

Comments by the Director-General Forests on the FRA Committee's report:
Public Response by FRA Committee members

9 February 2011

The Director-General Forests (DGF) in the Ministry of Environment & Forests (MoEF) has given a preliminary response to the FRA committee's report. While the engagement with the Committee's report is welcome, much of the response is based on some misreading of the report and its recommendations. Moreover, the DGF does not respond to several other key recommendations where MoEF has to take the lead.

1. DGF's point #1 (regarding OTFDs, "the suggestion in the Report that this prior occupation should not be insisted upon is a matter of serious concern and can not be accepted").

This comment is based on a misreading of the report. The Committee's recommendation is not to do away with the prior occupation requirement, nor to change the FRA in any other way. We are simply pointing out that the correct interpretation of the FRA is that the 75-years residence clause for non-STs applies to simply their recognition as forest-dwellers, and does not apply to their specific claim under section 3(1)(a) for individual or community cultivation rights. For the specific claim of cultivation rights, the prior occupation requirement is same for STFDs and OTFDs, viz., occupation as of 13th December 2005. This is clarified in detail on pages 56-57 of our report. The DGF's statement that "it is necessary that they have had 3 generations' continued occupation, defined as 75 years" is not supported anywhere in the Act. Also, at no point does the report say that any *new* forest land, not already under cultivation/occupation as of 13th December 2005, should be opened up for OTFDs. Thus the DGF's language about 'land scam of gargantuan proportions' is uncalled for.

2. DGF's point #2 (Community rights are "already recognized in the Reserved Forest Settlements/Notifications, which is the real reason why community rights have been applied for in relatively lesser numbers than individual claims" and "The proposal that State Forest Department will give the protection while community would have ownership/control is not a workable arrangement")

This comment is again based on misreading the report and also making claims that are not backed up by our field work.

- a. The primary reason why very few community forest rights claims have been submitted is simply that there has been no effort on the part of the implementing agencies to spread awareness about the CFR provisions, and no willingness on the part of FD to allow the kind of transfer of control that is proposed under the FRA. In other words, the CFR provisions have simply not been given a fair trial to draw the conclusion that communities are not interested. Where there has been active facilitation or an absence of active obstruction, there are in fact very many claims (several examples of which are given in the report). This is borne out by *all* of the Committee's consultations, field visits, and even its discussion with officials on the ground (all reported in its trip reports which are on the Committee's website <http://fracommittee.icfre.org/>). The DGF's contention that community rights are "already recognised in RF settlements/notifications", does not account for the fact that such settlement left out very many kinds of rights, that it was done in times when communities had little democratic space to claim all their customary uses, and finally, it does not acknowledge that almost nowhere in India have communities had the right to manage the forest (other than a few

pockets like Van Panchayats). All this space is opened up by the FRA, hence the need to facilitate CFR claims.

- b. To call gram-sabha level committees as being subject to partisan politics, thereby implying that JFM committees are somehow not subject to such politics, simply does not reflect an understanding of how grassroots democracy functions and is supposed to function. In any genuinely democratic institution, there will be pressures for and against sustainable forest management. It is the job of both local governance bodies and regulatory agencies to contain these pressures without stifling the democratic functioning of grassroots institutions.
- c. The committee has not recommended that “FD will give protection while community will have ownership/control”. The recommendation is for a layered system of governance where clearly defined rights and operational autonomy are coupled with responsibilities (including protection) at the community-level, while the FD plays a monitoring and regulatory role, coupled with providing additional support when called for. And the additional recommendation made by the undersigned 10 members is for a layer of democratic governance at the district-level.

3. DGF’s point #3: (“Communities can enter into a MoU...”).

Communities can take a meaningful decision about whether to enter into a MoU with anybody for providing any services (protection or other) only when they first have clearly defined rights and powers. This is what the FRA does. Implementing the community forest rights provisions of the FRA thoroughly will ensure that these rights and powers are clearly transferred to communities. If the communities enjoy ‘excellent relations with the FD’ as the DGF claims, they will employ the FD’s services where needed, but the power to decide must first be first given to them. Moreover, the Committee’s widespread consultations revealed a virtually uniform dissatisfaction with the forest department and a demand from communities that the department play more of a role of facilitator than manager and governor.

4. DGF’s point #4: (“diversion pressures on lands”).

Certainly there are and will be pressures for land diversion. For lands which have community rights, our committee has only recommended an NOC from the Gram Sabha as an ‘additional requirement’ under FCA, not the sole requirement. So this can only provide a deterrent for diversion. It must be noted that one of the biggest alienators of lands today is the government itself, when it uses the Land Acquisition Act to convert agricultural land to non-agricultural uses, and when it uses the FCA to convert forest land to non-forest uses. Gram Sabha control over such lands provide an additional layer of protection, rather than making them more prone to alienation. The experience with Niyamgiri, POSCO, and many other proposed diversions of agricultural and forest land, is testimony to this, and also bears out the MoEF’s own move (of July 2009) to require Gram Sabha consent for diversion of forest land. Moreover for individual lands, the DGF must be aware that cultivated lands everywhere are being diverted to other purposes illegally, regardless of what conditions are imposed on them (non-alienation, or no transfer to non-STs, etc.). The right agency to regulate these individually controlled lands and the conditions attached to them is the Revenue Department. The DGF is right that the FD should not be blamed for illegal transfers, and that is precisely why we have recommended that the lands with individual rights be converted to revenue lands along with the non-alienability conditions attached to them. Using FCA to control the conversion of these lands from agricultural to non-agricultural use is a highly centralised, impractical and non-transparent approach. State governments should be asked to amend Land Revenue codes if additional safeguards regarding conversion of such agricultural lands to non-agricultural uses are required.

5. DGF's point #5: JFM:

- a. If indeed the JFMCs have been constituted by including 'all adult members of the community as the general body' as the DGF states, then they are identical in structure (if not in size) with the Gram Sabhas recognised under the FRA, and so replacing JFMCs with Gram Sabhas should make no material difference to the question of representation. Terminology like 'massive breach of faith' only sensationalises the issue—it is not at all clear why transfer of control from a joint committee set up under an executive order and various target-driven projects to a fully downwardly-accountable committee backed by law and constituted through a more public process should amount to breach of faith of any kind.
 - b. The DGF's claim that 'JFM has been a very successful attempt to involve people' is a highly debatable one (as brought out by the Committee's report in Section 8.3 and the references given therein) but in any case the FRA provides a clear legal mandate for more autonomous community control, and this mandate cannot be bypassed. Senior forest officers within and outside the Committee have also agreed that JFMCs will have to be replaced by or converted into Gram Sabha-based committees under the FRA.
6. The DGF's point #7 regarding wildlife outside protected areas is fully echoed by the Committee, in various parts where it recommends conservation-based management, and also where it recommends that the notion and practice of critical wildlife habitats should also be extended outside today's protected areas. In fact the dichotomy of 'wildlife areas' as against 'general forest areas' is very much a creation of the current forest governance paradigm.
7. The DGF's point #8 regarding the need for non-forest livelihood options is covered in detail by the Committee's recommendations on convergence.
- 8. The DGF has not responded to a number of key recommendations made by the committee where MoEF and state FDs need to play a proactive role. E.g.,**
- a. How to avoid the problem of illegal evictions that has vitiated the FRA implementation process in many places, as also of fresh encroachments that have been reported from some areas
 - b. How to make available all forest rights and settlement and offence records to communities, and how to proactively implement the CFR provisions
 - c. How to avoid unnecessary interference of the FDs in FRA implementation (found to be widespread by the Committee, as reported in all its field visit reports), while discharging their legally mandated responsibilities under the FRA
 - d. How to re-start or re-orient the process of declaration of CTH and CWH so as to make it compliant with the FRA, and how to democratise overall protected area management to include Gram Sabha committees that get powers under Section 5
 - e. How to make forest silviculture in non-CFR areas more attuned to community needs
 - f. How to ensure MFP rights, including bamboo and tendu rights, so as to ensure better returns to forest-dwellers and ensure sustainable harvest of NTFPs through community-based systems and not only top-down bureaucratic control
 - g. How to ensure that the process of giving clearance for diversion of forest land complies with the FRA, including with the MoEF's circular of July 2009.

Most of the points above are covered in the consensus portions of the Report submitted by the FRA committee, and to that extent the above reflects the entire Committee's position on those points, not just those of the undersigned.

1. Sharachchandra Lele, sharad.lele@gmail.com
2. Ashish Kothari, ashishkothari@vsnl.com, 020-25675450 / 65002036
3. Arupjyoti Saikia, arupjyotisaikia@gmail.com, 9435557483
4. Jarjum Ete, Jartum@gmail.com, 9436041424
5. Roma, romasnb@gmail.com, 9868217276
6. Vasavi Kiro, vasavi.santosh@gmail.com, 9431102189
7. Ravi Chellam, rchellam@wcs.org, 9900901112
8. Ravi Rebbapragada, samataindia@gmail.com, 9848195937
9. Mannu Lal Markham, 9425864619
10. Ramdhan Lal Meena, ramdhanlalmeena17@hotmail.com, 9971009334