

A Report on

The Functioning of PESA in Odisha

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A Note from RCDC

RCDC assigned a task of compiling a report on the functioning of PESA in the state of Odisha based both on secondary analysis and primary survey at field level, to a local consultant organization National Institute for Development Innovation(NIDI) in late 2010. Agreeing with our observation that the report submitted under the same required further improvements and enrichments the consultant made fresh efforts in 2011 and submitted an improved version of the same without any extra charges. However, we found that to make it a public document useful to all stakeholders we need to modify the same significantly and add new section(s) as well as some exclusive analysis to this report. If this modification took almost a year to complete then that is primarily because of the limitations of time on the part of the undersigned to devote sufficient time for the same, but that in fact proved to be a blessing in disguise ultimately as some remarkable developments took place in the meantime helping us to prepare an updated version.

RCDC has been recognized as an important resource centre on matters such as PESA, and in 2012 the State Institute for Rural Development (SIRD) made a film on PESA for training purposes under our guidance. While it is ironical that PESA lost the focus it used to get earlier, after the Forest Rights Act was promulgated (and this is chiefly because FRA has been advantageous in a number of ways particularly in terms of ensuring individual benefits although the broader and diverse applicability of PESA is not found in the former), more unfortunate is the fact that neither the governments have been sincere in implementing PESA in its letter & spirit, nor has there been a massive effort on the part of the civil society to chase the government for this. One can very well see the ‘game’ played between the Centre and the states on this issue: the Centre continues to ask the states for proper implementation of PESA, and the states(atleast Odisha) continue to reply that they have already done it though the fact may be quite otherwise. It is good to know that a process has been started to amend PESA so as to help it overcome many of the legal limitations, but the pace of such positive developments has been very slow and hence not so encouraging. In fact, although the Ministry of Panchayati Raj once clearly wrote to the states that rise of naxal extremism was partly because PESA was not implemented properly, the concerned politicians and bureaucrats in power seem to be more serious(?) about planning for anti-extremist operations than implementing PESA sincerely. While this fallacy continues on the part of government, another side of the reality, i.e. limitations of the actual capacity of the Grama sabha and PRIs at the field level continues to be a factor to be considered while planning for this implementation. As such a very practical approach to PESA is also necessary apart from sincere and assiduous efforts.

This study has been possible under the programme support of Broederlijk Delen(BD), Belgium. RCDC expresses its gratitude for the critical support that BD extended to us for our work in some of the naxal-infested and disadvantaged areas of the state to facilitate a most holistic governance approach at the Grama Panchayat level.

Some of my colleagues have assisted in this work by providing me necessary information and documents. The Baripada-based NGO ‘Gram Swaraj’ arranged the copies of the proceedings

of the Mayurbhanj Zilla Parishad for our analysis while Sri G.K.Bose, PIO, Sundargarh Sadar Block has taken pain to provide us the proceedings of the Panchayat Samiti, Sadar Block. We sincerely acknowledge these contributions.

Last but not the least I would like to mention here that our professional association with NR Management Consultants, New Delhi assumed a small but important role in finalizing the document in the sense that when we used the draft version of this report for their work (for reference purposes) it encouraged us to finalize the report so that use of the term ‘draft report’ could be avoided.

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ABBREVIATIONS

ADC	Autonomous District Council
BRGF	Backward Region Grant Fund
CC	Cement Concrete
CSO	Civil Society Organization
FGD	Focused Group Discussion
FRA	Forest Rights Act, 2006
GoI	Government of India
GP	Grama Panchayat
HE	His Excellency
IAY	Indira Awas Yojna
ICDS	Integrated Child Development Services
ITDA	Integrated Tribal Development Agency
JFM	Joint Forest Management
KBK	(undivided) Kalahandi, Balangir and Koraput districts
KL	Kendu leaf
MFP	Minor Forest Produce
MGNREGS	Mahatma Gandhi NREGS(NREGS renamed)
MoPR	Ministry of Panchayati Raj
MoTA	Ministry of Tribal Affairs
MPP	Minimum Procurement Price
NREGS	National Rural Employment Guarantee Scheme
NRM	Natural Resource Management
OGPA	Odisha Grama Panchayat Act
OMMCR	Odisha Minor Minerals Concession Rules
OPSA	Odisha Panchayat Samiti Act
OZPA	Odisha Zilla Parishad Act
PDS	Public Distribution System
PESA	Panchayats (Extension to the Scheduled. Areas)
PESAA	Panchayats (Extension to the Scheduled. Areas) Act, 1996

PRI	Panchayati Raj Institutions
PRIA	Society for Participatory Research in Asia
PS	Panchayat Samiti (Block or intermediate Panchayat)
PWD	Public Works Department
RKVV	Rastriya Krishi Vikash Yojna
RWSS	Rural Water Supply & Sanitation
SC	Scheduled Caste
SFC	State Finance Commission
SFC	State Finance Commission
SGSY	Swarna Jayanti Swarajgar Yojna
ST	Scheduled Tribe
TFC	Twelfth Finance Commission
TRIFED	Tribal Cooperative Marketing Development Federation of India Limited
TSP	Tribal Sub-plan
VSS	Vana Samrakshan Samiti(village-level forest protection committee under JFM)
ZP	Zilla Parishad(District Panchayat)

PART: I
PESA IN ODISHA :
LEGAL PROSPECTS &
LIMITATIONS

PESA IN ODISHA: LEGAL PROSPECTS & LIMITATIONS

1. PESA: an introduction

The Provisions of Panchayat (Extension to Scheduled Areas) Act 1996, otherwise known as ‘PESA Act’ or simply ‘PESA’, is a concise and relatively unconventional legal framework, and is one of the few political legislations of India that have potential for the development of specific areas and uplift of specific categories of people. It applies to a geo-political regime specified for tribal-dominated areas, but excluding the north-eastern tribal districts of the country. Such areas are known as ‘Scheduled V Areas’ or simply ‘Scheduled Areas’ (vide annexure-1), and PESA recognizes various socio-cultural and political rights of the tribal communities living in these areas.

The Indian Constitution mandates to protect the identity and rights of the Scheduled Tribes through several of its provisions as contained in Articles 15, 16, 19(5), 23, 29, 46, 164, 343(M), 243(ZC), 244, 275, 330, 332, 334, 335, 338-A, 339, 342 and 366(25) besides the Fifth Schedule and Sixth Schedule appended to the Constitution. PESA synthesizes in itself the spirit and mandates of two important Constitutional provisions, i.e. articles 243 and 244.

Unlike the traditional panchayat regime of the country, a standard and statutory 3-tier Panchayati Raj system was sought to be institutionalized through the 73rd Constitution Amendment Act, 1992 along with its incorporation as Part-IX (Panchayats) into the Constitution. This Amendment, no doubt, held forth path-breaking provisions for an effective system of local self-government for mainstream, non-scheduled areas of the country; but keeping in view the unique characteristics and special needs of the Scheduled Tribes, the 73rd Amendment was not automatically extended to the Scheduled Areas or Tribal Areas. The Article 243(M), expressly titled ‘Part not to apply to certain areas’ pre-emptively stipulated under Clause (1) that the said Amendment will not apply either to the Fifth Schedule Areas otherwise called Scheduled Areas or to the Sixth Schedule Areas otherwise called the Tribal Areas. However, Section 243 (M) did also provide for the route through which the 73rd Amendment could be applied to Scheduled Areas and Tribal Areas. Its Clause 4(a) empowered the Legislature of the concerned State, if it wished so, to extend the Amendment to its Tribal Areas by way of adopting a Resolution to that effect. Its Clause 4(b) vested the power with the Parliament to extend the Amendment to Scheduled Areas or Tribal Areas by way of enacting a law incorporating the requisite ‘modifications and exceptions as may be specified in such law’.

Needless to say, the enactment of 73rd Amendment did go a long way in arousing the aspirations among the people including the Scheduled Tribes of the country for a stronger and institutionalized system of self-governance through its adaptation in an appropriate manner. Because, it promised the endowing of the Panchayats not only with statutory tenure and wider representation of weaker sections including STs, SCs, OBCs and women, but also with powers and responsibilities in respect of formulation and implementation of schemes for economic development and social justice (Article 243-G). In such a situation of heightened

expectation, a High Powered Committee comprising select Members of Parliament and Experts with Shri Dileep Singh Bhuria, MP as the Chairman was appointed in 1994 to recommend exceptions and modifications to the Part IX (73rd Amendment) of the Constitution in its application to the Scheduled Areas. The Committee (popularly known as Bhuria Committee) submitted its Report in 1995. What is now known as PESAA or Provisions of Panchayats (Extension to Scheduled Areas) Act, 1996 is nothing but the Committee's well thought charter of exceptions and modifications necessitated by the unique position of the Scheduled Tribes, subject to which the 73rd Amendment for introduction of a 3-tier Panchayati Raj could be applied to the Scheduled Areas. PESAA was enacted on 24 December 1996. PESAA is also a proactive instrument for deepening and strengthening the processes of self-governance further in the 5th Schedule Areas, because it expects the concerned State legislatures to redesign their administrative arrangements in line with a more radical system of self-government that is in vogue in Sixth Schedule Areas. However, critics also observe that the Bhuria Committee report has but been partly translated into PESAA and some of the recommendations of the Committee have not been fully complied with¹.

2. Scheduled Areas:

The term 'Scheduled Areas' has not been logically defined in the Indian Constitution. It has rather been defined as "such areas as the President may by order declare to be Scheduled Areas under the Central Act". "Though the Constitution has not spelt out the criteria to be followed for declaring an Area as a Scheduled Area, however, as a matter of established practice, these are preponderance of tribal population, compactness and reasonable size of the area, underdeveloped nature of the area, and marked disparity in economic standards of the people. They embody, broadly the principles followed in declaring 'Excluded' and 'Partially Excluded Areas' under the Government of India Act, 1935 and spelt out in the Report of the Scheduled Areas and Scheduled Tribes Commission, 1961²". The Tribal Sub-Plan areas (Integrated Tribal Development Projects/Integrated Tribal Development Agency areas only) are usually coterminous with Scheduled V Areas in the 9 states with few exceptions (Source: Ministry of Tribal Affairs website) .

Annexure-1 provides a list of the Scheduled Areas in Odisha.

3. Special implications of the Fifth Schedule to the Constitution:

The important features of the Fifth Schedule that make administration of the Scheduled Areas distinguished, include the following:

- Governor's Report to the President on the administration in the scheduled areas

¹ One can simply compare the actual practices against the Committee's recommendations like "nothing should be imposed from above on the Gram Sabha, which runs counter to the established traditional order, customs, conventions etc.", land should be acquired with the consent of the Gram Sabha, "It has been our stand that the tribal community should be regarded as in command of the economic resources. In this view of the matter, in a resource-based industry, the partnership of the village community and the outside capitalist-financiers should be recognised", and "The District level panchayat may be called Autonomous District Council", etc..

² Vide the webpage of Ministry of Tribal Affairs on Scheduled Areas ([http://tribal.nic.in/searchdetail.asp?lid=741&skey=scheduled areas](http://tribal.nic.in/searchdetail.asp?lid=741&skey=scheduled%20areas))

- Tribes Advisory Council
- Special Legislative Powers of the Governor
- President's power to declare and redefine the Scheduled Areas

Fifth Schedule (Clause 3) of the Constitution provides that the Governor of each State having Scheduled Areas should annually or whenever required so by the President make a report to the President, to keep the Union Government informed of the administration in Scheduled Areas. On the basis of this Report, the Union Government is to issue directives to the respective State Governments for better administration of the Scheduled Areas (Monditoka, A.K. 2010. Decentralized Governance in Tribal India³, pp.9-10).

Clause 4 of the Fifth Schedule recommends the constitution of a Tribes Advisory Council in each State having Scheduled Areas. If the President so directs, this kind of Council may also be established in the States, which do not have Scheduled Areas, but have Scheduled Tribes. TAC shall consist of maximum 20 members, nearly three-fourths of whom shall be tribal members of the State Legislative Assembly. The Council's duty is to offer advice on matters pertaining to the welfare and advancement of the Scheduled Tribes in the States as referred to them by the Governor. It is intended to serve as a consultative forum to facilitate the Governor for decision making about the kind of laws, policies and programmes that are required for the concerned Scheduled Areas. However, the Clause 5(5) provides that Governor shall not make any Regulation without having consulted the TAC working in the concerned State (Monditoka, A.K. 2010. *Op. cit.*).

The Governor of a State has special powers of legislation with respect to the Scheduled Area. They are 'legislation by notification' and 'legislation by regulation'. The Governor of a State is responsible for deciding whether an Act of Parliament or of the State legislature is suitable or unsuitable for Scheduled Areas. The State Governor by public notification can direct that any Act of Parliament or the State Legislature shall not apply to a Scheduled Area. The Governor can issue such notification without any reference either to the State Tribal Advisory Council or to the President of India. Further the Governor has been empowered to make regulations for peace and good Government of Scheduled Areas. Such regulations may in particular prohibit or restrict the transfer of Scheduled Area land by or among members of the Scheduled Tribes, regulate the allotment of land in Scheduled Area to members of the Scheduled Tribes or regulate the business of moneylenders, who lend money to members of the Scheduled Tribes in Scheduled Areas. The regulation making power of the Governor is subject to some limitations as specified in the Paragraph-5 of Fifth Schedule i.e. regulation to be made after consultation with the Tribal Advisory Council (Cl. 5-5), and regulation to have no effect until assented to by the President (Cl. 5-4) (Monditoka, 2010). Examples of exercising such powers are the Odisha Scheduled Areas Transfer of Immovable Property (By Scheduled Tribes) Regulation 1956, Odisha Scheduled Area Money-Lenders Regulation 1967, Odisha Scheduled Area Debt Relief Regulation 1967 and their subsequent amendments. However, critical reviews suggest that quite often the basic loophole of such regulatory exercises was excessive dependence on the mainstream bureaucracy for implementation and

³ <http://www.c-s-p.org/flyers/978-1-4438-2065-3-sample.pdf>

on the mainstream judiciary for grievance redressal and penal action. The ground reality pertaining to some of the basic concerns therefore could not change much, and the true objective behind such powers could hardly be fulfilled. In fact, some critics observe that if the provisions of Fifth Schedule, meant to promote the development of Scheduled Tribes along with protection of their traditions and customs were given a fair trial, a special legislation like PESAA might not have been necessitated at all after 46 years of proclamation of the Constitution. In fact, the failure and negligence on the part of the Governors regarding the management of scheduled areas have been critically dealt with by few competent authorities though quite softly and humbly given the status of the Governors themselves⁴.

However, all said and done, what is still not to be ignored is the fact that the Schedule V areas are no more in a position where they were during the British period. The repeated attempts of the central and state governments have succeeded in bringing these areas into the mainstream development, be it education or communication or otherwise. That such development initiatives have had but differential impacts because of differential mechanisms operating at the state levels is a matter that is applicable to the non-PESA areas as well. It is this lack of uniform and coherent implementation of the mandates and programmes that can said to be the cause of various kinds of development issues which the country has been facing since long, despite huge investments on different welfare schemes. And, it would also be totally wrong to attribute this lacuna to be the only reason behind the left-wing extremism because taking advantage of the situations for political or other intentions has neither been exclusive to the PESA areas nor new to the country.

4. PESA- its distinguishing characteristics:

Long before the PESA Act 1996 was enacted, several Constitutional provisions were available to the concerned States to protect and promote the interests of the Scheduled Tribes in the Scheduled Areas. However, for the first-time, the PESA unequivocally articulated the system of self-governance as the indispensable need of the communities living in Scheduled

⁴ For instance, Mr. A.N.P. Sinha, Secretary, Min. of Panchayati Raj, Gol in his Letter to Secretary Ministry of Tribal Affairs, Gol (D.O.No. N-16012/1/2008-P&J dated 29 July 2008) observed with concern, "It is noted that under the provisions of Para 3 of the Fifth Schedule, States concerned are required to submit to the President an Annual Report on the administration of the Fifth Schedule areas. We have obtained copies of two such reports. Their examination reveals that the reports are largely silent on the implementation of PESA. You would agree that effective implementation of the PESA Act is necessary for removing the discontent among the tribal population and for their progress. In fact several expert groups have recommended that the Governor's Annual Report about Administration of the Fifth Schedule Areas should be comprehensive and cover all aspects of governance, especially the provisions of PESA. . . . I would, therefore, request you to kindly have the matter examined and consider issuing suitable guidelines/ instructions to all the nine States having Fifth Schedule areas, for including a chapter in the Governor's Report, about implementation of PESA. A mechanism may also be instituted by which these reports are also shared with this Ministry so as to enable us to examine these". As things still remained unchanged almost, the Minister of Panchayati Raj and Tribal Affairs tried to take up the issue with the Governors themselves in an exclusive conference in 2011(vide annexure-2), but even that proved futile.

Areas, and recognized their traditional collective rights over natural resources. Prior to PESA, the Gram or Village even in a Scheduled area was defined in relevant Panchayat laws in most of the States as an administrative arrangement notified by the State Government. PESA is the first law that empowered traditional communities to redefine the administrative boundaries of their own village.

From the recognition of the principle of a community's collective right to self-determination which is the hallmark of PESA flows other unique features that distinguish this seminal legislation. Irrespective of the mainstream laws of the land, PESA has declared Grama Sabha to be the only competent authority to safeguard and preserve the traditions and customs of the people, their cultural identity, community resources and customary mode of dispute resolution (Section 4d). Gram Sabha, the village assembly, but not the Grama Panchayat the executive arm of the Grama, is empowered to approve all development plans and also identify the beneficiaries of each programme (Section-4e). Further, it is Grama Sabha which is the authority to issue certificate of utilization for any money spent by any Panchayat in the village (Section 4-f). The concerned State legislatures while endowing the Panchayats in Scheduled Areas with powers to function as institutions of self-government, are to ensure that Grama Sabha along with Panchayats at appropriate level are entrusted with a regulatory authority in respect of regulating intoxicants, ownership of minor forest produce, prevention of alienation of tribal land and restoration of the alienated land, management of village markets, control over money-lending to the STs and control over the institutions and functionaries in all social sectors (Section 4-m). The State legislatures are to endow the District Panchayats in Scheduled Areas with all-round powers and authority including the power to enact laws following the pattern of Autonomous District Councils in Tribal Areas under Sixth Schedule of the Constitution (Section 4-o).

Apprehensive about the untoward tendency of the Panchayats at higher level to grab and usurp the powers and functions of the Panchayats at lower level, the Act preemptively mandates the State legislatures to put in place necessary safeguards to ensure that no Panchayat at higher level encroaches on the powers and authority of Grama Sabha (Section 4-n). To ensure that the Panchayat Bodies including Grama Panchayat in Scheduled Areas retain their overall tribal character, the Act mandates the reservation of seats for STs in every such body never to fall below 50 percent of the total number of seats and the posts of Chairperson of each Panchayat in a Scheduled Area to be reserved only for STs. Moreover the State Government may nominate persons belonging to such tribes as have no representation in a Panchayat body at intermediate or district level, provided that such nomination shall not exceed one-tenth of the total members of that body (Section 4-i).

Above all, unlike so many instruments of law and policy, PESA issues a clear time-bound directive to all legislative and other authorities of the country, both Central and State level to ensure within a year of its enactment conformity to its letter and spirit by way of revisiting and amending each and every existing piece of law bearing on Panchayats.

Thus, PESA is a time-bound writ issued by the federal legislature to all legislatures and authorities of Union and States across the country to fall in line with its multifarious provisions on Panchayats within one year of its enactment i.e. by 24th Dec 1997.

5. Grey areas in PESA

However, apparently deflecting from a Grama Sabha-centric ethos, the Act has also provided for an either-or option between Grama Sabha or Panchayat at the appropriate level in respect of taking decision in certain matters. Though Grama Sabha remains the common forum of reference, consultation with Grama Sabha can be substituted by that with an appropriate Panchayat body prior to land acquisition or resettlement and rehabilitation of displacees in a Scheduled Area. What is more, the Act has whittled down the authority of not only Grama Sabha but also that of other Panchayat bodies above by saying that actual planning and implementation shall be coordinated at the State level (Section 4-i)⁵. Similarly the planning and management of minor water bodies in the Scheduled Areas shall be entrusted to a Panchayat at appropriate level (Section 4-j). Then, recommendation of Grama Sabha or appropriate Panchayat shall be mandatory prior to grant of prospecting license or mining lease for minor minerals in the Scheduled Areas (Section 4-k). Besides, prior recommendation of Grama Sabha or appropriate Panchayat shall be mandatory for grant of concession for the exploitation of minor minerals by auction (Section 4-l). Such either-or approach in above respects has legitimized the centralizing drives of most of the State legislatures for divesting the Grama Sabha of control and authority over certain crucial areas.

Further, the persuasive value of the Gram Sabha / Panchayat at appropriate levels decision is something, which needs to be elaborated upon. Is the State Government bound by the recommendations of the Gram Sabha / Panchayat at appropriate level? Can the Gram Sabha / Panchayat at appropriate level take any action if their recommendation is not heeded? Does the power of Gram Sabha /Panchayat at appropriate level extend to renewal of licenses? (PRIA 2002, Panchayat Extension Act: A Legal Analysis with Strategies-Rajasthan)

Above all, critics observe that if PESA did not receive due importance and follow up in the mainstream politics, and only half-hearted attempts were made by the States to comply with the mandate of PESA, then that is because of the absence of any monitoring or penal mechanism in the Act itself. And the result is that the so-called PESA areas can hardly be distinguished from the non-PESA areas in respect of the day-to-day administrative proceedings of the PRIs, and special provisions meant for the Scheduled Areas often lie unutilized or ignored.

6. Recent endeavours of the government:

⁵ And a review of the district planning process from the PESA angle can definitely lead to clarity on the governments' actual practice when it comes of honoring the plans coming particularly from PESA areas.

After promulgation of PESAA the governments at both central- and state levels engaged themselves, either *suo muto* or under some compulsion, in necessary follow up measures, to various extents and in various phases. The central government tried to facilitate necessary compliance of PESAA at the state levels by sending them letters of request/instruction/demand on one hand and framing model PESA Rules and guidelines on the other. The state government amended relevant state laws/regimes so as to conform to PESAA, and arranged for subsidiary/complimentary measures like making a film on PESAA in the Odia language for training purposes and awareness building.

6.1 Endeavours of the central government:

Although PESA is a cross cutting issue for several ministries(Rural Development, Forest & Environment, Panchayati Raj, etc.) in the Government of India, and the Ministry of Tribal Affairs is supposed to have a great role in the matter, the Ministry of Panchayati Raj has considered it as an issue deserving special attention.

Two major developments that have triggered the government action on PESAA are the Samatha judgement and the rise of left wing extremism. The promulgation of Forest Rights Act, 2006 has also made its impact though it appears sometimes that FRA has taken over PESAA so far the larger attention both at government and non-government level is concerned.

Some major initiatives were taken by the Ministry of Panchayati Raj in and after 2006, that coincided with the end of a decade after promulgation of PESAA. Realizing the grey areas of the Act alongwith the bottlenecks in its proper implementation, the Ministry entrusted the Indian Law Institute to formulate appropriate amendments in the concerned State laws with a view to assist the State Governments in carrying out the exercise of undertaking compliant legislation in consultation with their respective Departments of Law. The Indian Law Institute (ILI) submitted its report on 19/04/06, and the same was then forwarded to the PESA States for comments. Further, the Ministry constituted three sub-committees, namely one chaired by Shri B D Sharma, on 'Model Guidelines to vest Gram Sabhas with Powers as envisaged in PESA'; another chaired by Shri Raghav Chandra on 'Land Alienation, Displacement, Rehabilitation & Resettlement' and the third chaired by Shri A.K. Sharma on 'Minor Forest Produce'. Reports and recommendations of all these sub-committees were also forwarded to the PESA States for comments (GoI: Ministry of Panchayati Raj, Annual Report 2007-08, p.29).

The MoPR continued to review the situation in the PESA areas/states regularly and made efforts accordingly. For instance, in the context of Left-Wing Extremism in many PESA areas, MoPR believes that the solution lies in (a) ensuring people-centric good governance, (b) adopting participatory and holistic approach to Development Planning and Implementation, which also addresses the issues of agri-productivity, livelihood opportunities and skills, (c) Innovative use of the funds of the Backward Regions Grant Fund (BRGF) (which are untied) to address the specific local problems not covered by the existing Centrally Sponsored Schemes (CSSs)/ Additional Central Assistance (ACA) and State schemes, and (d) updating and computerization of Land Records, including Forest land. The

mechanism of decentralized planning process as stipulated under Article 243 ZD of the Constitution alone would ensure convergence of the plethora of central and state schemes, optimization of resources, and the desired outcomes. Therefore, on 30th April 2009 MoPR issued a detailed note to all the concerned PESA states and central ministries for consideration of the following proposals:

Operationalizing the provisions of PESA concerning Gram Sabha in the Scheduled Areas, and substantial empowerment of Gram Sabha in the non-Scheduled Areas.

- Making participatory, integrated, decentralized planning compulsory as envisaged under Article 243ZD and under Planning Commission guidelines of 25 August for the convergence of schemes/ the provisions concerning 'ownership of resources' and better outcomes.
- Implementing guidelines issued by the MoPR on the role and responsibilities of PRIs in CSSs/ACAs.
- Raising the level of administration, including incentives for the personnel
- Constituting Inter-Ministerial Group to monitor implementation of the various suggestions.
- Including addition nine Extremist Affected Districts (EADs) under BRGF and enhancing the basic allocation under BRGF for 76 EADs.

This note also stressed on expanding the scope of Rules framed under Forest Rights Act for operationalizing the provisions concerning ownership over minor forest produce and empowering the communities for forest management, and also for formulation of suitable guidelines for revival of the Chowkidari system⁶ (GoI: MoPR, Annual Report 2009-10, pp.42-43).

The year 2010 saw some major initiatives by MoPR. The year of Gram Sabha was celebrated from 2nd October 2009 to 2nd October 2010. That year PESAA completed its 14 years of promulgation. The Secretary, MoPR wrote to all the PESA states how failure in or poor implementation of PESAA has been one of the major causes behind the rise of left wing extremism, urging therefore for immediate and necessary follow up such as compliance with Forest Rights Act, 2006; framing of PESA Rules; and activation of Gram Sabhas on a mission mode. This letter reiterated the opinion of the Ministry that following PESA (and its complimentary law FRA) in letter and spirit would help the local communities realize the powers they deserve which in turn would enable them to address many of their issues that have been caused by unwanted external interventions (vide letter of No. N-11012/1/2007-PESA (Pt), dt. 21st May 2010).

In the meantime, the draft model operational manual of Gram Sabha in PESA areas were prepared and forwarded to the states. This manual attempted to make, in respect of the grey areas of PESA itself, a number of things clear. For instance, it said that customary norms

⁶ It can be referred to a kind of decentralized policing system in which the village guards(chowkidars or gram rakshis) used to be responsible for the day to day guarding of the village, and helped the police with clues. Vide for example, **Chowkidari System May Come Back**, http://www.thestatesman.net/index.php?option=com_content&view=article&show=archive&id=360571&catid=35&year=2011&month=2&day=27&Itemid=66.

would not be valid if inconsistent with the spirit of the Constitution and humanitarian values (section 2). While putting the Gram Sabha as the foremost competent authority in handling the local affairs, it also said that decency and dignity should be maintained in the meetings and management of Gram Sabha (section 7). It went a step ahead and provided for establishment of new panchayats if the Gram Sabha so decides with consensus provided that the functionaries/office bearers of this new panchayat would work without any pay (section 33).

Another landmark initiative by the ministry was formulation of model PESA Rules that were intended to guide the state in formulating their own State PESA Rules.

In addition, MoPR appointed another committee on minor forest produce under the chairmanship of Dr.T.Haque, this time to look into the specific aspects of ownership, price fixation, value addition, and marketing of MFP. The specific objective behind constituting this committee was to suggest appropriate measures for the implementation of provisions regarding ownership of Gram Sabha of Minor Forest Produce (MFP) under PESAA and FRA in letter and spirit. The committee recommended provision of minimum support price (MSP) for MFPs, along with necessary modifications in the state and central laws as well as institutional arrangements in the light of PESAA and FRA.

The ministry received critical support from other central ministries in respect of its endeavour for proper implementation of PESA in the state. For instance, the then Minister for Environment and Forest Sri Jairam Ramesh wrote to the state chief ministers a letter advising them to regard and treat bamboo as a minor forest produce as per FRA, and allow local communities to manage and own the local bamboo resources (vide his letter dt. 21st March 2011). Prior to that Sri Ramesh and the then Minister for Rural Development & Panchayati Raj Sri C.P.Joshi had met on 18th May 2010 and agreed that the Joint Forest Management Committees in PESA areas should be under the control of Gram Sabha and not under the Forest Department (vide the circular issued by the Ministry of Environment and Forest, dt.19th May 2010). On the other hand, TRIFED working under the Ministry of Tribal Affairs was to assume the role of the nodal agency in executing the MSP as per the recommendations of the Haque Committee, and the agency is understood to have started developing mechanisms to that effect.

6.1 Endeavours of the state government:

As the first step to comply with the PESAA, the Odisha (then Orissa) government made respective amendments in its Gram Panchayat Act, 1964; Panchayat Samiti Act,1959; and Zilla Parishad Act,1991, in the year 1997. Cumulatively we can call these as state panchayati raj legislations/laws.

However, these amendments have been but in partial conformity with PESAA in letter & spirit, and not in full. Rather, dilution seems to have occurred, either intentionally or unintentionally, through these amendments. And this dilution starts from the first significant amendment, i.e. in section 3 of the OGPA that defines Grama, Grama sabha, Palli sabha, and Grama Sasan. Whereas the said Act originally defines 'Grama' as 'any village or group of contiguous villages' that the government may notify, to comply with section 4(b) of PESAA it further provides the following:

“xxxxx in Scheduled Areas, a Grama shall ordinarily consist of a habitation or a group of habitations, a hamlet or a group of hamlets comprising a community or communities and managing the affairs in accordance with tradition and customs.”

In this particular case, the inclusion of an addition word ‘communities’ is apprehended to cause a dilution because section 4(b) speaks of any one community only in a village and not ‘communities’. Although the term ‘community’ has not been defined in PESAA, it ordinarily suggests a homogeneous social entity having integrity in itself. It may also mean a heterogeneous social entity in respect of differential socio-economic status or caste, etc., provided that the integrity remains intact despite such heterogeneity. The term ‘communities’ might have followed the term ‘habitations’ and ‘hamlets’, but it is likely to counter the sense of integrity that a community is supposed to stand for.

One of the remarkable features of the Odisha amendments is the indirect compliance with the provision of PESAA that gives simultaneous powers to the Grama sabha and the ‘panchayat at appropriate level’ in respect of a number of subject matters. This provision creates confusion, but the Odisha amendments have in a way nicely avoided that. For instance, section 44(2) of OGPA says, “xxx in the Scheduled Areas subject to the control and supervision of the Grama Sasan” the Grama Panchayat shall exercise the power of control over money lending to Scheduled Tribes, and the ownership over minor forest produce, etc.. It may be mentioned here that section 5 of OGPA defines ‘Grama Sabha’ as the meeting of Grama Sasan.

The concept of Grama Sasan in OGPA however creates an unnecessary confusion in itself. The Act defines it as a composition of all the persons of the Grama whose names are in the electoral roll. This means that villagers, whose names are not in the electoral roll for any reason, are not eligible to officially take part in the Grama sabha. PESAA on the other hand directly says that Grama sabha would consist of persons whose names are in the electoral roll at panchayat level.

OGPA doesn’t refer to the power of Grama sabha. Instead, it refers to the powers of Grama sasan, indirectly meaning Grama sabha.

The State legislation has retained the provision in PESA that every Gram Sabha shall approve the plans, programmes and projects for social and economic development before such plans, programmes and projects are taken up for implementation by the Panchayat at the village level. But this provision is indirect as the state Gram Panchayat Act, 1964 (with subsequent amendments) has rather entrusted such powers to the ‘Grama Sasan’ that consists of all the persons of a village whose name is registered in the electoral role of the assembly constituency, and when the Grama Sasan meets it is called Gram Sabha. Further, the 1965 Act also provides for a ‘Palli Sabha’ for every village within the Grama. Palli Sabha is the recognition of the body of all voters at the village level. Their main function is to recommend development programmes and annual budget estimates for the year under consideration by the Grama Panchayat. The Odisha amendments pertaining to PESA are however silent about the Palli Sabhas, and rather make the Grama Sasan as the smallest unit of governance (PRIA undated, Tribal Self-rule Law-Implications of Panchayat Laws in Scheduled Areas of Orissa, p.12). On the other hand, in Section 109, the said Act has provided a space for administrative control over the Gram Panchayat. It says, ‘ Collector or such other officer or person specially authorised on behalf of the State Government shall exercise general powers of inspection, supervision and control over the exercise of powers, discharge of duties and performance of

functions by the Gram Panchayat.’ Further, many of the powers have been made subject to the State government’s prescriptions. The State Act has thus provided a check on the autonomy of Gram Sabha and the Gram Panchayat.

On some important matters such as land acquisition, planning & management of minor water bodies and grant of prospecting license for minor minerals, the Odisha government has entrusted the powers to Zilla Parishad under the Odisha Zilla Parishad (Amendment) Act 1997 though only in case of minor minerals the GP enjoys the deserving power as per Odisha Minor Minerals Concession Rules. ZP is not required to consult Gram Sabha while exercising all these powers. This has happened despite the provisions made in the PESA that States shall provide necessary legislative safeguards to ensure that Panchayat at higher level does not assume the powers and authority of any Panchayats at lower level or of the Gram Sabha.

On the traditional rights of tribals, the State Act of 1997 has said that the safeguards provided in PESA, have to be “consistent with the relevant laws in force and in harmony with basic tenets of constitution and human rights” (vide section 5-6). This can contravene the spirit of PESA since a number of existing laws are inconsistent with PESA. Though such inconsistent provisions are supposed to be legally invalid after December 12, 1997, these however continue to be followed by the government departments and their functionaries for want of clear instructions and guidelines. Unless amended properly, the Odisha Gram Panchayat Act does not possess the strength to help implement PESA in its true spirit. Moreover, PESA itself limits the power to ‘safeguard’ and ‘preserve’, without any mention to ‘management’ and ‘development’, which is an inherent flaw of the law.

The state Act maintains that customary mode dispute resolutions shall not be in violation of the constitutional provisions or existing laws.

Regarding the business of money lending in Scheduled Areas of the state it is controlled and regulated under the Odisha (Scheduled Areas) Moneylender’s Regulation, 1967. In 2001, the same was amended so as to provide for the control of the Gram Sasan or the Gram Panchayat over money lending to Scheduled Tribes. No moneylender can advance money to any Scheduled Tribe except on the prior approval of the Gram Panchayat or the Gram Sasan. Although the 2001 Amendment is a step in the right direction, it fails to vest total control over the money lending to Scheduled Tribes in Gram Panchayat. Gram Panchayat has only been given the consultative powers in this respect. The effective control over the same still rests with the Government officials (Ibid, p.17).

In respect of ownership over Minor Forest Produce, the policy on Non-timber Forest Produce (NTFP) was notified by the Odisha State Forest and Environment Department [vide their resolution No.5503/ F&E dated 31 March 2000] in which initially 60 items were vaguely specified as Minor Forest Produce (MFP) though without any legal basis. Later on 9 more items including the denationalized (in 2006) sal seed were added to the MFP list. The resolution spoke of ‘ownership’ (without defining or specifying what it should mean) rights over MFP to the Gram sabha/Gram Panchayat in scheduled areas, and this right was

applicable only within the revenue jurisdiction of the GP. The resolution created a pseudo sub-category of MFP under the broad category of NTFP, and most of the valuable and/or vulnerable NTFP (like, tendu leaves, bamboo, gums & resins, bark) were excluded from the MFP list. Further, the OGP (MFP Administration) Rules 2002 came into force w.e.f. 15 November 2002, and prescribed a manner of regulation and control of trade in MFP by Gram Panchayats (and not Gram Sabha) in the Scheduled Areas but the government retained the power to fix the registration fee for such trading. The state still exercises monopoly rights in the procurement and trade of forest bamboo and kendu (tendu) leaf though it gives 50% of the net profit accrued in kendu leaf business as grant to the PRIs, irrespective of their status as PESA or non-PESA area. It also allows 100% right over bamboo to the VSS under the Joint Forest Management programme, which again has nothing to do with PESA. The 3rd State Finance Commission gave due consideration to the memorandum submitted by the civil society organizations demanding measures like sharing the profit from kendu leaf business with the pluckers directly instead of the PRIs, and recommended for giving 50% of the KL grant to the ‘registered labourers’ of KL, and 10% of the net profit from bamboo trade to the ‘individuals who are engaged in bamboo trade operation of the Government’. The SFC also recommended for necessary amendments in all concerned state laws relating to MFP so as to bring the same in conformity to PESA and Forest Rights Act, and also for a clear definition of ownership of Gram panchayat and Gram sabha over MFP alongwith transfer of the power of fixing registration fees to the Gram panchayats against licence for MFP collection (vide section 9.9.2 of the Report of the 3rd State Finance Commission, Odisha, 2010). Unfortunately, most of these recommendations have not been implemented till date⁷. Even the Joint Forest Management resolution of 2011, despite referring to PESA and FRA, did not make any exceptional provision for PESA areas.

While deregulation of 69 MFP items has definitely helped in collective trading by the primary collectors, restrictions on rest of the items have been quite problematic. For instance, lac is cultivated in many PESA villages of the state but its transit is affected due to the restriction (RCDC 2011, Report of the State-level Workshop on Promotion of Lac-based Livelihood).

On regulation of the sale of intoxicants the dominating state regime is the Bihar and Odisha Excise Act, 1915 which gives substantial powers in this regard to the Collector and other State officials. The Licenses to be issued to the manufactures of intoxicants, licenses

⁷ It must be noted that even CSOs who have closely observed the dynamics of MFP trade, particularly strategic items like kendu leaf, have not been in favour of total deregulation of the state trading as they apprehend that without developing a viable alternative mechanism such a deregulation may result in drastic impact on the whole system which in turn is likely to affect the primary collectors most. Organizations like RCDC therefore suggest that till such a mechanism is in place the state may continue trading, but not exactly the monopoly; rather it should be on behalf of the ‘owner’ communities and hence the net profit should fully be shared with them. The committee that was constituted recently by the Odisha government to recommend a strategy in view of the implications of FRA and PESA in state trading of kendu leaf took note of several complexities of the matter and recommended for a higher price (in tune with the recommendation of the 3rd SFC) and other benefit to the pluckers and other seasonal workers. The government without much delay implemented this presumably because of the forthcoming elections. However, there was no special consideration for PESA areas.

required to sell the same, passes for importing, exporting or transporting any intoxicant exceeding the specified quantity are to be granted by the Collector. Further the Excise Commissioner may prescribe the measures, weights and instruments to be used by the licensed manufactures. In addition the powers to inspect the premises of any licensed manufacturer also lie with the State officials. Thus the State enjoys overall control over the sale and consumption of intoxicants. However, the state Excise Act casts a duty on the Panchayats to give information about the unlicensed manufacture of any intoxicant though the action against such erring persons shall be taken by the State officials (PRIA undated, Tribal Self-rule Law-Implications of Panchayat Laws in Scheduled Areas of Orissa, pp.17-18).

The Odisha PESA empowers the Gram Panchayat, under the control and supervision of the Gram Sasan, to prevent alienation of land belonging to a Scheduled Tribe and restoration of such unlawfully alienated land. However, this provision is also subject to the “to be prescribed” clause. It is pertinent to mention here that the *Odisha Land Reforms Act, 1960*, puts certain restrictions on the transfer of any holding or part thereof by a raiyat belonging to a Scheduled Tribe. However, the said restriction doesn’t apply to Scheduled Areas. Further the Act empowers the Revenue Officer to evict the unlawful occupant of the property and restore the same to the Scheduled Tribe. Even this provision hasn’t been extended to the Scheduled Areas. The Odisha Scheduled Areas Transfer of Immovable Property (By Scheduled Tribes) Amendment Regulation, 2000 seeks to prevent the transfer of land by the tribals to the non-tribals in the Scheduled Areas of the State. Moreover, for speedy implementation of the punitive provisions of the Regulation, the executive magistrates have been vested with the Judicial magisterial powers to try offences under the Regulation (Ibid, p.18).

As per the Odisha laws the Gram Panchayat, under the control or supervision of the Gram Sasan, shall be responsible for the control or management of the village markets. The Odisha Agricultural Produce Markets Act, 1956 however provides that any agricultural market managed by the Gram Panchayat can be taken over by the State Government. Thus there is a clear conflict between the PESA and this Act (Ibid, p.19).

In case of minor minerals, the state law applicable is the Odisha Minor Mineral Concession Rules, 1990. These rules don’t provide for *mining leases* per se. However the definition of the *quarry leases*, for which provisions are contained in these rules, includes extraction, collection or removal of minor minerals. Thus these Rules can be considered to see how they regulate the exploitation of minor mineral in the State. The grant of quarry leases, quarry permits and the sale of minerals by public auction are in the hands of the state officials or the government departments. Thus a provision regarding the consultation with the Zilla Parishad needs to be added to bring these rules in tune with the Odisha PESA (Ibid, p.20).

Table-1 provides a comparative status of legal compliances against PESAA in Odisha:

Table-1: Comparative status of legal compliances against PESA in Odisha

Central PESA		Odisha PESA	
Section No.	Provision	Section No.	Provision
4 (a)	State legislation on the Panchayats that may be made shall be in consonance with the customary law, social and religious practices and traditional management practices of community resources	---	The state legislations on the panchayats include OGPA, OPSA, OZPA, their corresponding Rules for election, and administration, etc.; and some other laws like The Odisha Vesting of Properties (in Grama Sasans) Act and Rules, Odisha Grama Panchayats(MFP) Administration Rules, 2002, etc.. Of these, OGPA, OPSA, and OZPA have been amended in 1997 to incorporate the provisions of the Central Act, either partially or fully though these amendments do not exactly(directly) correspond to the religious practices of the local communities in Scheduled Areas except for some indirect references under section 5(6) of OGPA . The state PESA Rules are yet to be notified.
4 (b)	A village shall ordinarily consist of a habitation or a group of habitations or a hamlet or a group of hamlets comprising a community and managing its affairs in	S.3 (1) of OGPA	The state government may for the purposes of this act by declaration notified in the gazette constitute any village or group of contiguous villages as a Grama and assign to such Grama, a name which shall be one of the villages comprised within the Grama. Explanation: Village intervened only by forest areas, hills, streams, rivers and such other

	accordance with traditions and customs;		<p>natural barriers, and lands not forming part of any village may be treated as contiguous villages.</p> <p>Provided that in the scheduled areas, a Grama shall ordinarily consist of a habitation or a group of habitations or a hamlet or a group of hamlets comprising a community or communities and managing its affairs in accordance with traditions and customs.</p>
4 (c)	Every village shall have a Gram Sabha consisting of persons whose names are included in the electoral rolls for the Panchayat at the village level;	S.4 (1) of OGPA	For every Grama there shall be a Grama Sasan which shall be composed of all persons registered by virtue of the Representation of the People Act 1950 in so much of the electoral roll for any assembly constituency for the time being in force as relates to the Grama, and unless the Election Commission directs otherwise, of the said portion of the roll shall be deemed to be the electoral roll in respect of the Grama.
4 (d)	Every Gram Sabha shall be competent to safeguard and preserve the traditions and customs of the people, their cultural identity, community resources and the customary mode of dispute resolution:	S.5 (6) of OGPA	In the scheduled areas, the Grama Sasan shall be competent to safeguard and preserve the tradition and customs of the people, their cultural identity, community resources and customary mode of dispute resolution consistent with the relevant laws in force and in harmony with the basic tenets of the constitution and human rights.
4. (e)	every Gram Sabha shall — (i) approve the plans, programmes and	S.5 (3) of OGPA	The Grama Sasan shall have the power to (a) Approve the plans,

	<p>projects for social and economic development before such plans, programmes and projects are taken up for implementation by the Panchayat at the village level;</p>		<p>programmes and projects for social and economic development before such plans, programmes and projects are taken up for implementation by the Grama Panchayat;</p>
4 (e)	<p>every Gram Sabha shall be--</p> <p>(ii) responsible for the identification or selection of persons as beneficiaries under the poverty alleviation and other programmes;</p>	S.5 (3) of OGPA	<p>The Grama Sasan shall have the power to</p> <p>b) identify or select persons as beneficiaries under the poverty alleviation or similar other programmes.</p>
4 (f)	<p>Every Panchayat at the village level shall be required to obtain from the Gram Sabha a certificate of utilisation of funds by that Panchayat for the plans, programmes and projects referred to in clause (e);</p>	S.5 (3) of OGPA	<p>The Grama Sasan shall have the power to</p> <p>a)....</p> <p>b).....</p> <p>Provided that every Grama Panchayat shall be required to obtain from the Gram Sasan a certificate of utilization of funds by the Panchayat for the plans, programmes and projects referred to in, clauses (a) to (b).</p> <p>c) Consider and approve the annual budget of the Grama Panchayat including the supplementary or revised budget;</p> <p>d) Consider levy of all taxes, rates, rents, and fees and enhancement of rates thereof;</p>

			<p>e) Organize community service an drawing up and implementation of agricultural production plans;</p> <p>f) Consider all such matters as may be referred to it by the Grama Panchayat for its decision;</p> <p>g) Call for such information and data from the Grama Panchayat as it considers necessary; and</p> <p>h) Consider such other matters as may be prescribed.</p>
4(g)	<p>The reservation of seats in the Scheduled Areas at every Panchayat shall be in proportion to the population of the communities in that Panchayat for whom reservation is sought to be given under Part IX of the Constitution;</p> <p>Provided that the reservation for the Scheduled Tribes shall not be less than one-half of the total number of seats;</p> <p>Provided further that all seats of Chairpersons of Panchayats at all levels shall be reserved for the Scheduled Tribes.</p>	Section 10(3-a) of OGPA	<p>Seats shall be reserved for the Scheduled Castes and Tribes in every Grama Panchayat and the number of seats so reserved shall bear, as nearly as may be, the same proportion to the total number of seats to be filled up by direct election in that Grama Panchayat as the population of the Scheduled Castes in the concerned Grama or of the Scheduled Tribes in that Grama bears to the total population of that Grama and such seats shall be allotted by rotation to different wards in a Grama panchayat:</p> <p>Provided that where the population of the Scheduled Caste or, as the case may be, the Scheduled Tribes in a Grama is not sufficient for reservation of any seat one seat for the Scheduled Caste or, as the case may be, one seat for the Scheduled Tribes shall be</p>

			<p>reserved in that Grama:</p> <p>Provided further that in the Scheduled Areas, not less than one-half of the total number of seats to be filled by such direct election shall be reserved for the Scheduled Tribes.</p>
		<p>Section 10 (5-a and 6-a) of OGPA</p>	<p>xxx The offices of Sarpanchas in Grama panchayats shall be reserved for the Scheduled Castes and Scheduled Tribes and the number of offices so reserved for the Scheduled Castes and Scheduled Tribes shall bear, as nearly as may be, the same proportion to the total number of such offices as the population of the Scheduled Castes and Scheduled Tribes respectively in the State bears to the total population of the State xxx(5-a).</p> <p>For the purpose of reservation of the offices of Sarpanchas in Grama panchayats xxxx-a) the Grama Panchayats in relation to the Gramas in which the density of population of Scheduled Castes and the Scheduled Tribes is higher in the Block shall be reserved for Scheduled Castes or Scheduled Tribes respectively and shall rotate in the descending order after every two terms of general election.(6-a)</p>
		<p>Section 10(5-b) of OGPA</p>	<p>xxx Provided that in the Scheduled Areas, all the offices of the Sarpanches in Grama Panchayats shall be reserved for the Scheduled Tribes.</p>

		<p>Section 16(2-a) of OPSA</p>	<p>Seats shall be reserved for the Scheduled Castes and Tribes in every Samiti and the number of seats so reserved shall bear, as nearly as may be, the same proportion to the total number of seats to be filled up by direct election xxx in that Samiti as the population of the Scheduled Castes and Scheduled Tribes in that Samiti area bears to the total population of that area and such seats shall be allotted on rotation to different constituencies in the Samiti area:</p> <p>Provided that where the population of the Scheduled Caste or, as the case may be, the Scheduled Tribes in a Samiti area is not sufficient for reservation of any seat one seat for the Scheduled Caste or, as the case may be, one seat for the Scheduled Tribes shall be reserved in that Samiti area:</p> <p>Provided further that in the Scheduled Areas, not less than one-half of the total number of seats to be filled by such direct election shall be reserved for the Scheduled Tribes.</p>
		<p>Section 16(3-b) of OPSA</p>	<p>xxx Provided that in the Scheduled Areas, offices of the Chairman of all the Samitis shall be reserved for the Scheduled Tribes.</p>

		<p>Section 6(3-a) of OZPA</p>	<p>Seats shall be reserved for the Scheduled Castes and Tribes in every Parishad and the number of seats so reserved shall bear, as nearly as may be, the same proportion to the total number of seats to be filled up by direct election in that Parishad as the proportion of the Scheduled Castes in that Parishad area or of the Scheduled Tribes in that Parishad area and such seats shall be allotted on rotation to different constituencies in a Parishad:</p> <p>Provided that where the population of the Scheduled Caste or, as the case may be, the Scheduled Tribes in a Parishad area is not sufficient for reservation of any seat one seat for the Scheduled Caste or, as the case may be, one seat for the Scheduled Tribes shall be reserved in that Parishad area:</p> <p>Provided further that in the Scheduled Areas, not less than one-half of the total number of seats to be filled by such direct election shall be reserved for the Scheduled Tribes.</p>
		<p>Section 8(2-a) of OZPA</p>	<p>xxx Provided that in the Scheduled Areas, offices of the Presidents of all the Parishads shall be reserved for the Scheduled Tribes.</p>
<p>4(h)</p>	<p>The State Government may nominate persons belonging to such Scheduled Tribes as have no representation in the Panchayat at the intermediate level or the Panchayat at the</p>	<p>Section 6(6) of OGPA</p>	<p>Notwithstanding anything contained in this section the Government may nominate to a Parishad in the Scheduled Areas persons belonging to such Scheduled Tribes as have no</p>

	<p>district level: Provided that such nomination shall not exceed one-tenth of the total members to be elected in that Panchayat.</p>		<p>representation in the Parishad: Provided that such nomination shall not exceed one-tenth of the total members to be elected under Clause (a) of Sub-section (1).</p>
		<p>Section 6(6) of OPSA</p>	<p>Notwithstanding anything contained in this section the Government may nominate to a Parishad in the Scheduled Areas persons belonging to such Scheduled Tribes as have no representation in the Parishad: Provided that such nomination shall not exceed one-tenth of the total members to be elected under Clause (a) of Sub-section (1).</p>
		<p>Section 6(6) of OZPA</p>	<p>Notwithstanding anything contained in this section the Government may nominate to a Parishad in the Scheduled Areas persons belonging to such Scheduled Tribes as have no representation in the Parishad: Provided that such nomination shall not exceed one-tenth of the total members to be elected under Clause (a) of Sub-section (1).</p>
	<p>Gram Sabha(GS) or Panchayats at Appropriate Level(PAL)</p>		
4 (i)	<p>(i) The gram sabha or the Panchayats at the appropriate level shall be consulted before making the acquisition of land in the Scheduled Areas for development projects and before re-settling or rehabilitating persons affected by such projects in the Scheduled Areas; the</p>	<p>S.3 (6)(b) of OZPA</p>	<p>No acquisition of land for development projects and for resettling or rehabilitating persons affected by such projects shall be made under any law without prior consultation with the Parishad.</p>

	actual planning and implementation of the projects in the Scheduled Areas shall be coordinated at the State level;		
4 (k)	The recommendations of the Gram Sabha or the Panchayats at the appropriate level shall be made mandatory prior to grant of prospective license or mining lease for minor minerals in the Scheduled Areas;	S.3 (6)(a) of OZPA	No prospecting license or mining lease for minor minerals or concession for the exploitation of minor minerals by auction shall be granted under any law on or after the commencement of the Odisha Zilla Parishad (Amendment) Act, 1997, except with the prior recommendation of the Parishad.
		Section 4(5) of Odisha Minor Minerals Concession Rules, 2004	No prospecting license or mining/quarry lease or its renewal or auction of source shall be granted in Scheduled Areas without recommendation of the concerned Gram Panchayat ⁸ .
4 (l)	The prior recommendation of the Gram Sabha or the Panchayats at the appropriate level shall be made mandatory for grant of concession for the exploitation of minor minerals by auction;	S.3 (6)(a) of OZPA	As above

⁸ Thus, the OMMCR, 2004 appears to be contradictory to OZPA although quite nearer to the mandate of the central PESA. Interestingly, OMMCR doesn't refer to 'concession' anywhere except in the very beginning of the concerned notification that "the Government hereby makes the following rules for regulating the grant of mineral concessions in respect of minor minerals", whereas OZPA provides for recommendation of the Zilla Parishad for granting concession for exploiting minor minerals. However, the Mines & Minerals (Development & Regulation) Amendment Bill, 2011 defines the term 'mineral concession' as "a reconnaissance licence, a large area prospecting licence, a prospecting licence, or a mining lease in respect of major minerals, and minor minerals and includes quarrying permits and any other mineral concessions permitting the mining of minor minerals in accordance with such rules as may be made by the State Government in this behalf".

	Panchayats at Appropriate Level only		
4 (j)	Planning and management of minor water bodies in the Scheduled Areas shall be entrusted to Panchayats at the appropriate level;	S.3 (6)(c) of OZPA (without defining ‘minor water bodies’, like the central PESA ⁹)	The Parishad shall plan and manage the minor water bodies.
		S.42 of Odisha Pani Panchayats Act, 2002	Nothing contained in this Act shall apply to the minor water bodies if any, in the Schedule Areas in the State of Odisha. [(Section 42(2))]
	GS and PAL		
4 (m)	“While endowing Panchayats in the Scheduled Areas with such powers and authority as may be necessary to enable them to function as institutions of self-government, a State Legislature shall ensure that the Panchayats at the appropriate level and the Gram Sabha are endowed specifically with.....”	S.44 of the OGPA	Notwithstanding anything contained in any other law, in the Scheduled Areas, subject to the control and supervision of the Grama Sasan, the Grama Panchayat shall exercise within its local limits, such powers and perform such functions in such manner and to such extent as may be prescribed in respect of the following matters, namely-

⁹ However, this term ‘minor water bodies’ has been explained by the state government under Section 42-2 of the Odisha Pani Panchayat Act, 2002 as ‘the projects which irrigate less than forty hectares of land’.

4 m (i)	the power to enforce prohibition or to regulate or restrict the sale and consumption of any intoxicant;	S.44 (2-a) of OGPA	Enforcement of prohibition or regulation or restriction of the sale and consumption of any intoxicant
		Section 26(A) of the Bihar & Orissa Excise (Orissa Amendment) Act, 1998	<p>(1) Notwithstanding anything contained in this Chapter or elsewhere, in this Act, in the Scheduled Areas,-</p> <p>a) in no case there shall be granted under this Act any license for manufacturer, possession, or sale, or any exclusive privilege for manufacture or sale, of any intoxicant, except with the prior approval of the concerned Grama Panchayat accorded with the concurrence of the Grama Sasan; and</p> <p>b) no license or exclusive privilege which is granted in contravention of clause (a) shall have any effect for the purposes of this Act.</p> <p>(2) For the purposes of clause (a) of subsection (1)-</p> <p>(i) the authority competent to grant license for manufacturer, possession, or sale, or exclusive privilege for manufacture or sale, of any intoxicant, shall before granting any such license or exclusive privilege, refer every proposal therefore to the concerned Grama Panchayat for its decision within a period</p>

			<p>of thirty days from the date of receipt of such reference; and</p> <p>(ii) if the Grama Panchayat fails to communicate its decision within the period referred to in clause (i), it shall be deemed that the concerned Grama Panchayat has accorded the required approval.</p>
4. m (ii)	the ownership of minor forest produce;	S.44 (2-b) of OGPA	(b) The ownership of minor forest produce
4. m (iii)	the power to prevent alienation of land in the Scheduled Areas and to take appropriate action to restore any unlawfully alienated land of a Scheduled Tribe;	S.44 (2-c) of OGPA	c) Prevention of alienation of land and restoration of any unlawfully alienated land of a Scheduled Tribe.
4. m (iv)	the power to manage village markets by whatever name called;	S.59 of OGPA	Provided that in the Scheduled Areas the Grama Panchayat, subject to the control and supervision of the Grama Sasan shall have power to manage village markets by whatever name called.
4. m (v)	the power to exercise control over money lending to the Scheduled Tribes;	S.44 (2-d) of OGPA	Notwithstanding anything contained in any other law, in the Scheduled Areas, subject to the control and supervision of the Grama Sasan, the Grama Panchayat shall exercise within its local limits, such powers and perform such functions in such manner and to such extent as may

			<p>be prescribed in respect of the following matters, namely-</p> <p>.....</p> <p>(d) Control over money lending to the Scheduled Tribes</p>
4. m (vi)	the power to exercise control over institutions and functionaries in all social sectors;	Sec 20 (5-i) of OPSA	<p>Notwithstanding anything to the contrary in this Act, in the Scheduled Areas, the Samiti shall, in consultation with the Grama Sasan, be competent –</p> <p>(i) to exercise control and supervision, the nature and extent of which shall be such as may be prescribed, over institutions and functionaries of various social sectors in relation to the programmes and measures, as the government may, by notification, specify;</p>
4.m (vii)	the power to control over local plans and resources for such plans including tribal sub-plans.	Sec 20 (5-ii) of OPSA	<p>Notwithstanding anything to the contrary in this Act, in the Scheduled Areas, the Samiti shall, in consultation with the Grama Sasan, be competent:</p> <p>.....</p> <p>(ii) To prepare the local plans including tribal sub-plans for the area and to exercise control over the resources for such plans.</p>
4-m(n)	the State Legislations that may endow Panchayats with powers and authority as may be necessary to enable them to function as institutions of self-government shall contain safeguards to ensure that Panchayats at the higher level do not assume the powers and		<p><i>(No such direct provision under any state laws, and the central Act itself may be made partly responsible for that as it provides for simultaneous / parallel powers to the Gram Sabha and the PAL in some cases. As a result, the District Panchayat enjoys certain</i></p>

	authority of any Panchayat at the lower level or of the Gram Sabha;		<i>privilege or power in respect of granting prospecting license for minor minerals, as per OZPA although the OMMCR recognizes only the power of the Grama Panchayat in that case.)</i>
4-m(o)	the State Legislature shall endeavour to follow the pattern of the Sixth Schedule to the Constitution while designing the administrative arrangements in the Panchayats at district levels in the Scheduled Areas.		<i>[This provision in central PESA is in accordance with the recommendation of the Bhuria Committee to bring the district panchayats of Schedule Areas more or less at par with the Autonomous District Councils of Sixth Schedule Areas. The ADCs enjoy judicial, legislative, financial, and executive powers relating to specified matters whereas the Zilla Parishad(meaning in English: District Council) in Odisha doesn't have any judicial and legislative powers; its financial and executive powers are also limited. Unlike ADCs, whose jurisdiction includes the urban local bodies, the ZPs have their jurisdiction confined normally to the rural areas only. The state government has not made any legal provision to bring the ZPs at par with ADCs. The term 'administrative arrangements' in PESAA itself can be held responsible for such deviation as it doesn't specifically impose anything thereby creating scope for dilution with the interpretation.]</i>

7. Framing of rules, and executive instructions by the State:

One of the inherent weaknesses of PESAA is that it did not itself mandate for formulation of rules thereunder, which is a deviation from the standard practice. Rules under PESAA were very much required to explain many relevant things/procedures that were required for proper implementation of the Act. Realizing the implication of this lacuna, (unfortunately) after 13 years of the Act was notified, the Ministry of Panchayati Raj suggested Model PESA Rules for the states in 2010 so as to help them prepare their respective state PESA Rules. So far the states of Rajasthan, Andhra Pradesh, and Himachal Pradesh have notified their respective state PESA Rules following the model Rule in their own ways. However, the Government of Odisha is yet to do that.

8. Governmental update on the status of implementation of PESAA:

In response to a department order from the Ministry of Panchayati Raj, Government of India dated 29 September 2012 asking for the compliance status on PESA, the Government of Odisha submitted(annexure-3), vide letter No. 17174/17-Sec-18-1033, dtd. 8 October 2012 of the Commissioner-Cum-Secretary, Panchayati Raj Department, that all the provisions under Section 4 have been complied with. The state government however also made the following clarifications against certain sub-sections:

- Sub-section 4(i) of PESAA: The Revenue & Disaster Management Department have issued executive instructions to the Collectors for obtaining recommendation of the Gram Sabha during land acquisition process. However, the Department has been requested to move the Government of India for suitable amendment in the Land Acquisition Act as it is a central Act.
- Sub-section 4(j): Definition of ‘minor water bodies’ has not been defined in PESA Act, which is awaited.
- Sub-section 4(m-i): The Excise Department have already instructed the Collectors to implement the amended provisions in giving licenses to liquor vendors in Scheduled Areas.
- Sub-section 4(m-ii): The Forest & Environment Department have been requested to include 6 more MFP in the list(already existing MFP list of 69 items) and to transfer its ownership for management etc. to the GPs.

Regarding Section-5, the state government said that it was ‘being followed’.

This simply suggests that the state government maintained its earlier stand that the provisions of PESAA have been duly complied with in Odisha, despite some critical deviations and non-

compliances in actual practice. It is not understood how can the government claim compliance of sub-section 4(m-o) when the the district panchayats of Odisha are yet to enjoy the administrative arrangements available for their counterparts in the Schedule VI areas. The NTFP regime doesn't actually allow exercise of ownership rights over MFPs for the GP in Scheduled Areas, and adding 6 more items to the MFP list will not solve the issue. Moreover, the Panchayati Raj Department probably was ignorant of the fact that the term 'minor water body' has been explained in the Odisha Pani Panchayat Act.

Further, the Panchayati Raj Department recently launched a campaign for empowering the Grama Sabha, but paid no attention to PESA while doing so. This shows the difference between the claim and the practice.

In fact, the overall practice of the state government has been to pay no exclusive attention to the Scheduled Areas or to the implementation of PESAA except for very few special arrangements (like, reservation for the seat of the chairperson of the PRIs for the Scheduled Tribes) that could not prove much effective in fulfilling the objective of PESAA.

In the mean time, the Government of India has gone one step ahead to amend the Land Acquisition Act, 1894. The cabinet has cleared the Land Acquisition, Rehabilitation and Resettlement Bill, 2012 proposed by the Ministry of Rural Development in an attempt to revise the much criticised colonial Act in view of the changing scenario. The Bill has taken care of the provision of PESA, and has provided that no land shall be transferred by the way of acquisition in the Scheduled Areas in contravention of the law relating to land transfer prevailing to such Scheduled Areas. However, as we know, the prevailing laws relating to land acquisition in scheduled areas are not strong enough. Hence, the Bill in its present form is not much promising to address the issues of land transfer in the Scheduled Areas.

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PART: II

FOLLOW UP AT PRI LEVEL : REFLECTIONS IN PRI PROCEEDINGS

Salient points of discussion in the Palli sabha meeting in Madhapadar village

(Turiguda GP, Chadrapur Block, Rayagada district)

(as per original sequence in the resolution)

Date: 08-03-2011

1. Consolidation of the proceedings of previous palli sabha
2. List of work(projects) proposed under NREGS/MGRP/TFC (this included, apart from conventional projects such as road, culvert, tanks/pond, etc., new afforestation project at the cost of Rs. 2 lakhs.
3. List of beneficiaries under IAY and other schemes(including beneficiaries for land development)

Date: 02-10-2012

1. Agriculture(the Palli sabha agreed to the proposal of the representative of the Agriculture Department to go for SRI cultivation)
2. Education
3. Water & sanitation
4. Road projects
5. Biju KBK
6. BRGF
7. NREGS
8. IAY
9. 'Mo Kudia' scheme
10. Implementation of Forest Rights Act
11. Demand of the villagers for afforestation on 30 acres of land by the government and to hand over the same to them.

The villagers also demanded for allocation of direct grants to the Palli sabha and Gram sabha for development works(presently the financial grant is channelized through the Panchayat and the line departments).

Comment: Madhapadar has been a progressive village having sincere interest in forest protection, conservation, and other NRM activities alongwith safeguarding the rights of the people. The village has received facilitatory support from RCDC for this purpose. Demand of the villagers for afforestation is rather unconventional in the Palli sabha/Gram sabha tradition(which is almost controlled by the government) of Odisha.

Salient points of discussion in the Palli sabha meeting in Hemburu village

(Turiguda GP, Chadrapur Block, Rayagada district)

(as per original sequence in the resolution)

Date: 25-02-2009

1. Cement concrete road at Hemburu
2. Beneficiary selection for welfare schemes such as IAY

Date: 22-03-10

1. NREGS
2. Social audit committee(selection of members)
3. Beneficiary selection for OAP/NAOP(old age pension)
4. Beneficiary selection for farm pond/Mo Pokhari

Date: 07-10-2012

1. Right to Education Act
2. Agriculture
3. PDS
4. Old age pension
5. Disability allowance
6. CC Road
7. Projects under BRGF, Biju KBK, and NREGS
8. Mo Kudia
9. Tube wells
10. Livestock vaccination
11. Opening of new medical centre
12. Construction of conference hall, etc.

Salient points of discussion in the ‘urgent’ Gram sabha meeting in Turiguda GP

Date: 29-11-2011

1. New rules for BPL survey
2. Preparation of new BPL list for each & every village
3. Steps to declare(the GP) as drought-affected
4. Application to the HE the Governor of Odisha for recognizing Ramnapada as a separate revenue village.

Application to HE the Governor of Odisha

To

His Excellency the Governor of Odisha

Sub.- Regarding recognition of revenue village status for the hamlet village

Sir,

We are the residents of Ramnapada village, revenue village Ramana, GP Turiguda, district Rayagada submitting herewith a request through this application for recognition of revenue village status for our hamlet village because of the following reason:

- We are about 22 households living in this hamlet village for more than 20 years.
- Our hamlet village is about 1.5 km. away from the revenue(main) village.
- All households in our hamlet village are scheduled tribe whereas the residents of the revenue village are non-tribals and we do not get permission to sit with them in meetings which is why our hamlet village is deprived of various (government) benefits. Our village has no basic facility like drinking water, education, health, communication).
- PESA Act provides a scope for recognition of revenue village status for hamlet villages in the Schedule Areas. Our village being situated in the Scheduled Area we also request for that facility.
- We have discussed and approved this in our Palli sabha.
- This has also been approved in the Gram sabha on 29-10-2011.

Hence, we humbly request for conversion of our hamlet village into revenue village taking into consideration the above issues.

Approved by the Sarpanch

Residents of Ramnapada

Comment: One of the most remarkable contributions of PESAA is its recognition to a hamlet or habitation as a ‘village’ which can have its own Grama Sabha that enjoys several powers under the Act. This is unconventional because the Odisha Grama Panchayat Act effects the Gram Sabha at Gram Panchayat level only, and for village(revenue village) level Palli sabha is recognized as its counterpart though the powers of Grama sabha supersede that of Palli sabha. PESAA allows for the power of Grama sabha even at a level lower than that of the revenue village, i.e. a hamlet or habitation if that comprises a community and manages its affairs according to traditions & customs, in the Scheduled Areas. Now, as the Governor of the state is the sole authority at state level on matters related to the Scheduled Areas, he can

definitely ask the state government to declare revenue village status for a hamlet if the case so deserves. This is not exactly a power directly conferred under PESA or any other law, but the Ramnapada villages actually wanted to refer to the special authority of the Governor for Scheduled Areas. The villagers' resolution(palli sabha) was to be approved in the GP(Gram sabha) as per the normal procedure though this should not be necessary for Scheduled Areas. After the application was sent to the Governor, a local authority from the government visited the village for a preliminary enquiry. No further progress has been reported to us. But this was an extraordinary step that could be possible with necessary intellectual support from RCDC.

Interestingly, the MoPR also agrees to the fact that conventional village notifications have not been compatible with the requirement of PESA:

*“A process of notifying villages as PESA and constituting Gram Sabhas accordingly needs to be undertaken at the earliest. Applications may be invited from the community and inquired into by an official designated by the State Government in terms of whether or not the villages proposed are as envisaged in PESA. Villages proposed as per PESA may be so notified and a Gram Sabha constituted for each village.”(Address of Sri K.C.Deo, Minister for Panchayati Raj and Tribal Affairs in the conference on the **Role of Governors in the administration of Scheduled Areas and Tribal Areas in the context of Fifth and Sixth Schedule of the Constitution**, held at New Delhi on 30-10-2011. Vide annexure-2 for more details.)*

The Secretary, Panchayati Raj Department, Odisha however informed the central government that while it was suggested at a meeting of the Government of India to consider some modifications in the list of habitations prepared under the Drinking Water Supply Scheme and the R. D. (Rural Development) Department had been asked accordingly to provide the list thereof, the provision of PESAA that every village shall have a Grama Sabha, has been 'complied' with(vide her letter dated 8th October 2012) though, as we know, this is not the case exactly.

Salient points of discussion in the Gram sabha meeting in Nilabadi GP

(as per original sequence in the GP resolution register)

2008

26th January 2008(Republic Day):

- PDS
- Old Age Pension
- NREGS
- IAY
- 12th Finance Commission
- Utilization Certificate
- The objectives and benefits of Forest Rights Act as explained by a RCDC staff
- BRGF/KBK

1st May 2008(May Day):

- Budget
- NREGS

15th August 2008(Independence Day):

- Different loans(made available by the government for the poor)
- Old Age Pension
- NAOP
- Utilization certificate

2nd October 2008(Gandhi Jayanti):

- PDS
- Old Age Pension
- Natural disasters
- IAY
- NREGS
- Miscellaneous(not much income from orchards, many lacking BPL card)

2009

26th January 2009(Republic Day):

- PDS
- FRA and forest(stress on CFR, on imposing measurement of land eligible under FRA, decision to support RCDC's bioresource governance programme)
- Development work
- Old Age Pension
- Sanitation

15th August 2009(Independence Day):

- PDS
- Forest(application procedure under FRA, JBIC work in Jaiguda without Gram sabha permission)
- Land repairing under NREGS(not done so far despite implementation of concerned schemes)
- Utilization certificate
- Development work

26th August 2009: NREGS(only)

2nd October 2009(Gandhi Jayanti): Gandhi Jayanti(only)

2010

26th January 2010(Republic Day):

- PDS
- Old Age Pension
- NREGS
- Health
- Drinking water
- Education

(the resolution doesn't describe any details)

21st April 2010(special Gram sabha): NREGS(only)

1st May 2010(May Day):

- NREGS
- Budget for 2010-11

- Land development of FRA land under NREGS

15th August 2010(Independence Day):

- Agricultural land: The resolution says that as the embankments of two (important) water harvesting structures, Badabandha and Belabadi bandha were damaged resulting in (failure of irrigation) about 200 acres of land remaining fallow, and whereas request to the government for repairing of the same under NREGS has not yielded any result; hence it is decided that the Grama sabha will do the work on its own.
- PDS
- Utilization certificate
- TFC
- Old Age Pension
- Development work
- FRA(RCDC staff explained the four golden principles of bio-resource governance)

27th October 2010(Special Gram Sabha):

This meeting discussed only NREGS related issues including MGRY.

14th November 2010(Special Gram Sabha):

- Compulsory and free education
- NREGS
- Drinking water
- Sanitation
- FRA(RCDC staff explains that although people have received individual entitlements of forest land under FRA, still some of them are damaging forests; particularly the Sabdam village forest is being cut by people from other panchayats; so the members of Grama sabha were requested to look into the matter and take necessary steps.)

2011

26th January 2011(Special Grama sabha):

- Right to education
- MGNREGS
- Census 2011
- FRA(The Grama sabha adopted an extraordinary resolution relating to forest and biodiversity as under:)
 - As per the guidelines issued by the Secretary, Ministry of Panchayati Raj in his letter to the Chief Secretary of Odisha dated 21st May 2011, this Gram sabha resolves that within seven days of this resolution the local DFO would sit with the Sarpanch and

other PRI representatives of the panchayat, explain in writing the extent to which provisions regarding minor forest produce in annexure-4 of the said letter has been actually implemented or not implemented (reasons thereof), and shall render all assistance to the Gram panchayat for getting the benefits it deserves from bamboo, kendu leaf, and other MFPs. Besides, he/she will also provide necessary support for the proper management, conservation and utilization of MFPs.

- No afforestation or plantation activities shall be carried out in the common property areas of this panchayat (including reserve forests) henceforth without the permission of the Gram sabha. Besides, all the concerned government/private agencies shall report to the Gram sabha within 30 days of this resolution, furnishing details of the plantation activities undertaken so far in this panchayat; and the Gram sabha will take necessary decisions after a review of the same.
 - No more contract farming and farming of non-food crops shall be allowed in this panchayat without the permission of the Gram sabha; and those people/agencies who have taken up such activities earlier shall have to furnish necessary details to the Sarpanch, within 30 days of this resolution and with a copy of the contract farming agreement following which the Gram sabha shall decide on the future of such existing activities.
 - This Gram sabha intends to implement the provision of forming a Biodiversity Management Committee in the Biological Diversity Act, 2002. The State Biodiversity Board is hereby requested to render all necessary assistance for this purpose within 30 days. If this request is not given the importance it deserves this will be considered as contempt of the Gram sabha.
- IAY
 - PDS
 - Old Age Pension (OAP, NOAP)
 - Drinking water
 - Health & sanitation

Note: The unusual resolution relating to PESA, biodiversity, and contract farming, etc. was in fact inspired by sensitization done on the concerned issues by RCDC. Four more GPs adopted the same resolution. The unfortunate thing is that the resolution was adopted primarily because it was thought to be an ideal one and not because the GP stakeholders felt its need, which is why there was almost no follow up on their part on this. If they did not feel the need that doesn't mean that there was no such need; rather the fact is that the focus of discussion has been few immediate benefits such as IAY, and larger vision and greater planning seems to be a major missing point in all PRI proceedings though there may be few exceptions.

Proceedings¹⁰ of a Special Grama sabha of the Bhurtigarh GP

(Lanjigarh Block, Kalahandi district)

Dated: 15th August 2010

A special Grama Sabha was organized today on 15-8-2000 at 11 a.m. in the presence of the undersigned and chaired by the Sarapanch Sri Santosh Kumar Patra. The Executive Officer explained the (objectives of this) Grama sabha in detail. Then resolution was adopted on various proposals.

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.....

(signatures of the participants)

Proposal No. 13th Finance Commission:

The Executive Officer read out the details of the 5-year action plan of 13th Finance Commission of the Bhurtigarh GP. After discussion this was unanimously accepted and approved.

13th F.C. Action Plan

2010-11

1. Construction of tubewell at Sikarguda(Majhipada)
2. Repair of sanitary well at Sikarguda
3. Maintenance of existing tubewell 52 Nos.
4. Construction of Chandini, Drain, and Platform(10)
5. Construction of CC Road at Patropada
6. Construction of CC drain at Gauntia pada

2011-12

1. Construction of new tube well at Merdukupa
2. Construction of Chandini & Drain at Jankipadar
3. Construction of CC road at Sikarguda
4. Construction of ring well at Kapelpadar

¹⁰ Some of the words in the original hand-written proceedings were apparently indecipherable which is why such words (like, names of places) might appear erroneously in some cases though that should not affect the key interpretation and analysis for our purposes.

5. Construction of CC drain at Mundighati
6. Operational expenses on maintenance of accounts, audit and database work.

2012-13

1. Construction of ring well at Palki
2. Construction of ring well at Sorgan
3. Construction of ring well at Adakhu
4. Construction of platform and drain of 10 Nos. of tube well
5. Construction of CC road at Pushmandi
6. Construction of CC road at Saibhata
7. Operational expenses on maintenance of audit & database work.

2013-14

1. Construction of ring well at Mahinal
2. Construction of ring well at Lamer
3. Construction of platform and drain of 10 Nos. Tubewell
4. Repair of sanitary well at Kaichuan
5. Construction of CC road with drain at Kadamaska
6. Construction of CC road with drain at Khamanpada
7. Construction of CC road with drain at Pajeguda
8. Operational expenses on maintenance of accounts, audit and database work

2014-15

1. Construction of ringwell at Bhurtigarh
2. Repair of sanitary well at Bhurtigarh
3. Construction of ringwell at Gambharighati
4. Construction of platform with drain of 12 Nos. Tubewell
5. Spare parts purchase
6. Construction of CC road with drain at Sirigan
7. Construction of CC road with drain at Soorgan
8. Construction of drain at Mundabahal
9. Construction of CC road at Kaichuan
10. Operational expenses on maintenance of accounts, audit and database work

Proposal No.2: About opening a kendu leaf phadi

Although kendu leaf is collected and stored in Bhurtigarh GP there is no government phadi or procurement arrangement here which is why the tribals are deprived of the income opportunity from collection and sell of kendu leaf. Today's Grama sabha unanimously resolves that two phadis, viz.1-(at) Sirigan, and 2-(at) Bhurtigarh be constructed by the Forest Department to facilitate the collection and procurement arrangement for the leaves.

Proposal No.3: Bamboo is plentifully harvested in the forest areas of Bhurtigarh GP. In this area this is often treated as a minor forest produce. The panchayat is also paying attention to its(bamboo resource) maintenance at the GP level. It was discussed how some royalty from this source can be realized by the GP. It was unanimously resolved that the bamboo royalty be paid to the GP.

Proposal No.4: Three nalas on the way from Bhurtigarh to Merdikupa have been eroded by rain causing inconvenience to villagers of Merdikupa, Kadomaska, Sirigan, Palki, Jankipadar, and Kaichuan. It was thus resolved to construct bridge and to repair the road with the flood grant.

Proposal No. 5: It was resolved to go for avenue plantation from Bhurtigarh to Merdikupa under the MRNREGS scheme.

Proposal No. 6: The public was sensitized of (safe) drinking water, and it was decided to do sanitation activities with the Gan Kalyan Panthi(village welfare fund) so as to prevent diarrhoea.

Proposal No.7: It was resolved to construct the following roads under MGNREGS:

1. Bhurtigarh to Kutelpadar
2. Bhurtigarh to Mundighati
3. Bhurtigarh to Khamanpada
4. Sirigan to Kaichua
5. Bhurtigarh to Mundagan
6. Medical chowk to Tetelpada
7. Lamer to Gambharighati

Proposal No.8: Cattle pound-

As the good management of cattle is required hence today's House unanimously decided to construct and manage a cattle pound in the GP.

Finally the meeting ended with a vote of thanks to the members present and the Sarapanch.

Proceedings of the Grama sabha meeting of Kumbhariput GP

(Koraput district)

Dated: 26th January 2011

Today on 26th January 2011 at 10 a.m. a Grama sabha meeting was organized at the GP office on the occasion of January 26(Republic Day). This meeting was chaired by the Sarpanch Smt. Siun Meleka in the presence of the ward members and all the gentleman of the GP.

The meeting discussed the following:

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.....

.....

(signatures of participants)

1. The meeting started with Sarpanch Smt. Siun Meleka as the chair.
2. Today the proceedings of last Grama sabha meeting was read out, and being correct it was accepted unanimously.
3. Today the income-expenditure statement of the panchayat was presented, and being correct this was accepted.
4. Education was discussed in this meeting. The Sarpanch and the Executive Officer emphasised on education in presence of the members of Kumbhariput GP. Every guardian must send their children to school where nutritional food is being supplied. It was also explained to the school teachers.
5. The meeting reviewed the (implementation of) Forest Rights Act. Those who are cultivating dongar land or forest land will receive patta as per the government norms. The beneficiaries should apply to R.I., Kumbhariput or consult W.E.O., Bandhugaon to get their patta.
6. There was a detail discussion on the MGNREGS plan, and the action plan there-under was presented.
7. Projects proposed under the BRGF and TFC grants were incorporated in the Grama Sabha action plan.
8. The Sarpanch and the representative from RCDC explained that a GP-level committee should take up the responsibility of sustainable utilization, management and protection of natural resources as per the provision of Biological Diversity Act.
9. Cooperation of the members was requested for the forthcoming Census operations.

Salient points of discussion in the Panchayat Samiti meeting, Sundargarh Sadar Block

(Sundargarh district)

Date: 13-1-2009

- Development projects like IAY, RKVY, BRGF, NREGS, etc.
- Education
- Agriculture and cooperatives
- Health and animal health care
- PDS
- Rural water supply
- Lift irrigation
- Other miscellaneous

Date: 23-6-2009

- Health
- Soil conservation
- Agriculture
- Cooperatives
- Education
- PDS
- Rural water supply and sanitation
- ICDS
- ITDA
- Social & educational organiser
- Development projects
- Other miscellaneous

Date: 22-9-2009

- Development projects
- Health
- Education

- Rural water supply and sanitation
- Agriculture
- Soil conservation
- Animal health care
- Cooperative
- SGSY
- Social welfare and educational organiser
- ICDS
- Minor Forest Produce

Date: 03-02-2010

- Education
- Rural water supply and sanitation
- Agriculture
- PDS
- Health
- Animal health care
- Cooperatives
- ICDS
- Fishery and ITDA
- Development projects

Date: 19-05-2010

- Health
- Education
- Agriculture
- Lift irrigation
- Animal health care
- Horticulture
- Cooperatives
- ICDS
- Social welfare
- SC & ST welfare
- PDS
- Development projects

Date: 14-09-2010

- Rural water supply & sanitation
- Agriculture
- Horticulture
- ICDS
- Animal resources
- SGSY and ITDA
- Social welfare and fishery
- Education
- Minor forest produce
- Development projects

Date: 25-01-2011

- Agriculture
- Soil conservation
- Minor irrigation
- Lift irrigation
- Health
- ICDS
- Animal health care
- PDS
- Education
- Social welfare
- Horticulture
- ITDA
- Development projects

Date: 27-3-2011

(Emergency meeting)

Only issues relating to the development projects discussed.

Date: 02-08-2011

- Development project
- Rural water supply and sanitation
- Agriculture

- Health
- ICDS
- Animal health care
- Poverty alleviation scheme
- PDS
- Education
- Horticulture
- Other miscellaneous

Date: 26—9-2011

(Emergency meeting)

Development projects under BRGF and 13th Finance Commission grants discussed.

Comment: The proceedings of the Sundargarh Sadar Block have decently described the important discussions and decisions with some details in cases that appeared relevant to the concerned authorities. Unlike the Grama sabha proceedings we have seen earlier these PS proceedings appear to be more dynamic and vivid, chiefly owing to the fact that most of the rural development activities are controlled at Block level. However, not a single mention to PESA or the special powers thereunder was found in these proceedings.

Salient points of discussion in the Zilla Parishad meeting, Sundargarh

(Sundargarh district)

Date: 28-10-2009

- BRGF Action Plan
- NREGS Action Plan
- Cess grant and KL grant
- Rural development
- Agriculture
- Education
- Social welfare
- Health
- Miscellaneous
- Constitution of Standing Committee

Date: 22-02-2010

- Approval of labour budget under NREGS
- Approval of projects under KL grant
- Health
- Education
- Rural works
- Sports
- Other miscellaneous (this included a very important point raised by Sri Nirmal Naik, ZP Member who said that mining activities of the district should be approved in the ZP meeting as per PESA Act. However, the Collector 'clarified' that this subject matter 'does not come under the purview of the approval of the Zilla Parishad'. Sri Naik further said that during displacement and rehabilitation of people in establishment of mining, the same should be passed in the ZP 'as per guidelines'. The House decided to move the Government for necessary clarification both the matters.)

Date: 27-8-2010

- BRGF plan
- Forest (elephant menace)
- Agriculture
- Education
- Health
- PDS
- MGNREGS
- Projects under KL grant
- Projects under Cess grant
- Veterinary

- Sports
- Approval of the recommendation of the Standing Committee

Date: 02-02-2011

- RWSS
- Education
- Cess grant projects
- Ayurvedic dispensaries
- Approval of the recommendations of the Standing Committee
- Other miscellaneous (this included a grievance by a ZP member regarding non-allotment of land under FRA to the non-tribals. The concerned DFO was requested to provide a report on that.)

Date: 04-03-2011

(Special meeting)

This meeting discussed exclusively the appointment of Sikshya Sahayaks

Date: 29-7-2011

- Approval of NREGS plan
- Approval of ZP budget
- Rural works
- RWWS
- Health
- Agriculture
- Education
- MGNREGS
- Other miscellaneous

Date: 18-11-2011

- BRGF
- Projects under Cess grant and KL grant (ZP share)
- NREGS
- Recommendations of the standing committee(approved)
- Health
- Forest(the major discussion was on findings of the Standing Committee on Civil Supplies & Forest. The Committee had found through field verification that no forest clearance had been obtained by three industries, and that MCL did not actually

undertake any plantation although it claimed to have spent Rs.14.69 crores on that. The Parishad approved demand for CBI enquiry on the matter relating to MCL's fraud.)

- Road development
- RWSS
- Rural electrification
- Miscellaneous

The recommendations of the Standing Committees attached to the proceedings did not have any reference to any special power under PESA.

Comment: The referred proceedings of the Sundargarh Zilla Parishad appear to be a little dynamic with an exceptional reference to PESA only once. After a ZP member raised the issue of exercising the power of the ZP under PESA on mining operations, the District Collector gave a very wrong information that suppressed the matter. No other proceedings discussed that. This was really unfortunate.

Salient points of discussion in the Zilla Parishad meeting, Mayurbhanj

(Mayurbhanj district)

Date: 9-1-2009

- NREGS
- Pani panchayat
- Lift irrigation
- Renovation of pond (this focused on the Balidiha pond that had reportedly been damaged due to the flood of 1973 and also partly due to the illegal mines & quarries operating in the Shayamakhunta area. The DFO, Baripada was asked in the meeting to enquire whether any such illegal mining was taking place there. This can be linked with the ZP's power to grant license on mining of minor minerals in the Schedule Areas, but it is to be noted that the ZP did not discuss mining as one of the points in the agenda; rather the issue came out indirectly.)
- Health
- Drinking water & sanitation
- Agriculture/horticulture
- SC and ST Welfare
- Cess grant and KL grant
- PDS
- Other miscellaneous

Date: 30-6-2009

- Reconstitution of the standing committees of the ZP
- NREGS, IAY, SGSY
- PWD(demand for road development works)
- BRGF
- Irrigation
- Soil conservation
- Health
- Education
- Electricity
- Sports
- SC & ST Welfare
- PDS

- Estimates for expenditure of the ZP
- Other miscellaneous

The House expressed disappointment over the fact that the DFO, Baripada did not submit the report on illegal mining near Shyamakhunta. As such it was decided to form a committee to look into the matter.

Date: 4-11-2009

The proceedings include discussion on NREGS, road development, lift irrigation, soil conservation, educational matters, health care, and drinking water, etc.

The House was informed that a committee went for field verification of illegal mining near Shyamakhunta, and that action would be taken after submission of the report thereof. A remarkable part of this proceeding is the issue raised by the ZP member, Badasahi Sri Rajib Lochan Singh who asked for details of stone quarries, crusher units, and leased out quarries in the district which two local MLAs endorsed as an important issue. The Collector assured to provide the information through Tahasildar, Badasahi.

Date: 08-01-2010

- NREGS
- Education
- BRGF
- Health
- SC & ST Welfare
- Other miscellaneous

Interestingly there was no mention to the report on illegal mining near Shyamakhunta. However, the ZP member of Badasahi listed out a number of mines/quarries operating in the Badasahi area, and Smt. Sarojini Hembram, MLA said that transportation from these quarries caused serious damage to the road from Sanakerko to Jadunathpur. The House decided to look into the matter.

Date: 09-06-2010

- MGNREGS
- Health
- Education
- Agriculture
- Drinking water (RWSS)
- PDS
- SC & ST Welfare
- Estimates for expenditure of the ZP
- Other miscellaneous

No mention to the Badasahi mining issue was found in this proceeding.

Date: 4-10-2010

- Agriculture/Horticulture
- Education
- BRGF
- MGNREGS
- Health
- SC & ST Welfare
- Miscellaneous

Date: 28-01-2011

- Agriculture
- MGNREGS
- Education
- SC & ST Welfare
- Miscellaneous

Date: 16-06-2011

- Education
- Agriculture/horticulture
- Health
- Drinking water supply
- PDS
- MGNREGS
- Estimation for the expenditure of ZP
- SC & ST Welfare
- Miscellaneous

Date: 17-11-2011

- Education
- BRGF
- Devolution of fund (ZP share)
- Animal husbandry
- NREGS

- Other miscellaneous

Date: 20-4-2012

- Reconstitution of the Standing Committees of the ZP
- Health
- PDS
- Education
- Agriculture/horticulture
- Drinking water (RWSS)
- MGNREGS
- BRGF
- SC & ST Welfare
- Estimates for expenditure of the ZP
- Other miscellaneous

Comment: The proceedings of the Mayurbhanj Zilla Parishad appear to be quite formal without a single mention to PESA or the special powers thereunder. The issue of illegal mining was discussed not as a part of the agenda, and no satisfactory follow up regarding that was noticed in the referred proceedings.

PART: III

FIELD LEVEL ASSESSMENT

FIELD ASSESSMENT OF THE FUNCTIONING OF PESA REGIME

THE STUDY:

The present study was commissioned by RCDC towards the end of 2010 with an intention to assess the functioning of PESA at ground level. The consultant appointed for this purpose chiefly followed a method of individual and group interactions so as to assess how exactly the concerned stakeholders of PESA at ground level were oriented. As RCDC found that their first report required further enrichment in terms of sample sizes and improved analysis, hence they made a second round of survey in 2011 based on which the following analysis has been presented. The findings of this survey suggest that the PRI members and other important stakeholders of PESA at local level still lack a proper sensitization and orientation on PESA despite some occasional training/orientation programmes conducted by the state government (particularly through the State Institute for Rural Development). Of course the intellectual capacity of the stakeholders in the disadvantaged areas has some limitation that is likely to create some difficulty in ensuring a comprehensive understanding of the legal and constitutional provisions, but more questionable is the sincerity and approach of the government itself to make the orientation effective. The Gram Sabha Sashaktikaran Karyakram of 2012 is a testimony of this serious lacuna. Sensitization on the real and most useful dynamics of PESA rather seems to come through the intervention of civil society organizations/NGOs, and almost all successful cases of local implementation of the powers under PESA can be attributed to these interventions. However, quite often the non-government sensitization programmes focus on one or two specific aspects (such as the provision to regulate intoxicants leading to the anti-liquor campaign) of PESA which they think/find of immediate relevance for the communities, and hence a holistic understanding of PESA may not find adequate scope in such programmes to develop. Last but not the least that can be said in this context is the fact that the Forest Rights Act has taken over PESA, thanks to many of its advantages and potential to directly benefit the individuals; and the sensitization programme on FRA has cornered PESA though unintentionally of course. The survey reflects the impacts of many such factors, and the poor results do represent the reality.

STUDY AREA AND METHODOLOGY

The field study was conducted in 27 villages of 6 GPs in the districts of Koraput, Rayagada, and Gajapati. Some of these GPs have been RCDC's direct intervention areas on developing a model of bioresource governance, while the rest are in their neighbourhood.

District and Block wise no. of sample villages covered under the present survey			
District	Block	Gram Panchayat	No. of Sample Villages
Gajapati	Gumma	Kujasingh	3
		Taranga	3
Koraput	Bandhugaon	Nilabadi	4
		Kumbhariput	5
Rayagada	Chandrapur	Buduballi	7
		Dangsorada	5
Total	3 Blocks	6 GPs	27

The methodology of the study includes Focus Group Discussions (FGD), Individual Interviews and unstructured interviews with government officials. The FGDs in GP offices were conducted in the presence of sarpanch. The individual interviews were conducted with various stakeholders such as PRI members (Sarpanch, Ex-Sarpanch, Naib Sarpanch and Ward Members) and AWW, SHG members, Farmers, villagers. The details of individual samples covered is shown in the table below:

District-wise total individual sample size					
Stakeholders		Gajapati	Koraput	Rayagada	Total
PRI Members	Sarpanch	2	2	2	6
	Naib Sarpanch	2	2	1	5
	Ward Member	5	7	6	18
	Ex-Sarpanch	1	1	1	3
Others	AWW	1	2	1	4
	Farmer	7	6	5	18
	SHG Member	4	3	3	10
	Villager	12	14	16	42
Total		34	37	35	106

The methodology comprised of various steps as under:

Step 1: Development of FGD guidelines and interview schedules

Individual Interview schedule and FGD guideline were developed accordingly and shared with the field data collectors and orientation for the effective data collection for the study.

Step 2: Field data collection and review of secondary information

The data were collected from the selected samples through interview schedules and FGDs done in GP offices, and the secondary information were collected from respective government officials and reviewed.

Step 3: Analysis of primary and secondary information

The collected primary information in the schedules were entered into the Excel database and analysis was done in pivot chart and tables. The secondary information and FGD findings were also analyzed and incorporated in the report.

Step 4: Drafting of report

The structure of the report was finalized according to the objective of the study and the report was prepared considering the individual interview and FGD findings.

A BRIEF INTRODUCTION TO THE STUDY AREAS¹¹

Gumma Block of Gajapati district

Gajapati district is divided into seven administrative blocks, one Notified Area Council (NAC) and one Municipality. Out of the seven blocks the study was conducted in the Gumma block which is a backward and tribal block. As per the 2001 census 74.37% of total population is ST.

Our study was conducted in two gram panchayats, i.e. Tarangada and Kujasingh.

Tarangada GP at a glance: Tarangada GP consists of 17 revenue villages and 15 hamlets. The GP has 13 wards out of which 12 ward member seats are reserved for SC and ST candidates. Currently the ward members configuration is 10 ST, 2 SC and only 1 OBC. Six ward member seats are reserved for female ST candidates. Sarpanch is from ST community and the Panchayat Samiti member is a female belonging to ST community¹².

Total population of the GP was estimated to be 4,141 (2001 census) out of which 3,057 (73.82% of total population) are ST, 1,006 (24.29%) are other caste and only 78 (1.88%) belong to the SC community.

¹¹ The information provided here is as per the status during 2011. In 2012 panchayati raj elections took place which changed the positions vis-à-vis PRI functionaries in many areas. Some important changes have been noted here.

¹² After PRI elections in 2012 the PS member elected from this area is a male person belonging to OBC category.

Social security schemes and programmes

The panchayat is covered under many social security and benefit schemes and programmes. 398 HHs are covered under BPL schemes, 120 HHs under Antodaya Anna Yojana and 7 HHs under Annapurna Yojana. Besides, 68 beneficiaries are covered under widow pension, 10 under disability pension, and 110 under Indira Gandhi National Old Age Pension, 40 under Madhu Babu Pension Yojana. All the beneficiaries stated above are claimed to have been selected by the community and PRI members. These issues are followed and reviewed in monthly meetings of panchayats and gram sabha. Thus, the GP plays a major role in the selection of beneficiaries for various social security schemes and programmes. (Ref: *GP meeting proceedings dtd. 28th July 2008 and 30th Oct 2007, and gram sabha proceedings dtd. 2nd Oct 2010*).

Gram Panchayats also regulate the NREGS work and monitor the utilisation of fund in the area. 1,078 families (3,022 family members) are registered under NREGS. 30 families have received 100 days of work under the programme. 28 rural development works (9 water tanks, 16 farm ponds, and 2 roads) were undertaken in the gram panchayat in 2009-10.

Health and WATSAN

One health sub-centre and one livestock inspector, 51 tube wells, 27 open wells, 11 community ponds and six number of piped water (gravity flow) system, five Water Harvesting Structures, one minor irrigation point and lift irrigation point each are available in the GP. Out of the total 51 tube wells 42 are functional and nine are defunct. To keep these facilities functional and for the maintenance of the water source the GP has reportedly taken many steps and solved those issues through the meetings of the GP and gram sabha. The community reportedly decides, through the meetings, the utilization of fund in maintenance and renovation of water sources, keeping the village clean by constructing concrete walls in drains, road repair etc. Apart from this the GP also monitors the utilisation funds in the work and regularly evaluates the process in monthly meetings. (Ref: *proceedings of GP meetings dtd. 30th April 2008, and gram sabha proceedings dtd. 2nd Oct 2007*).

Village institutions and education

There are one High School, two Upper Primary Schools 12 Primary Schools, and 13 AWCs in the GP. Apart from these educational institutions 43 SHGs have been formed in the GP out of which 11 SHGs are financed under various government schemes (7 SGSY and 4 under ITDA). The selection of the SHG as a beneficiary also is being done by the gram sabha according to the proper guideline of the schemes. The gram sabha also decided to give community ponds on lease to SHGs for fishery under SGSY. Apart from this the GP also decided to regulate the GP weekly haat (Ref: *Proceedings of gram sabha held on 26th Jan. 2011*).

Control over forest and regulation of NTFP

The GP gives only license for trading of minor forest produces and no other rights/powers under PESA are exercised in this respect (*Ref: Proceedings of gram sabha held on 26th Jan 2009 and 26th Jan 2011*).

Kujasingh GP at a glance: This is a remotely located GP surrounded with hills, and the only connecting road is made of morrum making it virtually inaccessible in the rainy season. In this GP a *patharabani* (rocky patch) was given on lease by the permission of the PS and ZP. The GP is consisting of 20 villages and the Sarpanch is a tribal lady, when asked about the lease, said that she did not know the matter and that her husband could better explain things.

Consultation with Gumma Block Chairman:

The study team also met the Gumma Block chairperson Smt. Premika Mandal¹³ to address some identified issues such as the auction and fixation of the price of NTFP. She said, “The Block has fixed the price of the NTFP in the presence of all Sarpanch and PS members in a PS meeting. Although the price is fixed by the Block but the GPs can modify the price. The GP can fix the NTFP price as per the community demand, but not a single case of this has been noticed in the Block yet.”

Bandhugaon Block of Koraput district

Bandhugaon Block consist of 12 GPs having 155 villages and 137 wards with a total population of 50,018 (2001 Census) out of which 38,867 are ST. The total Block is under a single police station and consists of 142 revenue villages. There are 11,451 BPL families (BPL Survey 197). The literacy percentage is very low i.e. only 19.5 (2001 Census). There are 12 sarpanches, 137 ward members and two ZP members in the block. Four primary health centers and livestock instructors and only one veterinary dispensary are available in the Block.

Nilabadi GP at a glance: The GP is just adjacent to the Block headquarters and consisting of nine revenue villages. The sarpanch is Ms Aaradhana Meleka who is ST female candidate¹⁴. The GP is divided into 12 wards in which seven male and five female ward members were elected in the previous GP election. Out of the seven male ward members five are ST and one each from SC and other caste. Similarly, from five female ward members four are SC and only one belongs to the other caste. The PS member of the GP is a ST (male). The total population of the GP is 3449 out of which 1706 are male and 1743 are female. The details of demography of the GP are given in the table below.

Out of the total 3449 many have been covered under the social benefit schemes and programmes. The village-wise details are given in the following table:

¹³ The newly elected chairperson is Ms. Mariam Raita (ST).

¹⁴ The newly elected Sarpanch is a male person (ST) whereas the PS member is also a male person but belonging to the OBC community.

Village	Population	BPL	Antyoday	Annapurna
Nilabadi	1665	357	72	2
Gumura	566	139	50	1
Chekapadu	214	77	31	0
Dandabadi	162	49	30	1
Gulumiguda	186	51	12	0
Jayguda	235	70	27	2
Bada Gadvalsa	207	53	14	0
Sana Gadvalsa	189	40	1	0
Sabdum	25	21	11	0
Total	3449	857	248	6

Apart from this there are 196 beneficiaries covered under Indira Gandhi National Old Age Pension, 106 under Odisha Old Age Pension, 13 under disability pension and 15 under Madhu Babu Pension Yojana. These beneficiaries are being selected by the GP according to their need. (Ref: *The resolution copy of GP level consultation on 21st April 2011*).

Beside this the GP also regulates the minor minerals and forest produces. There was unauthorized blasting in a nearby hill, and the concerned contractor also tried to lift some morrum illegally. The GP sent a notice (vide *the letter no 137/10 dated 30th Aug. 2010*) to this person intructing him to stop the mining. This notice was ultimately effective. This action on the part of GP could happen only under facilitation of RCDC which has been working in that area.

As regards the reservation of seats for specific categories in the PRI election, the seat in ward number 11 was reserved for SC category though there is no SC HH in that ward. Therefore, the GP convened a meeting and passed resolution to reserve the seat for ST. The copy of that resolution was sent to District Collector as well as the Election Commission through the BDO. After three months the Collector approved of the resolution and the seat was reserved for ST¹⁵.

¹⁵ This information was shared by the PS member of Nilabadi GP Mr. Duryo Nag.

The GP's effort to stop liquor trading was unsuccessful. Liquor traders were very powerful persons and the PRI members were afraid of them. However, trading of liquor is controlled with intervention from Chasi Mualia Adivasi Sangh.

Kumbhariput GP at a glance: Kumbhariput GP consists of 11 revenue villages and 12 wards. The total population of the GP is 3,313 of which 436 are SC, 2,445 are ST and only 432 are other caste. There are 784 BPL HHs (*Source: BPL Survey, 1997*).

There are many beneficiaries are covered under various social security schemes and programmes in the GP. The details are given in the table below:

Details of Social Security Schemes and benefits in the Kumbhariput GP				
Name of the Scheme	No. of Beneficiaries	Amount of benefit in Kg of Rice	Amount in Rs.	Total Benefit in the GP
BPL	678	30	60	20340
Antyodaya Anna Yojana	168	35	70	5880
Annapurna Yojana	10	10	Free	100
APL Rice	131	25	50	3275
APL Wheat	131	8	60	1048
Kerosine	300	4	42	1200

Beneficiaries for government schemes are identified the GP. The community participates in the process of selection. GP also regulates the village market in terms of sanctioning lease and collection of levies.

Chandrapur Block of Rayagada district

Chandrapur Block is also a tribal dominated block. Two tribal-dominated GPs were sampled for the study, i.e. Budubali and Dangasorada.

Budubali GP at a glance: This is a remotely located GP of southern Rayagada. The GP is divided into 34 revenue villages and 13 hamlets, and has 11 wards. The GP is headed by a tribal Sarpanch and the PS member is also a tribal. Out of the total 11 wards, nine ward members are from ST community, 1 from SC and 1 from other caste. Only two of the total nine ward members are female.

The total population of the GP is 4,208, out of which 3,354 belong to ST, 738 belong to OBC and only 116 are Schedule Castes. Out of the total HHs 1,040 are covered under various government schemes. Maximum 711 HHs are covered under BPL, 242 are under Antodaya Anna Yojana, 77 under Indira Awas Yojana and only 10 HHs are covered under Annapurna Anna Yojana. Apart from these 383 individuals are covered under Indira Gandhi National Old Age Pension, 15 under MBPY, 27 under Widow pension and 25 under disability pension schemes.

Though there is a resolution passed for the use of minor forest produces and control over village market but the GP is very less active on PESA as observed by the study team. The sarpanch and PS member along with other PRI members and community are very less knowledgeable on PESA. Interestingly the Sarpanch was found to be unaware of the provisions of PESA in the GP.

Dangasorada GP at a glance: The GP is consisting of 42 revenue villages and 5 hamlets. The Sarpanch is a tribal whereas the Panchayat Samiti chairperson belongs to the OBC¹⁶. The GP has 14 wards. Out of these, 10 ward members belong to ST community from which four are female. Only one ward has a SC representative. Three wards are headed by the representatives of general caste people.

The total population of the GP is 4,845 out of which 3,260 are Schedule Tribes, 1,232 are OBC and 353 are Schedule Castes. 266 individuals are covered under IGNOAPS, 168 under OAPS, 14 under disability pension and 80 under widow pension.

The price of NTFPs fixed by Block panchayat is less than the market price. Hence GP decides the minimum procurement price of the MFPs (*vide resolution of Gram sabha dtd. 19th March 2011*). No other role in context of MFP is assumed by the GP. In fact, the GP lacks the resource and warehousing facilities for NTFPs collection and procurement.

INDICATIONS OF THE SURVEY DATA:

Testing community knowledge/awareness on the PESA was the prime objective of the study. 106 individual samples were taken for this purpose. Relevant information and facts are displayed below:

¹⁶ Now, both the sarpanch and the Block chairperson are from ST community. The Sarpanch is a lady.

A. Knowledge and Understanding

Knowledge and understanding of developmental schemes or programs by the community decide the success or failure of the programs. Thus, necessary care was taken to test the awareness of the local stakeholders on relevant aspects of the law(s) and programmes.

A.1 Knowledge on Government of India Act, 1935

The study covered 32 PRI representatives and 74 other stakeholders. 66.03 % of respondents did not know about this Act which formed the basis of constituting scheduled areas. Whatever apparent awareness on this colonial law was found in rest of the respondents, does not seem to be a proper awareness in most cases; rather there is a strong possibility that the respondents just believed that they probably knew about this.

Community Knowledge on Government of India Act				
District	Stake Holder	Yes	No	Total
Gajapati	Other	11	13	24
	PRI	8	2	10
Koraput	Other	7	18	25
	PRI	3	9	12
Rayagada	Other	4	21	25
	PRI	3	7	10
Total		36	70	106

A.2 Knowledge on PESA Act 1996

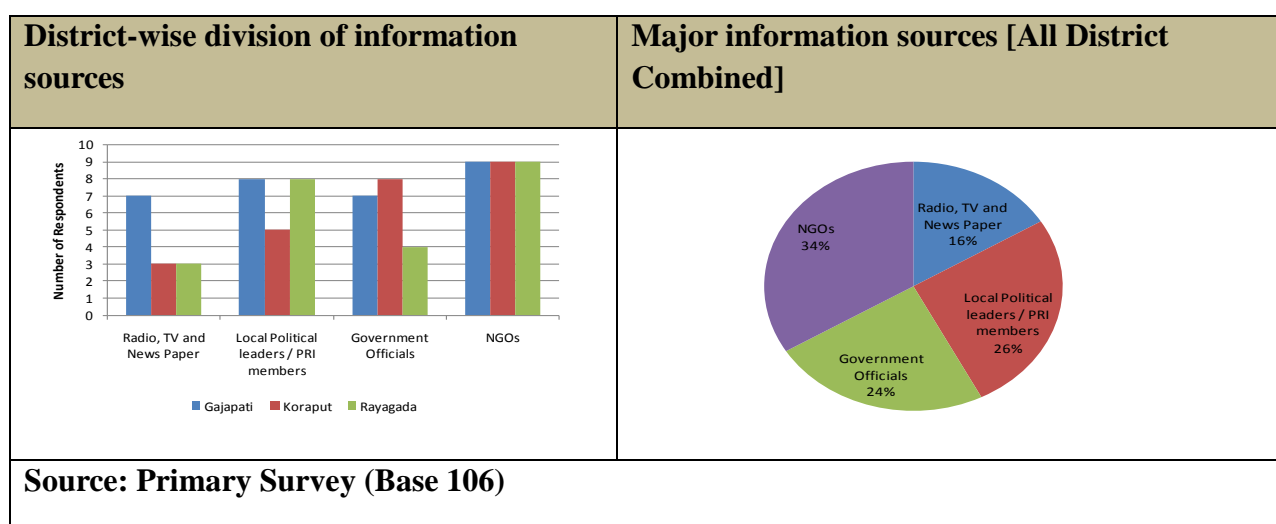
Community Knowledge on PESA Act 1996				
District	Stake Holder	Yes	No	Total
Gajapati	Other	11	13	24
	PRI	8	2	10
Gajapati Total		19	15	34
Koraput	Other	7	18	25
	PRI	3	9	12
Koraput Total		10	27	37
Rayagada	Other	4	21	25

36 respondents had idea about this law. 13% PRI representatives had knowledge on PESA while the general awareness (general respondents) was 21%.

	PRI	3	7	10
Rayagada Total		7	28	35
Grand Total		36	70	106

A.2.1 Sources of information on PESA Act

Local political leaders / PRI members, government officials and NGO representatives are mostly responsible for flow of information among public. Besides, TV and news-dailies are other major sources of information. NGOs are the prime facilitators of information on PESA in all three districts. PRI, members play major role in awareness of PESA among the villagers. In Gajapati, electronic media was found to be the major source of information while government officials play pivotal role for awareness on PESA in Koraput. In summary NGOs and PRI representatives are the major sources of information.



A.3 Knowledge on election procedure of PESA

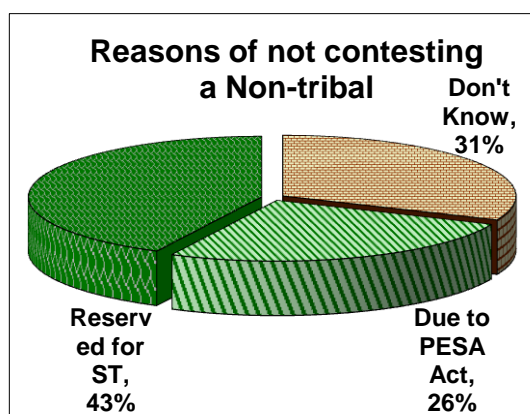
Contest of Non-tribal Sarpanch in Schedule GPs					
District	Stake Holders	Yes	No	Don't Know	Total
Gajapati	Other	3	13	8	24
	PRI	6	3	1	10
Gajapati Total		9	16	9	34
Koraput	Other	10	3	12	25
	PRI	6	2	4	12

Provisionally non-tribal candidates cannot contest the post of chairpersons in the PRIs in scheduled areas. 34 % of respondents had no idea on non-tribal candidate in panchayat election. Rest 66% respondents had combined response. Even 31 % PRI

Koraput Total		16	5	16	37
Rayagada	Other	6	12	7	25
	PRI	3	2	5	10
Rayagada Total		9	14	12	35
Grand Total		34	35	37	106

representatives had no idea on this. Almost 47 % PRI members had idea on the election procedure. Other members also had mixed response.

A.3.1 Reasons of non-contesting of a non-tribal



26% of respondents said PESA Act enables a non-tribal contestant to stand for position of sarpanch. 43 % respondents believed the seats are reserved for tribal candidates only. 31 % of total interviewees have absolutely no idea on election procedure.

A.4 Knowledge on Gram Sabhas

Out of the total 106 respondents, only 2 from Koraput district had no idea on time, duration and purpose of the gram sabha, and 3 respondents agreed that one gram sabha was conducted in their GP. The district-wise detail is given in the table below.

Number of Gram Sabhas conducted in a year in the GP								
District	One	Two	Three	Four	Five	Six	Don't know	Total
Gajapati	0	3	4	5	8	11	3	34
Koraput	2	3	5	4	10	8	5	37
Rayagada	1	2	6	5	8	5	8	35
Total	3	8	15	14	26	24	16	106

A.5 Selection of Beneficiaries for Poverty Reduction Program

Out of the total 106 respondents, 35 respondents didn't have any idea about the selection of BPL beneficiaries in gram sabha for poverty reduction programs. Out of these 35 respondents, 16 responses were from Rayagada, 11 from Gajapati and 8 from Koraput. Other 35 respondents knew about the selection of beneficiaries during gram sabha. Out of them, 14 were from Gajapati, 12 from Koraput and 9 from Rayagada. 12 respondents from all three districts agreed that the selection of BPL beneficiaries is done with due consultation with the sarpanch.

A.6 Issue of Fund Utilization Certificate

30 respondents viewed that no system was available regarding the issue of fund utilization certificate. 33 respondents told that it was decided in gram sabha meeting by majority voting or by "Gram Sanjojana Committee". 15 respondents agreed that the issue of fund utilization certificates was done jointly with government department and PRI representatives. 28 respondents told that the fund utilization certificate was issued for any ongoing activity at village level after discussion of income and expenditure and verification of documents. The district-wise break up is given in the table below:

Process of selecting beneficiaries			
District	During Gram Sabha	Consultation with Sarpanch	Don't know
Gajapati	14	4	11
Koraput	12	6	8
Rayagada	9	2	16
Total	35	12	35

Issue of fund utilization certificate				
District	Gajapati	Koraput	Rayagada	Total
In Gram Sabha meeting by majority voting	12	10	11	33
Discussion on income & expenditure & verification of documents	11	8	9	28
Combined with government department & PRI members	5	6	4	15
Lack of Knowledge & no system available	6	13	11	30
Total	34	37	35	106

A.7 Rights of the Gram Sabha over forest produces

From 106 respondents, 54 respondents have no idea on the rights of gram sabha over forest produces. 30 respondents said that they heard about the rights of the gram sabha on forest produces whereas 22 respondents said gram sabha could exercise no rights on forest produces.

Rights over forest produce				
District	In relation to production and use of forest produce	Collection, marketing and trading of forest produce	Conservation, regeneration and proper use of forest	Forest protection committee
Gajapati	4	6	4	4
Koraput	4	11	13	5
Rayagada	4	6	6	3
Total	12	23	23	12
N= 30, Multi Frequency Response				

A.8 Schedule Area Land Transfer Act

18 respondents had idea on land transfer rights in the schedule area. FGD inferences prove that maximum villagers did not know about the Act and its provisions.

Knowledge on Scheduled Area			
Land Transfer Act			
District	Yes	No	Total
Gajapati	7	27	34
Koraput	7	30	37
Rayagada	4	31	35
Total	18	88	106

In some GPs of Koraput even newly elected sarpanches did not know about the PESA Act. In Rayagada PRI members were not well versed with the provisions of PESA despite the training under Project Dakshyata. Some PRI executives/ Panchayat Extension Officers had heard about the Act from local NGOs.

Some PRI members of Gajapati district having close links with the government officials were aware of PESA in general. They had developed this awareness by regular interaction with the government officials in public meetings. Women PRI members hardly had knowledge on government schemes and PESA. This is because of their less involvement in the governance process.

FGD results reveal that most of the participants did have knowledge on the prohibition on contest by a non-tribal candidate for the reserved seat. Despite meager knowledge of the community on PESA, issues of land alienation, restoration, forest right, prohibition/ regulation and restriction of liquor are usually discussed in palli sabha and gram sabha.

B. Participation and involvement

Not only the knowledge and understanding of the community on the relevant laws, developmental scheme or program brings effectiveness of that program but also community participation and involvement in the process is equally important for its success.

B.1 Participation in Gram Sabha

Less than 50% of respondents regularly attended gram sabha. 22 out of total 37 respondents in Koraput have attended gram sabha. Only 12 respondents in Gajapati and Rayagada each have attended gram sabha.

Comparatively more PRI members have attended the gram sabha than other stakeholders. Out of 32 PRI respondents, 25 have attended the gram sabha (78 %) as against only 21 out of 74 other stake holder respondents having attended the gram sabha meeting (28%).

B.1.1 Agenda of attended Gram Sabhas

Respondents who have attended gram sabha agreed that the agenda normally included developmental works,

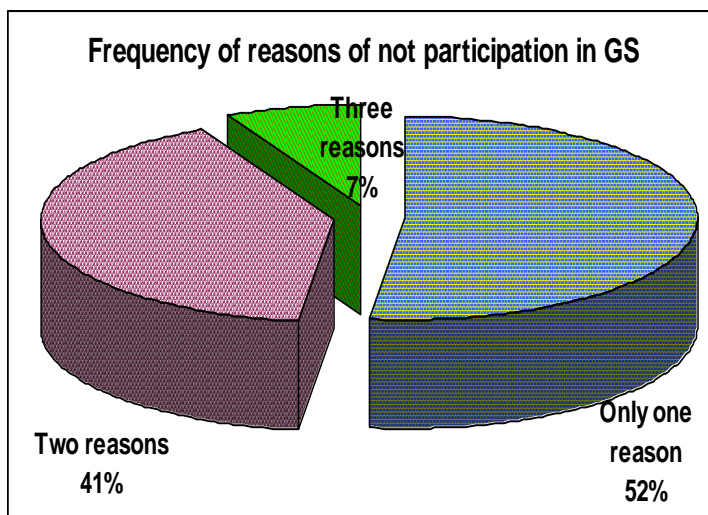
Participation in Gram Sabha				
District	Stake Holder	Yes	No	Total
Gajapati	Other	4	20	24
	PRI	8	2	10
Gajapati Total		12	22	34
Koraput	Other	12	13	25
	PRI	10	2	12
Koraput Total		22	15	37
Rayagada	Other	5	20	25
	PRI	7	3	10
Rayagada Total		12	23	35
Grand Total		45	61	106

ownership issue of minor forest produces, land alienation and prohibition/ regulation/ restriction on intoxicant. Control of money lending is the other major issue in Koraput (10 responses). Management of village and MFPs are the other major heads in the agenda in Gajapati. The table illustrates the district wise detail responses.

Agenda of attended Gram Sabha			
District	Gajapati	Koraput	Rayagada
Developmental Work	8	8	5
Minor Forest Produce	10	8	4
Land Alienation	7	11	2
Prohibition of Liquor	7	11	4
Control of Money lending	4	10	2
Village Market Management	3	3	2
N= 45, Multi Frequency Response			

B.2.1 Reasons for not attending Gram Sabhas

Lack of time availability, lack of personal interest and lack of pre-information on date and venue of gram sabha are the major reasons for the non-attendance. Some respondents have no trust on the gram sabha discussion and judge gram sabha as futile. One or more of the reasons cited above is the cause of absence in gram sabha. The percentage segmentation is given in the chart. From 61 non - attending respondents, 12 said that they don't get information regarding date and time of gram sabha. 11 respondents said that they don't have any interest in attending the gram sabha.



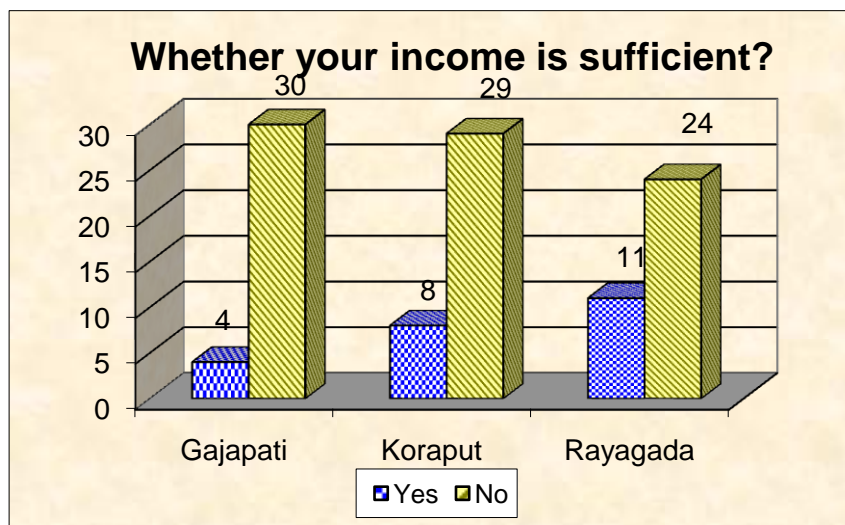
FGD results reveal that people who attend palli sabha do not prefer to attend the gram sabha. This notion floats among these villagers that the gram sabha is meant for the PRI members only. In sampled villages of Rayagada both palli sabha and gram sabha are controlled by the sarpanch. Participation of women in gram sabha and palli sabha is unsatisfactory. Only women PRI representatives are attending gram sabhas and palli sabhas accompanied by their husbands. Their husbands (no official authority) take all the collective decisions. In some cases the plans executed in the panchayat are not as per the demand of the people. Beneficiaries are selected under political influence. Tribal sarpanch is dominated by the non-tribal leaders.

C. Money lending

Money lending in the sample sites is linked with the expenditures under government programmes and per capita income of the villagers.

C.1 Income vis-à-vis expenditure

83 respondents lacked the basic minimum income and relied on loan/lending. 4 from Gajapati, 8 from Koraput and 11 respondents from Rayagada said that they have sufficient income to meet their expenses. In total 21.7% had enough income to meet their daily needs.

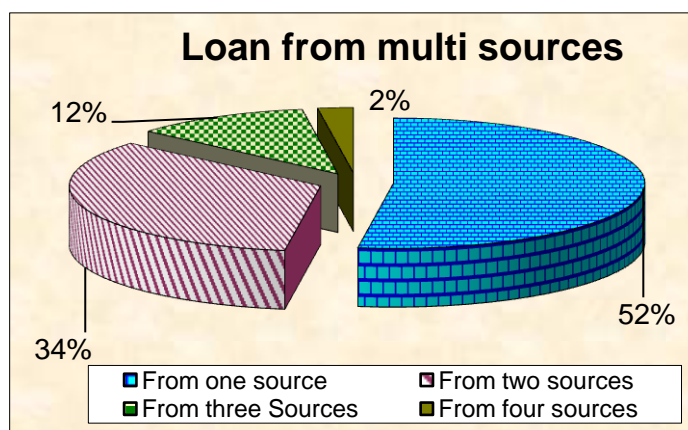


C.1.1 Sources of loan

Out of the total 106 respondents, 83 respondents had taken loans from banks, SHG group, local money lenders, relatives and friends. That only 5 had taken loan from money lenders is a good sign.

Source of Loan						
District	Bank	SHG	Money Lender	Relatives	Friends	Total
Gajapati	2	14	1	12	14	43
Koraput	7	13	1	8	4	33
Rayagada	4	9	3	5	4	25
Total	13	36	5	25	22	101
N= 83, Multiple Frequency						

People in these districts tend to rely on more than one source for getting loan. The alongside chart shows that 53% out of 83 respondents have taken loan from only one source. 34%, 12% and 2% respondents said that they had taken loan from two, three and four sources respectively.



C.1.2 Loan from money lender

People who have taken loan from local money-lenders were interviewed separately and were asked about the amount and rate of interest. Normal interest rate varied between 1-10 % (per month) and co-lateral certificate of rights of land (*patta*) or cattle (3 respondents in Rayagada). Interest rate is more without any co-lateral certificate or mortgage. The respondents were reluctant on being asked about the awareness of sarpanch on the loan procedure. On further inquiry it was found that many money lenders were either PRI members or politically powerful persons in the villages.

C.1.3 Repayment of loan and Pass Book

From the total respondents 49 respondents had taken loan from bank or SHG. Only 9 of them had bank pass books. Focus group discussions revealed that maximum tribal families depend upon agriculture and daily wage for their livelihood. Villagers have meager land unfit for cultivation on a viable scale. Hence, despite the ownership of land they have to rely on other sources for earning. Most of them are marginal farmers and work even outside the state. Some families migrate outside the state and others totally rely on loan. They take loans from local money lender, SHG groups and bank. In fact very few educated villagers avail loan from bank. However, most of the households prefer loan from local money lender.

District specific figures bring a different inference on local money lending. Local money lending system is less observed in Gajapati, but more frequent in Rayagada. In Gajapati, people don't know about the rights of gram sabha to regulate the money lending system whereas PRI members in Rayagada claimed to have a clear idea on such right of the local panchayat. In Koraput it was observed that the local money lending system was degenerating day by day. Awareness of villagers regarding the alternative loan sources and handholding of panchayat is the reason for this.

In some cases the political leaders of village or PRI members control the local money lending system. In Koraput district people need money at the time of election or any other village festivals. Taking advantage of the situation, outsiders from Parvatipuram of Andhra Pradesh use to come to provide such loan on a high rate of interest. Panchayat is helpless on this issue for it is the only source available during this time.

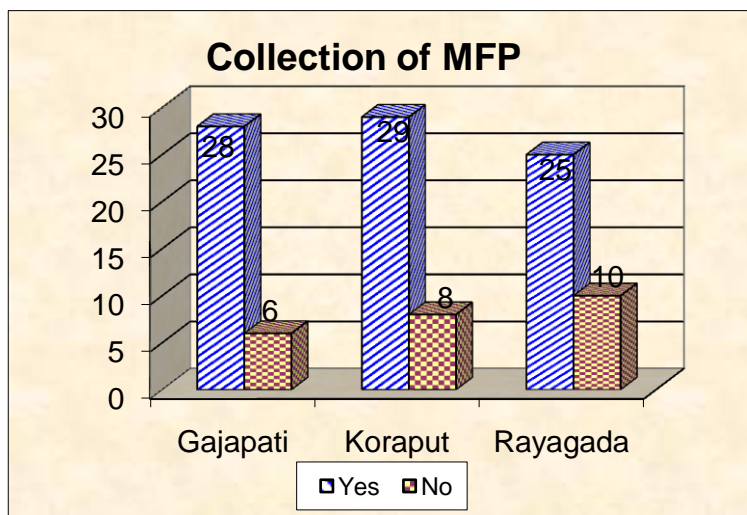
Exploitation by local money-lenders: Case Study I

Kakadi Hemalata is a marginal farmer in Nilabadi Panchayat of Bandhugaon block of Koraput. She owned one acre of medium level land. Her husband had passed away 15 years ago. She collects wood and minor produces from the nearby forest for her livelihood. This is a strenuous job and opportunity of earning everyday is limited. She took Rs.1000/- loan from the local sahukar(money-lender) last month, but actually received only Rs 750/- from the sahukar. This is a clear sign of exploitation. Hemlata is giving monthly Rs. 100/- to the sahukar and she has to continue it for another 11 months to free herself from the trap of the loan. Hemlata complained this to the local panchayat authority. No attention was paid to her complaint.



Exploitation by local money-lenders: Case Study II

G. Ganesh of Nilabadi village of Bandhugaon block of Koraput belongs to a poor family. He earns his livelihood from a teashop. He has taken loan of Rs.10,000/- from a sahukar of Parvatipuram. Out of Rs. 10,000/- principal, Ganesh received only Rs 8,600 /- as principal money and rest of the money was kept by the sahukar. Ganesh has been giving weekly Rs.700/- to the sahukar in terms of installment. He has to pay the total amount within three months. He has completed 4 weeks and the installment will continue for another 10 weeks. He is a non-tribal, but still helpless before the system. When non-tribals are yielding to the exploitive system, what can be expected of the poor tribals?



D. Ownership on Minor Forest Produce

Inhabitants in close proximity of forest collect minor forest produces. This is also a major source of income of the community. However, the ownership issue is discussed below.

D.1 Collection of MFP

Out of the total 106 respondents 82 collected minor forest produces for their livelihood. 28 out of 34 in Gajapati, 29 out of 37 in Koraput and 25 out of 35 in Rayagada district collected MFP as a secondary source of income. MFPs include tamarind, bamboo, siali leaf, broom grass, amla, mahua and tola, bahada, harida, cashew, seeds of teak, katak seeds etc. 24 respondents said that they don't collect any forest produce for their livelihood.

Status of collection of MFP				
MFP	Gajapati	Koraput	Rayagada	Total
One Item	5	3	2	10
Two Items	7	9	2	18
Three Items	6	9	4	19
Four Items	5	5	8	18
Five or > Items	5	3	9	17
Total	28	29	25	82
N= 82, (Only MFPs Collector)				

Out of the 82 respondents who collected MFP, 10 respondents collected only one item whereas 19 said that they were collecting at least three items and 17 were collecting five or more items. Variety of MFPs collected is dependent on the availability and accessibility of the produces.

D.2 Fixation of the MPP¹⁷ of MFP

Some respondents confessed that the price of MFPs varies from time to time, and that buyers (local traders) and sellers fix the price. From the alongside table it is clear that 33 and 39 respondents said that it is fixed by the sellers and buyers respectively. 8 respondents said sometimes the price is fixed by GP. Only 4 respondents said that sometimes the price is fixed by Panchayat Samiti. The details of break ups are shown in the table. Some respondents also

Fixation of the rate of Minor Forest Product					
District	Buyer	Seller	GP	PS	SHG
Gajapati	5	13	1	2	1
Koraput	16	11	2	1	4
Rayagada	18	9	5	1	1
Total	39	33	8	4	6
N= 82, Multiple Response					

believed that SHGs regulated the MFPs price.

D.3 Knowledge of Panchayat on transaction of MFP

Out of the total 106 respondents, 49 had no idea whether the panchayats were aware about the transaction of forest produces. 24 respondents agreed that their panchayats were aware of such transaction. The overall analysis suggests that people as well as the PRI members lacked adequate knowledge on rights

of GP on MFPs collection.

Knowledge of Panchayat on transaction of MFP				
District	Yes	No	Don't know	Total
Gajapati	8	9	17	34
Koraput	10	13	14	37
Rayagada	6	11	18	35
Total	24	33	49	106

D.3.1 Reasons for transaction of MFP without knowledge of Panchayat

Three major reasons were cited for transaction of MFPs without knowledge of GP. One reason was that since the license holders have authority to transact MFPs as per the guidelines of PESA, hence the GP was not supposed to get the information on transaction. The second reason was that the traders directly purchase the products from the primary collectors.

¹⁷ Minimum procurement price

As of the third reason cited, Gram Panchayats were supposed to be involved in the process of registration for trading; and in some places of Koraput and Rayagada districts they did not have annual report register for the traders. In these districts price of some NTFP was said to be fixed by the SHG group and the buyers. No license was issued to the traders by some gram panchayats in Rayagada.

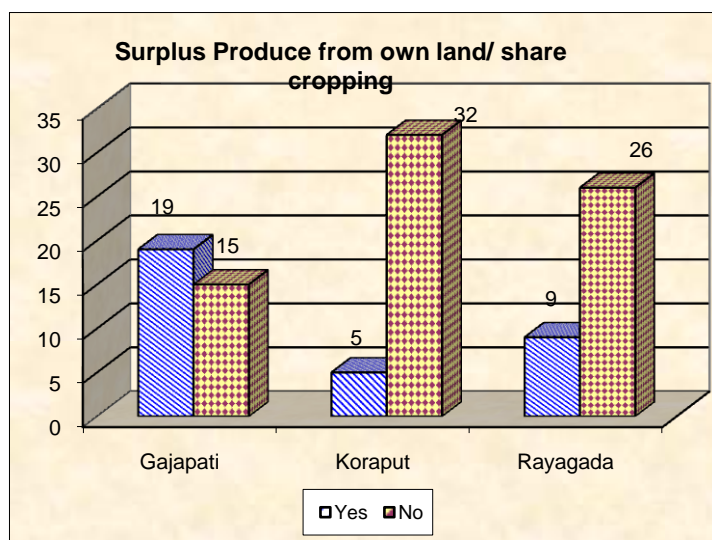
In Gajapati the panchayats did not appear to exercise any authority to fix the price of MFP. The price is decided between the buyers and sellers there. Remaining NTFP are sold at weekly market.

E. Market

This section explores the market transactions of surplus produces in view of the power under PESA to regulate the local market. The NTFP collectors fail to sell all their collections to the local traders. Hence they need a market place to sell their remaining collections and additional products by the farmers.

E.1 Surplus produce

33 respondents said they produce surplus grains. However, in Koraput and Rayagada the figure was very low. Out of the 19 respondents of Gajapati district only three used to sell their surplus produce both in the weekly market and to the middle man, whereas others used to sell their produces either to middle man or in the weekly market.



E.2 Market management

80 respondents did not have any idea about the management and maintenance of the weekly market. Only 6 respondents said that the gram panchayat managed and maintained the village weekly market.

F. Prohibition, regulation & restriction of Intoxicants

Another important right of the panchayat is to prohibit, regulate and restrict the intoxicants. The study strives to access the right, awareness and understanding of the community on this aspect.

F.1 Liquor consumption

Out of the total 106 respondents 46 (17 out of 34 in Gajapati, 15 out of 37 in Koraput and 14 out of 35 in Rayagada) claimed to be not consuming liquor. 22 respondents in Koraput were consuming liquor which was the maximum and the minimum figure lied in Rayagada district i.e. 14.

F.1.1 Availability of liquor

60 respondents consumed liquor regularly. Out of this only 4 respondents prepared liquor themselves in the Rayagada district. Others used to buy from local shop or from outside the village (24 respondents).

Sources of buying of liquor			
District	From local shop	From Outside	Any other
Gajapati	6	6	5
Koraput	10	7	5
Rayagada	8	7	6
Total	24	20	16

F.2 Unlicensed liquor shop

Of total interviewees, 18 said that there were unlicensed liquor shops in their villages whereas 39 respondents disagreed to this fact. 49 respondents had no idea on the licensing of local liquor shops. In Gajapati only 2 respondents told about the presence of unlicensed liquor shop in their villages. Of the 18 respondents, who agreed to the presence of unlicensed liquor shops, 11 had faced problems due to the shop and of them only 5 respondents informed to the Sarpanch among which 3 were from Koraput and 2 from Rayagada. Out of the total informed cases to the Sarpanch, no action has been taken at any place as per the responses.

Responses on unlicensed liquor shop				
District	Can't say	Yes	No	Total
Gajapati	12	2	20	34
Koraput	21	9	7	37
Rayagada	16	7	12	35
Total	49	18	39	106

whereas 39 respondents disagreed to this fact. 49 respondents had no idea on the licensing of local liquor shops. In Gajapati only 2 respondents told about the presence of unlicensed liquor shop in their villages. Of the 18 respondents, who agreed to the presence of unlicensed liquor shops, 11 had faced problems due to the shop and of them only 5 respondents informed to the Sarpanch among which 3 were from Koraput and 2 from Rayagada. Out of the total informed cases to the Sarpanch, no action has been taken at any place

F.3 Liquor business without the knowledge of Panchayat

Only 16 respondents said that there were people who were doing liquor business without knowledge of the Panchayat. 18 respondents disagreed with this statement. 52 respondents said they did not have any idea whether the persons doing liquor business had the permission or not.

Liquor business without knowledge of the Panchayat				
District	Yes	No	Don't Know	Total
Gajapati	1	5	28	34
Koraput	9	8	20	37
Rayagada	6	5	24	35
Total	16	18	52	106

F.3.1 Reasons of non-preparation of liquor

If people did not manufacture liquor then that was because of four major reasons: anti-liquor campaign and rally, decision in gram sabha to make their villages liquor free, opposition of the people to sale and consumption, and ban imposed by the Chasi Mulia Adivasi Sangh (CMAS) on liquor. 34% respondents told that decision of gram sabha and ban of CMAS were two major reasons to stop illegal liquor blending.

F.4 Knowledge of the people on power of GS to sale and use alcohol

Out of the total 106 respondents, only 28 respondents had knowledge on rights of gram sabha on regulating intoxicants. 78 respondents had no idea of this rights. In this case respondents from Koraput and Gajapati (11 each out of 37 and 34 respectively) had better knowledge than Rayagada.

Knowledge on regulation of alcohol by GS			
District	Yes	No	Total
Gajapati	11	23	34
Koraput	11	26	37
Rayagada	6	29	35
Total	28	78	106

F.5 Community perception on prohibition of alcohol

34 respondents in Gajapati, 25 in Koraput and only 16 in Rayagada said that the liquor should be prohibited in the villages. The perception of people was just reverse in Gajapati and

Rayagada. 94% respondents of Gajapati supported the prohibition of liquor whereas in other two districts 55% people supported the sale of liquor.

FGD results reveal that many HHs stopped preparing liquor due to campaign, rally and involvement of gram sabha in all the study districts. The consumption of liquor has not stopped but liquor blending has been stopped in many villages. In Gajapati, liquor consumption has been prohibited due to intervention of gram sabha. Liquor is allowed during the festival seasons. No illicit liquor shop was found in the villages of this district during the study. They are not aware whether the panchayat has any power on regulation and restriction of liquor business. Liquor should be prohibited in the village as it creates social offences, as responded by many.

G.1.1 Status of land ownership

Out of the total 106 respondents, 76 respondents possessed land. Of these 76 respondents, 50 possessed less than 2 acres of land each. Only 26 HHs had 2 to 5 acres of land. Not a single HH had more than 5 acres of land.

Possession of Land in acres			
District	> 2 Acres	2 to 5 Acres	Total
Gajapati	21	11	32
Koraput	18	8	26
Rayagada	11	7	18
Total	50	26	76

G.1.2 Knowledge on land right and displacement

Knowledge on transfer of land				
District	Yes	No	No idea	Total
Gajapati	2	24	8	34
Koraput	7	13	17	37
Rayagada	7	9	19	35
Total	16	46	44	106

44 respondents did not have any idea about the transfer of land to a non-tribal. Of the 16 respondents who said, 'yes, we can transfer our land to a non-tribal' 7 were from Koraput and Rayagada each. All the 46 respondents, who had knowledge that a tribal can't transfer his/ her land to a non-tribal, told that it was because of the restriction of the PESA Act.

9 respondents said that there was no such type of illegal land transfer or displacement situation so far noticed in their locality, so this issue had not yet been discussed in village meetings. 97 persons had no idea about any such situation in their area. Overall it was found that the community was not much aware of the land alienation issue.

Not a single case of displacement or acquisition of land for any developmental project or illegal land alienation was found in the villages of the entire study area. Granite quarries are

available in the villages of Gajapati district, but no displacement situation has reportedly occurred there till the time of survey. It was also evident from the focus group discussions that knowledge and understanding of the community on land alienation and restoration was very poor.

G.2 Procedure of working out a Plan

The procedure of working out a plan is done in three ways. The plan should be approved in the gram sabha and an agreement should be done with the respective committees. This procedure is followed in Gajapati and Koraput. 9 respondents from Gajapati, 5 from Koraput and only 2 from Rayagada gave their vote to this procedure whereas only five respondents said the plans were worked out through mutual agreement (often informal) by PRI and VDC in Gajapati district. Similarly, 8, 5 and 4 respondents from Gajapati, Koraput and Rayagada districts respectively said that the plans were worked out through administrative representatives. 19 respondents from Gajapati, 21 from Koraput and 22 from Rayagada said that there were no systems available in their GPs to work out the plan.

ANNEXURE

Annexure-1**List of Scheduled Areas and TSP areas in Odisha**

Sl. No.	District	Scheduled Areas		TSP Areas	
		Scheduled Areas	Area in sq. km.	TSP (ITDA) areas (CD Blocks)	No. of CD Blocks
1	Balasore	Nilagiri CD Block	252.91	Nilgiri	1
2	Mayurbhanj	Full district	10418	Baripada, Kaptipada, Karanjia, Rairangpur	26
3	Keonjhar	Keonjhar, Telkoi, Champua & barbil tahasils	6935.60	Keonjhar, Champua	10
4	Sambalpur	Kuchinda tahsil	2367.30	Kuchinda	3
5	Sundargarh	Full district	9712	Bonai, Panposh, Sundargarh	17
6	Gajapati	Nuagada, Mohana, Gumma, R.Udaygiri & Rayagada CD Blocks	2498.8	Parlakhemundi	5
7	Kalahandi	Thuamul Rampur and Lanjigarh CD Blocks	1323.5	Thuamul Rampur	2
8	Koraput	Full district	26962	Koraput, Jeypore, Rayagada, Gunupur, Malkangiri, Nabarangpur	42
9	Rayagada	Full district			
10	Malkangiri	Full district			
11	Nabarangpur	Full district			
12	Kandhamal	Kandhamal, Baliguda, and G.Udaigiri Tahsils	8021	Baliguda, Phulbani	12
13	Ganjam	Sorada tahsil excluding Gochha & Gazalbadi GP	912		

Total area of Scheduled Areas: 69403.11 sq. km.

Total area of TSP areas: 51920.25 sq. km.

Total population of Scheduled Areas: More than 55 lakhs

(Source: Government of Odisha)

Annexure-2

CONFERENCE OF GOVERNORS

SPEECH OF HON'BLE MINISTER OF TRIBAL AFFAIRS

AND PANCHAYATI RAJ, SHRI V. KISHORE CHANDRA DEO

(30th OCTOBER, 2011. ASHOKA HALL, RASTRAPATI BHAVAN)

The Role of Governors in the administration of Scheduled Areas and Tribal

Areas in the context of Fifth and Sixth Schedule of the Constitution.

Your Excellency, Respected Rastrapati, Respected Prime Minister, my esteemed colleagues Your Excellencies the Governors, Senior officials of the Government of India, I consider it a rare opportunity and privilege to be able to address this august gathering of Governors barely three months after I have taken charge as a Minister in the Union Cabinet. Scheduled Tribe community constitute more than 8 per cent of our national population and are still waiting to receive the benefits of freedom even after a lapse of more than sixty years since we achieved independence. The tribal populations are placed at the lowest rungs of our society in terms of various developmental indicators. The lowest literacy rates, high drop-out rates, widespread poverty, high infant and maternal mortality rates, an alarmingly high incidents of malnutrition, the absence of basic facilities and scarce livelihood means have deprived them the opportunity to a dignified livelihood among the fellow citizens of our country. I shall directly concentrate on matters relating to item Nos. 1 & 3 of the agenda. It is not merely a matter of coincidence that Left-Wing Extremism is prevalent in the Schedule V areas while the insurgent movements have confined themselves to Schedule VI areas. It is necessary for us to introspect and get to the bottom of the reasons and causes which has led us to this place and situation.

2. Despite the various efforts that have been made a large gap still remains to be bridged. The alienation of the tribal population has been growing rapidly mainly because they are being dispossessed of all their livelihood resources. The diversion of forests and common property resources for the use of non-forest purposes has resulted in the displacement of tribals from their homeland. The general apathy of official machinery, the escalating assaults related to their existing rights, the growing clout of market forces, the threat of mining and of course, the meager advancement through planned development efforts have been responsible for the growing unrest amongst this most oppressed and depressed class of people.

3. My Ministry has the responsibility of reducing these glaring gaps by supplementing the efforts of the nodal Ministries in the Government of India and of the State Governments through need-based interventions. We have taken up a series of programmes and schemes to empower the tribals socially, politically and economically. However, in this context, it is pertinent to mention that Your Excellencies have a vital role to play. The Governors have

been endowed with certain special powers with regard the Fifth Scheduled Areas. The judicious use of the provisions enshrined in the Fifth Schedule of our Constitution will certainly make a very positive impact on the tribals living in these regions.

4. Under the powers conferred by the Fifth Schedule, the Governors can not only direct that any particular law or part thereof may not apply to a Scheduled Area that can also make regulation for good governance and peace in these areas. The Governors can intervene in areas relating to (a) Prohibition or Restriction of the transfer of land by or among Scheduled Tribe members, (b) regulation of allotment of land in such areas and (c) the regulation of money-lending activities. The Governor has basically been given the legislative power to make regulations for the “peace and good government of any area which is a scheduled area.” The peace and good government are words of very wide import and give wide discretion to the Governor to make laws for such purpose. At this juncture, I would like to recall the observations made by Her Excellency, the President and the Governors’ Conference held on 16th and 17th of September, 2008 regarding the need for an authoritative legal opinion with respect to powers of Governors under the Fifth Schedule. The matter has since been examined in consultation with Ministry of Law and Justice and Attorney General of India has opined that “in performance of the functions and exercise of the powers under the Fifth Schedule, the Governor is not bound by the aid and advice of the Council of Ministers of the State”. The provisions of Articles 244(1) and 244 (2) which provide for the administration of the Scheduled Areas within a State in accordance with a Fifth & Sixth Schedule respectively emerge from the Excluded and Partially- Excluded Areas as envisaged under the Government of India Act, 1935.

5. I would now like to draw your attention to the implementation of PESA (the Panchayat Extension Scheduled Areas Act, 1996) for the Scheduled five areas. The focus of the PESA is to recognize the Gram Sabha as a key unit of governance in the Scheduled V areas as this would in turn give the people a control over their own resources. The Gram Sabhas under PESA are meant to be competent to safe-guard and preserve the traditions of their people, community resources and customary mode of dispute resolution. The Gram Sabhas are to approve plans, select beneficiaries and give utilization certificates to the Gram Panchayat. The Gram Panchayats further have:

- a) right to mandatory consultation in matters of land acquisition, resettlement and rehabilitation,
- b) right to recommend prospecting licenses/mining leases for minor minerals,
- c) power to prevent alienation of land and restore alienated land;
- d) power to regulate and restrict sale/consumption of liquor;
- e) power to manage village markets, control money lending to STs;
- f) ownership of minor forest produce;
- g) control over institutions and functionaries in all social sectors;

h) control over local plans and resources for such plans including TSP, etc;

i) planning and management of minor water bodies.

6. The purpose of implementing PESA in the Scheduled V Areas is to promote self-governance in order to address the problem of exploitation. But unfortunately, the implementation of PESA has not been satisfactory despite the guidelines that have been issued in this regard to State Governments by the Ministry of Panchayati Raj. I would like to urge upon your Excellencies, to exercise special powers of Governors to ensure implementation of PESA. I would like to highlight some key issues in which action may be initiated:

1. A process of notifying villages as PESA and constituting Gram Sabhas accordingly needs to be undertaken at the earliest. Applications may be invited from the community and inquired into by an official designated by the State Government in terms of whether or not the villages proposed are as envisaged in PESA. Villages proposed as per PESA may be so notified and a Gram Sabha constituted for each village.

2. Recently, Ministry of Panchayati Raj has commissioned studies on laws and rules in each State, pointing out the gaps and possible new formulations. These have already been shared with the State Governments of Jharkhand, Chhattisgarh and Orissa. Studies of remaining States will also be shared. There is need to ensure that State Acts are PESA compliant, and these studies can be used for making necessary amendments.

3. Ministry of Panchayati Raj has framed model rules which can be used as a reference point for making rules under the relevant State Acts so that the procedures to be followed by government functionaries are clear.

4. The National Institute of Rural Development (NIRD) has recently prepared a training module on PESA and shared it with the States. States may adapt this training module as per their needs and intensify their efforts in capacity building.

I would like to impress upon you the fact that the Gram Sabha is a congregation of the entire body of a village and cultivating this basic unit will give an opportunity to all citizens including those who have not been elected to any post to participate in the process of development and governance. It should be our earnest endeavor to ensure that the people who have been neglected for several years are made to feel that they are also a part of our democratic process.

7. I would now like to highlight the Forest Rights Act for Scheduled Tribes and other Traditional Forest Dwellers, which is a landmark legislation which gave a new hope to millions of tribals who have been living in forests for generations. For the first time ever, this Act seeks to recognize and regularize the pre-existing rights of tribals living in the Scheduled Areas. I would like to appeal to the Governors of the Fifth Scheduled States to ensure the speedy implementation of the Forest Rights Act through their respective State Governments as this would reduce a lot of tension arising out of land related issues in these areas. I would also like to draw your attention to the provisions of para-3 of the Fifth Schedule wherein the

Governors of Scheduled Areas States are expected to make an assessment of the administration of the Scheduled Areas and send an annual report to the President of India. The said reports should also deal with the observations made by the Tribal Advisory Council of the State and indicate steps taken with respect to the recommendation of the TAC. As per the records available with the Ministry of Tribal Affairs, the Governor's Report of the administration of the Scheduled Areas for the year 2009-10 is yet to come from some States. I urge upon the Governors to send this annual report in a timely manner as this would help us to evaluate the progress that has taken place in the Scheduled Areas of the States.

8. The Sixth Schedule of our Constitution among other things provides for the administration of tribal areas through District/Regional Councils in the States of Assam, Meghalaya, Mizoram, Tripura in exercise of powers given under the Constitution, the Governors of the Sixth Scheduled Areas may hold consultations with State Governments and Councils to emphasise need for having the democratic and decentralized governance at the village level. Some of the provisions that could be considered may include (i) creation of elected Village Councils where they do not exist; (ii) making Village Councils answerable to Gram Sabha; (iii) recognize Gram Sabha under the law and specify their powers and functions; (iv) mandatory and regular election for the Village Council through the State Election Commission and (v) vesting of more powers to Village Councils and Gram Sabha.

9. These measures will help in strengthening the democratic process and the empowerment of women which would consequently result in improved health services, education and nutrition programmes. This would also increase transparency in the process of planning, implementation and monitoring the developmental programmes. I would finally like to mention that my Ministry is actively pursuing the matter relating to the constitution of a Cell in the Governor's Office with the State Governments in order to handle the constitutional responsibilities of the Governor relating to the rights of Scheduled Tribes in the Scheduled Areas. I hope that these Cells are constituted by each State by the end of current financial year. As I conclude, I appeal to Your Excellencies, to personally intervene when necessary to deliver to our tribal population the dreams of our Founding Fathers.

---End---

(Source: <http://tribal.nic.in/writereaddata/mainlinkfile/File1319.pdf>, accessed 5-1-2013)



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No. : ~~17174~~
17-SEC-18-1033

Date: 06.10.2012

Dear Sir,

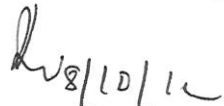
Kindly refer to your D.O. letter No.4493, dated 29.09.2012.

It may kindly be mentioned here that, the Odisha Gram Panchayat Act-1964, Odisha Panchayat Samiti Act-1959 and Odisha Zilla Parishad Act-1991 have already been made compliant to PESA Act, 1996.

The Status in detail is enclosed herewith.

Regards,

Yours sincerely,


(Aparajita Sarangi)

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Sri Sunil Kumar Bhargava, IAS
Principal Resident Commissioner,
New Delhi.

STATUS OF IMPLIMENTATION OF PESA ACT IN THE STATE OF ORISSA

Provisions in the Central Act	Provisions/changes in the State Act/laws.	Remarks
<p>Section-4</p> <p>a)-A State legislation on the Panchayat that may be made shall be in consonance with the customary law, social and religious practices and traditional management practices of community resources.</p> <p>b) A village shall ordinarily consist of a habitation or a group of habitations or a hamlet or a group of hamlets comprising a community and managing its affairs in accordance with traditions and customs.</p> <p>c) Every village shall have a Gram Sabha consisting of persons whose names are included in the electoral rolls for the Panchayats at the village level.</p> <p>d) Every Grama sabha shall be competent to safeguard and preserve the traditions and customs of the people, their cultured identity, community resources and the customary made of dispute resolution.</p> <p>e) Every Gram Sabha shall-</p> <p>i) approve the plans, programme and projects for social and economic development before such plans, programmes and projects are taken up for implementation by the Panchayat at the village level.</p> <p>ii) be responsible for the identification or selection of persons as beneficiaries under the poverty alleviation and other programmes.</p> <p>f) Every Panchayat at the village level shall be required to obtain from the Grama Sabha a certificate on utilization of funds by that Panchayat for the plans, programmes and projects referred to in clause (e).</p>	<p>Section-3 (1) of OGP Act.</p> <p>Section-4 (1) of OGP Act.</p> <p>Section-5 (6) of OGP Act.</p> <p>Section-5 (3) (a) of OGP Act.</p> <p>Section-5 (3) (b) of OGP Act.</p> <p>Section-5 (3) (b) of OGP Act.</p>	<p>Complied,</p> <p>But it was suggested in a meeting taken by Govt. of India for some modification taking into consideration the list of habitations prepared by R.D Department for Drinking Water Supply Scheme. The R.D. Deptt. have been requested for supply of the list of habitations for the purpose.</p> <p>Complied</p> <p>Complied</p> <p>Complied</p> <p>Complied</p> <p>Complied</p>

<p>g) The reservation of seats in the Scheduled Areas at every Panchayat shall be in proportion to the population of the communities in that Panchayat for whom reservation is sought to be given under Part IX of the Constitution;</p> <p>Provided that the reservation for the Scheduled Tribes shall not be less than one-half of the total number of seats;</p> <p>Provided further that all seats of Chairpersons of Panchayats at all levels shall be reserved for the Scheduled Tribes;</p> <p>h) The State Government may nominate persons belonging to such Scheduled Tribes as have no representation in the Panchayat at the intermediate level or the Panchayat at the Dist level;</p> <p>i) The Gram Sabha or the Panchayats at the appropriate level shall be consulted before making the acquisition of land in the Scheduled Areas for development projects and before re-setting or rehabilitating persons affected by such projects in the Scheduled Areas; the actual planning and implementation of the projects in the Scheduled Areas shall be coordinated at the State level;</p> <p>j) Planning and management of minor water bodies in the Scheduled Areas shall be entrusted to Panchayats at the appropriate level;</p> <p>k) The recommendations of the Gram Sabha or the Panchayat at the appropriate level shall be made mandatory prior to grant of prospecting license or mining lease for minor minerals in the Scheduled Areas;</p>	<p>Sec.-10(3)(a) of OGP Act. Sec.-16(2) of OPS Act. Sec.-6(3) of OZP Act.</p> <p>Sec.-10(3)(a) of OGP Act. Sec.-16(2) of OPS Act. Sec.-6(3) of OZP Act</p> <p>Sec.-16(3-a) of OPS Act Sec.-8 (2) a of OZP Act Sec.-10(5) b of OGP Act</p> <p>Sec-16(3-c) of OPS Act. Sec-6(6) of OZP Act.</p> <p>Section-3 (6) (b) of OZP Act. has been amended to consult the ZP before acquisition of land.</p> <p>The Z.Ps have been empowered to plan and manage in Section-3 (6) (c) of OZP Act</p> <p>Amendment Section-3 (6) (a) of OZP Act provides for approval of Z.P. in the matter.</p>	<p>Complied</p> <p>Complied</p> <p>i)The Revenue & Disaster Management Dpett have issued executive instruction to the Collectors for obtaining recommendation of Gram Sabha during land acquisition process.</p> <p>ii) The Revenue & Disaster Deptt have been requested to move the Govt. of India for suitable amendment of the Land Acquisition Act as it is a Central Act.</p> <p>Complied,</p> <p>The definition of Minor Water Bodied has not been defined in the PESA Act. Which is awaited</p> <p>Complied,</p> <p>The Steel & Mines Deptt. of the State have the same provision under Rule 10 (1) & 16 (1) of OMMC Rules 2004 as per the PESA Act.</p>
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<p>l) The prior recommendation of the Gram Sabha or the Panchayats at the appropriate level shall be made mandatory for grant of concession for the exploitation of minor minerals by auction;</p> <p>m) While endowing Panchayats in the Scheduled Areas with such powers and authority as may be necessary to enable them to function as institutions of self-government, in State Legislature shall ensure that the Panchayats at the appropriate level and the Gram Sabha are endowed specifically with-</p>	<p>Amended Section-3 (6) (a) of OZP Act.</p>	<p>Complied</p>
<p>(i) Power in enforce prohibition or to regulate or restrict the sale and consumption of any intoxicant.</p>	<p>(a) Amended Section-44(2) (a) of the OGP Act, 1964 empower the Grama Sabha of the GPs in the Scheduled Areas to exercise control over manufacture and sale of intoxicants.</p> <p>(b) The Bihar and Orissa Excise Act has also been amended to require prior approval of the Grama Sabha to license manufacture or sale of liquor within a GP in the scheduled areas. The Excise Department have already instructed the Collectors to implement the amended provisions in giving licenses to liquor vendors in Scheduled Areas.</p>	<p>Complied</p>
<p>(ii) The ownership of minor forest produce.</p>	<p>(a) Amended Section-44(2)(b) of the OGP Act. 1964 provides that ownership of MFPs in the scheduled Areas is vested in the GPs.</p> <p>(b) A new policy on</p>	<p>Complied</p>

(iii) Power to prevent **alienation of land** in the scheduled areas and to take appropriate action to restore any unlawfully alienated land of a Scheduled Tribe.

minor forest produce was notified by the Forest and Environment vide their resolution No.5503 F&E dt. 31.3.2000 in which 68 (sixty eight) items have been specified as Minor Forest Produce ownership over these MFP items has been transferred to GPs except MFPs growing in Reserve Forests, Sanctuaries and National Parks. K.L., Sal Seeds and Bamboos have not been included in the list of Minor Forest Produce. But in the mean time, sal seeds has been included. In the schedule of Minor Forest Produce vide Forest and Environment Department Notification No.7220 Dt. 18.7.06. Thus 69 items of MFP have been transferred to GP for their regulation and management.

(c) The OGP (Minor Forest Produce (Administration) Rule,2002, which prescribes the manner of regulation and control of trade in Minor Forest Produce by Grama Panchayats in the Scheduled Areas.

(a) Amended Section 44(2)(c) of the OGP Act.1964 has a similar provision.

(b) The Orissa Scheduled Areas Transfer of Immovable Property (By Scheduled Tribes) Regulation, 1956 has been amended by regulation. I to 2000 which interalia provides that proceedings

The Forest & Environment Deptt have been requested to include 6 more MFPs in the list and to transfer its ownership to GPs for management etc as per recommendation of committee constituted in the State. Ownership of 69 MFPs have been transferred to the G.Ps except Bomboo and Kenduleaf

Complied

<p>(iv) Power to manage all kind of village markets.</p>	<p>for eviction of an illegal occupant of Tribal land can be initiated on the report of a Gram Panchayat. Besides, prior approval of the Grama Panchayat with concurrence of the Grama sasan has been made mandatory before any land in scheduled areas can be settled by competent authority with a non-tribal. Beside, it is mandatory for the competent authority to inform the Gram Panchayat about all orders of ejection of restoration of land to the tribal made by them.</p> <p>(a) The amended Section 58(5) read with proviso to Section 59 of the OGP Act.1964 provide similar powers to the GPs in the scheduled Areas as well as other areas of the State.</p> <p>(b) As per provision U/S 58 of OGP Act. The application of Orissa Agricultural Produce Marketing (OAPM) Act in the GP areas <u>has been excluded.</u></p>	<p>Complied</p>
<p>(v) Power to exercise control over money lending to the Scheduled Tribes.</p>	<p>(a) Amended Section-44(2) of the OGP Act has vested similar powers on money lending to the Grama Sabhas.</p> <p>(b) The Orissa (Scheduled Areas) money Lenders Regulation,1967 has been amended empowering the GP to exercise, control over</p>	<p>Complied.</p>

<p><u>powers and authority of any Panchayat at the lower level or of the Gram Sabha.</u></p> <p>(o) The State Legislature shall endeavor to follow the pattern of the Sixth Schedule to the Constitution while designing the administrative arrangement in the Panchayats at district levels in the scheduled Areas.</p>	<p>amended accordingly. Law prevents higher Panchayats to interfere on lower Panchayats.</p> <p>It has been done</p>	<p>Complied.</p>
<p><u>Section-5</u></p> <p>Notwithstanding anything in Part-IX of the Constitution with exceptions and modifications made by this Act. Any provision of any law relating to Panchayats in force in the Scheduled Areas immediately before the date on which this Act receives the assent of the President which is inconsistent with the provisions of Part IX with such exceptions and modifications shall continue to be in force until amended or repealed by a competent Legislature or other competent authority or until the expiration of one year from the date on which this Act receives the assent of the President.</p> <p>Provided that all the Panchayats existing immediately before such date shall continue till the expiration of their duration unless sooner dissolved by a resolution passed in that effect by the Legislative Assembly of that State or, in the case of a State having Legislative Council by each house of the Legislature of that State.</p>	<p>Being followed.</p>	

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