



## A GOOD PRACTICES BRIEF

This Brief No.2 highlights practical approaches used to facilitate effective implementation of the Forest Rights Act in India



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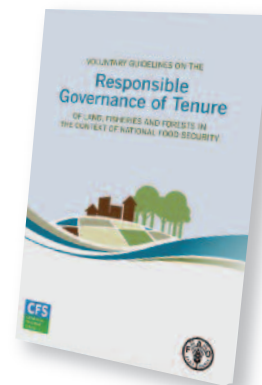
Food and Agriculture  
Organization of the  
United Nations

The Voluntary Guidelines  
and the World Bank:

Implementation of the Forest  
Rights Act in India: Critical Issues  
and Learning from Two Case Studies



**G**lobally, the ‘Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security’ (hereafter ‘VGGTs’) set standards for acceptable land governance practices that can be used to evaluate proposed and existing policies and programs. The VGGTs pay particular attention to recognizing the ‘legitimate customary rights’ of indigenous communities, small landholding farmers, and women, and represent internationally accepted standards for responsible governance practice that place tenure rights in the context of a human rights approach (FAO 2012). The VGGTs provide useful pointers to monitor progress in achieving security of tenure in the context of implementation of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006 (hereafter FRA) in India.



This brief has been prepared based on the findings of an assessment study on “Implications of FRA on Land Rights of Tribal Groups and Other Traditional Forest Dwelling Population in India: In the Context of the FAO Voluntary Guidelines on Tenure”. The study assessed factors that aid or impede implementation of the FRA in India. The three objectives of the research were:

- i) To examine if there could be more effective devolution of tenure to tribal groups and other traditional forest dwelling population (OTFD) under the FRA using some of the tools set out in the FAO’s technical guide to improve governance of forest tenure.
- ii) In instances where tenure security is evident, the study explored whether in fact this has resulted in more effective local control of forest resources (for instance, by strengthening of local decision making bodies like forest rights committees (FRCs) and *gram sabhas*<sup>1</sup>).
- iii) The study examined the perceived socio-economic benefits from the implementation of the Act.

The assessment used a mixed methods approach and data was collected through household survey (n=481), key informant interviews, and focus group discussions in three blocks each, in Narmada district in Gujarat and Bolangir district in Odisha, India. This brief highlights key issues that are critical for improving access to land and tenure security for marginalized forest dwelling communities in India and indicates common impediments to policy implementation.

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<sup>1</sup> “Gram Sabha means a village assembly which shall consist of all adult members of a village and in case of states having no panchayats, padas, tolas and other traditional village institutions and elected village committees, with full and unrestricted participation of women” GoI. 2006. “The Scheduled Tribes and Other Traditional Forest Dwellers (recognition of Forest Rights) Act, 2006.” Pp. 11. New Delhi: Ministry of Law and Justice, Government of India.

*Photo credits: Photos by Ruchika Singh except for page 4, photo by Barun Mitra.*

The brochure was prepared by a World Bank team with support from the Government of Japan, as part of a broader initiative to disseminate the Voluntary Guidelines in collaboration with the FAO.

This brochure is taken from a study prepared by Ruchika Singh  
(with institutional support from Barun Mitra, Liberty Institute, New Delhi)



## Case Study #1

### Using Technology as an Evidentiary Tool to Demand Fairer Implementation of FRA in Narmada, Gujarat

The FRA is historic legislation that recognizes and gives scheduled tribes (ST) and other traditional forest dwellers (OTFD) in India, the right to claim their customary livelihoods and guarantee tenure. Alienation of tribal groups and OTFDs from land and forests is central to their continued exclusion from progress and development in India. The FRA undoes the 'historic injustice' meted out to forest dwelling populations, as it has created a mechanism for tribal groups and OTFDs to claim their land and customary livelihoods that forest resources provide (Gol 2006):

- The FRA recognizes and gives individual land right (IFR) titles to STs and OTFDs who can prove their cultivation of forest land on or before December 13, 2005. In the case of OTFDs, 'additional proof of three generations of residence on the land and who depend on the forest or forest land for bona fide livelihood needs is required'.
- The FRA recognizes community forest resource rights (CFR) over common amenities and sites of cultural, religious or other significance, and the right to protect, conserve, regenerate and manage their community forest resources for sustainable use.



Key stakeholders in the implementation of the FRA are forest dwelling populations, relevant state level departments (forest, revenue and tribal affairs), Non-Governmental Organizations (NGOs) and experts working on the subject. The FRA has a three-tier quasi-judicial system of authority for verifying and adjudicating the claims (Gol 2006; Gol 2008; Gol 2012). Gram sabha is the primary authority for initiating the whole process by receiving and verifying the claims and then on the basis of verification (in the field as well as of documents submitted), the gram sabha sends its recommendation to the sub-divisional level committees (SDLCs) set up at the sub-divisional level. The SDLCs examine the resolution passed by the gram sabha and prepare the record of forest rights and forwards it to district level committee (DLC) for a final decision (Gol 2006).

After the FRA legislation was enacted in India, several NGOs who played a key role in lobbying for the FRA initiated work on its implementation in order to create awareness and knowledge about the FRA (and its rules and regulations) within forest dwelling communities. Action Research in Community Health and Development (ARCH) is one such organization in Gujarat. Post enactment of the FRA, a population of approximately 18,000 forest dwellers in the district was eligible to claim tenure security under IFRs. In 2007-2008, ARCH organized awareness campaigns and specials 'camps' in their intervention villages on the FRA and explained to the claimants about documentation needed to file claims and also built their capacities for filing claim forms. In the initial years post enactment of FRA, ARCH and other NGOs of the region like (Rajpipla Social Service Society – RSSS) became aware of the fact that there were three key challenges faced by IFR claimants:

- Compiling adequate evidence to claim title
- Inability to measure claimed land properly
- Handling the overall complexity of the claim process



Of the three above, the major challenge was to establish that the claimant had been cultivating forest land prior to December 13, 2005. Many IFR claims were rejected during this period for the reason that the applicants did not provide adequate documentary evidence of this use of the land. Although evidence indicates that both the claimants whose claims have been approved as well as those rejected had submitted similar evidence. This evidence included: GPS survey maps, forest offense fine receipts (that the forest department issued for violations of various forest acts and rules), elder's statement, past claim applications, evidence of use of the land (a house built, plantings or bunds<sup>2</sup>). Furthermore, an inconsistency in acreage claimed and acreage allocated under approved IFR claim applications was reported in Narmada district in the household survey. Of the 37 percent IFR claims approved in the district, only 30 percent of IFR claimants indicated that the claim was approved for the acreage area claimed; 70 percent indicated that the IFR claim was approved for lesser acreage.



Based on the above issues, ARCH developed a participatory mapping methodology using satellite imagery and GPS to advocate for transparent and accountable implementation of the FRA. To elaborate, ARCH trained IFR claimants/forest rights committee (FRC) members on creating digital maps of the cultivated IFR area using GPS instruments with the purpose of digitally delineating the area to be claimed within the forest land. The plotted cultivation boundaries were then superimposed on satellite imagery from 2005 by ARCH to objectively determine

whether pre-December 2005 occupants were still in occupation of forest land. The results indicated that many IFR claims that had been rejected, were in cultivation prior to the cut-off date. To scale-up this approach ARCH shared the methodology through Adivasi Mahasabha<sup>3</sup> in Narmada district. IFR claimants in more than 100 villages of Narmada district with the sustained effort of ARCH and RSSS have adopted this approach to substantiate their IFR claim application.

During the same period, with substantial evidence in hand, ARCH, RSSS and other organizations approached the High Court of Gujarat to review rejected claims. The Chief Justice Bhaskar Bhattacharya (2011) judgment was in favor of the petitioners and since then the IFR claims are being reviewed and many whose claims were rejected earlier have now been approved. Notably, in Narmada district, the majority of the approval letters issued are for joint title<sup>4</sup> (in the name of both husband and wife).

Empirical evidence indicates that IFR claimants whose claims have been approved have made investments on their land to improve its productivity, for instance land leveling, and construction of bunds, post receiving title and they now have access to government programs. Apart from the tangible benefits, many also perceive several intangible benefits, for instance greater self-confidence, a sense of empowerment, greater control over their life with no harassment from forest department officials—a constant fear that these communities used to live under.

Additionally, the benefits from CFR earnings have been substantial in Narmada district where sixteen gram sabhas, with facilitation from ARCH and RSSS, have earned millions of rupees (INR 185,086,998) from the sale of dry/wet bamboo. The gram sabha will now democratically decide how to spend their earnings for development work in the area and for sustainable governance and management of forest resources. This is the first time that the community/gram sabha has earned this amount. Prior to enactment of the FRA, communities' earnings from CFR were primarily from labor and non-timber forest produce that the community collected from the forest land. The bulk of the earnings (for instance from the sale of bamboo to a paper mill) previously went to the forest department.

2 In agricultural fields, farmers make 'bunds' over the contour lines to collect surface run-off, increase water infiltration and prevent soil erosion. <http://www.sswm.info/content/bunds> accessed December 29, 2015.

3 An informal network of NGOs and grassroots *sanghatans* (collective) which has facilitated implementation of FRA in Narmada district, Gujarat.

4 As per the Act, IFR titles issued ought to be joint titles to ensure that patriarchal norms and existing gender differences don't curtail access to property rights and forest resources for women.



## Case Study #2

### Transparent and Fair Implementation of the FRA Essential to Avert Conflict in Bolangir, Odisha

The process of implementation and approval of IFR claims and recognition of CFR claims that is crucial to secure livelihoods and facilitate community-led forest governance has been late in coming to the Bolangir district in Odisha due to multiple institutional and procedural hurdles in implementation of the FRA. The case of Bolangir provides crucial factors to take account of to ensure smooth implementation of the FRA, which are discussed here.

#### **Awareness, knowledge and capacity building on the FRA by key stakeholders is crucial for smooth implementation:**

Awareness raising among gram sabhas<sup>5</sup>, forest rights committees (FRCs), and IFR/CFR claimants about FRA and its rules and regulations is poor in the district. FRC members in the district indicated that they have not been trained about their roles and responsibilities. In many instances, FRC members were not aware that they were part of a FRC. Additionally, IFR/CFR claimants are not well versed in FRA rules and regulations, for instance, many IFR claims in Bolangir district have been filed at multiple levels—with the district welfare officer and others, although they need to be filed with the relevant FRC and gram sabha according to FRA rules and regulations (Gol 2006; Gol 2008; Gol 2012). This is a consequence of poor awareness and knowledge among IFR claimants about FRA rules and regulations.



One of the chief deterrents to participation of constituents in gram sabha and FRC has been the existence of multiple forest related committees like Van Sanrakshan Samitis<sup>6</sup> at the local level which have created multiple power centers at the village level. In many instances, the forest bureaucracy has fueled rifts within the community by supporting and promoting one committee and/or members of the community over the other. This has led to either the marginalization of the FRC, or subsuming the role of the FRC in the existing committee. The proximity of forest staff to certain members of the community creates another layer of power structure at the village level, and often results in undermining of the gram sabha as a community level platform for discussion.

Gram sabhas have not been convened as per the rules in the district. Evidence indicates that in many instances, gram sabhas have been convened without the required quorum. The community perceives gram sabha as powerless, and believes that state officials have the power to review/accept IFR and CFR claims. Overall, constitution and smooth functioning of the gram sabha is contingent on the size of the gram sabha, number of potential claimants from a gram sabha, homogeneity of a gram sabha, awareness about the FRA, etc. One of the reasons for poor awareness of the gram sabhas on the FRA in Bolangir is the state government's decision to initiate implementation of the FRA first for STs.

5 "Gram Sabha means a village assembly which shall consist of all adult members of a village and in case of states having no panchayats, padas, tolas and other traditional village institutions and elected village committees, with full and unrestricted participation of women" Gol. 2006. "The Scheduled Tribes and Other Traditional Forest Dwellers (recognition of Forest Rights) Act, 2006." Pp. 11. New Delhi: Ministry of Law and Justice, Government of India.

6 Van Sanrakshan Samiti (forest protection committees) or joint forest management committees were made under Joint Forest Management program of Government of India.



**Ensuring no discrimination between STs and OTFDs:** Implementation of the FRA regulation for STs first in the district has created a situation of unease, mistrust and conflict at the local level, not only between OTFDs and officials but also between STs and OTFDs. Homogeneity is not a necessity for village assembly meetings to be effective or for the FRCs to perform better. Diversity has its merits and can also facilitate greater deliberation and democratic decision-making, in this context however, implementing the FRA first for STs has led to accentuating social differentiations at the local level in Bolangir district and impacted smooth implementation of the FRA.

**Ensuring substantive participation of forest dwelling populations, especially of women and marginalized groups:** Participation of women in FRCs, and gram sabhas is minimal in the district. Women members are nominated to the FRCs, but are not aware of their roles and responsibilities.

**Ensuring transparency and accountability in the implementation process:** Awareness about the FRA and its rules and regulations (for instance joint verification process) is poor in Bolangir district among the potential IFR/CFR claimants. Claimants are not aware when the (joint) verification process of their claimed land happened, which ideally ought to be undertaken in their presence along with FRC members, forest and revenue department representation and any other interested party. IFR claimants are also not apprised of the rejection of their claim, which is against FRA rules and denies the claimant an opportunity to appeal. There is a discrepancy in the claimant's awareness about the status of their IFR claim application, and decisions taken at sub-division and district level about the IFR claim application. This shows that there is a lack of transparency, and reporting protocols are not being followed. Few officials in Bolangir district indicated that the reason for holding back the rejection of decisions at the block level is to avoid any conflict/agitation at the local level (which may arise due to high rate of rejection of IFR applications).

**Support and handholding by local organizations that are working to create awareness on FRA:**

The case of Bolangir illustrates that there is a need to have local organizations that can facilitate discussion and integrated institution building at the local level. NGOs in the district have not been able to create the desired impact, unlike in Narmada district. Likewise, the state administration through selective implementation of the FRA created an environment of unease and heightened social differentiation at the local level. There is a need to strengthen the interaction between forest dwelling populations, NGOs and government functionaries for integrative institution building and to ensure tenure security is implemented as a right, as legislated by the FRA. This requires constant engagement with state officials and functionaries in the region to build their capacities and provide support to civil society organizations who are facilitating the implementation of the FRA for sustainable and pro-poor forest governance.







## Learning From the Two Cases

The FRA is historic legislation that has the potential to catalyze development among the poorest and most marginalized forest dwelling populations (both ST and OTFDs) in India. The study assessed factors that aid or impede implementation of the FRA in India and key learning that emerged from this study are:

### Institutional and Procedural Aspects

- Limited bureaucratic willingness to implement the FRA, especially of the forest department, has resulted in undue interference of forest department officials in the entire process.
- Lack of support staff from the Department of Tribal Affairs, responsible for implementation of the FRA, has slowed down the processes.
- Need to ensure transparency and accountability in the implementation process, for instance greater transparency on decision making related to claims procedure made by SDLC/DLC.
- Discrepancy in claimed area and approved area by SDLC/DLC needs to be reviewed. This is crucial, as this would reduce the sense of arbitrariness in the decision-making process and the sense of unfairness that it inevitably breeds among the claimants.
- Awareness, knowledge and capacity building on the FRA of key stakeholders is crucial for its smooth and effective implementation.

### Role of NGOs

- Role of NGOs is crucial in the FRA recognition process as is evident from the findings in Narmada district where ARCH and its partners have played a catalytic role in the FRA rights recognition process both for recognition of IFRs as well as CFRs.
- Greater financial support and handholding of civil society organisations is crucial for effective, objective and transparent implementation of the FRA.

### Socio-economic benefits and potential of FRA

- CFR earnings for the gram sabhas in Narmada district indicate immense potential for development and poverty alleviation through FRA for the poorest and most marginalized communities in India.
- Evidence indicates that gram sabhas in Narmada are already planning and moving towards governance of forest resources.
- In most instances in Narmada district, approvals for joint land title under IFRs as enshrined under the FRA have been made.
- IFR claimants whose claims have been approved have already made investments on their land to improve its productivity, for instance land leveling and construction of bunds.
- Intangible benefits from recognition of IFRs/CFRs are already evident, for instance, greater self-confidence, a sense of empowerment, greater control over their life with no harassment from forest department officials.





## Good Practices That Have Facilitated Smoother Implementation

- Innovative participatory technological approach developed by ARCH, has resulted in creating objective supplemental evidence that the IFR claimants attach with their claim applications.
- GPS instruments measure land accurately and are much easier to operate compared to traditional methods of land measurement.
- Greater credibility, transparency and accountability of the entire process can be established while mapping.
- GPS survey maps can also be used to resolve competing claims at the local level.
- ARCH has been able to up-scale its methodology beyond its intervention villages through partnership with RSSS through Adivasi Mahasabha.
- Empirical evidence indicates that generating awareness and building capacity among the primary constituents (as undertaken by ARCH in Narmada district) is key for effective implementation of the FRA, as lack of awareness leads to lack of demand and mobilization.



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