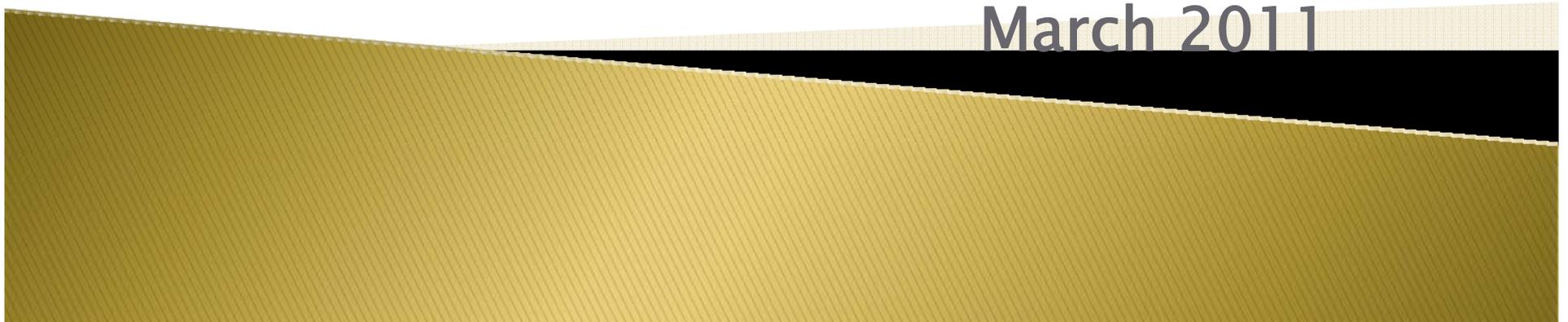




The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 – An Orientation

Sanjay Upadhyay
Environment Law and Development
Foundation
March 2011





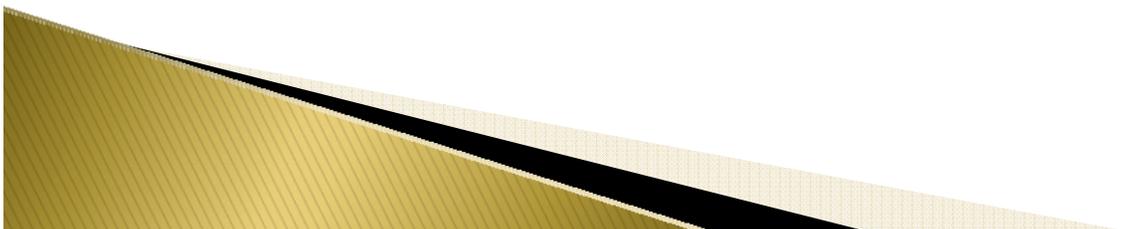
PART I

UNDERSTANDING FOREST RIGHTS ACT





BACK GROUND AND GENESIS



Five Cardinal Principles of FRA



1. Recognition and vesting of such forest rights which could not be recorded
2. A framework for Recording of rights including nature of evidence. (Section 6 read with Rules)
3. Rights with responsibilities and authority for sustainable use, conservation of bio diversity. Conservation regime to be strengthened while ensuring livelihood security.
4. Settlement process has been inadequate and rights have been ignored– Historical Injustice!
5. Insecurity of tenure and access to
6. forest resources

Process



- ▶ TSG on Act – First Draft
- ▶ Draft Published with minor corrections
- ▶ JPC– JPC Draft
- ▶ GOM– Negotiated Draft
- ▶ The Forest Rights Act (Published for Information on Jan 2, 2006)
- ▶ TSG on Rules– Headed by Sh SR Sankaran (Former bureaucrat)
- ▶ Draft Revised by MOTA
- ▶ Further “Refined” by Law Ministry
- ▶ Draft Pre published as required by the Act on June 19– 45 Days
- ▶ Comments received till August 7,8,2007
- ▶ Finally Notified on Jan 1,2008



SOME NEW CONCEPTS INTRODUCED –NOT IN THE ORIGINAL DRAFT

- ▶ **Other Traditional Forest Dwellers** introduced
- ▶ **“community forest resource”**–customary common forest land within the traditional or customary boundaries of the village or seasonal use of landscape in the case of pastoral communities, including reserved forests, protected forests and protected areas such as Sanctuaries and National Parks to which the community had traditional access
- ▶ **“Critical Wildlife Habitat”** – such areas of National Parks and Sanctuaries where it has been specifically and clearly established, case by case, on the basis of scientific and objective criteria, that such areas are required to be kept as inviolate for the purposes of wildlife conservation as may be determined and notified by the Central Government in the Ministry of Environment and Forests



Some Key Definitions



- ▶ **FDSTs**– who primarily reside in and who depend on the forests or forests lands for bona fide livelihood needs
- ▶ **OTFDs**–who has for at least three generations prior to the 13th day of December, 2005 primarily resides in and who depend on the forest land for bonafide livelihood needs.
- ▶ **Village** – four types– PESA village, non Scheduled areas village; forest village (and like) ; other TVIs (NE context)
- ▶ **Gram Sabha** – Constitutional Defn + Including Tolas, Padas
- ▶ **Forestland** means land of any description falling within any forest area . (Essentially from the Dec 12, 1996 Order of Godavarman Case)
- ▶ **Habitat** includes the area comprising the customary habitat (for the PTG context)

Types of Rights to be recognised



- ▶ **Secure individual or community tenure or both, on all forest lands**
 - Right to hold and live in the forest land under the individual or common occupation for habitation or self-cultivation for livelihood
 - Community rights, such as nistar, including those in erstwhile princely states, Zamindari
 - Right of ownership, access to collect, use or dispose of minor forest produce which have been traditionally collected within or outside
 - village boundaries

Types of Rights to be recognised



- ▶ Other community rights of uses or entitlements such as fish and other products of water bodies, grazing and traditional seasonal resource access of nomadic or pastoralist communities;
- ▶ Rights, including community tenures of habitat and habitation for primitive tribal groups and pre agricultural communities.
- ▶ Rights, in or over disputed lands
- ▶ Rights for conversion of pattas or leases or grants on forest land to titles;
- ▶ Rights of settlement of all forest villages, old habitation, unsurveyed villages and other villages in forests recorded, notified, or not, into revenue villages;



Types of Rights to be recognised



- ▶ Right to protect, regenerate or conserve or manage any community forest resource which they have been traditionally protecting and conserving for sustainable use;
- ▶ Rights which are recognized under any state law or laws of any Autonomous District Council or Autonomous Regional Council or which are accepted as rights of tribals under any traditional or customary law of the concerned tribes of any state;
- ▶ Right of access to biodiversity and community right to intellectual property and traditional knowledge related to biodiversity and cultural diversity;
- ▶ Any other traditional right customarily enjoyed which are not mentioned in clauses (a) to (k) but excluding the traditional right of hunting or trapping or extracting a part of the body of any species of wild animal.

Types of Rights to be recognised



- ▶ Right to in situ rehabilitation including alternative land in cases where FDSTs and OTFDs have been illegally evicted or displaced from forest land of any description without receiving their legal entitlement to rehabilitation prior to the 13th day of December, 2005
- ▶ FCA exempted on certain diversions!
 - The Central Government shall provide for diversion of forest land for the following facilities managed by the government which involve felling of trees not exceeding seventy- five trees per project

Some Principles which cannot be ignored

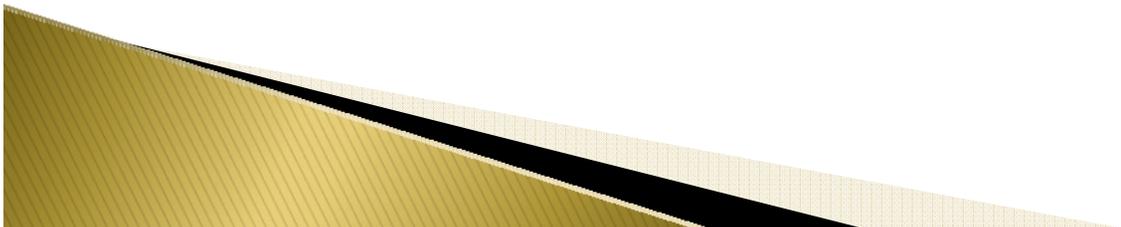


- ▶ Recognition in States and areas in States “*where they are scheduled*” (Looks like a limitation for STs in the context of OTFDs)
- ▶ Rights in Critical Wildlife Habitats may be modified, if such areas are to be made inviolate– (Subject to conditions)
 - Recognition complete
 - Est that Activities will cause irreversible damage as per WLPA
 - Co existence not possible
 - resettlement or alternatives package has been prepared and communicated
 - free informed consent of the Gram Sabhas for proposed **resettlement** obtained in writing
 - facilities and land allocation at the resettlement location are complete
- ▶ No diversion of Critical Wildlife Habitat in future

Some Principles which cannot be ignored



- ▶ Cut off date– Dec 13, 2005 for STFDs
- ▶ 75 years prior to Dec 13, 2005 for OTFDs
- ▶ Right over land is “*heritable but not alienable or transferable*” and shall be registered jointly in the name of both the spouses.
- ▶ The area under actual occupation shall in no case exceed an area of four hectares.
- ▶ No ‘net present value’ and ‘compensatory afforestation’ for diversion of forest land for recognition of forest right,
- ▶ No eviction till the process is complete
- ▶ Land taken for development purpose and not used for the same may be restored if not used for five years
- ▶ Forest Right Holders are empowered to perform duties
 - Forest, wildlife, biodiversity, catchments , habitat protected and IPR regulated



Structure



- ▶ Gram Sabha– as the initiating authority
- ▶ Sub Division Level Committee– first appellate body
- ▶ District Level Committee– Second Appeal and Final Arbiter
- ▶ State Level Monitoring Committee
- ▶ All bodies shall have representative of departments of Revenue, Forest and Tribal Affairs of the State Government and three members of the Panchayati Raj institutions at the appropriate level

Offences and Penalties



- ▶ One thousand rupees for authorities and members of authorities– Gram Sabha members included!
- ▶ Cognisance of Offence relating to Gram Sabha resolution only after a notice of sixty days to State Level Monitoring Body



Other Significant Provisions



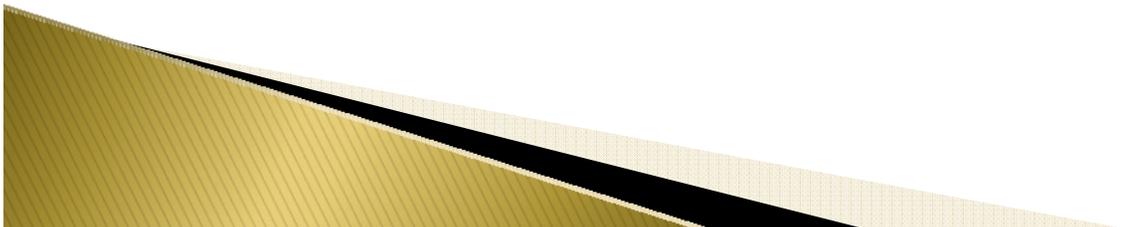
- ▶ MoTA is the nodal agency to implement the Act
- ▶ Central Government may give directions
- ▶ This law (and PESA) is in addition to and not in derogation of any other law.
(Operation of other laws are not barred)
- ▶ Central Government to make Rules



Lucky Thirteen!



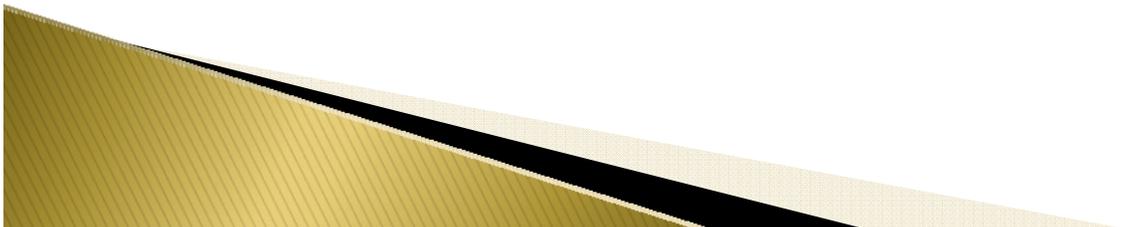
- ▶ 13 Set of Rights to be recognised!
- ▶ December 13 as the Cut off date!
- ▶ 13 diversions on FCA exempted!
- ▶ 13 Items in Land Title



Some Myths and Perceptions



- ▶ The Act hands over four hectares of forest land to every tribal family?
 - No, the recognition is about existing occupation up to a maximum of four hectares, to be validated in a three-level scrutiny process where every concerned department, including forest, tribal, revenue and panchayat, would be involved in verifying the veracity of the claims based on sound evidence.



Some Myths and Perceptions



- ▶ Is there a rationale of four hectares ?
 - This magical figure of four hectares, it seems is a bargain between 2.5 hectares as envisaged in the first draft of the Act on the basis of existing Forest Village Rules in various states to “as is where is basis” advocated by the Joint Parliamentary Committee. Clearly, there is no scientific or legal basis of four hectares.



Some Myths and Perceptions



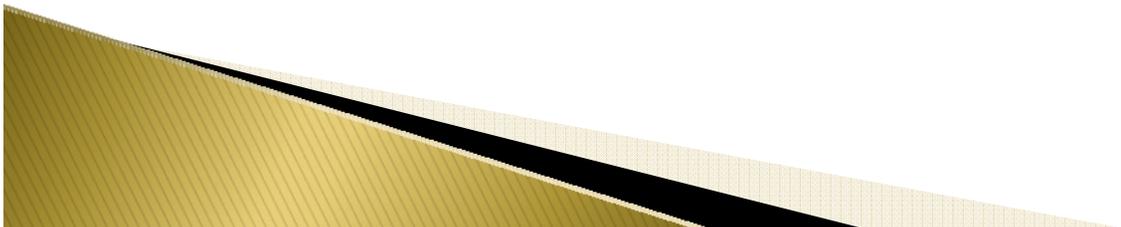
- ▶ The cut off date!
 - This Act has no relevance to the cut off date be it 1980 when the Forest Conservation Act came into being or December 2005 which is mandated by the current Act.
 - Historical injustice has to be proved by historical records. Clearly, December 13, 2005 is not a historical date and neither is 1980.



Some Myths and Perceptions



- ▶ Is this Act about regularization of encroachment ?
 - This Act is not about regularization of encroachment; it is about recording unrecorded rights and following a due process.
 - Every Wildlife Protection and Forest Act in the country lays down a due process of settlement of bonafide claimants.
 - The Forest Rights Act attempts to better the existing process.



Some Myths and Perceptions



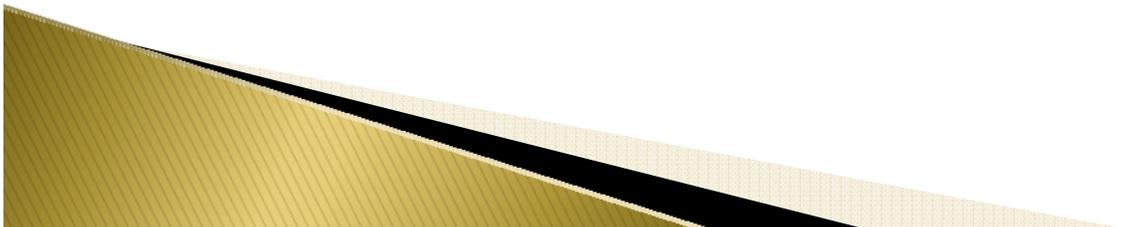
- The process of reservation under Indian Forest Act has been faulty and well documented.
- The settlement process under the Wildlife Protection Act has been far from satisfactory and the Supreme Court of India has been struggling to set this right since 1995 in the ongoing Center for Environment Law – World Wide Fund for Nature versus Union of India case.



Some Myths and Perceptions



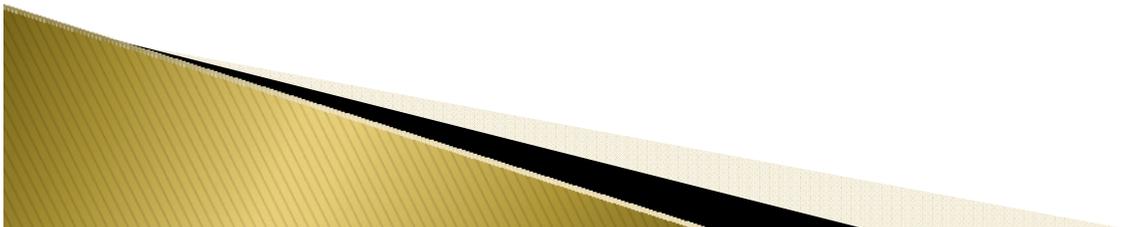
- ▶ Several hundreds thousand hectares will be transferred to tribals and ownership will be given by the Forest Rights Act.
 - The Act no where mentions the word ownership (except for minor forest produce) or forest land transfer.
 - It only secures tenure on forest land to those who have been residing since generations



Some Myths and Perceptions

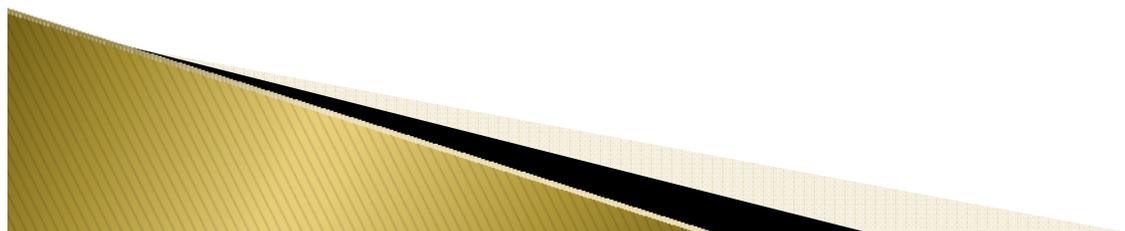


- ▶ The Gram Sabha, the lowest unit of governance, cannot be given this important task of initiating the recognition process for they lack capacity
 - What are the other institutional models available at the village level.
 - Why are we so reluctant to rely on the wisdom of the village (the ordinary *Gram or Gaon*?)





Part II– The Process and the Field Concerns



The Process (Rules)



- ▶ GS–Call for Claims (three months)



- ▶ (Forest Rights Committee Authorised)



- ▶ Determination of CFR



- ▶ FRC to prepare record of claims, maps, list of claimants including for Community Rts





The Process (Rules)

- ▶ GS to pass resolutions

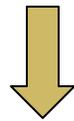


- ▶ Forwards the Resolution to the SDLC
 - (Panchayat Secretary shall be Secretary of Gram Sabha)
- ▶ Important Role of FRC– Verifying, delineation, pastoralists, PTG claims
- ▶ Overlapping Claims
- ▶ Evidence

The Process (Rules)



- ▶ Appellate Bodies– GS to SDLC to DLC to SLMC
 - (Within a time frame)
 - (On inter Subdivisions level claims or Inter District Claims)



- ▶ DLC to send Record of Forest Rts to Collector for correction of records
- ▶ Role of SLMC include dispute resolution, reporting and monitoring



Implementation Challenges of FRA

- ▶ The preparation of the special Gram Sabha should be independent of the activities of FRC.
- ▶ The need for a delineating the various groups of rights and especially those that have trans-state implications
- ▶ Capacity building of SDLCs and DLCs.



Implementation Challenges of FRA



- ▶ Dissemination of “ correct legal information” on FRA(guidebook) preferably under the aegis of MoTA in association with Welfare Department
- ▶ A state wise understanding of forest-tribal issues with prioritisation. e.g. Community Initiated forest management in Orissa; orange area patta holders in M.P. and Chhatisgarh; Khuntkatti lands in Jharkhand, Eksali lands in Maharashtra

Some concerns from the Field

- Little or no understanding of which of the Forest Rights are being exercised and how do they relate to the legal provisions!
- Inter village and inter panchayat claims which overlap and disputes resolution mechanisms still not well developed including on CoFR and CFR.
- Duties under FRA
 - No ordinary “duties” but the communities have been “empowered to perform duties”.
 - Clarity required especially with existing processes



Some concerns from the Field

- ▶ Confusion between settlement and recognition
- ▶ No clear guidelines to First Appellate Bodies such as Sub Division Level Committee and also to the District Level Committee on grounds of rejection or approval including reasoned orders
- ▶ Recognition of rights versus regularisation of encroachments!





New Legal Challenges

- ▶ Public Interest Litigation in seven High Courts!
- ▶ Conservationists in the Supreme Court on grounds of constitutionality among others
- ▶ Currently referred to a larger bench!
- ▶ Transfer Petitions being heard.
- ▶ NC Saxena Committee
- ▶ Madhav Gadgil Sub Group of NAC
- ▶ Only time will tell whether a history was created to undo historic injustice or it will go down in history!!



THANK YOU

