Multi Stakeholder Consultation
on FOREST RIGHTS ACT

Ranchi, August 13, 2012
Poorest Areas Civil Society (PACS) Programme: An Introduction

The Poorest Areas Civil Society (PACS) Programme is an initiative of the UK Government’s Department for International Development (DFID). Under PACS, DFID is partnering with Indian civil society to help socially excluded people claim their rights and entitlements more effectively, so they receive a fairer share of India’s development gains. The five-year programme (2009-2014) supports civil society organisations (CSO) promoting inclusive policies, programmes and institutions at local, district and state levels.

PACS will reach out to five million people and their households in 120 districts across the states of Bihar, Chhattisgarh, Jharkhand, Madhya Pradesh, Uttar Pradesh, Orissa and West Bengal. The programme focuses on socially excluded groups - scheduled castes (SC), scheduled tribes (ST), Muslims, women and people with disability (PwD).

PACS aims to:

- Strengthen demand for improved access and implementation of Livelihoods Programme.
- Make services providers more responsive and accountable
- Address the different forms of barriers and discrimination faced by socially excluded groups in accessing services and benefits.

PACS adopt a two pronged approach of working on strengthening both, the demand side and the supply side. The work on strengthening the demand side would be largely through grass root interventions. The work on the supply side would involve engaging with the service providers and wider civil society, and deliberate on bringing change, change that would help, support, empower and enable the socially excluded groups to claim and access their rights and entitlements.

PACS has two thematic strands:

a. Non-discriminatory access to livelihood opportunities.
b. Non-discriminatory access to basic services (education, health and nutrition).

Under the thematic strand of non-discriminatory access to livelihoods, one of the focus areas of the intervention is to strengthen the implementation of Forest Rights Act (FRA).

NAYA SAWERA VIKAS KENDRA (NSVK)

Naya Sawera Vikas Kendra is a registered organisation working in twelve districts in Jharkhand largely focusing on the dalit and tribal communities. The organisation made a modest start in Giridihi and slowly grew to expand its work over neighbouring district of Koderma and Hazaribagh. In appreciation of its work civil society leaders and organisations invited NSVK to expand its work in other districts. Thus, it grew out to also cover Bokaro, Dhanbad, Gumla, Deoghar, Gumla, Latehar, Jamtara, Chatra and Palamu districts since 2006.

The focus of the NSVK’s work has mostly been building community based institutions for empowerment of marginal and excluded communities to ensure their access to and control over livelihood resources; and to actualise the Gandhian ideas of local self-
governance (Gram Swaraj), community self-reliance (Gram Swawalamban) and responsible governance (Jababdeh Sarkar). It is working with tribal communities such as with Santhal, Oraon, Munda and Birhor, a primitive tribal group in especially in Hazaribagh and Giridih districts. Among non-tribals, it has been working with Mushahars, Paswans and Ravidas which are among the lowest dalit groups in the social hierarchy in India, as also with the Muslims, who are sparsely spread in these districts.

The Naya Sawera Vikas Kendra’s (NSVK) under the PACS project on ‘Right to Land & Livelihood of Excluded & Marginal Communities’ empowers the socially excluded and marginal communities to access their rights and entitlements under the FRA and MGNREGA. The organization also through effective advocacy engages with the government enabling the communities to access their entitlements. The organisation’s experience over the past two decades has firmly established that community based peoples’ organisational process can significantly contribute to peoples’ empowerment and collective bargaining, while building their capacity and confidence in planning and supervising interventions for their development.

Forest Rights Act (FRA): Background

“The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006” was declared on 02 January 2008 after decades of struggle on the part of forest dwellers and civil society organizations. The act was enacted with an intention to undo the historical injustice to the Scheduled tribes and other traditional forest dwellers; still the implementation has left a lot to be desired.

For the first time, this legislation provided for explicit recognition of the rights of forest dwelling communities over common lands and resources, including to land for cultivation, minor forest produce, grazing areas, water bodies, etc. It also legally empowers communities to protect and manage forests, wildlife, biodiversity, water catchment areas and their cultural and natural heritage (s.3(1) (i) and 5). Finally, the process of determining and recognizing all these rights was to be initiated by, and accountable to, the gram sabha (village assembly) - thus marking a sharp shift away from the centralized managed regime.

Over the past four years from January 2008 to present time the implementation of the existing Act and its provisions has not been as effective as it should have been and also led to confusion then actually benefiting forest dwellers.
What does the FRA do?

Grants legal recognition to the rights of traditional forest dwelling communities, partially correcting the injustice caused by the forest laws.

Makes a beginning towards giving communities and the public a voice in forest and wildlife conservation.

Who is a forest dweller under this law, and who gets rights?

There are two stages to be eligible under this Act. First, everyone has to satisfy two conditions:

1. Primarily residing in forests or forest lands;
2. Depends on forests and forest land for a livelihood (namely "bona fide livelihood needs")

Second, one has to prove:

That the above conditions have been true for 75 years, in which case you are an Other Traditional Forest Dweller (s. 2(o));

OR

1. That you are a member of a Scheduled Tribe (s. 2(c)); and
2. That you are residing in the area where they are Scheduled (s. 4(1)).
3. In the latter case you are a Forest Dwelling Scheduled Tribe.

What kind of rights do forest dwellers get under this Act?

The law recognises three types of rights:

Land Rights

No one gets rights to any land that they have not been cultivating prior to December 13, 2005 (see section 4(3)) and that they are not cultivating right now. Those who are cultivating land but don't have document can claim up to 4 hectares, as long as they are cultivating the land themselves for a livelihood (section 3(1) (a) and 4(6)). Those who have a patta or a government lease, but whose land has been illegally taken by the Forest Department or whose land is the subject of a dispute between Forest and Revenue Departments, can claim those lands (see section 3(1)(f) and (g)).

The granted land cannot be sold or transferred to anyone except by inheritance (see section 4(4)).
Use Rights
The law secondly provides for rights to use and/or collect the following:

1. Minor forest produce things like tendu patta, herbs, medicinal plants etc “that has been traditionally collected (see section 3(1) (c)). This does not include timber.
2. Grazing grounds and water bodies (sections 3
3. Traditional areas of use by nomadic or pastoralist communities i.e. communities that move with their herds, as opposed to practicing settled agriculture.

Right to Protect and Conserve
Though the forest is supposed to belong to all of us, till date no one except the Forest Department had a right to protect it. If the Forest Department should decide to destroy it, or to hand it over to someone who would, stopping them was a criminal offence.

For the first time, this law also gives the community the right to protect and manage the forest. Section 3(1) (i) provide a right and a power to conserve community forest resources, while section 5 gives the community a general power to protect wildlife, forests, etc. This is vital for the thousands of village communities who are protecting their forests and wildlife against threats from forest mafias, industries and land grabbers, most of whom operate in connivance with the Forest Department.

How are rights recognised?
Section 6 of the Act provides a transparent three step procedure for deciding on who gets rights. First, the gram sabha (full village assembly, NOT the gram panchayat) makes a recommendation - i.e who has been cultivating land for how long, which minor forest produce is collected, etc. The gram sabha plays this role because it is a public body where all people participate, and hence is fully democratic and transparent. The gram sabha's recommendation goes through two stages of screening committees at the taluka and district levels. The district level committee makes the final decision (see section 6(6)). The Committees have six members - three government officers and three elected persons. At both the taluka and the district levels, any person who believes a claim is false can appeal to the Committees, and if they prove their case the right is denied (sections 6(2) and 6(4)). Finally, land recognised under this Act cannot be sold or transferred.

FRA – Status in Jharkhand
The state of Jharkhand has around 30% area under forest, having 24% ST population, Scheduled Caste and Other Backward Castes totals up to over 75 percent. The State of Jharkhand has a huge percentage of these people living in and around forest land/areas. There is therefore all the more reason to recognise the Tribal and Other Traditional Forest Dwellers as integral part of the forest ecosystems and accord to them their responsibility and authority for its sustainable use of all such resources as enshrined in this Act.
Assessing the status of Forest Rights Act 2006 in Jharkhand presents a unique opportunity to understand the effectiveness of legal rights in addressing historical wrongs in tribal context. Drafted with the best intentions to cover livelihood crisis in forested parts of the country its implementation at the grassroots has left much to be desired particularly in the state with long history of struggle for land and forest rights. Although it is the lucrative trade of minor forest produce which is largely associated with lack of intent to implement the law by concerned agencies it is pertinent to examine the ground level causes which scuttle the extension of such progressive right to the forest dwelling communities. This may help in identifying challenges and way ahead for addressing the loopholes in a democratic set up.

Still the number of claims received and the number of claims settled is relatively small.

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<th>No of claims received at Gram Sabha level as on 3.7.12</th>
<th>42334</th>
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<tbody>
<tr>
<td></td>
<td>No of claims approved</td>
<td>16466</td>
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<tr>
<td>Total area of Pattas distributed</td>
<td></td>
<td>37822 Acres</td>
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<tr>
<td>No of Forest protection committees constituted by Gram Sabhas</td>
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<td>No of claims rejected at Gram Sabha Level</td>
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<td>No of claims rejected by Sub Division Level Committee</td>
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<td>No of claims rejected by District level Committee</td>
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<td>Districts with maximum no of claims</td>
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<td></td>
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<tr>
<td>No of approved community claims</td>
<td>Above 500</td>
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Source: Department of Tribal Welfare, Govt. of Jharkhand

The state had started in earnest with formation of FRC’s in all the panchayat. The government has undertaken efforts to train its staffs and panchayat functionaries, on the provisions and rules for implementation, there have been efforts from the civil society organisations to facilitate claim process, still the implementation has left lot to be desired. Some of the critical issues identified by various stakeholders are:

- Members of FRC not selected through the gram sabha and this has led to nomination of many uninterested person
- Functionaries at panchayat, block and district level do not have a clear understanding of the provisions (more so of the community claims)
- The interpretation of the rules has generally been very varied leading to confusion and rejection
- The FRC constitution on a panchayat level at times do not conform to the PESA areas
- There has been lot of resistance for the implementation from the Forest department (acknowledged even by the tribal ministry)
- CFR claims are not being expedited

The tribal ministry had reviewed the implementation of the Act, there have been representations to the ministry to remove the bottlenecks in implementation. The tribal
ministry has taken a proactive step and has initiated a process to amend the rules to make it easier for implementation and more directly beneficial to forest dwellers.

**Multi Stakeholder Consultation on FRA – The Context**

The Ministry of Tribal Affairs nodal agency for the Act, has issued a draft Notification proposing certain amendments to the Act. The window for any objections and suggestions in connection with the draft rules to be filed with Under Secretary (FRA), Ministry of Tribal Affairs, GOI closes on the 19th of August 2012.

Going through the present proposed Amendment draft it is an opportunity to discuss the issues in the larger perspectives and submit appropriate recommendation based on the experiences on the ground to the Ministry.

The Ministry has proposed to make some amendments in the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Rules, 2008 that are as follows:

1. Lay down a procedure for identification or hamlets or settlements and process of consolidation of their lists,
2. Increase the mandatory tribal membership of Forest Rights Committees from the present one-thirds to two-thirds,
3. reduce the present requirement of quorum of two-thirds in the gram sabha meetings to one-half,
4. Clarify that the term ‘sustenance’ includes fulfilment of livelihood needs of self and family, including the sale of any produce,
5. Allow transportation of minor forest produce within and outside forest area through ‘locally appropriate means of transport for use of such produce or sale by forest rights holders or their cooperatives/federations for livelihood,
6. Lay down process for recognition of rights, including community rights, (vii) insert new Claim Forms for Rights to Community Forest Resource and Title Form for Community Forest Resources etc.

The recommendation would enable issues of tribal’s and other forest dwellers living in and around the forest areas to have equal rights and entitlements with dignity within the framework.

**Key Objectives of the Consultation**

In view of the proposed amendment it is important to consolidate the experiences on the ground drawn from Government, Community based organisations, Civil Society organisations, academia and suggest appropriate recommendation which addresses issues of Scheduled Tribes and Other Traditional Forest Dwellers living in and around the forest areas.

A half day Consultation is organized in Ranchi on 13th of August 2012 at SDC, Ranchi (Jharkhand) with following objectives:

1. Understand the perspective of government on FRA implementation and the expectations from Civil Society
2. Learn about the key challenges faced by socially excluded groups in accessing FRA provisions in Jharkhand
3. Suggest recommendations to the proposed Amendments on the FRA to the MoTA, Government of India