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IMPLEMENTING THE FOREST RIGHTS ACT: LACK OF POLITICAL WILL?

Historically, usage and access of forest resources by India's *Adivasi* community and other forest dwellers have been considered as encroachment and their efforts of forest land acquisition have been used as evidence of their anti-development attitude. Government policy has continued to deny them legal rights to use, manage and conserve forest resources and to hold forest lands that they have been residing on and cultivating. In 2006, the passage of the Scheduled Tribes and Other Traditional Forest Dwellers' (Recognition of Forest Rights) Act (hereafter FRA)¹ tried to make amends by recognising customary rights of forest dwellers, including the right over common areas and the right to manage and sell forest produce. However, the overall implementation of FRA still suffers from inadequate community awareness, conflicting legislations, lack of dedicated structure for implementation and devoted staff, administrative roadblocks to smooth processing of claims, and governance deficit. Reportedly, the Ministry of Environment, Forests and Climate Change (MoEFCC) is now pushing for a set of new rules that will dilute FRA and limit powers of the Gram Sabhas, despite the objections raised by the Ministry of Tribal Affairs (MoTA).²

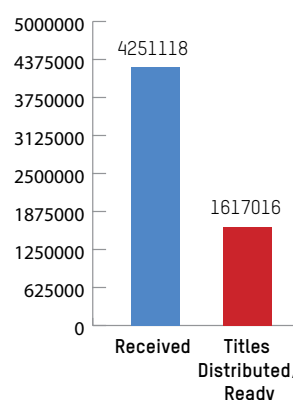
In India, nearly 275 million poor people depend on Non-Timber Forest Products (NTFPs) for subsistence and livelihoods.³ This segment of population is among the most vulnerable: forest dependents form two-thirds of the extremely poor, and half of them belong to marginalised *Adivasi* communities that constitute 8.6 per cent of the total population.⁴ About 40 per cent of those displaced after independence in India due to development projects are *Adivasis*.⁵ In the four states of Andhra Pradesh, Chhattisgarh, Jharkhand and Orissa, about six lakh *Adivasis* have been affected and displaced due to mining projects.⁶ A large number of people, especially *Adivasis* and other forest dwellers, do not get compensation as their rights over land and resources have not yet been established. Indian laws since colonial times have considered forest dwellers as "encroachers" and have criminalised their forest-related livelihood activities - collecting forest produce, farming, grazing of animals, and using water bodies.⁷ The Forest Department's control over high value forest produce has further hampered the recognition of forest dweller's rights.

In 2006, the FRA recognised customary rights for *Adivasis* and forest dwelling groups over their land. The landmark legislation laid the foundation for more democratic forest governance through recognition of individual and community forest and resource rights.⁸ It entitles individuals, families or communities to rights over land and forest, and importantly, empowers the Gram Sabha, or village assembly, with initiating the process of claims and recognition of rights.

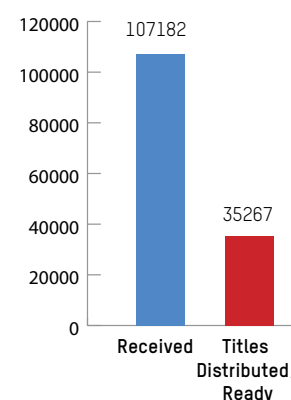
However, the implementation of the Act has been a mixed story, where a few successes were shadowed by many failures. Till end of May 2015, the government had received 4.4 million claims, but only 1.7 million had resulted in titles. Inter-state variations are stark, and on 2 July 2015, officials from nine state governments namely Bihar, Jharkhand, Himachal Pradesh, Karnataka, Kerala, Odisha, Telangana, Uttarakhand, Uttar Pradesh and West Bengal, who lag behind in implementation of FRA, convened in Delhi for a review-cum-consultation meeting led by the Secretary, Tribal Affairs.⁹ It is disappointing that the most empowering provisions of FRA - the Community Forest Rights (CFRs) and the Community Forest Resource (CFRe) Rights¹⁰ - the right to protect, regenerate, conserve or manage forest resources - are still lagging behind as the following graph shows. Until May 2015, only Odisha and West Bengal had provided disaggregated data on CFRe claims; of a total of 4814 of which only 2148 (45 per cent) have been distributed.¹¹

The implementation of the Act has been slow, and expressing its displeasure on the same, the PMO has reportedly directed the MoTA to implement the Forest Rights Act in a "campaign mode".¹²

INDIVIDUAL CLAIMS/TITLES
DISTRIBUTED TILL 2015 MAY



COMMUNITY CLAIMS/TITLES
DISTRIBUTED TILL 2015 MAY



Source: <http://www.tribal.nic.in/WriteReadData/CMS/Documents/201508100959332745375MPRForthMonthofMay2015.pdf>

The Citizens' Report (2015) on the status of implementation of FRA notes that during last year, several attempts were made by the MoEFCC (erstwhile Ministry of Environment and Forests) to dilute the power of the FRA, particularly related to diversion of forest land under the Forest Conservation Act, 1980.¹³ At the same time, researchers have termed the recognition of CFRs and CFRe under the FRA as a historic opportunity for India to implement the largest-ever land reform. Through FRA, India's forest dwelling people have gained the opportunity to have their rights recognised over a minimum of 40 million hectares of forest land that they have been managing, using, and protecting in more than 170,000 villages.¹⁴

At a time when policy makers are mulling over reviewing and reframing the Forest Rights Act, Oxfam India recommends the following based on inputs from multi-stakeholder consultations and evidence-based research.

Recommendations

- ▶ Expedite implementation of the FRA through awareness creation, robust monitoring and better support systems.
- ▶ Improve the record of recognising Community Forest Resource rights and provide support to post-claims management and conservation process for strengthening forest-based livelihoods
- ▶ Allocate financial resources and full-time staff at the sub-divisional and district levels for the implementation of the FRA.
- ▶ Align all legislations and policies governing forest land with the FRA

Context

India has seen dramatic economic growth in recent decades. However, extreme poverty remains common amongst certain excluded groups and regions. It is more prevalent in forest areas than agricultural or urban areas,¹⁵ and is most acute among *Adivasis*, whose human development indicators lag 20 years behind national averages.¹⁶ As mentioned earlier, up to 275 million people in India depend on forests to meet day-to-day needs like firewood, fodder, food and medicines. A considerable proportion of these are *Adivasis*, who constitute over 100 million of India's population.

Laws and forest governance systems inherited from the colonial era have, for long, deprived people from using their forest resources, thus condemning them to extreme poverty and vulnerability. In the later decades, Government of India introduced several rights-based, progressive legislations such as the FRA that recognise *Adivasis'* and other forest dwellers' rights over land. The Forest Rights Act 2006 recognises:

- The right to live in and cultivate forestland that has been under the occupation of a household or community up to a maximum of four hectares.¹⁷
- The rights of individuals and communities over minor forest produce, fish and other products of water bodies, and grazing land.
- The right of communities to protect, regenerate, conserve or manage any forest or community forest resource it has traditionally protected or conserved.
- A multi-tiered structure of decision-making consisting of Gram Sabhas, government officials and elected representatives at Gram Sabha, sub-divisional, district and state levels.¹⁸
- Heritable but not alienable or transferable rights.¹⁹

A requirement of prior informed consent²⁰ from Gram Sabhas concerned was also made mandatory before any *Adivasi* forest land was diverted to industrial use. This was done in order to protect the rights of the forest dwellers over forest land, in line with the circular and guidelines issued by the Ministry of Environment and Forests (MoEF)²¹ on August 3, 2009 and the MoTA on July 12, 2012 respectively. In this regard, Gram Sabhas supported by sub divisional and district level committees have the authority to determine and verify forest rights. A state level committee is responsible for monitoring implementation, while the MoTA acts as a nodal agency providing detailed guidelines and monitors overall implementation.²²

A range of obstacles are revealed in the implementation of FRA—starting from a lack of ambition among top officials, resistance among lower level officials, a general lack of awareness, restrictive rules, and commercial pressures linked to the natural wealth within forests. The Forest Department, which has managed forest resources since colonial times, continues to be seen as an obstacle, despite attempts to limit its role in the implementation.²³

Some of these weaknesses have since been addressed. An amendment of the Rules in 2012 clarified ambiguities regarding definition of community forest rights and decentralised governance of NTFFP, role of Gram Sabhas in conservation and management of community forest resources, and defined responsibilities of implementing agencies.²⁴ An apex court judgement upholding the need for prior recognition of forest rights and Gram Sabha consent before awarding clearances was a significant step ahead,²⁵ since as much as 1.82 lakh hectares of land have been diverted for non-forestry projects without Gram Sabha consent between 2008 and 2011.²⁶

According to the High Level Committee (HLC) on the Status of *Adivasis* that submitted its comprehensive report in 2014, the implementation of the Act has been weak despite the promising provisions. The government has not yet made the report public.²⁷

On the other hand, the central government is reportedly ready with a notification to dilute *Adivasis'* and forest dwelling communities' rights enshrined in the Act.²⁸ In addition to this, various other subversions through letters, circulars and memorandums issued by the MoEF²⁹ and the Ministry of Panchayati Raj (MoPR) have been attempted that are at cross purposes to FRA. Be it the circular issued by Maharashtra on village forest rules in May 2014 that urges Gram Sabhas to hand over their powers of managing forest resources to the Forest Department³⁰ or the July 2014 circular by MoPR, which gives the power over ownership, use and disposal of Minor Forest Produce to Joint Forest Management committees, instead of the Sec 4(1)(e) committees as envisaged under the FRA. In order to resist this, the MoTA has been playing a proactive role in pushing for better implementation of FRA. This has been done through amending the FRA Rules and issuing relevant guidelines, orders, circulars and letters.³¹

Recommendations

► Expedite implementation of the FRA through awareness creation, robust monitoring and better support systems

It is often noted that the potential of this legislation and its most important provisions are still not known by target communities, civil society organisations (CSOs) and implementing authorities.³² A large-scale study across eight states found that 68 per cent of single women headed households did not apply for rights as they lacked awareness and access to services provided under the Act.³³ Officials responsible for informing the Gram Sabha members are themselves found to be "thoroughly ignorant" about the Act.³⁴ Additionally, setting up of a National Forest Rights Act Council involving the ministries concerned, individuals from Gram Sabha committees and expert civil society members was recommended by CSOs; this too remains unfulfilled.³⁵

The HLC had observed that implementation of the protective provisions in the law and the process of recognition and assertion of forest rights is obstructed by contradictory processes like diversion of forest land alienating *Adivasis* and other forest dwellers' rights, displacement from the protected areas and Tiger Reserves, and displacement due to intervention by the Forest Department through forceful plantation in the forest lands. The report added that while the protective clause under FRA is meant to prevent such cases of violation of forest rights, the implementation process has almost entirely ignored the protective parts of the law.³⁶

Authorities responsible for implementing FRA should take swift action to facilitate the process of filing and recognising community forest rights. The MoTA, in partnership with state nodal agencies and CSOs, should design a campaign to spread awareness about community rights with a special focus on Particularly Vulnerable Tribal Groups (PVTGs) and pastoralists.³⁷ Communities like the Van Gujjars in Uttarakhand, Gaddis in Himachal Pradesh, Dhangars in Maharashtra, Maldharis and Agariyas in Gujarat and other pastoralists who are seasonal users of forest resources often find that their rights are ignored.³⁸ Administrative hurdles when claiming community rights should be addressed and a mechanism needs to be set up to systematically identify and prevent rejections on improper grounds.³⁹ State-level monitoring committees should meet regularly and take *suo motu* action in such cases. State action plans must be reviewed and monitored on a regular basis with the involvement of civil society. If action

plans violate the act, immediate amendments and corrections must take place.⁴⁰

► **Improve the record of recognising Community Forest Resource rights and provide support to post-claims management and conservation process for strengthening forest-based livelihoods**

The Forest Rights Act also recognises community rights over forest resources (CFRes). These rights apply to common forest land within villages or seasonal grazing areas for pastoral communities. They also include reserved forests and protected areas such as sanctuaries and national parks.⁴¹ Initially, community claims were expected to be as numerous as individual claims as they provide secure livelihood avenues through forest resources.⁴² But the number of claims has remained low and many reported community claims are for development projects like roads and health centres. This is despite the fact that India accounts for about 170,000 forest fringe villages covering 32 million hectares.⁴³ Severe data limitations regarding community claims to land are an additional expression of neglect. The neglect is particularly glaring in protected areas, forest falling within municipal areas and among PVTGs, nomadic pastoralists, shifting cultivators and Other Traditional Forest Dwellers.

For instance, it has come to notice that CFR claims in districts Ambikapur and Sarguja in Chattisgarh covering over 16963 hectares of forest land has resulted in a narrow, limited set of rights to communities. Out of the nine types of Community Rights relating to management and conservation and right to sell forest resources, the state has recognized only three -rights over fuel wood, rights to collect minor forest produce and grazing rights for cattle.⁴⁴

Once the community rights are recognised, the issue of management and conservation of these resources by the Gram Sabha is critical. In this regard, the rights of the Gram Sabha to issue transit permits for sale of minor forest produce (MFP), and availing the minimum support price (MSP) for MFPs still remain a challenge in most cases. However, in some instances, the Gram Sabha has been able to issue transit passes for sale of bamboo resources, as seen in Maharashtra and Odisha.⁴⁵ Although the new guidelines issued in April 2015 clarify some of these points, more action from MoTA is required to help facilitate the post-CFR management process. Handholding support is also needed to set up conservation and management committees by the villages, and conducting participatory baseline studies of forest resources and threats.

At a more fundamental level, the rights-based, decentralised paradigm of the Forest Rights Act calls for a deeper change in governance. The relationship between the Gram Sabha and the Forest Department needs to be clarified. The Forest Department should respect the Gram Sabha's authority for managing and protecting forests, and support the committees set up by the Gram Sabhas. However, the structure of such committees should not be dictated by government departments and must evolve out of existing bodies guided by an informed Gram Sabha.

► **Allocate financial resources and full-time staff at the sub-divisional and district levels for the implementation of the FRA.**

The Report of the Joint MoEF-MoTA Committee on FRA in 2010 found that Tribal and Social Welfare Departments have inadequate staff to deal with implementation of the Act.⁴⁶ The Citizens' Report 2014 on Community Forest Rights articulated the helplessness of the nodal agency owing to lack of human resources, especially field staff, to implement the law in letter and spirit.⁴⁷ The 2015 Citizens' Report cites several administrative officials on the difficulty in accessing

information as they have to rely on the Forest Department for information on claims. This is owing to the local administration hardly having any forest-related information and being largely unaware of field-level implementation issues related to the Act.⁴⁸ In this regard, appointment of full-time staff, both at sub-divisional and district levels, is an immediate requirement. In addition, CSOs suggest setting up a technical advisory team consisting of at least one-third of CSOs to help sub-divisional and district committees in their tasks and assist communities in demarcating boundaries and mapping out community forest resources.⁴⁹

In addition, the HLC states that there is an urgent need to strengthen the institutional system to support the process of implementation, including strengthening of the Gram Sabhas and Forest Rights Committees (FRCs), streamlining functioning of the sub-divisional and district level committees, and addressing challenges in the role of the state level monitoring committees, with clear structures within the nodal ministry.⁵⁰ The Centre and state governments should allocate separate financial resources to fund full-time positions without diverting funds meant for other purposes, notably from the Tribal Sub Plan.

► **Align legislations and policies governing forest land with the FRA**

Usha Ramanathan (2015) found that, since 2008, when the FRA was brought into force, the settlement of forest rights has been tardy, reluctant, partial and often denied. She observes: "There is hardly anyone who gives up power or authority without a struggle".⁵¹ The conflict between various ministries, related laws, policies and programmes has slowed down the implementation of the Forest Rights Act.⁵² Misinterpretation by different state governments adds to the confusion.⁵³

According to the Citizens' Report 2015 on Community Forest Rights, several attempts have been made by the MoEFCC through a number of orders, resolutions and letters to dilute, violate, and provide exemptions to weaken the Act. Along with the T S R Subramaniam Committee Report which reinstated dilution of Gram Sabha consent for linear projects, these developments will clearly affect the statutory rights and decision-making powers of the Gram Sabhas.⁵⁴ All such orders, resolutions and letters⁵⁵ intended towards diluting the FRA should be withdrawn with immediate effect. The MoTA is empowered by the Act to uphold the law and has issued important orders and directions to counter the ongoing attempts to dilute the substantive legal provisions vested under FRA. These include notifications regarding forest land diversion, Joint Forest Management and recording of rights under FRA.

The Tribal Affairs Ministry has also issued clarifying orders and directives to state governments triggering progress in some states. Nevertheless, to address the recurring conflicts, a thorough review of all relevant legislations needs to be carried out to ensure coherence between the FRA and the Indian Forest Act (1927), the Forest (Conservation) Act (1980), the Wildlife (Protection) Act (1972), the Biological Diversity Act (2002) and the Panchayats (Extension to the Scheduled Areas) Act (1996). Furthermore, a roadmap should be developed to ensure convergence between the FRA and existing developmental schemes such as the Mahatma Gandhi National Rural Employment Guarantee Scheme (MGNREGS) and other rural development programmes to enhance investments in forest land over which rights have been recognised.

As Khare (2012) observed, the historical injustice perpetuated against forest dwellers is unlikely to subside with the passage of a single law.⁵⁶ However, the Forest Rights Act could, if implemented in letter and spirit, be a significant step towards this goal. In terms of scope and reach, effective implementation of FRA can indeed be one of the largest exercises of land reform our country has ever seen. As of today, the binding constraint seems to be a chronic lack of political will.

Notes

- 1 Oxfam India's 2013 publication titled *Implementing the Forest Rights Act: Addressing a Historical Injustice* briefly discusses the evolution of FRA. Available at: <http://www.oxfamindia.org/resources/policy-brief/implementing-forest-rights-act-addressing-historical-injustice>
- 2 15th January, 2014 letter from MoEFCC cited in <http://indianexpress.com/article/india/india-others/tribal-ministry-objects-to-diluting-forest-law/>
- 3 Planning Commission of India (2011). Report of Sub-Group I on Forestry. In *Forests and Sustainable Management of Natural Resources*, report of the Working Group for the Twelfth Five-Year Plan (2012-17). New Delhi.
- 4 National Advisory Council (2011), NAC Recommendations finalized in its meeting held on 26 February 2011 on The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, New Delhi, Accessed at nac.nic.in/pdf/fra_recommendations.pdf on 22 November, 2013.
- 5 <http://www.thehindu.com/opinion/lead/land-development-and-democracy/article7138586.ece>
- 6 <http://www.indiaenvironmentportal.org.in/files/actionaid%20resource%20rich%20report.pdf>
- 7 National Advisory Council (2011), op. cit.
- 8 Ibid.
- 9 <http://tribal.nic.in/writereaddata/News/201507300428306059423MinutesofReview-cum-consultationmeetingonFRA-2ndJuly2015%28final%29.pdf>
- 10 CFR is defined as "the customary common forest land within the traditional or customary boundaries of the village or seasonal use of landscape in the case of pastoral communities, to which the community had traditional access". The rights over CFR as well as other CRs can be recognized over any forest land including reserved forests, protected forests and protected areas such as Sanctuaries and National Parks. [Citizens' Report 2015 accessed at <http://www.kalpavriksh.org/index.php/contact-us/13-home/366-citizens-report-2015-community-forest-rights-under-the-forest-rights-act>]
- 11 <http://www.tribal.nic.in/WriteReadData/CMS/Documents/201508100959332745375MPRfortheMonthofMay2015.pdf>
- 12 <http://economictimes.indiatimes.com/news/politics-and-nation/pm-narendra-modi-puts-drive-to-transfer-land-title-to-tribals-in-campaign-mode/articleshow/47684272.cms>
- 13 <http://www.kalpavriksh.org/index.php/contact-us/13-home/366-citizens-report-2015-community-forest-rights-under-the-forest-rights-act>
- 14 <http://www.rightsandresources.org/publication/potential-for-recognition-of-community-forest-resource-rights-under-indias-forest-rights-act/>
- 15 Arvind Khare (2012), Epilogue, in *Rights and Resources Initiative* (Ed) (2012), *Deeper Roots of Historical Injustice: Trends and Challenges in the Forests of India, Rights and Resources Initiative*, Washington, DC.
- 16 P. Lanjouw and R. Murgai (2011) 'Perspectives on Poverty in India', Washington DC: World Bank, p.24, available at: http://www-wds.worldbank.org/external/default/WDSContentServer/WDS/IB/2011/05/05/000356161_z20110505044659/Rendered/PDF/574280PUB0Pers1351B0E_xtp0ID0186890.pdf (accessed December 2013).
- 17 Adivasis are entitled to claim their right if they have resided in or depended on forests since 2005; other traditional forest dwellers have to show that at least three generations (75 years) have resided in the forest area.
- 18 Gram-sabhas receive, consolidate and verify claims in the village. Sub-Divisional and district committees examine and maintain records of claims. State level committee monitors implementation at the state level (Tushar Dash and Ashish Kothari, 2013).
- 19 Tushar Dash and Ashish Kothari (2013), *Forest Rights and Conservation in India*, in Holly Jonas, et al (eds), *The Right to Responsibility: Resisting and Engaging Development, Conservation, and the Law in Asia*. Natural Justice and United Nations University, Institute of Advanced Studies, Malaysia.
- 20 Safeguards related to free, prior and informed consent is an internationally accepted human rights standard especially where land and resources of indigenous communities are concerned.
- 21 Now known as MoEFCC
- 22 Status Reports available at: <http://tribal.nic.in/Content/ForestRightActOtherLinks.aspx>
- 23 Madhusudan Bandi (2013), *Implementation of the Forest Rights Act: Undoing Historical Injustices*, *Economic & Political Weekly*, Vol XLVIII, No 31, pp. 21-24.
- 24 Kalpavriksh and Vasundhara (2013), op cit.
- 25 Ibid.
- 26 Madhusudan Bandi (2013), op cit.
- 27 Government of India (2014) , Report Of The High Level Committee On Socio-Economic, Health And Educational Status Of Tribal Communities Of India, Ministry of Tribal Affairs, New Delhi, Accessed at <http://www.ruralindiaonline.org/resources/report-of-the-high-level-committee-on-socio-economic-health-and-educational-status-of-the-tribals-of-india/> on 18th March 2015.
- 28 http://www.business-standard.com/article/economy-policy/govt-s-bid-to-dilute-tribal-rights-to-help-industry-115030300002_1.html
- 29 Now known as MoEFCC
- 30 <http://fra.org.in/document/Maharashtra%20Village%20Forest%20Rule,%202014.pdf>
- 31 http://fra.org.in/document/Community%20Forest%20Rights%20At%20a%20Glance_May%202015%20newsletter%20final.pdf
- 32 Tushar Dash and Ashish Kothari (2013), op cit.
- 33 ActionAid India (2013), *Our Forests, Our Rights: Implementation Status of Forest Rights Act – 2006*, New Delhi.
- 34 Madhusudan Bandi (2013), op cit.
- 35 Vasundhara and Kalpavriksh (2013), *Proceedings of National Consultation on Community Forest Rights under Forest Rights Act, 16th & 17th March, 2013*, Indian Social Institute, New Delhi.
- 36 Government of India (2014),
- 37 In some cases, grant of CFR rights to "Settled" communities has led to the pastoral communities being restricted access to these forests.
- 38 <http://www.kalpavriksh.org/index.php/contact-us/13-home/366-citizens-report-2015-community-forest-rights-under-the-forest-rights-act>
- 39 NC Saxena et al (2010) observed that the administrative resistance to community claims is because of the ownership and control over minor forest produce. This resistance has included "active subversion", for over a decade, of the PESA provision of minor forest produce ownership to Adivasis.
- 40 Vasundhara and Kalpavriksh (2013), op cit
- 41 UNDP and Samarthan (2011), *Recognition of Community Rights under Forest Rights Act in Madhya Pradesh and Chhattisgarh: Challenges and Way Forward*, Study Report by SAMARTHAN - Centre for Development Support, and UNDP, New Delhi.
- 42 Madhusudan Bandi (2013), op cit.
- 43 Tushar Dash and Ashish Kothari (2013), op cit.
- 44 Personal communication, Oxfam India Staff.
- 45 <http://www.kalpavriksh.org/index.php/contact-us/13-home/366-citizens-report-2015-community-forest-rights-under-the-forest-rights-act>
- 46 NC Saxena et al (2010) Report of the Joint MoEF-MoTA Committee : Manthan – Report of National Committee on Forest Rights Act, Government of India, New Delhi.
- 47 Kalpavriksh and Vasundhara (2015), *Citizens' Report 2014, CFR Learning and Advocacy*, Pune.
- 48 Citizens' Report 2015
- 49 Vasundhara and Kalpavriksh (2013), op cit.
- 50 Government of India (2014) HLC
- 51 <https://in.news.yahoo.com/where-do-advivasis-stand-in-indian-law-064753172.html>
- 52 <http://www.kalpavriksh.org/index.php/contact-us/13-home/366-citizens-report-2015-community-forest-rights-under-the-forest-rights-act>
- 53 Madhusudan Bandi (2013), op cit.
- 54 Citizens' Report (2015).
- 55 Refer to Citizens' Report (2015) for a discussion.
- 56 Arvind Khare (2012), op cit.

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