



# Legal advice for environmental justice: Experience from eastern India

Sanjay Upadhyay  
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Enviro Legal Defence Firm

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First published by the International Institute for Environment and Development (UK) in 2015

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ISBN: 978-1-78431-168-1  
IIED order no.: 17575IIED

For copies of this publication, please contact IIED:  
International Institute for Environment and Development  
80-86 Gray's Inn Road  
London WC1X 8NH  
United Kingdom

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A catalogue record for this book is available from the British Library.

Citation: Upadhyay, S and al (2015) *Legal advice for environmental justice: Experience from eastern India*. IIED, London.

Cover photo: An interactive legal literacy training camp, "Panchayat Shivirs", in the village of Block Burmu in Ranchi District in the state of Jharkhand. © ELDF

Design:  
Judith Fisher, [regent-typesetting.co.uk](http://regent-typesetting.co.uk)  
Smith+Bell, [www.smithplusbell.com](http://www.smithplusbell.com)

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The **Enviro Legal Defence Firm (ELDF)**, India's first environmental law firm aims at mainstreaming the discipline of environment and development law, resolving conflicts over natural resources and strengthening environmental jurisprudence. ELDF is an independent team of erudite legal professionals, which provides services to governments, non-government organizations, educational institutions, individuals, private and external agencies engaged in areas of environment and development law.

### **Acknowledgements**

The authors wish to acknowledge the contributions of and thank Mr Ali Kaba and Mr. Lorenzo Cotula for their valuable comments in reviewing drafts of the report.



This report was funded by UK aid from the UK government, though the views expressed do not necessarily represent those of the UK government. The views expressed herein, remain the responsibility of the authors.

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## Acronyms

A&R	Advice and referral
CBO	Community-based organisation
ELDF	Environment, Law and Development Foundation
FRA	Forest Rights Act
FRRRC	Forest Rights Resource Centre
NGO	Non-governmental organisation
SDLC	Sub Division Level Committee

## 1. Background

Limited access to environmental justice is one of the biggest obstacles to tackling environmental issues for people in India. These issues often do not get addressed because individuals, as well as local community-based organisations (CBOs), simply do not know where and how to obtain correct, reliable and timely advice and representation nor how to gather evidence to pursue their concerns.

This paper distills lessons from experience with the *Vanadhikar Samadhan Kendra* (Forest Rights Resource Centre – FRRC) in Jharkhand, India. The FRRC uses the advice and referral (A&R) service model developed by the Enviro Legal Defence Firm and the Environment Law and Development Foundation (ELDF) to promote legal awareness and action to secure environmental justice.

A&R is a tool for developing mutually beneficial partnerships between skilled legal professionals in the field of environment and development law, and individuals who are facing challenges with environment and development issues and who need professional legal support.

While the ELDF has been operating A&R *pro bono* for a number of years, it recently made the service a state-wide initiative through a programme of implementation of the Forest Rights Act in Jharkhand, eastern India, supported by the state government. The ELDF set up the FRRC, which allows anyone – from a claimant to a government official – to submit a query for support on any matter related to the Forest Rights Act. The tool has delivered encouraging results. It aims to address the significant historical injustices meted to tribal populations of India by equipping them with support to claim their forest rights.

This paper gives a brief overview of A&R and the FRRC, including the idea, the need, the operational set-up, accessibility, economic feasibility and, most importantly, the benefits to the affected and/or the victims of environmental injustice – and to environmental justice more generally. It also briefly discusses the lessons learnt from using the tool, achievements to date and the enabling factors that helped make the FRRC a success. Lastly, it reflects on how such a tool could be replicated and scaled up in different contexts.

We believe that the A&R service can enable development practitioners and citizens at large to use the law as a tool in their local context to not only increase environmental awareness, but also to resolve conflicts around natural resources and to secure environmental justice for marginalised people.

## 2. The origin of *Vanadhikar Samadhan Kendra* (FRRC)

Recognising the gap between the field and the courts on matters related to natural resource management, and the adverse impact of this gap on securing access to environmental justice, ELDF developed a unique tool to offer pro bono support for guiding, advising and representing anyone who approached the organisation seeking help regarding legal conflicts around natural resources.

The tool started as a web-based advice and referral (A&R) cell for a range of actual and potential legal conflicts throughout India. Through the service, ELDF professionals guide the inquirers towards legal solutions in the area of environment and development. The A&R service has now become a platform where skilled legal professionals with expertise and hands-on experience in dealing with legal problems concerning natural resources, provide advice on a variety of issues.

Issues taken to the A&R service include:

- legal strategies and solutions for dealing with improper sewage disposal in urban areas
- denial of the rights of forest dwellers in rural areas
- improving understanding of the role of civic authorities in different urban issues
- felling trees, wild animals and compensation issues
- forest produce, including transit
- illegal trade in wildlife products
- tribal rights
- forest conservation
- community forest rights
- issues related to scheduled areas.<sup>1</sup>

The ELDF has provided advice to diverse stakeholders from urban and rural contexts, irrespective of their background – including CBOs, tribal and non-tribal people and groups, activists, high profile and lower rank officials, non-officials, small-scale entrepreneurs and social workers.

To date, the ELDF (both the firm and the foundation) has handled these queries using its own staff, but it has also drawn on a national network of specialists in environmental law as well as technicians, such as toxicologists and hydrologists, who are willing to look at a case or provide technical advice free of charge, at least initially.

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1. Scheduled areas are areas specially earmarked and declared by the President of India through a parliamentary process in the Fifth (central Indian belt) and Sixth Schedule (in the northeastern part of India) as per Article 244 of the Constitution of India. Historically these are remote and backward areas inhabited by a majority of tribal communities that have been excluded from the normal operation of law to preserve the social customs and to safeguard the traditional vocations of the tribal peoples living in these areas.

Individuals or groups contact the A&R service by post, telephone, email, SMS, or in person. Complaints are referred to the appropriate expert. A dedicated, interactive web-based service has also been created to provide a free service ([http://eldfindia.org/advice\\_referrals.php](http://eldfindia.org/advice_referrals.php)). However, this is carried out on an ad hoc basis, depending on time availability and sometimes convenience.

Building on this experience, the ELDF decided to adapt this service to a statute- and state-specific experiment, working with state authorities, to explore its replicability and scalability. This experiment has been carried out in the state of Jharkhand, where ELDF convinced the state that taking a rights-based approach to implementing the Forest Rights Act is essential in ensuring that the benefits of this legislation extend to the remotest corners of the tribal dominated and forest rich state of Jharkhand. In this context, the A&R service was provided under the aegis of the FRRC.

### 3. Key features of Vanadhikar Samadhan Kendra (FRRC)

The FRRC was set up in Jharkhand, eastern India, as part of a programme supported by the Department of Welfare of the government of Jharkhand to support the implementation of the Scheduled Tribes and Other Forest Dwellers (Recognition of Forest Rights) Act of 2006 (popularly known as the Forest Rights Act or FRA).

The FRA is one of the most significant pieces of legislation in recent times concerning indigenous peoples. It seeks to undo a historical injustice, allowing not only the documentation of unrecorded rights and the vesting of those rights in forest dwelling scheduled tribes and other traditional forest dwellers; but also securing the long-standing tenure rights of those people on forest land and resources of which they had hitherto been deprived.

Jharkhand possesses a large area of about 29 per cent forest cover, with many districts having more than 35 per cent forest cover. Jharkhand also hosts a very large tribal and non-tribal forest-dependent population. Yet the process of recognising forest rights has been slow compared to other states in India. One of the key reasons for this is that, while claims for recognising forest rights under the FRA have been filed by communities before the village assembly (known as the *Gram Sabha*), the statutory authorities as well as committees created under the FRA (i.e. the forest rights committee created by the *Gram Sabha*, the sub-divisional level committee, the district level committee and the state level monitoring committee), have lacked the expertise and capacity necessary for dealing with those claims. This is primarily due to a lack of awareness on the process under the FRA as well as the rights and duties that the FRA vests upon them. This affects authorities at all levels and this situation is aggravated by the lack of coordination between other line departments, such as the forest department, the tribal welfare department, the revenue department and the department for local self-governance.

Equally problematic is the lack of capacity amongst the beneficiaries, i.e. the forest dwelling scheduled tribes and other traditional forest dwellers who can claim rights under the FRA. The capacity of those who help such beneficiaries, especially from the legal perspective is equally a concern. Furthermore, the community does not get the requisite support for the filing of claims from the ground-level staff who are statutorily mandated to assist such claimants. This is due to the fact that there is lack of knowledge of the law, guidelines and clarifications that have been issued and also lack of intent. All these factors have hindered the implementation of the FRA.

#### Who is a 'village elder'?

To validate a claim the evidence given by a village elder is 'valid' evidence. However, there is a lot of confusion regarding the age of a village elder. Should it be 60, 65, 70 or 75 years?

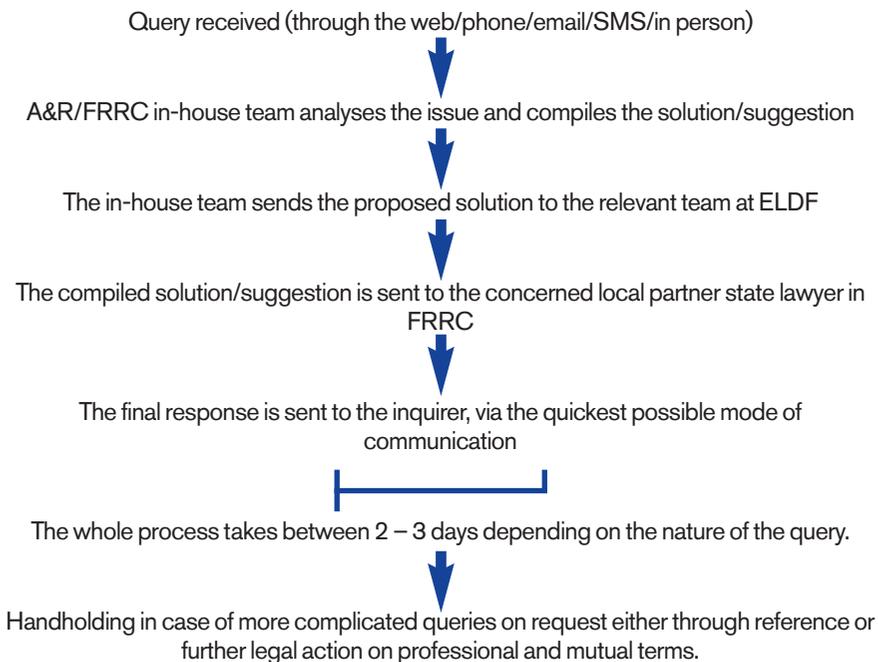
#### Amin – The official for land measurement:

Another confusion is about who should measure the land that is claimed under the FRA. Ordinarily, it is the Revenue Department which is authorised to measure it. But owing to the shortage of officials, retired officials known as 'Amin' have been hired to measure the land. However, little is known about the formal acceptance of their findings and they are often disputed by the lower authorities accepting the claims.

The aim of the FRRRC was to scale up the implementation of the FRA and the process of recognition of rights in the state of Jharkhand. This aim was pursued not only through the conventional methods of training camps, knowledge dissemination and hand-holding support to tribal peoples, but also through interactive, timely and real-time help and assistance of this important legislation via the A&R service.

The FRRRC is based in Ranchi, the capital of Jharkhand. It is located within the premises of the State Tribal Research Institute – a hub of tribal-related socio cultural space, which facilitates access to, and familiarity with, the FRRRC. The FRRRC is designed as a one-stop window for addressing any queries related to the implementation of the FRA. One of its kind in the country, the FRRRC creates a two-way communication channel between the claimants and the state to address the challenges of implementation of the FRA and provides a 24/7 helpline for support on all matters related to the Act. Figure 1 illustrates the process for addressing queries at the FRRRC.

**Figure 1. Step-wise procedure for addressing queries at the FRRRC**



The helpline service team has been extended to three pilot districts in Jharkhand – namely, the districts of Ranchi, Dumka and West Singhbhum. In each district, two or three members from the NGOs or CBOs are supported by at least one lawyer or paralegal trained by ELDF. Requests for support from other districts have led to the FRRC being extended state-wide.

The FRRC provides the opportunity to anyone – from a claimant to a government official – to receive support on any legal matter related to the FRA. The relevance of the FRRC is illustrated by the number of queries (over 100 queries) received both from government departments and from individuals within three months of setting up the centre. It is also vindicated by the increase in the number of rights recognised in the state over the past year.

In addition to the A&R facility, the FRRC has worked to disseminate knowledge on the FRA through a number of other channels. A key activity has been the organisation of *Panchayat Shivirs*, or interactive legal literacy training camps ([www.policy-powertools.org/Tools/Ensuring/docs/legal\\_literacy\\_camps\\_tool\\_english.pdf](http://www.policy-powertools.org/Tools/Ensuring/docs/legal_literacy_camps_tool_english.pdf)), usually organised at the village level in order to increase awareness of the rights of the people under the law. The aim of the *shivirs* is to create a participatory platform for village stakeholders to increase their awareness of their rights under the FRA and to discuss possible legal remedies to the practical challenges they face. ELDF has conducted numerous sessions in the three selected districts of Jharkhand.

These *shivirs* have been a huge success not only in raising awareness of the law and on the procedures to be followed under the law, but also in creating a 'brand' for the FRRC and raising awareness about the support offered by it.

Training as well as interactive and advisory services are also provided to local CBOs and local partner organisations on matters related to filing fresh claims, advancing pending claims and using the newly recognised rights for improved livelihoods. In addition to legal awareness, the training includes problem-solving sessions where on-the-spot legal advice is provided. Special workshops have been organised for this purpose where representatives identified CBOs working at the ground to be trained as 'master trainers' on the law. Thus for example the training brought out key implementation issues of land measurement and the nodal responsibility, what kind of claims can be entertained as community claims, whether religious structures can be claimed or not, the kind of species that can be planted in community forest areas and many other issues. Also, the training helped trainees who were trained initially but did not receive any training after the rules were amended in September 2012. In addition to these grassroots-level sessions, the outreach programme also involved training for state-level government officials, including officials from the forest, welfare and other state line departments. Priority was given to members of the committees constituted under the FRA.

In all types of training sessions, the FRRC has distributed publications and pamphlets on the rights and duties under the law and on procedures for applying for and dealing with claims on the recognition and vesting of forest rights.

Currently, the FRRC is facilitating 600 individual claims for forest rights in Hazaribagh district and 10 community claims in the Tamar block<sup>2</sup> of Ranchi district. It is also facilitating the recognition process of habitat rights of particularly vulnerable tribes such as Pahariya in Dumka district and Birhor in Ranchi district. A few examples of FRRC activities are provided in Box 1.

### **Box 1. Illustrative actions by the A&R service of the FRRC**

#### **Case Study – 1: Mandate of *Gram Sabha* and correction of process errors in FRA claims**

A query was received through a Jharkhand-based CBO named 'Prerna' regarding 600 pending claims in the Hazaribagh district. On inspecting the copies of the claim forms, the FRRC found that they had been filed without the mandatory resolution of the *Gram Sabha* (village assembly). Since the resolution of a *Gram Sabha* is mandatory in the validation of any claim under the FRA, the FRRC directed the stakeholders to retrieve the claim forms from the sub divisional level committee and re-file them after obtaining the necessary validation from the *Gram Sabha*. This experience raised two crucial issues– 1) that the *Gram Sabha* resolution is a legal requirement that cannot be sidestepped, and 2) any process-related error can be rectified and resubmitted. This helped in revisiting the 600 claims already presented. It also paved the way for thousands of additional applications which had similar clerical and procedural errors.

#### **Case Study – 2: Relationship between the FRA and the Forest Conservation Act, 1980**

The District Welfare Officer (DWO) of East Singhbhum district submitted a query on whether a *Gram Sabha* resolution is required for the diversion<sup>3</sup> of forest land under the Forest Conservation Act of 1980. The FRRC team clarified that a circular had been issued by the then Ministry of Environment and Forests. The circular states that diversion of forest land can be permitted only after the *Gram Sabha* passes a resolution declaring that all the claims for recognition of rights under the FRA have been settled. Although this provision is not enshrined in the law, the circular reflects the then Ministry's directive that FRA compliance is necessary prior to diversion of forest land. This position has been subsequently diluted and the current position is that linear projects such as roads, railways, transmission lines, canals and the like are exempted from such FRA compliance unless particularly vulnerable tribal groups and pre-agriculture communities are affected, in which case the rights of these groups need to be recognised prior to diversion of forest land.

#### **Case Study – 3: Rights over religious places under the FRA – Support to the implementer**

This was a query on whether a community claim for a place of worship (Mandasthal of Lord Shiva for the Kurmi tribe in Jharkhand) can be recognised under the Forest Rights Act. The inquirer was advised that the granting of forest rights cannot be given legally for such Mandasthal exclusively. However, the Forest Rights Act 2006 grants the right to reside within forests and also grants certain customary rights which have been practised by the people in that particular area and in present scenario as *Manda*. The inquirer was advised of the provisions of the Forest Rights Act under which this type of claim can be recognised. They were also apprised of a recent order issued by the Supreme Court of India wherein the Court recognised the customary and religious right to protect and preserve the local deity under the Forest Rights Act.

2. Block is an administrative categorization comprising several village councils or Panchayats formed at the intermediary level between a village council and a district for developmental programs implementation.

3. Use of forest for non-forest purposes.

## 4. Outcomes of the FRRC

### 4.1. The key challenges

There have been several challenges in running the FRRC. The most important one is the considerable cost of running the service. There has been a mismatch between lack of funds and volume of queries. Addressing any query necessitates more often than not a field visit for a physical verification of the situation on the ground. This, along with other logistical costs of the legal personnel visiting the site, is in itself a substantial expense particularly since the inquirer is ignorant of the law and is unable to offer any financial support for addressing queries. Further, operating such a service requires at least three personnel – a trained lawyer (which itself is a cost as such lawyers are as not easily available as mainstream practice lawyers are), a field worker and a technical support staff member for data entry. This is in addition to the standard expenses of building rentals and running such a service (computer, electricity, internet, telephone, stationery, etc.). Together all these comprise a substantial monthly cost which needs due financial support.

Another barrier is 'language'. Most of the formal legal instruments are in English or in Hindi, and in very technical and difficult language. In order to comply with legal requirements, the solutions proposed must also use a formal, technical language that is far from the language spoken by the victims or the beneficiaries, who prefer local vernaculars. This also creates a challenge in communicating the legal solutions to the beneficiaries, and ensuring that the beneficiaries can 'own' and take forward those solutions.

The third barrier is the lack of professionals in the sector who can understand both the law and the reality on the ground. Legal training in India is primarily theoretical and court orientated, rather than people friendly. There are few people who can provide such services, and building a cadre of professionals who can bridge the gap between the languages at field level and the courts is a big challenge.

Then there are the usual challenges of lack of infrastructure and facilities, vis-à-vis the magnitude of the problem and the scale of the outreach needed to empower the vast number of people who may suffer problems or seize opportunities around the FRA.

Another big challenge is getting necessary documentation from the inquirers. Often legal solutions are based on evidence, and gathering evidence is a big challenge. This gets compounded with the political tensions in Jharkhand which is infested with Left Wing Extremism (LWE) and therefore the issues compound challenges of accessing documentation for evidence purposes.

Then there is the conventional challenge of lack of coordination between the line departments which are responsible for the implementation of social welfare

legislation such as the FRA. The lack of such coordination invariably leads to bottlenecks in offering due support to inquirers.

## 4.2. The achievements

Despite the challenges outlined above, there are significant achievements. The A&R service has made the ELDF team more proactive in terms of response to the queries that they receive. Further, it also helps give more clarity on the various facets and dimensions of implementing the FRA.

Feedback received from the stakeholders (authorities, local communities and CBOs) suggests that there is increased knowledge and awareness of the FRA, both in government agencies and among local CBOs and the communities. This work has also resulted in an increased volume of claims in the state, which is one of the key objectives of the law. There has been significant improvement in the settlement of pending claims. The FRRRC has also sought to resolve conflicts between various line departments and some of them now understand and appreciate their overlapping roles.

There has also been improved connectivity between the government and the people through the FRRRC. As a result, legislation has now found its way to the remotest corners of Jharkhand. For instance, there was a general perception in Jharkhand that all village level work was done at the block officer level and accordingly people were filing their claims with the block officer. This was a misunderstanding at both the level of the officials and the communities, and was leading to conflicts between the officials as well as the Sub Divisional Level Committee (hereinafter SDLC) (who are the appropriate authority under FRA). The SDLC was rejecting both individual and community claims. Through the FRRRC, it was brought to the knowledge of SDLC as well to the nodal welfare department at the state level that the SDLC does not have power to reject claims under the Act. Issues such as these were earlier clarified through the *shivirs* but now can be handled through an institutional mechanism in FRRRC.

The FRRRC has also strengthened the village-level committees (Forest Rights Committees) established to facilitate the recognition of rights under the FRA.

Even though the intervention focused on three districts in Jharkhand, news of the FRRRC spread across the state and queries were soon received from all districts. Government officials and CBOs from non-target districts approached the FRRRC and requested training and *shivirs* in their districts as well. The queries and support sought from other districts led to the expansion of the scope of the FRRRC to become a state-wide facility.

Last but not the least, the key authorities responsible for the implementation of FRA (nodal officers) are now more active on FRA issues. This is evident through the numerous queries from the officials on the day-to-day implementation of the FRA and subsequent responses by the FRRRC.

### 4.3. The enabling factors

The achievements outlined above were made possible due to several enabling factors. There has been proactive support from the state government, in particular the Welfare Department and some key officials, including the Principal Secretary to the Tribal Welfare Commissioner, and other officers. The importance of government support is highlighted by the fact that, for a short duration, disinterest and scepticism from some state-level senior officials led to delays in the functioning of the FRRC, primarily due to lack of support and stalling of funds to operate the service.

The innovative use of multiple technologies has been another factor for increased awareness and access to the service. There are now multiple ways to approach the FRRC— through SMS, phone, web, post, in person, by word of mouth. This multiplicity of channels has facilitated the connection between FRRC and its beneficiaries.

ELDF has a team of legal experts with extensive knowledge on enviro-legal issues, including the way the law operates on the ground, and is therefore well positioned to handle queries emanating from the field. ELDF also works through local partner organisations active on the ground, who know the field situation better. This facilitates field-oriented outreach interventions. Indeed, first-hand knowledge, ground-truthing, surveying and covering the entire area through primary field-based interactions have proved important enabling factors in the success of the FRRC.

The strong outreach and awareness programmes through the *Panchayat Shivirs*, information dissemination through pamphlets, regular interactions with local NGOs and CBOs, participation in field programmes organised by government agencies and other NGOs, have also been enabling parameters.

Perhaps the most important enabling factor has been the strong conviction in the sustainability of centres such as the FRRC. ELDF believes that this model is indispensable if social welfare legislations are to reach the ground. Merely enacting legislations has not helped and support to exercise rights and deal with claims is key. The FRRC model offers a path to tackle this issue and ensure the proper implementation of the FRA.

Finally, although lawyers are usually considered expensive, the centre has been relatively cost-effective since it does not need to be exclusive and can be combined with other ongoing programmes (for example as with the Vanadhikar Centre in the case of ELDF's project for implementing the FRA in Jharkhand). We believe that the centre can be made into a national movement with similar set-ups across not only the state, but the entire country, especially where implementation arrangements are weak.

## 5. Lessons learnt and tips for wider replication/adaptation

### Must Dos

- Generate support from key stakeholders and decision making authorities
- Support of local CBOs
- Engage with local field experts in the subject area
- Understanding of the local context, including the key concerns of the people in the area, in order to be able to guide the inquirer appropriately.
- Ensure suitable financial support
- Develop a team of motivated professionals to run the programme
- Create suitable in house infrastructure to operate the service
- Develop and distribute user friendly fliers and pamphlets to back up the technical advice provided
- Develop a mode of outreach and communication that is clear and easy to access
- Make the service easily accessible through a telephone service, including SMS and web-based support
- Ensure quick and appropriate solutions to the query received
- Always follow up on the solution provided on request or with additional sources.

### Don't Dos

- Delay support for queries
- Discriminate between inquirers
- Random unorganised set-up and infrastructure
- Inaccessible set-up
- Start the service without due support from professionals and local CBOs
- Provide any financial support to the beneficiaries
- Lose primary documents including evidence
- Forget quorum
- Submit to incorrect forum, such as blocks

The centre is for technical support only, and this needs to be communicated very clearly to the beneficiaries. Providing financial support to one person is likely to trigger an increase in requests that cannot be met, and leads to perceptions of favouritism. It can also distort local understanding of the nature of the intervention.

Supporting environmental justice through the testing of the A&R service has been a 'shot in the arm' for the ELDF, as well as for the state. A tool that was initially implemented through a web-based service has now been linked to a key policy programme and expanded through multiple communication channels, including community outreach and training for government officials.

The result is an innovative experiment which bridges the gap between the field and the courts, which provides a body of experience and lessons that can be drawn upon for the rest of the country. Adaptation and replication on a larger scale require innovative thinking and tailoring for new contexts and situations. We believe that the centre can be made into a national movement with similar set-ups throughout the state and the whole country.

## Legal advice for environmental justice: Experience from eastern India

Limited access to environmental justice is one of the biggest obstacles to tackling environmental issues for people in India. These issues often do not get addressed because individuals, as well as local community-based organisations (CBOs), simply do not know where and how to obtain correct, reliable and timely advice and representation nor how to gather evidence to pursue their concerns.

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### Research Report

March 2015

**Land acquisitions  
and rights**

*Keywords:* India, Land rights,  
Legal advice

ISBN: 978-1-78431-168-1

