

Countering Coal?

A discussion paper by Kalpavriksh and Greenpeace

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Kalpavriksh (KV) is a voluntary group based in India, working on environmental education, research, campaigns, and direct action. It began in 1979, with a students' campaign to save Delhi's Ridge Forest area from encroachments and destruction. Starting with these roots in local action, KV has moved on to work on a number of local, national, and global issues. Its activities are directed to ensuring conservation of biological diversity, challenging the current destructive path of 'development', helping in the search for alternative forms of livelihoods and development, assisting local communities in empowering themselves to manage their natural resources, and reviving a sense of oneness with nature.

KV has been helping communities and civil society groups to implement the Forest Rights Act, specifically its Community Forest Rights provisions, as a means of achieving more effective and equitable conservation as also checking damage to forests by destructive development projects.

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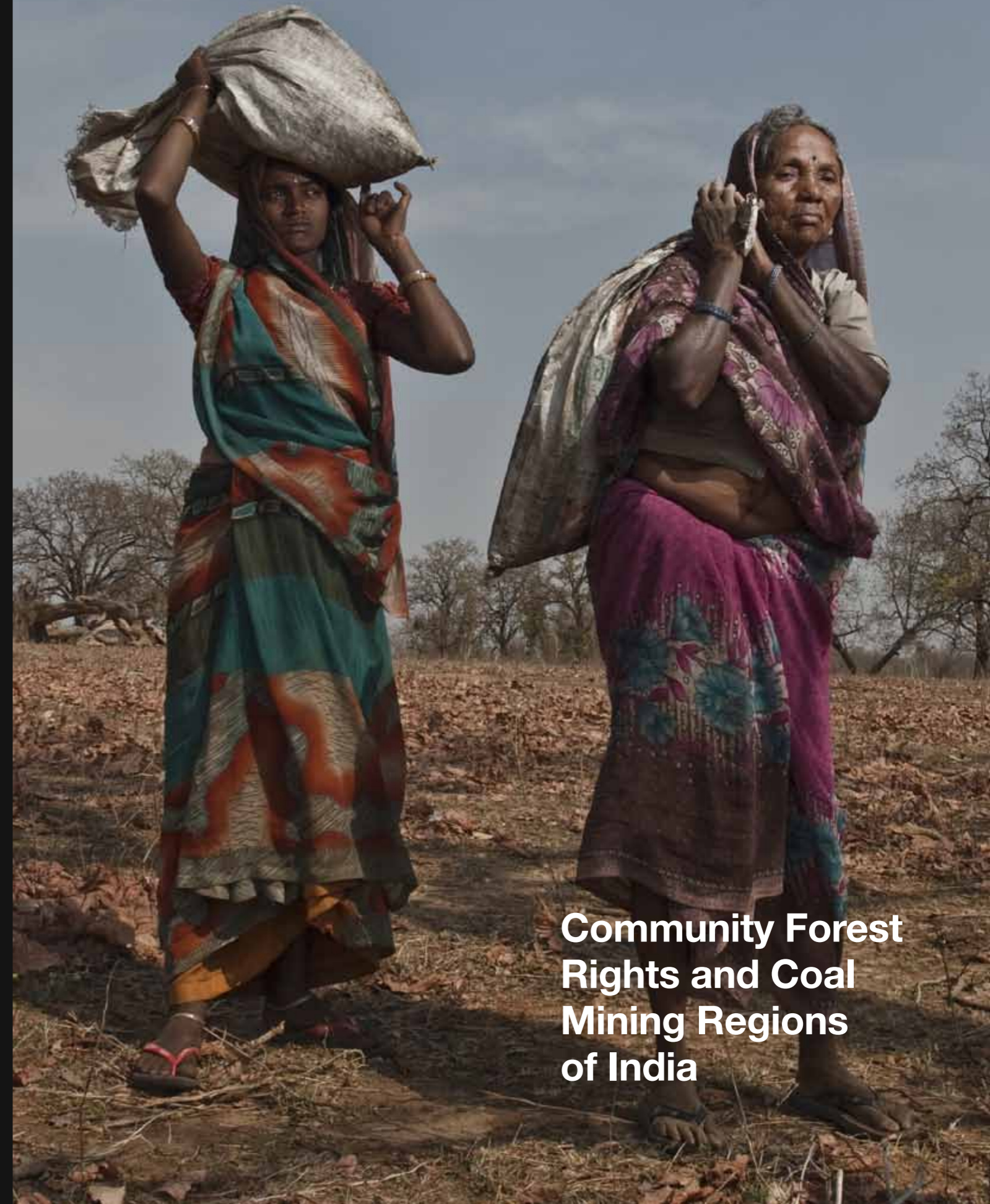
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**Community Forest
Rights and Coal
Mining Regions
of India**



Acknowledgment

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Image on the cover: Women from the Budher village in Singrauli District of MP returning home after collecting Mahau.

Image above: Mahua flowers - a non - timber forest produce that is available in abundance in the Mahan forests during the months of April - May every year. Communities living in and around these forests collect it, dry it and sell it in the market to earn a living. Mahua has very high nutritional value and is also used by communities for domestic consumption.

Photography: Harikrishna Katragadda / Greenpeace.

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Radhakali, from Amelia village in Singrauli district of MP, with her family in the Mahan forests. A group of 50 families were camping in a clearing in the Mahan forests along with their children during the Mahua season to collect Mahua. © Greenpeace

Section 01

India's coal context

Not only is India's coal expansion on the rise, so are efforts to acquire additional land (both forest and non-forest) for linked thermal power plants, road, rail infrastructure and the range of ancillary activities that go along with establishing a coal mine. Juxtaposed with this expansion are living realities of people who have historically been dependent on forests and lands that are either officially recognised forest land or where there are tenorial contestations.

India's tryst with coal mining can be traced back to the colonial times, judging from the Ministry of Coal's proud proclamation of the early coal mining days of 1774 near the Damodar river in Jharkhand. The country's reliance on coal and coal based power generation was evident from the first five year plan period itself when the need for increasing coal production and its efficiency was one of the tasks set out for independent India. With the gradual establishment of a nationalised coal mining sector, most of the coal mining in India has historically concentrated on feeding the domestic demand. The coal reserves of India up to the depth of 1200 meters have been estimated by the Geological Survey of India at 276.81 billion tonnes, as on 1.4.2010. These deposits are largely found in the states of Jharkhand, Orissa, Chhattisgarh, West Bengal, Madhya Pradesh, Andhra Pradesh and Maharashtra (Source: Website and Annual Reports of Ministry of Coal). As per projections, coal consumption is projected to increase to about 1500 million tonnes per year by 2031-32.

It needs to be kept in mind that in recent years the discussion around coal mining impacts has become interspersed with that of forest loss. This is primarily because a large amount of coal reserves of the country are known to be located in areas which are forested, or officially recognised as forests. It is also because these forest lands are crucial for the survival of forest dependent communities (both tribal and non-tribal) as well as the wild flora and fauna which these habitats support. While for the purpose of this study we will be looking at forest lands (both demarcated and under dispute), it needs to be asserted that a large amount of coal is also available in reserves located outside these forest lands, even as they remain untapped for mining.

If figures of environment and forest clearances for coal mining granted by the MoEF are to be relied upon, it would be evident that the spread of coal extraction is only on the rise. According to the Centre for Science and Environment's 2011 fact sheet, during the 11th five year plan (FYP) period in India (till August 2011), 181 coal mines (including projects that applied for capacity expansion) were given environment clearance (EC)¹ by MoEF. It highlights that the combined production capacity of these 181 coal mines is at least 583 million tonnes per annum (MTPA). The same study adds that from 2007 to August 2011, 113 coal mining projects have been granted forest clearance (FC).² This includes 67 projects which received final forest clearance and 46 projects which received in-principle forest clearance. About 26,000 ha of forestland have been diverted for coal mining since 2007. During the 10th FYP the total forestland diverted for all mining projects was about 29,000 ha. So, the forestland diverted for coal mining alone during 11th FYP is equivalent to forestland diverted for all mining projects in 10th FYP (CSE, 2011).

A recent article in Economic Times corroborates the above. This article relies on the document of the MoEF

Many of these coal-bearing areas also encompass land and resources which have historically been used by communities for common purposes including those related to resource use, and cultural or sacred associations.

that details coal-mining clearances over the last 30 years, which shows that it cleared 94% of coal-mining projects during this period. The article adds that between 1982 and 1999, the ministry took an average of five years to give full clearance to a proposal for coal mining. Between 2000 and 2004, when the BJP-led coalition was in power, the time taken fell to three years. Under UPA-I (2004 to 2009), this fell further to 17 months. And in the UPA-II (2009 onwards), this has plummeted to about 11 months (Rajshekhar, 2012).

Not only is India's coal expansion on the rise, so are efforts to acquire additional land (both forest and non-forest) for linked thermal power plants, road, rail infrastructure and the range of ancillary activities that go along with establishing a coal mine. Juxtaposed with this expansion are living realities of people who have historically been dependent on forests and lands that are either officially recognised forest land or where there are tenurial contestations. In either instance, the change of existing forest, agriculture or grazing land-use to mining (or ancillary activities) would undoubtedly impact the lives and livelihoods of people who have been living in these areas for generations and have been dependent on forests (Greenpeace, 2011 and Greenpeace, 2012).

Many of these coal-bearing areas also encompass land and resources which have historically been used by communities for common purposes including those related to resource use, and cultural or sacred associations. There might not be tenurial records available for such collective associations and therefore in instances of threats from coal mining or any other diversion, these areas remain where there is least regulatory attention or often even little community assertion. However, there are many coalfields of the country where contestations around protection of common and individual access to forest, agricultural and grazing lands have been recorded. These might not have often led to successful attempts in stopping or regulating coal mine operations, but are nevertheless an indication that conflicts related to land diversions for coal mining exist, and are widespread.



Women from Amlori village, Singrauli dis, MP carrying dry firewood from the forests.
© Greenpeace

As an example, the North Karanpura Valley in Jharkhand is witnessing strong people's resistance to coal mining expansion. The entire North Karanpura coal field covers an area of approximately 118,668 ha, of which 41,457 ha. is forest land. While existing coal mines like Piperwar, Ashoka I and II have already impacted the forests and people's livelihoods, there are many more mines which are planned for the region. Two critical people's struggle forums, the Karanpura Bachao Sangharsh Samiti (KBSS) and the Karanpura Bisthapita Morcha (KBM), have been articulating their concerns against the existing and proposed mining in this extremely ecologically fragile region (Greenpeace, 2012).

Similarly, in Raigarh district of Chhattisgarh, organisations like Adivasi Majdoor Kisan Ekta Sangthan and Jan Chetna have used legal forums to raise issues of regulatory lapses as well as impacts on people's health and livelihoods against coal mining and related industrial processes in the area. In particular the resistance has been against the setting up of a coal mining and coal washery at Gare village in Tamnar taluka of the district (Kohli, 2010, Dhar, 2012).

In the area being impacted by the Mahan coal block in Singrauli district of Madhya Pradesh, communities have now come forward to articulate the impacts on their forest-based lives and livelihoods. A series of village level discussions have led to members of the community coming together to assert their historical and legal rights.

In the area being impacted by the Mahan coal block in Singrauli district of Madhya Pradesh, communities have now come forward to articulate the impacts on their forest-based lives and livelihoods.

According to Ramadhar Saket (village Amelia, District Singrauli): "Every year during the Mahua season I shut down my house in Amelia village and come and stay in the Mahan forests for about a month to collect Mahua, which I sell for Rs. 17-20 / kilo. We also collect other forest produce like tendu leaves, chironji, harra, bamboo, mushroom etc, but we are now hearing that these forests will be given to the company for mining coal. If the government gives away these forests we have no other means to live and we will not even get any compensation because we have no rights over these forests." (further details in Section IV)

Section 02

Community Forest Rights (CFR) as a legal entity

The Forest Rights Act defines Community Forest Resource as “customary common forest land within the traditional or customary boundaries of the village, or seasonal use of landscape in the case of pastoral communities, including reserved forests, protected forests and protected areas such as Sanctuaries and National Parks to which the community had traditional access.”

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (hereafter called Forest Rights Act or FRA) came into force in January 2008 when the corresponding Rules were finalised and gazetted. The FRA recognizes and vests forest rights and occupation of forest land in forest-dwelling communities (Scheduled Tribes and Other Traditional Forest Dwellers). These rights are both in the nature of individual recognition as well as that which has traditionally been used by the tribal and other forest dwelling communities for common purposes. While there are different sets of criteria for the eligibility of tribal and non-tribal forest-dwelling communities (the former having to show occupation prior to December 2005, and the latter having to show 75 years of residence in the area where the claim is being made), individual and community rights (CFR) can be claimed by both.

As the purpose of this document is to look closer at the relevance of CFRs in coal mining areas, it would be our attempt to lay out both potentials and pitfalls. However, prior to that one needs to begin by understanding that the FRA approaches community level forest rights towards establishing a collective tenurial security on what is clearly defined in the law as 'community forest resource'. The Act defines such forest resource as "customary common forest land within the traditional or customary boundaries of the village, or seasonal use of landscape in the case of pastoral communities, including reserved forests, protected forests and protected areas such as Sanctuaries and National Parks to which the community had traditional access." It is on such land, that the concerned gram *sabha*² can initiate a process for recognition of several rights, including community rights such as *nistar*⁴ or those exercised in intermediary regimes such as *Zamindari*, right of ownership (i.e. access, use and disposal of non-timber forest produce (NTFP)), rights over the products of water bodies and grazing grounds, habitat rights of Primitive Tribal Groups (PTGs) and rights to protect community forest resources; amongst other rights (see Box 1 below).

Box 1

COMMUNITY FOREST RIGHTS UNDER FOREST RIGHTS ACT

Section 3(1) provides for:

- (i) Community rights such as *nistar*, by whatever name called, including those used in erstwhile Princely States, *Zamindari* or such intermediary regimes (3(1)b);
- (ii) Right of ownership, access to collect, use, and dispose of minor forest produce which has been traditionally collected within or outside village boundaries (3(1)c);

(iii) Other community rights of uses or entitlements such as fish and other products of water bodies, grazing (both settled or transhumant) and traditional seasonal resource access of nomadic or pastoralist communities (3(1)d);

(iv) Rights including community tenures of habitat and habitation for primitive tribal groups and pre-agricultural communities (3(1)e);

(v) Rights in or over disputed lands under any nomenclature in any State where claims are disputed (3(1)f);

(vi) Rights of settlement and conversion of all forest villages, old habitation, unsurveyed villages and other villages in forests, whether recorded, notified or not into revenue villages (3(1)h);

(vii) Right to protect, regenerate or conserve or manage any community forest resource which they have been traditionally protecting and conserving for sustainable use (3(1)i);

(viii) Rights which are recognised under any State law or laws of any Autonomous District Council or Autonomous Regional Council or which are accepted as rights of tribals under any traditional or customary law of the concerned tribes of any State (3(1)j);

(ix) Right of access to biodiversity and community right to intellectual property and traditional knowledge related to biodiversity and cultural diversity (3(1)k);

(x) Any other traditional right customarily enjoyed by the forest dwelling Scheduled Tribes or other traditional forest dwellers, as the case may be, which are not mentioned in clauses (a) to

(k) But excluding the traditional right of hunting or trapping or extracting a part of the body of any species of wild animal (3(1)l);

(xi) Right to in situ rehabilitation including alternative land in cases where the Scheduled Tribes and other traditional forest dwellers have been illegally evicted or displaced from forest land of any description without receiving their legal entitlement to rehabilitation prior to the 13th day of December, 2005 (3(1)m).



A Khairwar tribal woman from Budher village, Singrauli dist, MP collecting Mahua from the Mahan forests in the wee hours of the morning.
© Greenpeace

These CFRs need to be read with provisions of Section 5 which empower the gram sabha to:

- (a) protect the wildlife, forest and biodiversity;
- (b) ensure that adjoining water catchment area, water sources and other ecological sensitive areas are adequately protected;
- (c) ensure that the habitat of the forest dwelling scheduled tribes and other traditional forest dwellers is preserved from any form of destructive practices affecting their cultural and natural heritage;
- (d) ensure that the decisions taken in gram sabha to regulate access to community forest resources and stop any activity which adversely affects the wild animals, forest and the biodiversity are complied with."

The FRA Rules attempt to operationalise the CFR provisions and list a range of evidences which can be used by communities to establish their claim. These include community rights such as *nistar* by whatever name called; traditional grazing grounds; areas for collection of roots and tubers, fodder, wild edible fruits and other minor forest produce; fishing grounds; irrigation systems; sources of water for human or livestock use, medicinal plant collection territories of herbal practitioners; as well as remnants of structures built by the local community, sacred trees, groves and ponds or riverine areas, burial or cremation grounds. All of the above can be used as proof by communities to establish CFR claims.

Before moving on to the section where we relate CFRs to coal mining areas, it is important to state that the grant of CFRs on forest land does not imply change of *land ownership* from the forest or revenue departments to communities. The CFR assertion is more towards use, management and conservation of forests and forest land, and ownership of the minor forest produce (MFP) in such forests or forest land. In some instances user or management rights have been already recognised in existing regimes such as in some states where *nistar* rights are provided for, in areas where Schedule V and VI of the Constitution are applicable, in parts of Uttarakhand where villages have been vested powers under legislation related to Van Panchayats, or in Jharkhand where tenancy acts provided rights to tribal peoples. However, this recognition is critical in areas where historical and traditional access to forest land for use or management purposes would have been termed "illegal" or of the nature of an "encroachment", or where previous rights were restricted to certain aspects of forest use. The Section 3(1) provisions when applied for community forest claims are towards assertion of what has been commonly held in villages for use, management, conservation or cultural purposes (*more on this in the subsequent sections*).

Section 03

Relevance of CFRs in coal mining regions

Many existing or proposed coal mining areas are predominantly tribal, while others have primarily non-tribal communities. Both kinds of communities are dependent on the forest, though the kinds and depth of their relationships with the habitat might have transformed over time.

Geet (along with her son) a Khairwar tribal woman from the Budher village, in Singrauli district of MP collecting Mahua from the Mahan Forests. Budher is a soon to be displaced village as Mahan Coal limited (joint venture of Essar and Hindalco) is pushing for the forest clearance of a coal block in the Mahan forest.
© Greenpeace



There are a range of reasons why communities have historically accessed both forest land and resources. While this would include every day and seasonal use of timber and non-timber forest produce for domestic consumption, it has also entailed larger scale collective extraction and sale of forest produce like timber, bamboo, leaves, fruits, flowers, honey, and a range of other products with commercial value. Designated common lands are also used for grazing or as forest reserves for future use of the village community. However, there are non-usufruct aspects of the commons too when one or a number of villages have understood an area (be it a patch of forest or a hill range) to have significant ecological functions (such as hydrological flows), or be sacred or otherwise culturally important and thereby needing collective efforts to conserve. Village communities have also held common lands as their burial grounds or necessary for other ritual, cultural and recreational purposes.

As discussed in the previous sections, many coal bearing areas in India have been and are located in forest areas with various levels and kinds of human interaction and dependence. These forests are home to a wide array of wildlife and biodiverse habitats, and at the same time support lives and livelihoods of communities living in and around these areas. Many existing or proposed coal mining areas are predominantly tribal, while others

have primarily non-tribal communities. Both kinds of communities are dependent on the forest, though the kinds and depth of their relationships with the habitat might have transformed over time.

It cannot be denied that there has been a rising pressure on these forests due to the increase in instances of illegal logging, poaching and excessive extraction of forest produce. But none of these can match the demand for the forest land for coal extraction as well as all its ancillary activities such as roads, transportation lines, dumping grounds and so on. If one adds the impact of the thermal power plants for which this coal is being extracted the figures related to forest land diversions would increase substantially.

Given the nature of CFRs, what is it that this kind of recognition of rights can do in coal bearing areas where mining is proposed and impacts are going to be felt on both the habitat and livelihoods of forest dependent communities? Can CFRs can be an effective tool to counter coal mining where communities desire to do so? What kind of tenurial security can CFRs provide, and can such recognition of community rights be a defense against acquisition of land, especially when it might be a forcible take over? We need to understand this in two ways: *first*, at the level of understanding the scope of CFRs when located in coal contexts and *second*, by applying the clauses to the specific coal bearing area with current and ongoing coal mining and thermal power stations. In this section we seek to deal with the first point, with the second point to be explored in subsequent sections.

WHAT CAN CFRS HELP ACHIEVE IN AREAS WHERE COAL MINING IS ONGOING OR IS PROPOSED?

1. Rights as assertions

In many of these coal bearing areas, even though both tribal and other forest dwelling communities have been residing for generations, the lack of recognition of rights and historical oppression at the hands of the state or forest mafia has meant that many communities do not believe that they can assert their rightful claim on the forests and forest produce. Discussions with forest dwelling and tribal communities in some of these coal mining areas have revealed that they believe that the forest ownership vests with the forest department and they have rights and concessions only at the behest of the state. The process of recognition of rights which includes getting informed, engaging in collective discussions and evidence-gathering, mapping, and so on, would enable a change in this reality and allow for communities to believe in their rightful claims over forests. This presumably can translate into forest dwelling communities feeling the need to hold on to what they are

able to recognise as “theirs” (see point 3 below).

2. Re-engaging with commons

The experience of the implementation of the FRA has shown that there has so far been much greater emphasis on individual rights, whether it is in the form of the claims or the thrust of official implementation. While this can be partly attributed to the lack of awareness about CFRs amongst forest-dwellers, as also amongst the district/state/national governments, and partly to active obstruction or inefficient implementation by the relevant authorities, it is can also be understood as a gradual erosion of people’s connection with commons. While this might not be universally applicable, a process like the CFRs has the potential to allow for community’s re-engaging with the nature and spirit of common heritage and property. Such processes are ongoing in a number of states, as described in the report of the MoEF-MoTA Committee on the FRA (MoEF-MoTA 2010). This is also important to counter the gradual individualisation of human societies, whether rural or urban, and strengthen both intended and ongoing collective conservation efforts.

3. Instilling or energising resistance

With the above two factors in place, it can be hoped that CFRs, and in particular ownership of MFPs as also the right to manage and conserve forests, along with the empowerment to protect forests, wildlife, catchment areas, habitats, and cultural and natural heritage (Section 5 of FRA) can add an additional incentive for communities to continue their ongoing resistance related to coal mining; or where such resistance does not exist, this might infuse the possibility of people organising themselves around the protection of rights. In many ways it then becomes a mechanism to bind people to habitat/territory/resource worth defending. This does not imply that there would not be an already existing connection with the common land or forest resource, but the fact that it is now legally tenable makes such a connection that much more possible. In some instances this might not result in communities being able to immediately protect rights and resources, but could become a tool for local resistance in such a way that it can delay final approvals till such time many other processes are put into place, such as action through the courts or engaging with regulators.

4. Negotiating for compensation

One cannot deny the corollary to the last point of the resource acting as a point of binding people together. The recognition of rights, whether community or individual does not ensure that the community will stand up to defend those rights. However, due to a range of factors, it is possible that CFRs become an important tool for negotiation for the communities to demand better and

more suitable compensation. This is especially true when it comes to the ownership of MFPs which cannot be ignored by project authorities and governments. The process of empowerment and assertion of rights, along with current understanding of the spread of industrialisation might lead communities to seek suitable compensations for their rights (both individual and community). CFRs can therefore ensure that communities are in a better decision-making position regarding options they would seek out of a proposed mining operation in and around their area.

The above processes of recognition of CFR rights over land as well as resources can be related to areas where mining has been initiated after 2006 (when the FRA was enacted) and where rights have not been recognised. An attempt can also be made to push for the recognition (at least for adequate compensation) in retrospect, where mining has been initiated or lands diverted.


Further, what happens if after a CFR claim has been put in by the gram sabha or a right has been recognized and the same area gets demarcated for coal mining or any other industrial purposes? What decision-making role or power does the gram sabha have? While the Act or Rules do not have explicit provisions for this, there are some crucial implementation related executive orders which have a bearing. A circular issued by the MoEF (first on 30.7.2009 and reissued on 3.8.2009. and sent to all state governments) clearly states that gram sabha consent is a requirement before forest land is diverted for non-forest use (such as coal mining) under the Forest Conservation Act 1980. It also states that such diversion cannot take place unless the processes under the FRA are completed. This includes the finalisation of both individual and community claims. The circular clearly states, "The State/UT Governments, where process of settlement of Rights under the FRA is yet to begin, are required to enclose evidences supporting that settlement of rights under FRA 2006 will be initiated and completed before the final approval for proposals."

This circular has two other provisions that are relevant to villages affected by coal mining. First, it requires that gram sabhas consent to the diversion of forest land for developmental facilities that are to be provided under Section 3(2) of the FRA and that provisioning of such facilities has been completed. Second, it requires that gram sabhas consent to “compensatory and ameliorative measures if any”. If this phrase is intended to include measures such as compensatory afforestation, catchment area treatment, and so on, then there is a much wider area over which consent of relevant gram sabhas is required. This interpretation has however not been tested yet, as this part of the circular has not been implemented at all.

Section 04

How do CFRs relate to eminent domain powers of the State?

It cannot be denied that the CFR process takes one aspect of the decision making to the level of the people who would be most affected by change of land use towards coal mining. But there are a range of social, economic, political factors that influence final decisions either at the level of the community or by the state, of which CFRs would be only one.

A close-up photograph showing a woman's hands sorting through a large pile of dried, yellowish-brown Mahua flowers. The woman is wearing a green bangle on her left wrist. The background is a dense field of these dried flowers.

A woman drying Mahua, collected from the Mahan forests. Tribal and non-tribal communities collect Mahua and sell it in the local markets to earn a living. © Greenpeace

The Constitution of India has originally provided for the right to property under Articles 19 and 31. Article 19 guarantees to all citizens the right to "acquire, hold and dispose of property". Article 31 provided that "no person shall be deprived of his property save by authority of law." It also provided that compensation would be paid to a person whose property had been "taken possession of or acquired" for public purposes. In addition, both the state government as well as the union (federal) government were empowered to enact laws for the "acquisition or requisition of property" (Schedule VII, Entry 42, List III). It is this provision that has been interpreted as being the source of the state's 'eminent domain' powers (Source: http://en.wikipedia.org/wiki/Eminent_domain#India).

Where CFRs are granted on forest land, it does not amount to ownership transfer from forest or revenue departments of the government to communities exercising these rights. Therefore the sense of 'property' here is more related to use, management and conservation of forest and forest land, as also ownership of minor forest produce. However, the eminent domain powers of the state allow for the extinguishment or take over of any rights that have been granted by them in the first place. Even in any instance where land ownership is transferred to a village or panchayat and it is attributed to be their common property, such land can be acquired using the state's eminent domain powers. However, unlike the pre-rights scenario, with CFR rights communities are empowered with the potential of collective assertion to either resist this take-over or be able to negotiate a better compensation.

Another interpretation is that eminent domain powers of the state could be resisted if one combines the fact that the CFRs being granted are non-alienable and non-transferable, along with the empowerment of communities to conserve forests and knowledge (both provided for in the FRA). But of course this would be subject to varied interpretations in and outside the courts.

Therefore it is not that CFRs are an absolute guarantee against acquisition or diversion of land for coal mining and related activities. They do add another layer of decision-making where communities have a central role to play in both filing community claims and at a later date deciding whether the CFRs are worth the fight. It cannot be denied that the CFR process takes one aspect of the decision making to the level of the people who would be most affected by change of land use towards coal mining. But there are a range of social, economic, political factors that influence final decisions either at the level of the community or by the state, of which CFRs would be only one.

A Mahua tree in Amlori village , Singrauli dist , MP fully laddened with "dori" (Seeds) , which communitites collect and sell in the market to earn a livelihood. The oil from the Mahua seeds is used as a moisturiser as well as for domestic consumption by local communities. In the background is an overburden of the Reliance Sasan Ultra Mega Power Plant.
© Greenpeace

Section 05

Locating CFRs and coal in Singrauli, Madhya Pradesh

The Singrauli district has three subdivisions – Deosar, Waidhan and Chitarangi. The three forest subdivisions also coincide with this, and have a total of nine ranges.



Ash pond in Belwada. Fly ash being discharged from the nearby Anpara Thermal Power Plant, flow indiscriminately, posing grave danger to the villagers living nearby.
© Greenpeace / Sudhanshu Malhotra



The Essar Power plant in Bandhaura village, Singrauli district, MP. Essar has been pushing for the forest clearance of a coal mine in the Mahan forest (1182 ha of forest land) which if granted will severely impact the livelihoods of communities who depend on these forests.
© Greenpeace

The Singrauli district of Madhya Pradesh was carved out of Sidhi in 2006. However, the 'Singrauli coal field' is a much larger area which also includes small parts of the neighbouring districts of Sonbhadra (UP) to the East, and Koriya and Surguja (Chhatisgarh) to the South. It is now the eastern most district in Madhya Pradesh. For the purposes of this study, we would be looking at the applicability and experience of CFRs in Singrauli district where several old mines are operating and new mines are proposed with their thermal power linkages either in the same district or outside. The Singrauli district has three subdivisions – Deosar, Waidhan and Chitarangi. The three forest subdivisions also coincide with this, and have a total of nine ranges. The district headquarters is Waidhan, and Singrauli is also an important town.

Literature points out that ever since 1840, when coal was discovered in Singrauli, the area's development has revolved around exploiting this mineral resource.⁵ Today Singrauli's landscape hosts some of the oldest thermal power stations and operational coal mines in India, set up by the National Thermal Power Corporation (NTPC) and Northern Coalfields Ltd. There is also an aluminum smelting plant and other industrial and commercial operations (Greenpeace, 2011). An important change in the last decade in Singrauli has been the affirmative push of the private sector to tap the area's coal reserves for large-scale power generation. Several big energy players in the country find a place in Singrauli's future-scape, including Reliance, Hindalco, Essar, Jaypee, and

Dainik Bhaskar (DB) Power. Additionally, many other state government-led special purpose vehicles (SPV), set up as public-private partnerships, are looking to operate mines as well as build super critical and mega-thermal power plants in the area (Greenpeace, 2011).

FOREST LOSS IN SINGRAULI

5872.18 hectares of forest in the Singrauli region have been officially diverted for non-forest use, from the initiation of the Forest Conservation Act in 1980 till mid-2011 (Greenpeace, 2011). According to information procured through Right to Information, this area includes 5760.55 hectares of reserve forest and 111.60 hectares of revenue forest. However, it does not include the several instances of encroachment on forest land or illegal cutting of forests that may have occurred as a result of the existing and proposed industrial operations.

As per the data available with the Divisional Forest Office, 3229.06 hectares of forest are awaiting approval for diversion in Singrauli. Another 788.49 hectares have received Stage I (in principle) approval from the Ministry of Environment and Forests and the Stage II (final) clearance is pending.

COMMUNITY FOREST RIGHTS IN SINGRAULI

As per statistics available in the Office of the Tribal Commissioner, Waidhan, Singrauli, as of 13.2.2012 there were 67 CFR claims by tribal communities and another 24 by other traditional forest dwelling communities. These claims are divided into the three sub-divisions in the district as follows: Deosar (62), Waidhan (2) and Chitarangi (27).

However, it is important to understand that many of these claims are those related to the developmental activities which forest dwelling communities are entitled to as per Section 3(2) of the FRA, and not the CFR rights under Section 3(1) (listed in Box 1, pg 07).⁶

There are two specific cases in point which need to be looked at closely when it comes to CFRs in the Singrauli coal field region. The first relates to Mahan coal block in East Sidhi forest division of Waidhan in Singrauli district. The allocation and approval given to this project has been at the centre of negotiation between the MoEF and the Empowered Group of Ministers (EGoM) set up to look into coal block allocation and other related environment regulatory issues. In May end the EGoM recommended that the MoEF grant forest clearance to Mahan coal block which has been pending because the MoEF's expert committee had advised that the project should not be approved due to its quality of forests and rights of forest-

dwelling communities in the region. The project has been proposed by Mahan Coal Ltd., a joint venture company of Essar and Hindalco. It is important to note that Essar and Hindalco's power plants - which will use the coal - are already under +construction in the area and the companies have put forth this *fait accompli* argument to seek the forest land diversion for 1182 hectares. Arguing that an investment of Rs.3600 crores has already gone into the existing plants, it is claimed that the Mahan coal block linkage is urgently required if the plants are to start producing power (Kohli, 2011).

However, meanwhile, representatives of villages such as Budher, Amelia, Piderwah, Suhira and others who are dependent on the Mahan and Chhatrasal forest (and adjoining block which is being sought by Reliance Power) have written to the district collector, MoEF as well as a special expert committee of MoEF which visited the region in March 2012, objecting to forest clearance here. They argue that they have initiated the process of claiming CFRs on both Mahan and Chhatrasal, that the process of recognition of rights is not complete, and that forest clearance should not be granted till such time the recognition of rights is completed. The latest set of letters have been sent in June and August 2012 to the District Collector. The letter dated 16th August 2012 from Amelia and Suhira villages highlight that they were not allowed to propose a resolution for their CFR claims on Mahan at the gram sabha meeting on the previous day. They made an attempt to do so around five times, even as they asked

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It needs to be reiterated here that according to the July 2009 circular of the MoEF, no approvals for forest land diversion can be granted until the recognition of rights process under the FRA is completed, and till gram sabha consent is obtained.
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the representatives of the project proponent Mahan Coal Ltd to leave the meeting of the gram sabha where the resolution was being proposed. (See Annexures 1 and 2)

The villagers are yet to receive a response to either of these letters even as more and more villages join in to understand the relevance of CFRs for their livelihood context. It needs to be reiterated here that according to the July 2009 circular of the MoEF, no approvals for forest land diversion can be granted until the recognition of rights process under the FRA is completed, and till gram sabha consent is obtained.

The other case in point is related to the communities affected by the allocation of the Moher and Amrohli coal blocks which have been given as coal linkage for Reliance's Sassan thermal power project. The villages impacted by this diversion come within the Singrauli municipal area, even though they largely have forest dependent livelihoods.

As noted in the Report of the National Committee on the Forest Rights Act (MoEF-MoTA 2010), there are many areas where customary rights of villages (both individual and community) are in areas that are now within municipal city limits. Several such sites are still used by nomadic or seasonally migrant pastoral (and other) communities. The report notes that such communities have no way of making their claims, since the relevant institutions under FRA do not exist in towns/cities, but that a way must be found for such claims to be possible. According to Ministry of Tribal Affairs (MoTA), in its circular dated 4th March 2010 clarifying this issue, rights cannot be claimed or given in urban areas, since SDLCs and DLCs cannot be formed. This however amounts to continuing the historical injustice such communities have faced, rather than coming up with a more creative resolution to this.

What is also of relevance here is an earlier MoTA letter, dated 21st January 2009, which though is with reference to Panchayat Areas in Korba district of Chhattisgarh has an interpretational bearing on other areas too. The letter states that, "...in case the Municipal and Panchayat Areas of Korba district of Chhattisgarh, which are having



Jeetlal Baiga standing in front of his bulldozed house in the Moher forest, in Singrauli dist allocated to the Reliance Sasan UMPP. Jeetlal, was forcibly moved out of his house and has been put up in a rehabilitation plot in Amlori village. He did not get his due compensation because FRA was not implemented in the region.
© Greenpeace

Amravati, a single mother of six children who lives in Moher village, Singrauli dist, MP. Amravati and her family will have to move out of this house and her land to make way for the Reliance Sasan mine (UMPP). © Greenpeace



forest land, have gram sabhas within the meaning of section 2(g) read with section 2(p) of the Act then the claims of the occupants of forest land in such areas for recognition and vesting of forest rights over the forest land under their occupation can be considered as per the procedures laid down in the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of rights) Rules 2008."

MoTA continues to provide clarification to this issue using both these letters in the relevant section of their website, creating confusion on which of these interpretations holds.

But even as we discuss the interpretations related to the central legislation and subsequent clarifications, implications are already being felt in coal blocks set aside for power plants. Take for instance the story of Jeetlal Baiga, a former resident of the Moher forests within the municipality limits of Waidhan, Singrauli district, which have now been cut down since the forest land has been diverted for a captive coal mine for the Reliance UMPP.

Jeetlal was living along with his family in the Moher forest and was later displaced by the mine and has now been shifted to a rehabilitation hut on the outskirts of Amlori village. Though Jeetlal has been living in the Moher forest for generations, he did not get any rights under the FRA. The then collector P. Narahari said that he was helpless, in this case because FRA does not provide rights to people living in "urban forests"; Moher was one such forest. There are around 80-90 families in Amlori basti (all Baiga adivasis) whose forest rights have not been recognised because of this issue. This has cost them their livelihood, as the Moher forests have now been diverted for mining and these tribal families did not get anything in lieu of this diversion. Jeetlal says: "*when I was living in the forest I used to make plates with leaves from the forest and collect medicinal plants which I used to sell to earn my livelihood; since they have shifted me here, I have no means to earn my livelihood. They gave me 50 kg rice and some money as compensation which is all finished now.*"

Amravati from Moher village, Singrauli district says: "*Before the work for the mine (Reliance mine) began, I used to go into the forest and collect forest produce, but now they have made boundaries all around the forest and they do not allow any villager to enter into the forest. They say that the forest now belongs to the Reliance company so you cannot go in there. We were not even given any compensation for the loss we suffered due to this.*"

Section 06

Conclusion and recommendations

With regard to projects and activities that require diversion of forest land, and in this case coal mining, the CFR provisions could therefore be of immense significance for communities. They provide an additional layer of decision-making, and exercise of rights and powers, modifying the hitherto sole authority of the state to make decisions regarding forest land diversion.

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The CFR provisions of the Forest Rights Act signify an important shift in thinking relating to the governance of forests in India, away from a centralised bureaucratic control to more decentralised, community-based control. With regard to projects and activities that require diversion of forest land, and in this case coal mining, these provisions could therefore be of immense significance for communities. They provide an additional layer of decision-making, and exercise of rights and powers, modifying the hitherto sole authority of the state to make decisions regarding forest land diversion. However, the jury is out on the question of whether CFRs challenge the eminent domain powers of the state; various interpretations are possible, and it is likely to be only through actual implementation and court judgements that this will be clarified. Meanwhile, the responsibility of governments to implement the CFR provisions, and of civil society to assist communities in making and pursuing CFR claims, are crucial aspects to follow up on.

In view of the ground situation of conflict and environmental damage in many parts of India where coal mining, thermal power plants, and other related operations are ongoing or proposed, and in view of the spirit and letter of the Forest Rights Act that attempts to undo historical justice by recognising long-standing rights and providing governance over forests to communities, it is strongly recommended that:

1. There should be a moratorium on all new mining in forest areas until coal availability in other areas and alternative energy solutions are assessed. Destruction of further forest areas should not be allowed when ecologically and socially more acceptable alternatives exist.
2. State Governments should ensure that the recognition of forest rights is first carried out under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006 (FRA), for the entire area proposed for diversion. This must especially include community forest rights. No forest land should be diverted under the Forest (Conservation) Act without

first complying with the FRA.

3. The process outlined in the communication issued by the Ministry of Environment and Forests on the 30th of July 2009 to ensure compliance with the FRA, should be followed in letter and spirit by state governments. Diversion of forest land where this has not been done, since the FRA came into operation (and certainly since July 2009), should be considered null and void, and any clearances to projects based on this be withdrawn forthwith.

4. Forest areas that are important for local communities, their role in water recharge and security, their biodiversity values, and other such crucial values, must be declared permanently off-limits to mining.

5. For any mining project, a comprehensive Environmental Impact Assessment (EIA) must include all biodiversity values (including domesticated or agricultural biodiversity), and must be accompanied by a Social Impact Assessment (SIA) that looks at livelihood, cultural, and social impacts; both these must be conducted by organisations and individuals who are completely independent of project proponents, and should involve local populations.

6. There must be a process to seek the free, prior and informed consent (FPIC) of the communities likely to be affected by mining, including through displacement or dispossession. This must include providing the communities with accessible and adequate information (including the EIA and SIA, in local languages), and holding a genuine and open public consultation. People have a right to be informed in detail about the proposed project and the impacts it poses for their lives.

7. People have a fundamental right to freedom of expression and peaceful assembly and this should not be suppressed by the police or any other state-sponsored force. Communities voicing their dissent should not be intimidated, insulted and assaulted.

8. The issue of livelihood of affected communities has remained fundamentally unanswered in the mining areas for decades. People are resettled in an urban or mainstream pattern, which is completely unsuitable for tribal or other forest-dwelling communities, including hunter-gatherers, pastoralists, farmers, fishers, and craftspersons. Monetary compensation for land has been the main (often the only) type of compensation offered. Where communities provide FPIC for relocation, there needs to be a legal mandate to give people a genuine option of maintaining their earlier livelihoods by introducing a land-based rehabilitation system, through which relevant ecosystems on which they depend (forests, wetlands, agricultural land, etc) are provided at their relocation sites.



Ramkaya and his family members (Amelia village, Singrauli district, MP) cooking food in their makeshift settlement in a clearing in Mahan forest where they are staying during the Mahua season. © Greenpeace

Section 07

Endnotes

¹As per the Environment Impact Assessment (EIA) notification, environment clearances are mandatory for coal mining projects above 50 ha of mining lease area from the central government (category A projects) and between 5-50 ha area from the state government (category B projects)

²According to the Forest (Conservation) Act, 1980, no coal mining on forest land can take place without approval for diversion of this land for non-forest use from the MoEF. As per additional guidelines (Section 4.4), work on non-forest land cannot also be initiated unless approval for forest land has been procured (MoEF, 2004)

³The FRA defines gram sabha as the village assembly consisting of adult members of a village

⁴Nistar rights secure such traditional access and entitlements over local forest resources of local communities which were recognized by different regimes or exercised as customary rights. Nistari claims need to be understood as traditional rights of access and usufruct rights over forest produce such as timber, firewood, grazing, minor forest produce or other specific resource uses mentioned in the claim (Source: FAQ on CFRs by Government of Odisha dated 20.2.2010)

⁵<http://www.blacksmithinstitute.org/projects/display/147>

⁶Source: Various Right to Information (RTI) responses and data received collected by Greenpeace through offices of the Tribal Commissioner and District Collector, Singrauli in 2011

Section 08

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Nigahi coal mine, India's largest open cast mine, operated by NCL(Northern Coalfields Limited) in Singrauli.
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