



Recognize Habitat Rights

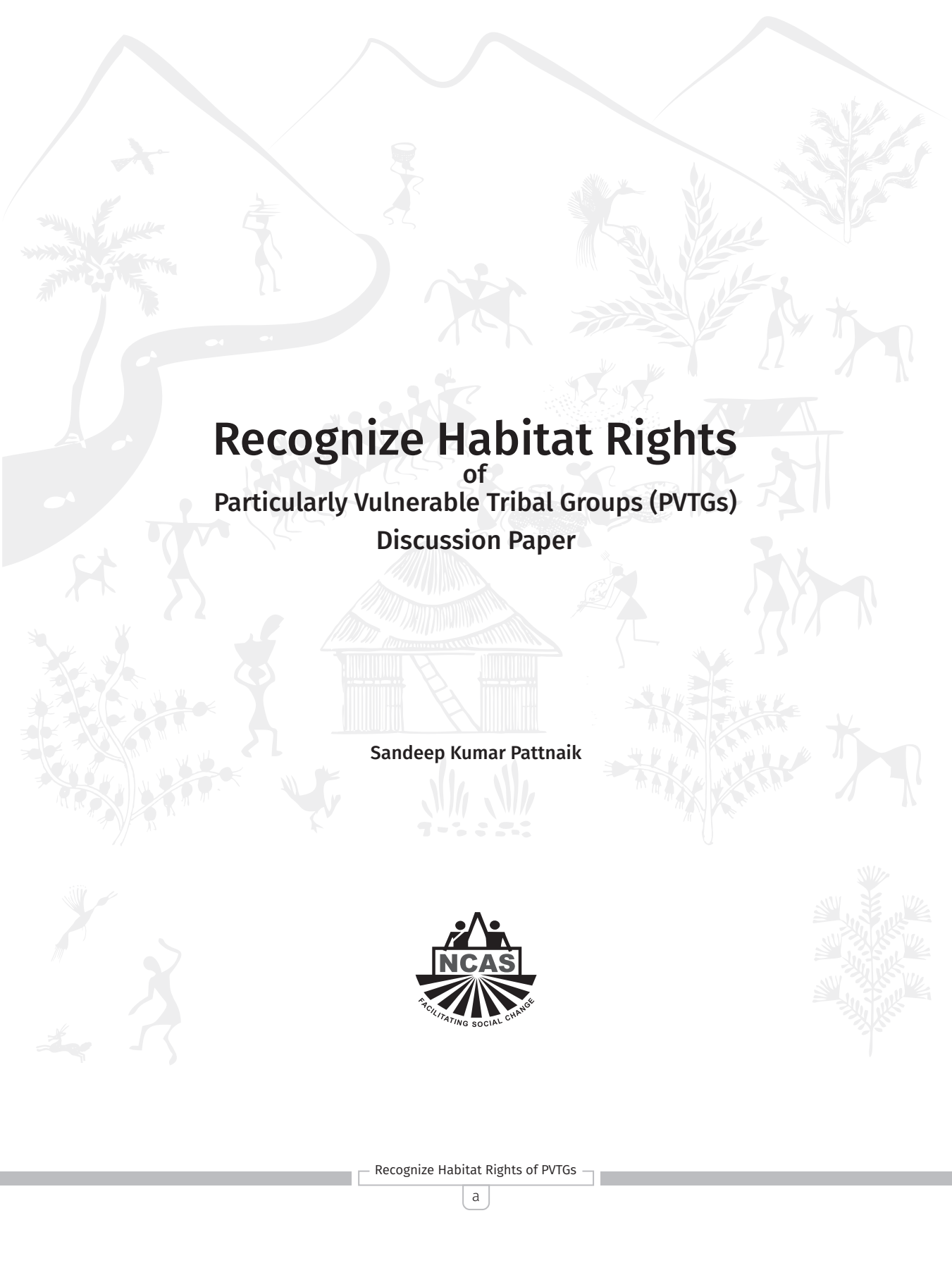
of

Particularly Vulnerable Tribal Groups (PVTGs)

Discussion Paper

Sandeep Kumar Pattnaik





Recognize Habitat Rights of Particularly Vulnerable Tribal Groups (PVTGs) Discussion Paper

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Preface

It is a well-documented fact that, among Adivasis, the Particularly Vulnerable Tribal Groups (PVTGs) are most marginalized and their vulnerabilities are getting acute with time. This historical process of marginalization is further perpetuated by increased displacement, land alienation, decreasing access and control over forests, food insecurity, poor health and education, political insignificance. Needless to say, many of these issues are entrenched in the National and state level policy framework. PVTGs' customary rights over lands, forests and other traditional sources of livelihood must be respected and protected. The new phenomenon of growth-led economic and developmental policies is, in a big way, threatening their symbiotic relationship with nature and all its bounties. In the process, they are being denied access to natural livelihood resources such as land, forest and water. More tragic is the fact that wherever the tribals have put up resistance against forcible land acquisition by the state, they have had to face state repression of various kinds including denying them their various other legal entitlements.

After a long drawn fight of Adivasis and forest dwellers, the government of India brought an important legislation, named as Schedule Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006 to secure the tribal rights over forest land and resources. This Act for the first time provided scope for the recognition of the PVTGs' forest and habitat rights. The law is significant in seeking to democratize the process of rights recognition by making gram sabha the key authority in the rights recognition process.

Habitat Rights of PVTGs is one of the most significant aspects of the FRA and continues to remain more or less neglected at the national and state level. This paper will give an overview of the current status of Recognition of Habitat Rights of FRA and discusses the obstacles in the recognition of Habitat rights. This paper suggests possible measures to make effective implementation of habitat rights.

This paper would not have been complete without the flow of the support and cooperation from many people and many quarters. Communities sacrificed valuable time to share their personal narratives. Sincere thanks to each one of them for their support.

I am thankful to Dr Premananda Panda, Mr Chitta Behera, Dr Sricharan Behera, Dr Manohar Chauhan, Mr Tushar Das, Mr. Subrat Kumar Nayak, Mr Bimal Pandia, Mr B.N. Durga, Ms Aishwraya Laxman and Ms Adwaita Deshmukh and Mr Ashok Nirgulkar for their support and cooperation. I am also grateful to team members of Vasundhara, Gram Swaraj, Seva Bharathi, Action Aid of Odisha and Chaupal of Chattisgarh for extending cooperation for this paper.

I appreciate the contribution and cooperation of my colleagues Mr Amit Narkar, Ms Himani Pathak, and Mr Lingu Patil for the constant support for this paper.

I am hopeful that this paper will be able to initiate a well-informed discourse and public argument on Recognizing Habitat Rights of PVTGs among the policy makers, administrative personnel connected with tribal development, intellectuals, and activists.

Sandeep Kumar Pattnaik

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Abbreviations

AJY	Ama Jungle Yojana
BDO	Block Development Officer
CAMPA	Compensatory Afforestation Fund Management and Planning Authority
CCD	Conservation cum Development
CSD	Campaign for Survival and Dignity
DC	District Collector
DLC	District Level Committee
FD	Forest Department
FPIC	Free, Prior and Informed Consent
FRA	The Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act
FRC	Forest Right Committee
GoI	Government of India
HR	Habitat Rights
IPRA	Indigenous Peoples' Rights Act
ITDA	Integrated Tribal Development Agency
JBIC	Japan Bank for International Cooperation
JFM	Joint Forest Management
MGNREGS	Mahatma Gandhi National Rural Employment Guarantee Scheme
MKDA	Mankdia Khadia Development Agency
MOEF	Ministry of Environment and Forest
MOTA	Ministry of Tribal Affairs
MPA	Micro Project Agency
NAC	National Advisory Council
NHRC	National Human Rights Commission
OMC	Orissa Mining Corporation
OPELIP	Odisha PVTG Empowerment and Livelihoods Improvement Programme
OSFDP	Odisha Forestry Sector Development Project
OTFD	Other Traditional Forest Dwellers
PDS	Public Distribution Systems
PESA	Panchayats (Extension to Scheduled Areas) Act
PRI	Panchayat Raj Institution
PVTG	Particularly Vulnerable Tribal Group
RDD	Rural Development Department
SDLC	Sub Divisional Level Committee
SDO	Sub Divisional Officer
SLMC	Sub-Divisional Level Monitoring Committee
VSS	Vana Samrakshan Samiti

1. Introduction

In the month of April 2015, the Ministry of Tribal Affairs (MoTA) sent a letter to the Chief Secretaries of all state governments to make an 'all-out effort' to recognize the habitat rights of Particularly Vulnerable Tribal Groups¹ (PVTGs) in their states. The recognition of habitat rights bears utter significance for the 75 PVTGs in 15 States/Union Territories including 13 PVTGs in the state of Odisha. Habitat rights for PVTGs as guaranteed by The Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act (FRA), 2006 ought to be granted to them.

FRA was enacted to undo 'the historical injustices' by way of providing tenurial security through recognition of customary rights over cultivated lands and forest resources being used by the communities. Section 3(1)(e) of FRA specifically provides for "rights including community tenures of habitat and habitation for primitive tribal groups and pre-agricultural communities" and Section 2(h) defines 'habitat' as the "area comprising the customary habitat and such other habitats in Reserved Forests and protected forests of Primitive Tribal Groups and pre-agricultural communities and other forest dwelling Scheduled Tribes."

The Ministry of Tribal Affairs issued a note on April 23rd, 2015 bearing No. 23011/16/2015-FRA where it stated that the right to community tenures of habitat and habitation over customary territories used by PVTGs include not only habitation, but also social, economic, spiritual, sacred, religious and other purposes.

The FRA Amendment Rules 2012 now state, "In view of the differential vulnerability of PVTGs, the District Level Committee shall ensure that all PVTGs are conferred habitat rights, in consultation with their concerned traditional institutions and that their claims for habitat rights are filed before the concerned Gram Sabhas." In the Orissa Mining Corporation v. MoEF case, the Court pointed to the FRA Rules, 2012 which state: "(c) In view of the differential vulnerability of Particularly Vulnerable Tribal Groups (PVTGs) amongst the forest dwellers, District Level Committee should play a pro-active role in ensuring that all PTGs receive habitat rights in consultation with the concerned PTGs' traditional institutions and their claims for habitat rights are filed before the concerned Gram Sabhas."



1: Certain tribes have been characterized as Particularly Vulnerable Tribal Groups (PVTG) (earlier known as primitive tribal group) on the basis of their greater vulnerability even among the tribal groups in India.

2. International Initiatives

Internationally, there have been legal initiatives to recognize similar rights of local communities. In Philippines, the Indigenous Peoples' Rights Act (IPRA), 1997 recognizes 'Ancestral Domain' of local communities. Within this law, ancestral domain claims of the Ilonggo over Luzon Island, comprising an area of 136,000 hectares, have been recognized. In Canada, under the Indian Act, land belonging to the First Nation Peoples is declared as 'Reserve Lands;' authority is divided between the Indigenous People and the government on tax, justice, fiscal relations, environment etc. Malaysia recognizes the concept of 'Native Title.' An interesting example of Native Title is that of the Kadazandusun village of Bundu Tuhan, spread over the hills, valleys and southern foothills of Mount Kinabalu, a Native Reserve of 1263 hectares with a model of self-governance. The Native Title² Act of Australia and the iTaukei Land Act of Fiji have similar scope to recognize the native and ancestral territory and rights of local communities³. There is no definition per se of habitat rights around the world. But in international parlance it is recognized as 'ancestral domain' or 'reserved land' and so on.

3. Heritage of Adivasis Struggles to protect their land and Natural Resources⁴

Adivasis have had a long history of revolt against the colonial rulers to protect their land and natural resources. Some of these tribal revolts were localised while others were more widespread. The British rule over India, which started during the industrial revolution in Europe, was primarily intended to augment their wealth by acquiring the minerally rich landscapes and commercially valuable forest resources lying in the hilly and forested terrains inhabited mostly by the tribal communities. In order to achieve their colonial ambitions they employed, to start with, the strategy of inducting and engaging well-off sections of non-Adivasi, general population living in urban and plain areas- merchants, contractors, liquor vendors, money lenders and clerks- who, backed by the colonial army, entered into the hitherto inaccessible tribal hinterlands as the intermediary agents of British rule. These outside elements, who possessed no cultural tie with the tribal way of life, emerged in due course into a class of exploiters and expropriators of the innocent,



- 2: Native title is a form of land title that recognizes the unique ties some Aboriginal groups have to land. Australian law recognizes that native title exists where Aboriginal people have maintained a traditional connection to their land and waters since sovereignty and where acts of government have not removed it.
- 3: Discussion with the team members of Vasundhara, an organization based at Bhubaneswar, Odisha.
- 4: Discussion with Mr. Chitta Ranjan Behera, Activists based at Cuttack, Odisha

self-governed tribal communities. The resultant tribal ire was therefore first directed against these outside intruders, who were pejoratively called Diku, an epithet, which survives to this very day across the country's tribal societies. All the tribal revolts were secondarily targeted against the British rulers, to the extent the latter came forward, with their brute force, to defend and protect their Indian agents, the first enemy of the rebellious tribes. Each tribal revolt, despite the glorious instances of sacrifice and martyrdom shown by their chieftains, was ruthlessly suppressed by the British forces, who were equipped with advanced weaponry of modern warfare, far more powerful than the primitive fighting tools of the rebellious tribes. But, the colonial rulers, who were obviously intent on a long-term engagement with the tribal areas for mercantile interests, proved cunning enough to concede to the principal demands of the irate tribes, i.e. to recognize the community-centred governance of the tribal areas, to which the mainstream laws made by the British for the rest of the land won't apply. Thus were enacted the Wilkinson Rule 1837, Ganjam-Vishakhapatna Agency Tracts Act 1839, Santal Pargana Act 1855 and Yule Rules 1856, Chotanagpur Tenancy Act 1908 and the like, which led to the legislation of Scheduled Districts Act 1874, the origin of Scheduled Areas comprising tribal preponderant territories. The Fifth and Sixth Schedules appended to today's Constitution can therefore be traced to the heroic tribal revolts of late 18th century, followed by those of 19th century down to early 20th century. Since the 70s of 18th century around 80,000 tribals lost their lives fighting for protection of their land and culture from the intrusion by an alliance of British rulers and their Indian agents. Numerous, small and big tribal uprisings took place across the country, especially in Bi-har, Andhra Pradesh, Bengal, Odisha, Andaman and Nicobar Islands, Maharashtra, Madhya Pradesh, Arunachal Pradesh, Assam, Mizoram and Nagaland. The main tribes involved in revolt in the nineteenth century were Mizos, Kols, Mundas, Daflas, Khasi and Garo, Kacharis, Santhals, Muria Gonds, Nagas, Bhuiyas and Kondhas. Great tribal heroes like Tilka Majhi, Siddu and Kanhu, Toma Dora, Dora and Chakra Bisoi, Rendo Majhi, Ratana and Dharani Naik, Birsa Munda, Gunda Dhur and Laxman Naik though ignored by the official history are remembered in the folklores and folktales of the respective tribes. The British officers, who suppressed their revolts, did however record the uncompromising stance and spirit of these tribal heroes, who refused to surrender and fought till the end.

Under the irresistible impact of the unceasing spate of tribal revolts, the British rulers thought it prudent to declare the tribal preponderant regions as Excluded and Partially Excluded Areas, with twin objectives in mind- not to allow the non-tribal mainlanders to acquire the tribal lands and settle in the tribal areas, and not to allow the application of general laws to the administration of tribal areas. Finally the Government of India Act 1935 provided for such exclusionary provisions in respect of the tribal areas. The Constitution

of India which was proclaimed on 26 January 1950 simply reproduced those exceptional provisions in the shape of Fifth Schedule and Sixth Schedule. Thus, the special treatment being meted out the Scheduled Areas in the Constitution and subsequently under PESA Act 1996 is the obvious outcome of the long-drawn struggle and sacrifice of the adivasis forenforcing self- rule in their respective domains. However, due to near complete black-out of the tribal struggles from the mainstream history books, today's tribal children are also largely unaware of their rich heritage. Under the circumstances, the mainstreaming of tribal communities depends upon the incorporation of the great heritage of tribal struggles and martyrdom into mainstream historiography of India's anti-colonial struggles.

4. Historical Injustices to PVTGs

There are 75 PVTGs distributed across fourteen or more states in India (including the Union Territory of Andaman and Nicobar Islands) with a total population of 1.36 million, which accounts for about 2% of the total tribal population in India⁵. As per the 2001 census, out of 75 PVTGs, 19 groups have a population of less than 1000. Their socio-economic vulnerability and low population size has led them to be treated as 'endangered' and 'on the verge of extinction,' a terminology which denies them their full humanity⁶. The groups most under threat have been identified as the Shompens, Sentinelese and Jarawas of the Andaman Islands; the Bondos of Odisha; Cholanaickans of Kerala; Abujh Marias of Chhattisgarh and Birhors of Jharkhand⁷. They are closed societies with open minds. By and large, they are relatively deprived; but their heritage, tradition and culture make their societies tenacious to survive amidst upheavals and downfalls. They will survive so long as the forests, wildlife and bio-diversity survive.

Considering the development index, the President of India, as per the clause 1 of article 342 of the Constitution, notified 62 tribal groups of Orissa as Scheduled Tribes in 1956. Article 366 (25) defined Scheduled Tribes as: "Schedule Tribes" mean "such tribes or tribal communities or parts of or groups within such tribes or tribal communities as are deemed under article 342 to be the scheduled tribes for the purposes of the constitution." Keeping an eye upon their all-round development, certain groups were identified during the 5th Plan (1974-78) period. Thereafter, the Government of India has classified and declared some Primitive Tribal Groups as a separate category that needs special attention. In fact,

5: Annual Report of Ministry of Tribal Affairs, Government of India 2005-06.

6: Draft recommendations of the working group of National Advisory Council, Development Challenges specific to particularly vulnerable tribal groups (PVTG)

7: Report of the high level committee on socio-economic, health and educational status of tribal communities of India, Ministry of Tribal Affairs, Government of India (May, 2014)



Table 1. Particularly Vulnerable Tribal Groups and their Population in India

Name of State/ Union Territory	No. of Particularly Vulnerable Tribal Groups	Population as per 2011 Census*	Population as per Data shared by the State Governments
Andhra Pradesh	9	277166	NA
Telangana	3	27267	NA
Bihar	6	8525	15273
Jharkhand	8	292359	NA
Gujarat	5	66728	124881
Karnataka	2	50870	NA
Kerala	5	25440	NA
Madhya Pradesh	7	950744	NA
Chhattisgarh	2	116274	NA
Maharastra	3	173786	NA
Manipur	1	27524	35236
Orissa	13	138341	89208
Rajasthan	1	111377	73995
Tamil Nadu	5	255600	32813
Tripura	1	188220	185308
Uttar Pradesh	2	6005	NA
Uttrakhand	2	54727	NA
West Bengal	3	47995	58744
Andaman & Nicobar island	5	769	NA

**(Figure calculated/ estimated as per information provided by DDG Statistics and DIR statistics in office of the secy. TA in Sept 2016 as directed)*

even the usage of the word ‘primitive’ by the Government to define the most vulnerable tribal groups is highly debatable. In 2006, the Government of India proposed to use the alternative term Particularly Vulnerable Tribal Groups (PVTGs) instead of ‘Primitive’ Tribal Groups. PVTG is not a Constitutional category, nor are these constitutionally recognized communities. It is an administrative category, selected from among the sections/ sub-sections of a particular Scheduled Tribe, but not a whole community.

For example, all the Juangs (ST) population in Odisha is not considered as a PVTG, but only the sections that are covered under the micro-project⁸. The PVTG is a government of India classification created with the purpose of enabling improvement in the conditions of certain communities with particularly low development indices⁹.

Odisha houses 13 PVTGs- highest among all the States and Union Territories of India- namely Birhor, Bondo, Poraja, Didayi, Dongria Khond, Juang, Kharia, Kutia Khond, Lanjia Soura, Lodha, Mankidia, Paudi Bhuyan, Soura and Chuktia Bhunjia. They are found in specific compact areas spread over 12 districts of the state, namely Kalahandi, Nuapada, Sundargarh, Deogarh, Angul, Mayurbhanj, Keonjhar, Malkangiri, Rayagada, Kandhamal, Gajapati and Ganjam. The Eastern Ghats region of Odisha is home to seven, and the Northern Plateaus houses six PVTGs respectively.

The PVTGs inhabit 541 villages/ settlements distributed in 69 Gram Panchayats under 20 part blocks, 10 ITDAs, and twelve districts of Odisha. There are as many as 18,493 households with a total population of 78,519¹⁰. For all-round development of PVTGs, 17 Micro Projects are operating in the State of Odisha out of which 13 Micro Projects are located within the Scheduled Area and remaining four are located outside the Tribal Sub-Plan area. PVTG families are being assisted by Micro Projects under various schemes like agriculture, horticulture, soil conservation and animal husbandry, etc. Besides, basic infrastructure facilities, like drinking water, education, health and link roads are being provided in the Micro Project areas with focussed attention.

A survey conducted by the Odisha government in 2012 found that the population of PVTGs was growing at a meagre 5.20 per cent while their literacy rate was estimated at 33.38 per cent. Literacy among female PVTGs was 24.75 per cent, much lower than the rest of the population. These communities have a low literacy level and high drop-out rates, absence of a written language, stagnant or negative population growth, and depletion of forests and loss of traditional rights over forests, inaccessible health care services, debt bondage resulting in socio-economic exploitation and pre-agricultural level of technology. Their occupations include food gathering, non-forest timber produce collection and shifting cultivation. Besides these, there is illegal land transfer of PVTGs land to non-tribals along with illegal encroachment of land in the terrains of PVTGs. A land reform policy including

8: Development Planning, Execution And Performances: A Critical Analysis Of The Development Scenarios Of The Particularly Vulnerable Tribal Groups Of Odisha By Dr. Srichran Behera Published By National Centre For Advocacy Studies, 2014.

9: B. M. L. Patel (1 January 1998). Agrarian Transformation In Tribal India. M.D. Publications Pvt. Ltd. pp. 313- ISBN 978-81-7533-086-3. Retrieved 2 April 2013.

10: CCD Plan Survey, SCSTRTI, 2007



the provisions for distributive justice for the PVTGs is yet to take shape. Their problems and needs are acute. These groups are very close to nature and depend heavily on land and forest resources for their subsistence. Forest nurtures their life and livelihood.

In colonial times, they were made to suffer from systematic alienation from their resources through declaration of Reserved Forests and Protected Forests. Their vulnerability increased especially when they were displaced from their lands or their land was acquired for mining, industrial or conservation purposes without any proper rehabilitation ensured for them. For example, a PVTG- the Hill Khadias in the Shimilipal Tiger Reserve Area- were evicted without any proper compensation or rehabilitation. Similarly in 2009, 245 Baiga families were forced out from the Achanakmar Tiger Reserve, when it was notified so under the Project Tiger¹¹. The Baiga families were relocated to an area where their traditional livelihood from the collection of Sal and Tendu leaves and of the bamboos in the forests was no longer feasible. In Tamil Nadu, the Kattunayakans, a tribe of honey-collectors, who live on the fringes of the 321-square-kilometre Mudumalai Wildlife Sanctuary, are being prevented from collecting honey as well as other produce from the forest area due to immense harassment from forest guards¹². Even the government is yet to enumerate the PVTG families that have been displaced without rehabilitation and compensation.

In 2002, a Standing Committee formed by the MoTA to review the 'Development of Primitive Tribal Groups,' shared that the tribal people, especially PVTGs, are worst affected by developmental projects like dams, industries and mines. As original inhabitants of forests, their rights on forests and on forest produce are not adequately protected; therefore, the committee recommended protecting the traditional rights of the PVTGs in the forests. Besides, the Committee was concerned over continued alienation and insecurity of tribal lands, despite the enactment of various protective Laws and Regulations by the States/ UTs.

5. Ironies of Development

Ironically, PVTGs habitats, particularly in the States of central and eastern India, such as Chhattisgarh, Jharkhand and Odisha, have become the centre of attention of major investment firms engaged with mines and minerals. In the name of growth and development, the government of India is inviting national and multinational companies to enter the forest areas, engage in mining and set up mineral-based industries. More than



11: Sayantan Bera, Baigas in exile, Down to Earth, July 31, 2012, Available at <http://www.downtoearth.org.in/content/baigas-exile>

12: Mari Marcel Thakaekara, Honey is life, New Internationalist, Issue 425, 2009, Available at <http://newint.org/features/2009/09/01/tribal-peoples/>

90% of the mineral reserves in Odisha are lying in tribal-concentrated areas and an equal percentage of affected persons alone are tribals in case of industrial and mining projects taken up in the state of Odisha. A number of proposals for steel and alumina plants have come up in these states which are rich in iron ore, bauxite and coal as well as other precious metals. Between 2011 and 2014, 48 mining leases were approved in tribal areas across the country by the Union Ministry of Mines. The average proportion of forests in India's mineral-producing districts is 28 per cent, more than the national average of 20.9 per cent; and mining invariably leads to forest depletion and tribals displacement¹³. In the Year 2005, the Korean company POSCO had signed an MoU with the Odisha government to build a steel plant in Jagatsinghpur and to mine iron ore from Khandadhar in Sundhargarh District. The Steel plants of Tata were to come up in Lohandiguda in Chhatisgarh. Vedanta Limited, a British MNC, has invested Rs 5,000 crore to set up an alumina refinery with a capacity of one million tonnes a year at Lanjigarh in Kalahandi district of Odisha. The refinery planned to source its minerals from the Niyamgiri hills in Rayagada and Kalahandi districts by displacing the Dongaria Kondh, a PVTG. These are only a few illustrations of a vast number of mineral based industries being located in the areas inhabited by the PVTGs.

They have already suffered due to large-scale displacement caused by dams, mining and heavy industries since independence. According to one estimate, 80 percent of the sixty million people who were displaced by the projects in the first fifty years since independence were Adivasis¹⁴. In Odisha, about 35% of Adivasis have lost their lands for mines and different developmental projects, which pushed the Adivasis into impoverishment, joblessness, landlessness, homelessness, loss of access to common property resources, marginalization, increased morbidity, social disarticulation and lack of employment opportunities¹⁵. In the name of national development, the PVTGs have been displaced; their communities fragmented and consequently deprived and defrauded of their livelihood resources. It has been noticed that in several contexts where mining projects have been proposed or implemented on the lands of PVTGs, their voices were seldom heard. The absence of a requirement for Free, Prior and Informed Consent (FPIC) has contributed to severe human rights abuses, as well as negative social, economic, cultural and ecological consequences for Adivasi communities. For decision-

13: <http://opinion.bdnews24.com/2017/01/23/as-maharashtra-makes-big-mining-push-tribals-push-back/>

14: Adivasi Awakening and Emergence of New Politics by Manoranjan Mohanty published in Frontier Vol. 44, Nos. 11-14, Sep 25-Oct 22, 2011

15: Review of Tribal Sub-Plan approach in Odisha.... study of Provision, Implementation, and Outcome by SCSTTRI, Bhubaneswar, 2010



making to be inclusive, consent should be obtained through forums comprising of their representatives and in-depth consultation processes. This provision is specifically mentioned in the Forest Rights Act (FRA), 2006 as well as in the Panchayats (Extension to Scheduled Areas) Act (PESA), 1996, which requires the local Adivasi communities to decide on the use of their land and resources. Invariably, the issues of forest resources use in the interest of the state and state-sponsored industries do not go through the Gram Sabha. The village elites are co-opted by the government officials and representatives of corporate bodies. The norms are never honoured and voices of the people are ignored.

6. Status of Implementation of Forest Rights Act (FRA) in Odisha

The FRA, 2006 is a historic legislation enacted in Dec 2006 by the Parliament of India. This Act is the result of long-drawn struggles of Adivasis and forest dwellers of the country. In the preamble of the Act, Government of India, for the first time, recognized the inseparable relationship of tribals and forest dwellers with the forest and admitted to have done historical injustice with them since the British period and post-Independence. Thus, FRA recognizes pre-existing rights of the tribals and OTFDs (Other Traditional Forest Dwellers) over forest and forest land.

The traditional livelihood system of PVTGs has been based on shifting cultivation and collection of edible forest produce. Such a system was rendered sustainable by a level and pattern of utilization of land and forest resources that ensured their self-generating capacity. Sustainability was also ensured through adoption of a highly diversified pattern of production and shifting cultivation¹⁶. Most of the lands under cultivation were left un-surveyed by the government and were recorded as state-owned revenue or forest land¹⁷. During the Colonial Rule as well as after Independence, land classification was done without recognizing tribals' rights. As a result, the land in the Fifth Schedule areas now belongs to the government, mostly to FD (Forest Department), leaving large numbers of Adivasis legally landless and labelled as 'encroachers' on their own lands. Due to extension of stringent laws like the Indian Forest Act, 1927, the Forest Conservation Act, 1980 and the Wildlife Protection Act, 1972 to Fifth Schedule areas, not only have the forest-dependent communities been denied access to critical livelihood resources, but even their recognized rights have been further diluted or taken away. There have been various instances where the forest department has been filing cases against the PVTGs.



16: Tribal movements and livelihoods: recent developments in Orissa by Sakti Padhi and Nilakantha Panigrahi

17: Madhu Sarin, Expert deposition, INDEPENDENT PEOPLE'S TRIBUNAL DECEMBER 2016

After a prolonged fight by Adivasis and forest dwellers, the government of India brought an important legislation named as 'The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act,' 2006 to secure the tribal rights over forest land and resources. The main aim of FRA is to undo the historical injustice which is inherent in the arbitrary processes by which the ancestral lands of the forest-dwelling communities were classified as state forests.

The Forest Rights Act, 2006 not only called for reviving the regime of tribal self-governance in the fifth schedule areas as was intended by the Central PESA Act, 1996, but it also extended certain provisions of the PESA Act to the non-scheduled areas, such as by empowering the Gram Sabha as the ultimate authority in respect of ownership and management of all kinds of forest land. Besides, the role of Gram Sabha in protecting natural resources was upheld by the Supreme Court, such as in the land mark judgment on the Niyamgiri case on 18th April, 2013. The case attracted both national and international attention. The Supreme Court upheld the provisions of FRA, highlighting the power of the Gram Sabha to prevent destruction of its natural and cultural habitat, thereby also giving importance to the habitat rights of "Dongaria Kondh" who belong to PVTGs.

The government of Odisha is claiming that Odisha ranks number one among the states in the country in recognizing Individual Forest Rights (IFR). The government claimed that about 4,06,745 individual family titles and 5,942 community rights (CFR) titles involving an area of about 6,09,553 acres and 3,27,171 acres respectively were distributed under the Act till end of June, 2017.

Also, 18,402 individual title certificates were distributed to Particularly Vulnerable Tribal Group (PVTG) families involving an area of around 31,233 acres. These PVTG families are presently residing in 17 Micro Project areas of the State under which they have been covered under various schemes.

The State Government also claimed that the decision to cover rights holders of the Forest Rights Act (FRA) under different welfare schemes through convergence at the field level seems to have yielded results, as more than 2.3 lakh persons benefited from this new initiative. It claimed that more than 2,30,000 beneficiaries have been covered under various schemes like Mo kudia, IAY, Mo Pokhari, land development under MGNREGS, National Bamboo Mission, National Horticulture Mission, marketing of minor forest produces etc.

Around 1,49,327 households have been provided IAY houses, 3,818 have been provided Mo Kudia, 3549 households have been provided Mo Pokhari, 54,099 have been covered under

land development with support from MGNREGS, 8,776 families have been covered under National Horticulture Mission, 286 families have been covered under Bamboo Mission, and 13,228 households have been covered under various other programmes¹⁸.

However, it appears that the government of Odisha has focused more on providing land rights to individual claimants, neglecting community forest rights, rights in protected areas and rights to non-ST forest dwellers. Even so, the number of titles granted to the tribal households is small compared to the total number of tribal households in the state. Campaign for Survival and Dignity (CSD), Odisha, which had struggled for the very enactment of the historic Forest Rights Act, 2006 in the country, has made its critical observations on the 'FRA Status Report' being produced by State Level Monitoring Committee (SLMC) submitted to the Chief Secretary, Odisha Government and Minister, MoTA, GoI (Government of India). The CSD report alleges that the recognition of Community Forest Rights is being neglected and moves at a snail's pace. There is no proper awareness on Community Forest Rights among the tribals. Besides, while there are 13 PVTGs in the State, not a single PVTG has had their habitat rights recognized as per Section 3(1) (e) of FRA, not a single forest village or un-surveyed village has been converted into a revenue village as per Section 3(1) (h), and not a single Forest Protection and Management Committee as per Section 3(1) (i) and Section 5 of FRA has been formed till date by any Gram Sabha¹⁹.

In its report, CSD alleged Government of Odisha to have used the recognition of the Act as a mere land distribution scheme. The report states, "In 80 per cent of the cases, the IFR titles have been issued without demarcation and verification of the occupied and claimed forest land, leading to less area. This is more acute in PVTG areas and hence, particularly bears significance for the PVTGs. Groups like Kutia Kondh in Kandhamal district are complaining that the government has issued IFR pattas, but since there is no process of demarcation, they are on the verge of losing those lands to plantation by the forest Department. Besides, while no Gram Sabha rejects any IFR claim, around 1,52,530 claims (1,27,214 of STs and 25,316 of OTFDs) have been arbitrarily rejected in the State by the Sub Divisional Level Committee (SDLC) officials and all the blame for the rejection has been placed upon the Gram Sabha. Also, all the CFR titles reported to have been issued in the State are faulty." Due to the lack of political and bureaucratic will to recognize the CFR titles, communities (even aware and active ones) are having a hard time submitting claims. Forest records, maps and working plans are almost invariably unavailable to the FRC



18: <http://kalingatv.com/latestnews/odisha-retains-top-spot-in-fra-implementation/>
19: <http://www.orissadiary.com/CurrentNews.asp?id=41484#sthash.MKmEeR70.dpuf>

(Forest Right Committee); lands being used by communities are routinely taken up for afforestation programmes under various projects (such as JBIC- Japan Bank for International Cooperation project in Orissa); communities are being denied CFR claims on lands because they are ‘demarcated for mining.’ In some places, CFR claims have been rejected for procedural reasons or simply kept pending²⁰. There is also a widespread assumption amongst officials (especially forest department officials) that CFR need not be applied for, since people are already benefiting from existing arrangements such as Nistar rights, JFM (Joint Forest Management) arrangements, etc. In some cases, either CFR claims are not accepted because ‘land is under JFM’ or only land under JFM is being permitted for CFR claims²¹. In the memorandums submitted by CSD, Odisha before the Governor of Odisha on FRA implementation, the important demands include accordance of Gram Sabha Sarkar status to Gram Sabha, demarcation of all the forest lands under actual occupation of the tribals and forest dwellers and issuance of correct IFR titles, and dissolution of all Van Samrakshan Samitis (VSSs.)

7. Forced Plantation on PVTG Land without Consent – A Case

At least 52 families in the Burlubaru village in Odisha’s Kandhamal district belonging to Kutia Kondh community (a PVTG), who mainly live in the hills and have an indigenous diet, received individual forest rights titles of over 166 plots of forestland in 2012-13 under the Forest Rights Act (FRA) of 2006²². They have been cultivating tubers, fruit, millets and other indigenous crops on the land for the past several generations. The conflict started when the forest department carried out massive teak plantations on their cultivated land without their consent. In the name of the afforestation programme, this attempt of the government to evict tribal people from their lands- their only source of nutrition- amounted to blatant infringement on the tribals’ rights over forest lands as guaranteed under the FRA, 2006. This illegal measure not only deprived the villagers of their basic livelihood sources but was also likely to impinge on the eco-system of the area. Many of such plantations have been taken up on the lands already being cultivated or brought under shifting cultivation by the tribals in different districts of Odisha.

20: Executive Summary and Conclusions of the Report of the Joint Committee on the Forest Rights Act, December 2010

21: Executive Summary and Conclusions of the Report of the Joint Committee on the Forest Rights Act, December 2010

22: A petition was sent to Ministry of Tribal Affairs Govt. of India on 8 th August 2015 by organizations including the Odisha-based Vasundhara, Maharashtra-based Vrikshamitra and Kalpavriksh, Jharkhand Jungle Bachao Andolan and independent researchers like Rana Roy.

http://fra.org.in/document/Petition_%20Violation%20of%20Forest%20rights%20Act%20by%20Plantation%20&%20forestry%20Program_%209th%20August%202015.pdf



The plantations are being carried out under schemes such as the Odisha Forestry Sector Development Project (externally aided project supported by Japan International Cooperation Agency), plantations for compensatory afforestation using Compensatory Afforestation Fund Management and Planning Authority (CAMPA) funds and plantations using Mahatma Gandhi National Rural Employment Guarantee Act funds²³. In a Gram Sabha meeting in September 2015, the villagers passed a resolution against the plantations, resolving that the forced plantations will have adverse impact on the rights and livelihoods of the forest dwellers and will significantly impact biodiversity. The villagers sent their grievances to various government authorities, including the National Human Rights Commission (NHRC), following which the NHRC visited the area and submitted its report to the government. The report confirmed that the plantations were being carried out on the land on which tribal rights were recognized under FRA 2006. The forest department, however, claimed that the plantations were taken up with the help of Vana Samrakshan Samiti (a joint committee of forest department and village council), after “thorough discussion with the villagers.” The forest department stated, “We have the resolution as proof of tribals’ consent and there was no case of forcible plantation;” but villagers insist that the department must stop forcible plantation of commercial species on their land that affects their life and livelihood. This is a clear violation of their rights under FRA, 2006. Despite the protest by the villagers, the forest department is continuing the plantation. Villagers expressed their views saying, “If the forest department decides to undertake plantation programme in any village, it should entrust the concerned job along with necessary funds to the Gram Sabha as required under FRA 2006, instead of going straight for the plantation programme by itself and that too, involving commercial species like teak and eucalyptus etc. which are fraught with hazards to eco-system and its biodiversity.” One of the villagers, Ms. Basanti Majhi from Kutia Kondh Community said, “We cultivate almost 72 types of millets and pulses and it is the single source of livelihood. This is less water-intensive and more efficient in the time of drought. Due to the forced plantation of teak and eucalyptus by FD, the share of millets and pulses in our food basket is reducing and we are compelled to depend on rice given by the government under PDS (Public Distribution System). This is against our food culture.”

The civil society organizations’ petition to Ministry of Tribal Affairs on 8th August, 2015 states that these forcible plantations on the land of Kutia Kondha violate India’s obligation under the Convention on Biological Diversity (CBD) and in accordance with the United Nations’ Declaration on the Rights of Indigenous Peoples (UNDRIP).



23: <http://www.livemint.com/Politics/vIRcN0PdeQN5YqApdbNdlI/Forest-departments-violating-Forest-Rights-Act-say-tribals.html>

The Government of India is obligated to respect and help sustain the rights of the tribal/indigenous people to their traditional occupations, conservation systems, and traditional subsistence activities for livelihood, food and nutritional security. Their indigenous knowledge and traditional agriculture practices need to be strengthened and supported. Proper implementation of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 will facilitate the above.

Another villager shared that the forcible plantation of Saguan (Teak) will take 40 to 50 years to grow. "How do we live then? This monoculture plantation is not only affecting our sources of food but also seriously affecting the ecosystem." The forest department is making the aggressive plantation over the area of the community where IFR is recognized, Forest Department (FD) is developing nurseries and the communities are barred from entering these areas. These plantations are carried out through 'Ama Jungle Yojana (AJY)' under the Odisha Forestry Sector Development Project (OSFDP). The Forest and Environment department of Odisha Government has purposed to take up conservation of forests under the AJY over the next years from 2016-17 to 2021-22 at an estimated cost of Rs. 1,170.02 crores. The amount is sourced from Compensatory Afforestation Fund Management and Planning Fund.

This is promoting Vana Samrakshan Samitis (VSSs) operating under Joint Forest Management (JFM) mode. JFM was conceptualized in 1993 through an administrative order of the Government; the VSSs were supposed to be formed under it. Various studies have highlighted how the very concept of JFM sabotaged the community governance mechanisms prevalent since long, thereby substituting democratic values with the bureaucratic stranglehold.

This is a classic example to show how an administrative order is contradicting and overriding the provisions of Forest Rights Act (FRA). The FRA entrusted the Gram Sabha with complete power for planning, management and allocation of community forest resources, which meant that the VSSs were non-entities.

The scheme 'Ama Jungle Yojana' of the OSFDP is being run through the VSS. This parallel arrangement is usurping the powers of the Gram Sabha that are guaranteed under the 73rd Amendment of the Constitution and under the Forest Rights Act 2006 as well. There is rising power tussle and conflicts between the VSSs formed by forest department and the Gram Sabhas in many districts over land acquisition and forest rights, mining projects, felling of timber trees and Compensatory Aforestation Fund Act (CAFA) 2016.

The VSS, as an institution, is contradictory to Gram Sabha being empowered under FRA

2006 and it seeks to substitute the Panchayat Bodies, completely nullifying the institutional relevance of PRIs (Panchayat Raj Institution). The nodal officials under this new Scheme are accorded greater importance and play a vital role in decision making processes at grassroots level. On the contrary, different studies indicate that the forested landscapes have so long been protected and conserved by the communities with their own systems of protection and management from time immemorial, which is being respected and recognized under FRA, 2006.

Baragadia village of Naranapur Gram Panchayat under the Nilagiri Block of Balasore district and Hariharpur, a small tribal village in Barkort Block of Deogarh District have taken formal resolutions in their respective Gram Sabhas to oppose the AJY offered by the Forest Department, Govt. of Odisha. Villagers are claiming that as per the Section 4(1)(e) of FR Rules, there is no need to form a VSS; in fact, it gives the Forest Department exclusive control over forest and its resources.

The Union Ministry of Tribal Affairs has also cautioned the Odisha Government not to erode the authority of the Gram Sabha while implementing the massive forest regeneration programme 'Ama Jungle Yoyana.' Previously, the Odisha government has also been given a clear direction on the authority of the Gram sabha under the FRA.

The Government of Odisha should discourage the establishing of two parallel bodies for planning and management of community forest resources at the village level and respect its earlier stand that Gram Sabha is central to taking any decision on community forest resources wherever Forest Rights Act, 2006 is being implemented. The villagers are also demanding that all the forest land be demarcated under actual occupation of the tribals and forest dwellers and correct IFR titles be issued, that all the rejected and pending IFR claims be reviewed and that awareness be created at the community level so that they can reclaim the area not covered under the IFR titles issued.

Even at the national level, there has been hardly any progress regarding the implementation of the FRA in relation to PVTGs. Given that these groups are most often very 'remote' from the centres of government administration, and do not have as much civil society organizational presence as elsewhere, various processes and provisions of the FRA have hardly reached them. In states such as West Bengal, Jharkhand, and Uttar Pradesh, there has been absolutely no effort by the state governments to identify such groups and provide them with any facilitation for the FRA. Odisha is the only state that appears to have taken some proactive steps for PVTGs. Besides the reporting format, the State government has issued a number of circulars especially focusing on the rights of PVTGs. It has entrusted the responsibility for proper implementation of various provisions

of the Act on the Micro Project officers & project administrators of ITDAs. But even in Odisha, while CFR including habitat rights have been claimed for a couple of PVTGs, largely due to the effort of community groups, the SDLC and DLC have neither facilitated nor positively responded to the claims. CFR processes, and in particular 'habitat right' processes, are ongoing amongst the Juang PTG in Keonjhar district, Dongria Kondh PTG in Kalahandi district, Chakutia Bhunjia in Nawapara district and Mankiridia & Khadia in Mayurbhanj district of Orissa. In some cases, such as the Chenchu PTG of Andhra Pradesh, there have been substantial CFR claim processes including mapping of customary areas, but no explicit work on 'habitat rights'²⁵.

8. Status of Claiming Habitat Rights of PVTGs: A Case of Mankadia and Khadia

For PVTGs, the implementation of FRA has been the poorest since their habitat rights are not clearly defined or understood by the Forest Department. No disaggregated information or data is available at the national level on status of the implementation of the provision for rights of PVTGs, particularly of habitat rights under the FRA. In April 2010, the Ministry of Environment and Forests and the Ministry of Tribal Affairs jointly constituted a 20-member committee to look at various issues relating to the implementation of the FRA and sustainable forest management. This Joint Committee Report found that Orissa is the only state that has taken steps on PTGs, issued circulars on their rights, and entrusted the responsibility to specific officials; but in no case have the 'habitat rights' or the Community Forest Rights (CFRs) been finalized.

Mankdia, Khadia and Lodhas are three Particularly Vulnerable Tribal Groups (PVTGs) living in Mayurbhanj district of Odisha. The Khadia & Mankadia are nomadic food-gatherers and hunters, found in the hilly areas of Shimilipal hill ranges in Panchpir sub-division, particularly in Jashipur block areas. On the other hand, the Lodhas are a tribe needing special attention for their socio-economic rehabilitation. They are found in Suliapada & Morada blocks of Baripada sub-division²⁵. These groups have long been suffering from deprivation of their due entitlements; lack of voice makes them inherently vulnerable. Psychologically, the Khadias and the Mankadias are not strong enough to deal with the mainstream society, while the Lodhas suffer from social denouncement because of the false tag of criminal tribes attached to their forefathers by the British. A few of Lodha

24: Report of National Committee on Forest Rights Act December 2010, A Joint Committee of MOTA and MOEF, Government of India, <http://rajbhavan-maharashtra.gov.in/rajbhavan/pdf/tribalcell/FRA%20COMMITTEE%20REPORT%20N%20C%20SAXENA.pdf>

25: <http://mayurbhanj.nic.in/tribe.htm> developed by National Informatics Center, Mayourbhanj District Center, Government of Odisha.



communities are gradually adopting agriculture as their livelihood but for majority of the PVTGs, forest is the mainstay. So they choose to live close to forests and are more concentrated in Similipal biosphere reserve of Odisha. They still live a life close to pre-agricultural age. Khadias are known as hunter-gatherers, collecting Non-Timber Forest Produce (NTFPs) round the year. They are also known for their honey hunting skill. The Mankadia habitats have distinct features such as rich forest, mountains and valleys. Most people live in isolated habitations. This tribe has special expertise in catching monkeys ('mankada' in Odia) and has probably inherited its name from that. Other than food items, Mankadias only collect bark of Siali creeper (*Bauhinia vahli*) for their income. Siali is found across Similipal biosphere reserve but more plants of these species are found in rich and deep forest as the creeper needs support of big trees to grow. The Mankadias prepare ropes and some other items from the bark of the siali.

In six blocks of Mayurbhanj district, 255 Mankadia households live in nine habitations. As they battle poverty on an everyday basis, educating their children is the last thing on their mind. Literacy rate is less than 8%. Leave alone the status of education and health; Mankadias are suffering from massive poverty and acute malnutrition. Mortality rate among the Mankadias is very high. Forced to stay away from their main habitat and livelihoods source, they live pitiable lives. Government is implementing a special development programme for Mankadia tribe. But despite various development initiatives taken by the government and the non-governmental organizations, the socio-economic conditions of Mankadias have not improved much.

While development initiatives have hardly penetrated the Mankadia tribes, unfortunately, these Mankadias are now facing serious threats on their livelihoods and habitat. Mr. Baya Mankadia, the first matriculate of the community, says his people have been forced to abandon their ancient rope-making traditions. The rope, plaited from a creeper known as 'siali' (*Bauhinia vahlii*), which grows in abundance in the forest, is very strong and many household and agriculture implements are prepared from that. These products have a high demand among farmers in rural areas. The irony is that while big traders are getting access to the barks, local Mankadias whose livelihoods are centered around that are being denied access to the forest by the forest department. As the collection of bark is being restricted, many Mankadia families have been forced to buy plastic potato sacks at three rupees each from the market and use the strands to prepare ropes. They make very little profit in doing that.

8.1 These Mankadias are even worse

The PVTG special project Mankadia Khadia Development Agency (MKDA) operates from Jashipur and has covered villages only in Jashipur and Karanjia blocks. These agencies were set up aiming at all-round development of the PVTG building under the Conservation cum Development (CCD) Plan of the Government of India.

Mankadias have never bothered about any formal private land title. They consider the forest their village and their area. In 1980, 30 households of this nomadic PVTG Mankadia community in Utthanisahi village were asked to settle in a narrow confine. The government provided them four decimals of land per household to settle down. As is well known, four decimals of land would not be significant even in urban areas. For a nomadic tribe living in forest, it was extremely unfortunate to be asked to confine their living within that area. The Integrated Tribal Development Agency (ITDA) believed that they did a great favour to the Mankadias by granting the land. Many Mankadia households were left out from that too, for instance, Mankadias of Mahalibasa village. A nomadic and community ownership oriented tribe was asked to settle in very limited confines.

After 20 years of instructing these families to settle in the limited allotted land, government started a Primary School at the Mankadia colony in Utthanisahi village of Kaptipada block. The school started functioning from 8th March, 2010. As of now, 54 children of the Mankadia PVTG are studying in the school. However, it is mostly a signboard school devoid of basic facilities. The tubewell has not been functioning since long. Children drink water from a nearby stream and the midday meal preparations use the same water. People have made several approaches about this problem to the BDO, Kaptipada; and also the Sub-Collector, Udala of Mayurbhanj district. Their plight has still not been addressed. Similar is the status in eight other Mankadia habitations in Mayurbhanj district.

Odisha Simlipal National Park which has an area of 2,750 sq kms is located at the centre of Mayurbhanj district in Odisha. The total area has been divided into two zones i.e., the critical tiger habitat (core) area extending over 1,194.75 sq kms and a buffer area of 1,555.25 kms. In 1956, it was formally designated as a 'Tiger Reserve.' In 1979, the Government of Odisha declared it a Wildlife Sanctuary and in 1986, it was declared a National Park. In 1994, the Government of India declared it as a biosphere reserve and UNESCO added this National Park to its list of biosphere reserves in May 2009. At present, there are around 10,000 people living in this forest. At least 12 rivers cut across the plain area. Prominent among them are the Rivers Budhabalanga, Palpala Bandan, Khairi and Deo.

Mankdias faced restrictions on collecting Siali bark from Similipal Tiger Reserve authorities for many years. They still resort to the collection to earn a living, as there is little other option. The lack of basic facilities and restricted means of livelihood has deprived these people from leading a life of dignity, even causing them to die of starvation and malnutrition.

8.2. Scope of Habitat Rights as per Forest Rights Act and Hopes

The Mankdias and Khadias have a traditional and intricate relationship with the forest. Forest Rights Act has provided an opportunity to these PVTGs. The Mayurbhanj district administration, the local organization 'Gram Swaraj' and 'Vasundhara,' a Bhubaneswar based NGO came together to provide support to Mankdias in submitting claims for their habitat and other rights under the Forest Rights Act. The claim submission process was initiated with village level consultation and awareness building in the month of December 2015. In the second round, maps of their habitat, resources and their use were prepared. Very meticulously, the Mankdias have drawn their territory map which extends to Balasore and Keonjhar district beyond Mayurbhanj. They mentioned the name of the forest, the routes, their meeting places, places of worship, their resting places and water sources. Interestingly, none of the territory is overlapped by other groups or habitation. Eventually, documents essential to claim habitat rights were prepared incorporating these maps. In the third stage, their claims were verified by forest and revenue departments and subsequently submitted with SDLCs in the last week of April 2016.

It was highly promising that the District Level Committee (DLC) had approved the claims of Mankdias on their habitat. Formal delivery of entitlements was yet to be made, though Recognition of Habitat Right of Mankdias was a historic step which would certainly allow them to move ahead to a dignified living. However, it was learnt that on the insistence of the Tiger Reserve officials, the DLC had taken a decision to reduce the area of the habitat rights of the Mankdias falling in the core area. Recently, the DLC is learnt to have reversed its decision on approval of habitat rights claims after an objection made by the forest department that asked to exclude critical tiger habitat from the habitat rights claims. This has happened after a directive issued by the National Tiger Conservation Authority (NTCA) of the MoEF barring conferment of forest rights in critical tiger habitats. The NTCA directive has been widely opposed by forest rights groups and CSO networks as violating FRA.

8.3. Problems far outweigh the promises: Now they are being displaced

A total of 56 villages are located in the buffer area of Similipal Tiger reserve. In October 2016, 44 villages had secured rights over nearly 25,000 hectares of forest land inside the

reserve under the Forest Rights Act, 2006. The rights allow tribal households to harvest and use forest resources to maintain their traditional livelihoods. Even though they have earned the entitlement under the FRA, their access to those resources has become more vulnerable than before. The forest department is making efforts to evict the villagers from both buffer and core area. Villagers from Kiajhari village in the buffer area have already been involuntarily evicted in violation of FRA as well as the Wildlife Protection (Amendment) Act, 2006, which clearly says that buffer areas are supposed to promote co-existence. This has posed a new and very serious challenge to the Mankadias and other forest dwellers. These communities – Mankidia, Khadia and Lodha - belong to the PTG/PVTGs and the FRA ensures that such groups have right over their area of habitation and cannot be displaced. However, innocent people are forcibly thrown out and are denied rights to forest land, where they have been living for generations. All three communities practice livelihoods in harmony with nature and among their own communities. In the absence of access to forests, they are not able to collect non-timber forest produce and are losing access and control over resources. This displacement has not only impoverished them but also alienated them from their traditional skills like honey collection and identification of herbs for preparation of medicines, crafting baskets from bamboo and other household items from tree barks. These skills will be extinct over a period of time. Since people inside the Similipal core area are living almost like captives without any outside contact, it was not possible to get information regarding the status of FRA claims made by those people. However, people from the buffer area have submitted their claims, awaiting recognition²⁶.

Intense pressure by the forest department is taking a toll. Here, on 9th September, 2015, 35 families of Jamunagrah village were rehabilitated to Nabara – a colony developed in Udala. Earlier, the inhabitants of Jenabil village were relocated in 2010 and Upper Barakhamunda and Bahaghar villages in 2013. “The irony is that, the relocated communities are still unaware that 3982.44 acres of forest land is issued under Community rights,” claims Campaign for Survival and Dignity²⁷. In the village of Jamunagarh, in the park's 'core' area, only three out of more than 35 original families have decided to stay on and continue to use the land that they received entitlement to in 2015. Others did not have that conviction and chose to take the compensation and moved away. Of course, the tribals demanded the alternative of relocation to cultivable land from the tiger reserve, but the district administration failed to provide it and compelled them to take the compensation of Ten



26: <http://www.fao.org/fsnforum/cfs-hlpe/sites/cfs-hlpe/files/resources/Our%20Forest%20Our%20Rights.pdf>

27: <http://www.adasiresurgence.com/forest-rights-act-issues-constraints/>

lakh rupees per family, The Mankadias are being outraged by the forest department. Recently, two Mankdia men were beaten by forest department personnel while they were moving inside the forest for collection of siali bark.

Several civil society organizations in Odisha including Campaign for Survival and Dignity (CSD), are protesting against the forcible eviction of villagers from the Similipal Tiger Reserve in Mayurbhanj district.

The pitiable case of Mankadias is one that raises consciousness and questions the approach of the government towards these communities who maintain a way of life that is simple, secluded and very close to nature. Mankadias require support to ensure livelihood security and safeguard their natural and traditional habitat.

9. Recognition of Habitat Rights of Madia Gond (PVTG) in Gadchiroli District of Maharashtra

Nearly 60 Madia Gond Adivasi villages from Dhanora taluka of Gadchiroli district in Maharashtra came together to claim habitat rights over their traditional territory of Khutgaon under Sec 3(1)(e) of the FRA on 21st January, 2016, in a meeting organized in Khutgaon tola. The traditional elders and community leaders were also present in the meeting. Individual and community rights have been recognized in several of these villages; however, the community wants to secure complete rights over its traditional customary habitat. The process towards preparing the habitat rights claim began six months ago, with information on the habitat being derived from testimonies of elders. Several meetings were organized of every village Gram Sabha individually as well as collectively. The final claim was prepared when each Gram Sabha had passed a resolution on the claim. Several local and district level governmental functionaries were also asked to be present for the meeting where the claim was verified and passed. The claim has been collectively prepared by the community and submitted to the Sub Divisional Level Committee (SDLC)²⁸.

The claim includes:

- i. habitation and cultural rights of the Madia Gond community;
- ii. cultural and religious rights over the traditional geographical area;
- iii. the right to use, protect, manage and conserve the natural spaces, natural things, and sacred spaces associated with their religious and cultural traditions;



- iv. the right to protect spaces of religious, cultural and traditional importance from any kind of change or destruction;
- v. the right over spaces currently in use for the community programmes and traditional festivals and also the right to find new places for such events as decided by community consensus as and when the community requires;
- vi. the right to practice traditional/ customary forms of farming, and the right to use, protect, manage and conserve forests that they have been seasonally using for livelihood needs;
- vii. the right to protect, manage and conserve their community resources in their traditional area;
- viii. the right to collectively use all the above mentioned rights with other STs and OTFDs, through recognition of their pre-existing rights; and
- ix. any other rights which may arise out of further study of the habitat²⁹.

Following are the timelines for Recognition of Habitat Rights of Madia Gond:

- 30th January to 4th February, 2016 – SDLC level consultation
- 5th February, 2016 – Consultation with SDO and DC
- 1st March, 2016 – Claim Submitted at SDLC
- 5th to 6th March, 2016 – Field visits by Revenue, RDD (Rural Development Department) and Forest Officials
- December, 2016 – Habitat Rights claim was recognized by SDLC and sent to District Level Committee (DLC)
- May, 2017 – Habitat Rights claim of 'Khutgao Ilaka' was recognized by DLC

Villages of Madia Gond, comprising of traditional habitat areas of 60 Gram Sabhas, have successfully ensured their habitat rights, including mountains and places of worship, which are linked to their traditional practices.

10. Recognition of Habitat Rights of Baiga (PVTG) in Dindori District of Madhya Pradesh

In Dindori district of Madhya Pradesh, the 55 Baiga villages known as Baiga Chak have applied for their habitat rights. However, Seven Baiga villages in Baiga Chak area of the Dindori district of Madhya Pradesh have received Habitat Rights titles through a process facilitated by the district administration over a collective area of nearly 9000 ha, on 29th December, 2016. The titles mention habitat right as have been given over minor forest produce, fish and water resources, and the right to protect, conserve and manage customary forests. However, examination of the titles reveal that they are CFR titles (these



29: Shared by Mahesh Raut, Bharat Jan Andolan on CFR-LA list serve. For More details, contact Mahesh at maheshraut.work@gmail.com)

villages had received titles over CFR in 2009, but the titles were faulty and contained a list of conditions under the Indian Forest Act, 1927). They do not specify any sites of religious, social or cultural relevance to the PVTGs- one of the distinguishing bio-geographical features of the habitat of the Baigas, do not recognize the rights over the entire habitat (Baiga Chak), and have only been given to seven villages³⁰.

11. Challenges and Difficulties

There are inherent challenges and operational difficulties in extending recognition of Habitat Rights to PVTGs. Following are some significant instances of the same:

- i. There is a lack of clarity about what constitutes a habitat and the methods and processes involved in claiming rights over a certain habitat. For example, about six Juang tribal communities (pirha) in Odisha claimed nearly 2,500 sq kms for their habitat rights over their customary territory in 2010 in the iron rich Keonjhar district; but the claim has been pending at the Sub-Divisional Level Committee, which has asked the State government to clarify the scope and expanse of the habitat. Clear information from the State government regarding the same should be communicated to the concerned authorities administering claim rights over habitat and communities.
- ii. As of today, the status of PVTG is assigned only to those groups who are covered by continuous geographical limits of Micro Projects initiated by the government of Odisha in the past, but it does not include all members of those communities. Between 1976-77 and 1994-95, the Government of Odisha established Micro Projects in 17 Blocks to cater to 11 PVTGs spread over 541 villages. Large numbers of villages which stay outside the geographical jurisdictions of the Micro Projects need to come under the category of PVTG and are therefore entitled to habitat rights. For example, all the Juangs, who are a category of ST population in Odisha, are not considered as PVTG but only those segments of them that are covered under the Micro Projects³¹. The question of whether there was any discussion on the concept of habitat when the Micro Projects was defined, arises. Because not all members of a certain PVTG are entitled to benefits of Micro Projects, it needs closer scrutiny to ensure no member is deprived of his/ her rights and entitlements.

30: <http://www.downtoearth.org.in/news/baiga-tribals-become-india-s-firstcommunity-to-get-habitat-rights-52452>.

31: Behera, S (2014) Development: Planning , Execution and Performances: A critical Analysis of the Development scenarios of the Particularly Vulnerable Tribal Groups of Odisha, National Center For Advocacy Studies, Bhubaneswar.



- iii. There are non-PVTGs who have been living with the PVTGs since generations. For example, non-PVTG groups like Gaudas communities living with PVTG communities like Juangs in the iron rich Keonjhar District. Quite often, the Gaudas, who are more familiar with the officialdom due to their greater exposure to the outside world, do gain most of the benefits meant for the Juangs.
- iv. At places where the traditional boundaries clash with the district and state boundaries, there is no clarity on how the State would solve these issues³².
- v. It needs to be determined how habitat rights would be claimed in forests and other lands contained within Tiger Reserves, given the restrictions on PVTGs in such areas³³.
- vi. The possibility and feasibility of PVTGs who have already been displaced due to developmental projects, claiming their traditional habitat rights has not been discussed³⁴.
- vii. Bureaucrats lack an understanding of the traditional systems and authorities deny habitat claims where traditional shifting cultivation or long distance forest use practice is part of the claim, e.g. in Mayurbhanj district of Orissa and Bhamragad of Maharashtra³⁵.
- viii. There is very little awareness about the FRA among the tribal communities in general and PVTGs in particular. Even the officials and civil society groups working in the PVTG areas possess a scanty understanding about the habitat rights.

12. Functioning of ITDPs and Micro –Projects for PVTG.

The advent of the Fifth Five Year Plan (1974-79) was marked with a revolutionary change in the approach to the cause of tribal development. The Government introduced the Tribal Sub-Plan (TSP) approach through ITDA (Integrated Tribal Development Agency) to cater to the development needs to all tribal preponderant areas, called Scheduled Areas. Both area-wise development and community development were considered equally important and within the community families and individuals were targeted for focused attention for their all-round development. Besides, as a part of this overall strategy a special attention was given to the educationally and economically very backward tribes called Primitive Tribal Groups (PTG), now renamed as Particularly Vulnerable Tribal Groups (PVTG). For them a special network of agencies called Micro Projects was created. Each Micro Project had a project area covering a few contiguous villages inhabited by a specific PVTG.



32: Report of the National Consultation on Habitat Rights of Particularly Vulnerable Tribal Groups (PVTGs) 4th October, 2010, organized by National Committee on Forest Rights Act, government of India and Vidarbha Livelihood Forum.
33,34,35:Ibid

There are 62 tribal communities in the State of Odisha, out of which 13 communities belong to Particularly Vulnerable Tribal Groups (PVTGs) having low level of literacy, declining or stagnant population, pre-agricultural level of technology and extreme economic backwardness. The population of PVTGs was 89,208 in 21,802 households spread over 12 districts of the State. The State Government had no scheme exclusively for PVTGs as of March 2016. However, Government of India (GoI) has launched a scheme viz., Conservation-cum-Development (CCD) Plan for them. Besides, two other schemes viz., Special Central Assistance (SCA) to Tribal Sub Plan (TSP) and Grants under Article 275 (1) of GoI, to extend benefits to PVTGs in addition to other categories of STs. All these three schemes are implemented by the Scheduled Tribes & Scheduled Caste Development, Minorities & Backward Classes Welfare (SSD) Department of the State Government. The schemes for PVTGs are implemented through 17 Micro Projects (registered societies). Each Micro Project is governed by a Governing Body (GB) headed by the Collector and a Special Officer, who is the chief executive.

The C&AG had conducted a Performance Audit in the year 2009 in respect of the Micro Projects meant for development of Particularly Vulnerable Tribal Groups. The said Audit had highlighted the deficiencies in implementation of various schemes for development of PVTGs of Odisha. Though the Government had accepted all the recommendations, none of the recommendations have been fully implemented, even after a lapse of 7 years as pointed out by the follow-up audit by C&AG. The Follow-up Audit test-checked the records of nodal Department (SCST Welfare Dept) and six out of 17 Micro Projects during April to July 2016, covering the period 2013-16. Out of the four recommendations accepted by the Government, only one recommendation was partially implemented, while the remaining three were not implemented at all. The Audit observed that shortage of manpower still persisted, which affected implementation of various projects. Supervision and monitoring was not adequate to address the bottlenecks in implementation of projects. Targeted numbers of projects under Income Generation Scheme were not completed. Facilities like provision of road connectivity, drinking water, electricity, etc., were not created adequately. Besides, there were deficiencies in addressing malnutrition, healthcare services, education, etc.

13. Ministry of Tribal Affairs, GoI on Participatory Development of Tribal Areas³⁶

For the effective implementation of TSP, on March 4, 2014, the Ministry of Tribal Affairs, GOI circulated operational Guidelines for Formulation, Implementation and Monitoring of



36: Discussion with Mr. Chitta Ranjan Behera, Activists based at Cuttack, Odisha

Tribal Sub-Plan and Article 275(1) grants. The guideline states that “while there is no shortage of funds for livelihood sectors like agriculture, animal husbandry, horticulture, handicrafts, handloom, skill development etc. under various Centrally Sponsored Schemes, the access of tribal population to such schemes continues to be poor. In addition to the problems of physical access, the absence of functionaries of line departments is a severe handicap. The ITDAs were to facilitate such access. But over the years, several scheme-specific bodies at district level including DRDAs have become stronger whereas ITDAs have become weak in most of the States. Depletion of forests and displacement has further exacerbated livelihood problems. In view of this, the ITDAs have to play a role in facilitating delivery of public goods and services, and particularly carry the schemes relating to livelihood to the people. In addition to having people who can facilitate the personnel in charge of programs in line departments to access the tribal people / areas, the personnel of ITDAs etc must have basic knowledge of various schemes and their feasibility in specific areas”.

Whatever has been said above in respect of ITDAs is fully applicable to the Micro-projects set up for PVTGs. To infuse transparency and accountability to the administration of TSP process, the above guideline at Para-9 suggests a number of reforms for making it participatory, which are worth quoting-

“9. Transparency, Accountability and social Audit:

- 9.1 When works are taken up in a particular area, the beneficiaries / villages / habitations will be informed through the Gram Panchayats and Gram Sabha.
- 9.2 When individual beneficiaries are benefited, the names and the nature of benefit should be disclosed to the Gram Sabha and the Gram Panchayat. The disclosure will include the amount of money spent, the amount of money spent by individual beneficiaries, incomplete works, funds required for completion of incomplete works.
- 9.3 The ITDA will take pro-active role in bringing to the notice of the tribal people various Centrally Sponsored and State Plan schemes from which the people can benefit. They will also facilitate access of the people to the functionaries in-charge of these schemes.
- 9.4 An independent evaluation of the scheme and its impact will be made through reputed institutions once every two years. Institutions like Tribal Research Institute and State Institute of Rural Development of one State may also be engaged in evaluation of scheme of another State.”

However, the above guideline has hardly been taken seriously, let alone implemented by any State having ITDAs and Micro-projects, including Odisha. This has grossly affected the

activities like beneficiary selection, input supply and infrastructure development. There is also no mechanism in place for operationalizing participatory monitoring in which the programme beneficiaries and the programme implementing personnel could together. So far the ITDAs and Micro projects have seldom consulted the Gram Sabha for making their developmental process more participatory and inclusive.

Given the massive bulk of grants available for the TSP and multiplicity of schemes and programmes meant for the tribal communities including PVTGs, the paltry progress achieved in the indices of socio-economic development of the tribal communities has raised certain basic questions which need to be addressed forthwith.

14. Recognize Habitat Rights: Recommendations

In this context, it is essential that the habitat vulnerable rights of PVTGs as guaranteed by the FRA, 2006 be recognized and the claims filed by these communities be granted at the earliest. It is crucial that their lands and habitats be protected from any intrusion and that their displacement be prevented.

- a A time-bound and participatory process needs to be adopted, involving PVTGs in decisions concerning their habitat rights. The government and non-governmental organizations should facilitate the claim-making process of habitat rights in a sensitive and concerted manner. The communities should be made aware of the provisions in FRA on habitat rights. The traditional leaders of these communities must be taken into confidence and Gram Sabha should have a well informed decision making process.
- b The government shouldn't implement the PVTG programmes as part of delivering packages of services. As the recommendations of the National Advisory Council (NAC) of the last United Progressive Alliance (UPA) government have noted, there is a significant risk that vulnerabilities may exacerbate rather than reduce through government intervention and therefore due caution must be exercised in all cases. Programmes should not have the effect of undermining people's self-sufficiency and their own development priorities must be the driving force of any governmental action. The policy package of the Indian state has failed to win over the Adivasis into the state system. That is because this did not address the basic issues underlying Adivasi awakening³⁷. Vulnerabilities must be addressed through upscaling of their traditional knowledge, a culture self-determined by the communities' system which



37: Adivasi Awakening and Emergence of New Politics by Manoranjan Mohanty published in Frontier Vol. 44, Nos. 11-14, Sep 25-Oct 22, 2011

- includes food production, and strengthening of distribution systems. Their rich repertoire of traditional skills and knowledge needs to be preserved too.
- c The government of India should come out with a guideline on habitat rights, which is pending with the Ministry of Tribal Affairs (MoTA). A simple 'how-to' guide on habitat rights needs to be produced by MoTA, which can be adapted by state nodal agencies as appropriate, and issued in large numbers to communities and relevant officials. This guidebook has to include all relevant clarifications on habitat rights for processing and facilitation of claims. Both the Union and the State governments should conduct workshops on PVTGs' habitat rights regularly at various levels.
 - d PVTGs are living all across Odisha, but a limited number are included in the Micro Projects which deprive others of the benefits. There is an urgent need of mapping the habitations of PVTGs and including them in Micro Projects as well as in the claim submission process.
 - e The State governments must conduct comprehensive surveys to arrive at accurate demographic and socio-economic figures of the PVTGs.
 - f The government should also include a habitat approach in implementation of its programmes for PVTGs like Micro Projects or Odisha PVTG Empowerment and Livelihoods Improvement Programme (OPELIP) etc. The state government has recently started OPELIP for improved living conditions and reduced poverty of the tribal communities. OPELIP interventions will be implemented in 17 Micro Project Agency (MPA) areas located in 12 districts of Odisha namely Malkanagiri, Rayagada, Angul, Deogarh, Ganjam, Nuapada, Keojhar, Sundergarh, Gajapati, Kandhamal, Kalahandi and Mayurbhanj, covering 13 PVTGs living in some 1,019 villages and hamlets and 84 Gram Panchayats (GPs)³⁸.
 - g A massive exercise in creating awareness about PVTG Rights, amongst communities, officials and civil society groups, is needed. This must be in local tribal languages and should involve various media including radio, television/ cable, and print media. Particular attention needs to be given to habitat rights.
 - h The government must ensure that adequate safeguards are incorporated in the State laws/ regulations to protect the PVTGs against alienation of their lands by non-tribals through deceit. State Governments should be persuaded to amend or make the laws more stringent for speedy restoration of lands from illegal occupation.



38: Final project design report of Odisha PTG Empowerment and Livelihoods Improvement Programme available on <https://operations.ifad.org/documents/654016/7f55bfa6-ccd2-492a-8a75-b66096634810>

15. Conclusion

PVTGs' customary rights over lands, forests and other traditional sources of livelihood must be respected and protected. For generations, they have sustained the natural resources and biodiversity through their traditional knowledge and practices. The new phenomenon of growth-led economic and developmental policies is, in a big way, threatening their symbiotic relation with the nature and all its bounties. These policies and the promotion of large infrastructure projects and mega mining and manufacturing units in their habitats are resulting in a large-scale displacement of these populations from their traditional habitats. In the process, they are being denied access to natural livelihood resources such as land, forest and water. More tragic is the fact that wherever the tribals have put up resistance against forcible land acquisition by the state, they have had to face state repression of various kinds, including denying them their various other legal entitlements. Legal literacy mission is an essential part to help them realize their rights. The enactment of the FRA has provided some space for the PVTGs and forest dwellers to claim their habitat rights. The recognition of customary habitats and ancestral lands shall prevent the potential threats of shrinking and depleting of resource base and the resulting hunger, malnutrition and erosion of traditional occupations. However, there are impending factors such as lack of a common understanding and conceptual clarity among different actors, and field level operational challenges. There are no national level data on the status of FRA implementation specifically with regard to these groups. The various processes of the FRA have hardly reached them and there is very little progress with implementation. Lack of understanding and lack of awareness at almost all levels seems to be the key reason. Lack of adequate implementation mechanisms poses serious limitations in the implementation of FRA. Moreover, such laws require a great deal of political will on part of the mainstream parties.

As soon as PVTGs' claims on habitat rights get fulfilled, it will be much easier for them to protect their land, forests and water resources along with their own traditional/ native systems of self-governance and cultural traditions and customs. The PVTGs in different regions of the country also need to assert and struggle for their habitat rights, which can lead to communitarian command over natural resources and assure them a dignified life in a self-governing system as enshrined in FRA, PESA and the 5th Schedule of the Indian Constitution.

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