited RIs and ARIs in Mayurbhanj. Regular reviews, monitoring meetings and trainings were conducted to build the capacity of the officials involved in the process of CFR rights recognition. A FRA Cell was set up in Jashpur which consolidates and maintains all the case records of individual forest rights, community rights and CFR rights of Jashpur Tehsil in digital form and provides these records to the gram sabha if needed. A CFR Atlas was also prepared to support the district administration in planning and executing summary community forest rights recognition. A CFR Atlas is a map which includes the information about the number of villages eligible for recognition of community forest rights and maps can be prepared for any administrative division (i.e. country, state, district and block).

The process of filing claims for community rights and CFR rights started in 2013 in 44 villages of Similipal Biosphere Reserve. A local civil society organisation based in Jashpur tehsil known as Centre for Regional Education on Forest and Tourism (CREFTDA) played a pivotal role in facilitating the claim filing under community rights and CFR rights. The organisation provided support in preparing community forest resource maps; filing of the claim forms; verification of the customary boundary and claims with adjacent FRCs and line departments; final approval of claims by gram sabha; and forwarding the claims to SDLCs. The Tehsildar and other revenue officials provided the villages the necessary formats and documents required.

After submission of claims to the SDLC, the process of CFR mapping started in Similipal. CFR Areas were mapped on the identified traditional landmarks with the guidance of the elders of the community and the final CFR maps were prepared at the FRA Cell, Jashpur with the entire database generated from GPS machine. After preparation of all the CFR Maps, these maps were

superimposed on the CFR boundaries of all the 44 villages to address the possibility of overlapping boundaries. In case CFR boundaries overlapped, the issue was addressed by first preparing the maps and list of villages with overlapping boundaries and then calling a joint meeting of the respective villages. These meetings were held in the presence of Tehsildar, Revenue Inspector, Assistant Revenue Inspector, Sarpanch, FRC members and gram sabha members. After discussions on customary boundaries and traditional landmarks and passing of appropriate resolutions, the CFR boundaries of the respective villages were re-mapped. These rectified maps were shared with the respective villages, and after the approval, these were forwarded to the SDLC through Tehsildar. The DLC then prepared the titles to community rights CFR rights. The major issue in this case was that CFR Titles and CFR Maps remained pending with Forest Department for approval even after being approved by DLC. The main concern raised by the Forest Department was that the area of the CFR (within the customary boundaries of the village) forms a large part of the Similipal Tiger Reserve. For example, in case of Bilapaka Village, the customary forest land over which villagers got CFR Rights was very large compared to the forest land within the village boundary. The Bilapaka villagers had been traditionally protecting and conserving their customary forest with some rules and regulations. For example, in summer season, every day on rotation basis a group of 10-12 men would go for patrolling the forest. Further, villager also collectively extinguish forest fires by sweeping dry fuelwood and leaves to one side of the forest so that the fire does not spread. The villager use different types of resources within their customary forest land such as sacred grove; arable land; shrines for deities; water sources; burial grounds; grazing land and non-timber forest produce. The CFR Map for the Bilapaka Village is shown in Figure 2 below. As visible, the customary forest land far exceeds the forest land within the village boundary (shown as village forest in the CFR Map).



**Figure 2: CFR Map of Bilapaka Village in Jasipur Tehsil, Similipal Tiger Reserve**

## Question and Answer Session

**QI:** With regard to rights granted on forest land for self-cultivation and habitation, can trees be felled for the purposes of cultivation?

**AI:** The Forest Rights Act recognises the right of the Forest Dwelling Scheduled Tribes and Other Traditional Forest Dwellers to hold and live in the forest land for habitation or self-cultivation for livelihood. In view of the above, the titleholders have the right over trees standing on the said forest land. However, felling and disposal of the trees shall be treated in the same manner as trees on private lands under the relevant state laws. As such, the felling and disposal of such trees shall be subject to conditions, requirements for permission from the competent authority, etc. as specified in those laws, if any.

**Q2:** In reference to MoEF&CCs guidelines on compliance with Forest Rights Act, 2006 with respect to diversion of forest land for non-forestry purposes under Forest (Conservation) Act, 1980, will the rights be settled over the forest land proposes to be diverted or will it extend to the area to be actually affected, for example, zone of influence in case of hydel projects?

**A2:** As per MoEF&CC's Guidelines dated 03.08.2009 with respect to compliance with FRA in cases of diversion of forest land for non-forestry purposes under Forest (Conservation) Act, 1980, the rights to be settled will be restricted only to the forest land proposed for diversion for non-forestry purposes.

**Q3:** What is the meaning of 'bona-fide' in the bona-fide livelihood need?

**A3:** As per Forest Rights Rules, the term 'bona-fide livelihood needs' has been defined to mean fulfilment of livelihood needs of self and family, including the sale of surplus produce arising out of exercise of such rights.

**Q4:** With regard to experiences from implementation of CFR rights in Similipal Tiger Reserve in Odisha, what will happen if the Management Plan prepared by gram sabha is not in sync with the Working Plan prepared by the Tiger Reserve Authorities?

**A4:** As per Forest Rights Act, 2006, it is the duty of the gram sabha to constitute committees for the protection of wildlife, forest and biodiversity from amongst its members. It is the duty of the committee to prepare a conservation and management plan for community forest resources. Guidelines by Ministry of Tribal Affairs vide letter No.23011/16/2015-FRA dated 23.04.2015 further specifies that gram sabha and the Committee constituted by it shall be the authority to modify the micro plan or working plan or management plan of the Forest Department to the extent necessary in order to integrate the same with the conservation and management plan for the CFR as passed by the gram sabha. Therefore, in this case if the management plan prepared by the gram sabha for the community forest resources within the Similipal Tiger Reserve is not in sync with the working plan prepared by the Forest Department, the gram sabha can modify the said working plan in order to integrate the same with their management plan.

**Q5:** Can the forest land over which CFR Rights are recognised, be converted to an agriculture field?

**A5:** Under Forest Rights Act, the gram sabha has only been given the right to protect, regenerate, conserve or manage any community forest resource that they had been traditionally protecting. It is important to note that CFR Right is only a management right and FRA does not grant gram sabha the right to change the land use of the forest land over which the CFR is recognised. Therefore, the forest land (in question) cannot be cleared for agricultural use after the CFR titles have been issued.

## **Feedback regarding the Sensitization Workshop**

Post the technical sessions, a form was given to the participants to collect information regarding their view of the workshop. The feedback form used is shown in the figure below.

### Feedback Form

We need your valuable inputs to evaluate this training. You are requested to provide your comments by putting a cross on appropriate box

1. How do you rate Substance, Content and Relevance of the on following aspects?

- a. Overview of Forest Rights Act      Excellent  Good  Satisfactory  Unsatisfactory
- b. Role of the Forest Dept.              Excellent  Good  Satisfactory  Unsatisfactory
- c. Judicial decisions                      Excellent  Good  Satisfactory  Unsatisfactory

2. How relevant is this workshop in terms of your responsibility towards implementation of FRA?

Very relevant                       Not relevant

3. Duration of Workshop

Appropriate                       Very long                       Too short

4. New information acquired (in %)

< 25%                       26-50%                       51-75%                       >75%

5. Will this workshop enhance your knowledge towards your responsibility in implementation of FRA?

Yes                       No

6. Your comments about Resource Person on following aspects

**a. Dr. Arvind Jha**

Subject Knowledge                      Excellent  Good  Satisfactory  Unsatisfactory

Relevant Examples                      Excellent  Good  Satisfactory  Unsatisfactory

Teaching Skill                              Excellent  Good  Satisfactory  Unsatisfactory

**b. Mr. Tushar Dash**

Subject Knowledge                      Excellent  Good  Satisfactory  Unsatisfactory

Relevant Examples                      Excellent  Good  Satisfactory  Unsatisfactory

Teaching Skill                              Excellent  Good  Satisfactory  Unsatisfactory

**c. Adv. Rahul Choudhary**

Subject Knowledge                      Excellent  Good  Satisfactory  Unsatisfactory

Relevant Examples                      Excellent  Good  Satisfactory  Unsatisfactory

Teaching Skill                              Excellent  Good  Satisfactory  Unsatisfactory

**Name of the Officer:**

**Designation:**

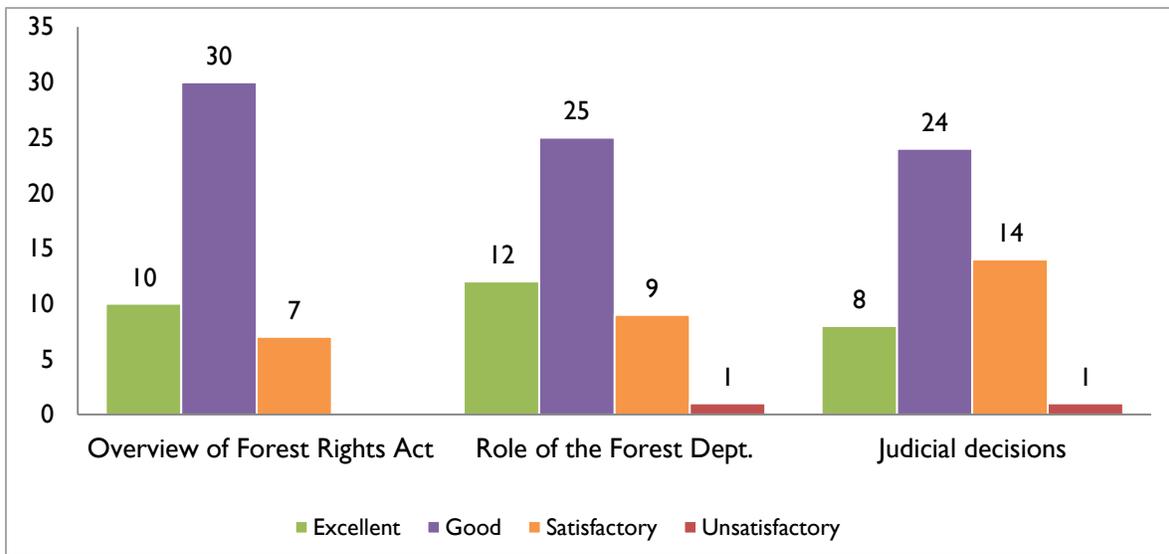
**Figure: 1: Feedback used in the Workshop**

A total of 47 forest officials attended the workshop on Forest Rights Act. An analysis of the 47 feedback forms reveals the following findings regarding the workshop.

**Participant’s rating on the Substance, Content and Relevance of the workshop:**

The participants were asked to rate the substance, content and relevance of the workshop on the following aspects: Overview of the Forest Rights Act, Role of the Forest Department in implementation of Forest Rights Act and Judicial Decisions on the Act.

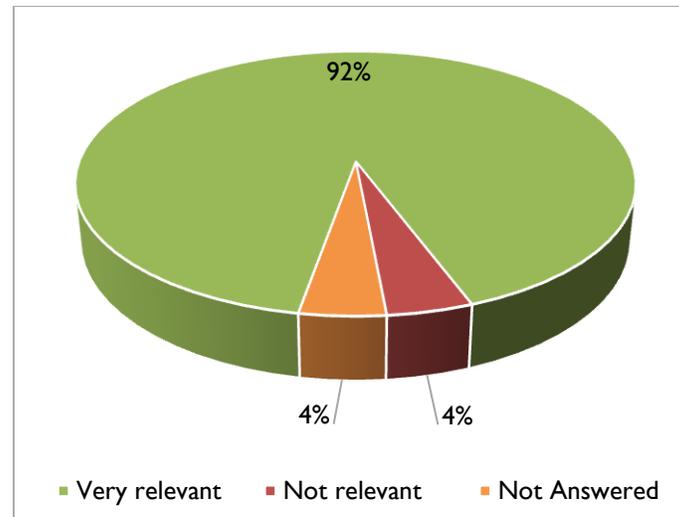
The majority of the participants were highly satisfied, found it very relevant to the training and believed that it significantly improved their knowledge. Figure-2 shows the rating given by participants regarding the substance, content and relevance of the training on topics in Forest Right Act implementation. All the topics covered were given mostly “excellent”, “good” and “satisfactory” ratings by the participants.



**Figure 2 - : Participant’s evaluation on the topics covered**

**Participant's rating on the relevance of the workshop in terms of Responsibility towards Forest Rights Act:**

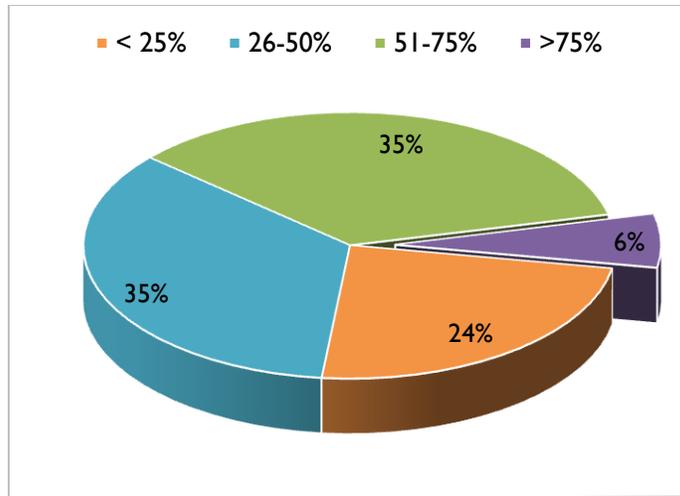
The participants were asked to rate on the relevance of the workshop in terms of their responsibility towards implementation of Forest Rights Act. From figure 3 it is clear that out of 47 participants, 92 % of the participants found the course to be very relevant to their job, while 4% found it to be not relevant. The rest 4% of the participants did not answer this question.



**Figure 3:- Participant's rating on the relevance of the Workshop**

**Participant's rating on New Information acquired from the Workshop:**

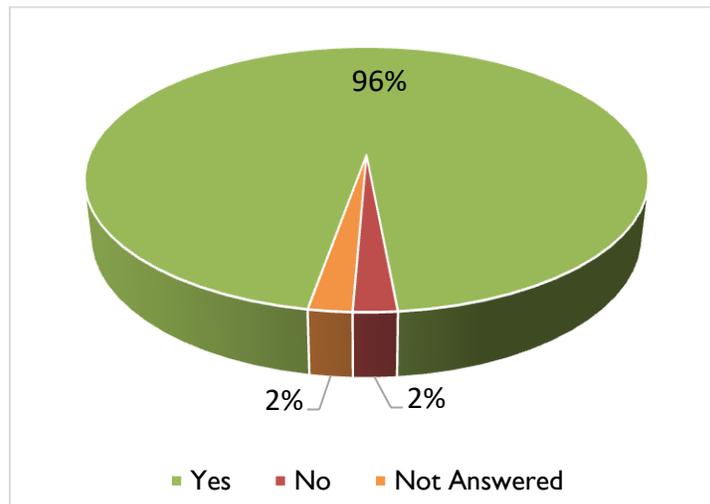
The feedback form asked for participants' responses regarding how much of new information (%) they acquired from the workshop. 76% of the participants felt that they acquired between 26-75% of new information during the workshop. The rest 24% of the participants felt that less than 25% of new information was acquired during the workshop. Figure 4 shows the rating given by the participants with respect to new information acquired from the workshop.



**Figure 4 - : Percentage (%) of new information acquired by the participants from the workshop**

**Participant’s rating on Knowledge Enhancement from Workshop:**

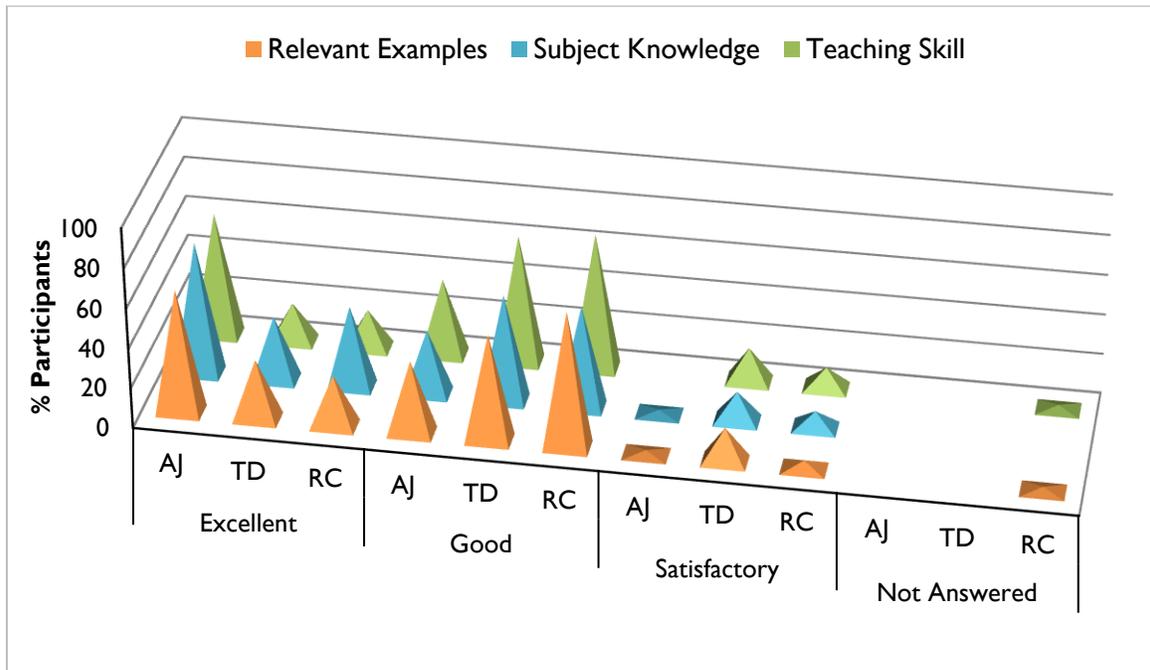
The feedback form asked for participant’s view on whether the workshop enhanced participant’s knowledge towards their responsibility in implementation of FRA. 96% of the participants answered in positive. 2 % of the participants felt that the workshop did not enhance their knowledge towards their responsibility in FRA implementation. Rest 2 % did not answer the question.



**Figure 5- : Participant’s rating on whether Workshop enhanced knowledge on FRA**

## Feedback about Resource Persons

The participants gave feedback regarding resource persons' subject knowledge, examples given during workshop, teaching style. Except few (negligible) almost all participants were satisfied with resource persons and rated them between good to excellent.



\* **AJ**- Dr. Arvind Jha, **TD**- Mr. Tushar Dash, **RC**- Adv. Rahul Choudhary



## Sensitization Workshop

On

# The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006

Venue: State Forest Training Institute, HILZI

Kharagpur, Kolkata

Date: 7<sup>th</sup> May 2019

### List of Participants

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