

May 1, 2008
Issue 1

TRACKING THE FOREST RIGHTS ACT

NEWS AND INFORMATION ABOUT THE IMPACT AND
IMPLEMENTATION OF THE ACT FROM ACROSS INDIA

Editorial

Reflections on the First Phase of Implementation

The Forest Rights Act (FRA) is finally diffusing through the walls of legislatures and touching the ground. Government of India claims that across states, thousands of Forest Rights Committees (FRCs) have been formed as a result of people getting together to hold gram sabha meetings for this Act. Civil society organizations and people's movements have been instrumental to this process; spreading awareness, encouraging attendance and in some cases physically organizing meetings.

This newsletter is an attempt to consolidate major happenings around the Act. These include cases of creative interpretation of the Act, conflict and cooperation on the ground and immediate impacts of the Act, both positive and negative, both on India's forests and biodiversity as well as forest-dwelling communities.

In a debate that is as polarized as the FRA has been, where most groups have in mind a "proper" implementation process, where parties have challenged the very constitutional validity of the Act, this newsletter aims to enquire into the Act's implementation by examining news stories as reported by popular and independent media as well as local organizations working directly on the ground. The idea being that except the analysis presented in the Editorial section, the reader has the freedom to formulate his or her own opinions about the Act's rollout across the country.

This first issue covers major happenings from January 1, 2008 up to May 1, 2008. It is not exhaustive but representative of the kinds of strategies being used and issues being faced. Our next issue, to be released early June, will feature stories from May 1, 2008 to June 1, 2008. The next issue will also carry a special feature on the implementation of Critical Wildlife Habitats (as mandated under FRA). This feature will include a status report as well as a brief analysis of the process being employed to identify and designate these areas.

NATIONAL NEWS

Jan 8, 2008: PM writes to CMs on speedy implementation of Act

In his letter to Chief Minister of all States and UTs, the Prime Minister requested full cooperation for speedy implementation of the FRA. He specified that State Governments would be required to set up the relevant authorities for vesting forest rights (viz. Sub-divisional Level Committee (SDLC), the District Level Committee (DLC) and the State Level Monitoring Committee (SLMC)) at the earliest. The Ministry of Panchayati Raj would anchor the organization of gram sabhas for the purpose of the Act. The PM also stressed that adequate protection be provided to Critical Wildlife Habitats (Section 4 of FRA) during all stages of implementation.

Source: Press Information Bureau, 11.01.08 / <http://pib.nic.in/release/release.asp?relid=34561>

Editorial:

*Reflections on the First
Phase of Implementation*

NATIONAL NEWS

NEWS FROM STATES

IMPORTANT EVENTS

Feb 15, 2008: Min. of Panchayati Raj writes to CMs on implementation of FRA

The Minister of Panchayati Raj wrote to all State Governments delineating its own role in initiating gram sabha meetings for the Act. The letter called on all States to organize gram sabha meetings on the 28th of February 2008 for the purpose of initiating the recognition of rights process. Key issues clarified were that the Gram Panchayat would preside over the first gram sabha meeting (as per the Rules), the SDLC would ensure quorum in this meeting, SDLC or Gram Panchayat would explain the Act's provisions and roles and responsibilities to gram sabha members and that the Forest Rights Committee (FRC) would be elected from amongst the members present. Additionally, the letter implied that the SDLC, Gram Panchayat members and relevant committee members would be trained on the Act and Rules in advance and before the first gram sabha meeting.

Source: Copy of letter circulated by Campaign of Survival and Dignity / <http://forestrightsact.awardspace.com>

Feb 20, 2008: MoTA urges time-bound implementation of Act

During a two-day meeting organized by the Ministry of Tribal Affairs (MoTA), its Secretary, G.B. Mukherji urged States to draw up an action plan and complete the preliminary work by mid March. He stated that gram sabha meetings for the purpose of the Act should begin by Feb 28th and be completed by March. This meeting, which was attended by officials from the Ministry of Environment and Forests (MoEF) and MoPR, also discussed the roles of relevant ministries in implementation. Additionally, the Secretary, MoPR commented that the FRA was in "complete harmony with PESA and needed to be implemented in letter and spirit."

Source: Press Information Bureau, 19.02.08, <http://pib.nic.in/release/release.asp?relid=35469>

The Hindu, <http://www.hindu.com/2008/02/20/stories/2008022051531500.htm>

Summary of Writ Petitions filed against the FRA in various courts across the country

JAN 26, 2008: MADRAS HIGH COURT, MADURAI BENCH WP no. 533 of 2008

Filed by T.N.S. Murugadoss Theerthapathi

Key arguments:

- FRA infringes on fundamental rights granted under Articles 14 and 21 of Constitution of India (Col)
- FRA infringes fundamental duties to protect the environment granted under Article 51 of Col
- Provisions of FRA in Chapter II (Forest Rights) would lead to severe degradation of forests, lax of statutory protection to wildlife and shortage of rain
- Section 3 that allows forest-dwellers to hunt animal species is in violation of Biodiversity Act 2002, and will allow even hunting of tigers¹
- Tribes may associate with business people for construction of resorts
- MoTA can frame laws for the welfare of tribes but it is out of their jurisdiction to frame laws regarding forestland.
- The Preamble of the Act that states, that the Act is to "recognize and vest forest rights...whose forest rights could not be recognized" is incorrect and baseless since during the declaration of a

DATE NOT KNOWN: HIGH COURT OF JUDICATURE OF ANDHRA PRADESH, HYDERABAD

WP no. 21479 of 2007

Filed by J.V. Sharma (Retd. IFS), Lohit Reddy (Retd IFS) and A.H. Qureshi (Retd. IFS)

Key arguments:

- Section 4 recognizes, restores and vests forest rights without adequate care and precaution to safeguard forests
- Encroachments and illegal occupation of forestland is punishable under law either with imprisonment or fines or both. The FRA seeks to legitimize these illegal acts and works at cross-purpose with the prevalent laws of the land.
- FRA places an embargo on eviction of encroachers till recognition of rights process is complete. This provision gives protection to illegal occupants and would also encourage further encroachments.
- Decisions by State Governments to regularize encroachments from time to time have acted as strong inducement for further encroachments of forest areas. This is proof that no lessons are learnt from past experience and pressure on forestland

¹ This is in contradiction with Section 3(l) of the Act, which states that forest dwellers may enjoy "any traditional right customarily enjoyed by the community...but excluding the traditional right of hunting or trapping or extracting a part of the body of any species of wild animal."

<p>Reserved Forest, all rights were already settled and therefore all existing rights have already been recorded and enquired into.</p> <ul style="list-style-type: none"> • Encroachments and illegal occupation of forestland is punishable under law either with imprisonment or fines or both. The FRA seeks to legitimize these illegal acts and works at cross-purpose with the prevalent laws of the land. <p>Given the above, the FRA should be suspended pending disposal of this petition. <i>Source: Original Petition</i></p>	<p>would only increase.</p> <ul style="list-style-type: none"> • Andhra Pradesh State Government in Government Order Ms. No. 2262 dated 25.11.1968, affirms that forest lands should be treated as un-assignable and that all encroachments into forests that have come into existence 1964 onwards should be evicted. • Ceiling of vesting land rights up to 4 ha is ad hoc and without any basis. On the contrary, according to a paper placed before the National Commission to review the Working of the Constitution, the average land holding by tribes is 2.07 ha. • FRA is in violation of Article 51-A of Col • Tribal communities would not benefit from the FRA since it does not facilitate their move into mainstream economic activity. <p>Given the above, the Hon'ble Court must issue an order declaring the FRA (Chapter II, III and IV) as illegal and unconstitutional. <i>Source: Original Petition</i></p>
<p>FEB 21, 2008: MADRAS HIGH COURT WP no. Unknown of 2008 Filed by V. Sambasivan (Retd. IFS) Key arguments:</p> <ul style="list-style-type: none"> • FRA is illegal, unconstitutional and null and void • Provisions of the FRA (Section 4.7) which allow for diversion of forestland up to a total of 75 hectares for basic developmental facilities, without prior clearance from the Central Government, is in severe violation of existing Indian Forest Act 1927, Forest Conservation Act 1980 and Wild Life Protection Act 1972. • The Preamble of the Act that states, that the Act is to “recognize and vest forest rights...whose forest rights could not be recognized” is incorrect and baseless since during the declaration of a Reserved Forest, all rights were already settled and therefore all existing rights have already been recorded and enquired into. • FRA infringes on fundamental rights granted under Articles 14 and 21 of Constitution of India (Col) • FRA infringes fundamental duties to protect the environment granted under Article 51 of (Col) <p>Given the above, the Hon'ble Court must issue an order declaring the FRA as illegal and unconstitutional <i>Source: Original Petition</i></p>	<p>FEB 21, 2008: SUPREME COURT OF INDIA WP no. 109 of 2008 Filed by Bombay Natural History Society, Wildlife Trust of India, Wildlife Society of Orissa and Assam Youth Tribal League Key arguments:</p> <ul style="list-style-type: none"> • Challenges the constitutional validity of the Act by arguing that the Parliament does not have jurisdiction to legislate on land matters and that forests as a concurrent subject do not include forest land. • Alleges that the Act will “destroy the integrity of the last remaining forests by enabling alienation in perpetuity of vast tracts of forest lands”, and “will result in the destruction of wild life, wild life habitats and will seriously erode the ecological integrity of the last remaining forests in India”. • Seeks enforcement of state laws that prohibit transfer of lands by/among STs, and return of lands illegally alienated from STs. • Argues that the FRA allows forest-dwellers no source of income other than selling/transferring land allotted to them under the Act². <p>Given the above, the Hon'ble Court must issue an order declaring the FRA as illegal and unconstitutional. <i>Source: Original Petition</i> <i>For a more detailed critique of this petition, see: Kothari, A (2008) 'Saving conservation laws from conservationists'. InfoChange: News & Features http://infochangeindia.org/200804077043/Other/</i></p>

² This is in contradiction with Section 4(4) of the Act, which states that “rights are heritable but not alienable or transferable”.

DATE NOT KNOWN: SUPREME COURT OF INDIA

WP no. 69 of 2008

Filed by Wildlife First, Nature Conservation Society of Amaravati and Tiger Research and Conservation Trust

Key arguments:

- FRA is unconstitutional since it is destructive of very forests that the State is under a constitutional duty to protect and preserve.
- Parliament does not have jurisdiction to legislate on land matters and that forests as a concurrent subject do not include forestland.
- FRA cannot be implemented since the precise population of potential rights holders is not known and their claims for forest rights would be far in excess of the sustainable carrying capacity of remaining forests
- States must first enforce state laws that prohibit transfer of lands by/among STs, and return of lands illegally alienated from STs.
- Term “primarily resides in and who depends on the forest lands for bona fide livelihoods needs” is vague and not properly defined under the Act
- Appointment of MoTA as the nodal agency for the implementation of the Act is arbitrary and unreasonable.
- It is impossible to regulate the extent of exploitation and to determine “bona fide livelihoods needs”
- Rights covered under 3(1) which confers the right to protect, regenerate or conserve or manage any community forest resource s arbitrary and illegal on the ground that conservation and management needs special skills and knowledge and can be carried out only by independent authorities. The gram sabha hardly possesses any expertise in this complex field.
- FRA does not contemplate any role of an independent agency in the recognition of rights in favour of tribal communities.
- Present Act makes it impossible for any agency to ensure that forests are only given to genuine tribals and forest dependent dwellers
- No rationale basis to arrive at a figure of 4 ha
- Act equates STs with OTFDs when in fact the two categories have no common traits and cannot be treated equally in the conferment of forest rights.
- Act is a pure political decision in order to obtain political mileage to the parties in power and against public interest.

Given the above, petitioners request an ad-interim ex-parte stay on the implementation of the FRA and its Rules.

Source: Original Petition

Note: Unconfirmed reports suggest that a writ petition has been filed in the Bombay High Court by a group representing retired foresters. This petition was not available.

NEWS FROM STATES

The implementation of the Act is still a mixed bag. While some states like Chhattisgarh and Madhya Pradesh have already swung into the claims process, others like Orissa and Gujarat are in the process of constituting FRCs, and still others like Tamil Nadu, Kerala and West Bengal have not begun any groundwork. Much of the available information on the status of implementation is informal and no State Government has commented on the status as yet.

Tamil Nadu:

Feb 4th: Implementation – a non-starter

The Central Government is yet to communicate the details of the Act to the Tamil Nadu State Forest Department. □□Principal Chief Conservator of Forest, C.K. Sreedharan commented, "I have not received any communication so far. We heard that the rules framed under this Act have also been notified.□ We do not know

how to implement it". The Forest Department has expressed its hesitation about the severe environmental implications of the law but is willing to cooperate with its implementation. "If I get the communication, I will act," said Sreedharan. According to sources, the process of notification of the Act were hurried through. Another forest official said, "We were never given a chance to really speak about this Act." The Tamil Nadu Revenue, Rural Development and Tribal Welfare Departments have also not initiated any implementation in the State.

Source: The Hindu, 07.03.08 / <http://www.thehindu.com/2008/03/07/stories/2008030754640600.htm>

Feb 24th: Chennai High Court issues a stay order on clearing of trees & alienation of forestland

The Chennai High Court directed authorities not to clear forestland or fell trees and also not to issue pattas or allow any alienation of land from sanctuaries, national parks and biosphere reserves, until further orders. The stay order was in response to a writ petition submitted by V. Sambasivam.

Source: The Hindu, 24.02.08 / <http://www.hindu.com/2008/02/24/stories/2008022453850400.htm>

Orissa:

Feb 10th: FRCs to be constituted at Palli Sabha Level

Revenue Minister, G.V. Venugopal Sarma stated that in Orissa, the FRCs meant for the determination of forest rights would be constituted at the Palli Sabha level.

Source: The Statesman,

<http://www.thestatesman.net/page.arcview.php?date=2008-02-11&usrsess=1&clid=9&id=216936>

Mar 15th: Appeal to extend dates of palli sabha meetings in Kalahandi District

Adivasis and other traditional forest dwellers of the Uraladani Panchayat in Kalahandi District have appealed to the CM to extend the dates of the palli sabha meetings. They stated that it would be difficult to hold these meetings and constitute FRCs on the 16th and 23rd of March as per Government of Orissa orders, due to lack of notice.

Source: Press release by Seba Jagat, circulated on forestrights@yahoo.com

Mar 29th: Concern over the Rights of Other Traditional Forest Dwellers

The Conservator of Forests in Koraput district expressed concern over the conditions of eligibility under FRA for Other Traditional Forest Dwellers (OTFD). He felt that terms of eligibility were being interpreted differently by different groups and this could cause more harm than good to OTFD, especially since it may be difficult for them to provide voter identity cards, passports etc. along with their claims application. Moreover the problem was coupled with gaps in communication between the district administration and villagers in forming 'Forest Rights Committees' in the district. While initially March 17 and 23 were fixed by the administration to conduct special Palli Sabhas to form the 'Forest Rights Committee' in each revenue village by inviting at least 75 per cent of population, most of the meetings could not be organized for fear of violating the election code of conduct.

Source: The Hindu, 29.03.08 / <http://www.hindu.com/2008/03/29/stories/2008032951240300.htm>

Apr 1st: FRCs could not be Elected in many Villages

a). Across Orissa, approximately 55,000 villages were required to elect FRCs. In Phirnikinali ward, Chandaka revenue village, the FRC could not be formed because of lack of quorum (2/3rd of total population) in the gram sabha meeting. Additional issues that hindered the meeting included communication problems. While it was announced that the gram sabha meeting would be held at 4pm on Mar 23rd, it was actually held at 2pm. The Panchayat executive officer commented that the FRC could not be constituted because of lack of quorum and

late arrival of Phirnikinali villagers. To add to the confusion, all villagers present were asked to sign some papers although most did not know the content. The same is the case in a number of districts, where either the Palli Sabha did not have quorum or could not meet at all due to lack of awareness about the meeting.

Source :Business Standard, 1/4/08

http://www.business-standard.com/common/news_article.php?leftnm=3&autono=318608

b). In Satkosia National Park, residents of Asanbahal forest village were aware of the proposed palli sabha. However, they had no idea about the purpose of the FRC nor that these meetings were regarding a new law. They claimed that the Government Order had only mentioned land rights and since many did not occupy forestland, they were unenthusiastic about the meeting. In fact, they were surprised to know that they could claim rights to resource use and rights to protect and conserve forests under the Act as well.

Source: Personal communication during author's visit to Satkosia National Park, March 2008

West Bengal:

Mar 27th: “Gram Sansads” to be Relevant Gram Sabhas

The Principal Secretary of the Panchayati Raj and Rural Development issued an Order on Mar 17th (1220/PN/O/I/1A) that stated that FRCs were to be constituted at a “gram sansad” level meeting to be held any time before Mar 31st. Civil society organizations working in the Buxa region of Alipurduar and Jalpaiguri report that the State Government’s Order has been a major obstacle to organize village meetings. As a result, 11 remote and spatially separated villages in this region are operating through a single FRC, that too which was hastily formed on Mar 25th. They feel that it is impractical to conduct a proper claims recording and verification process for several villages distant from each other. This is especially unworkable when it comes to verifying community forest resources and other rights to forest produce. In addition, the Government Order stated that for practical purposes, “gram unnayan samitis” could be considered as FRC if all conditions of membership are met. Groups are outraged that the State Panchayati Raj & Rural Development Department has interpreted the Act in its own way. They feel that imposing an existing committee is “illegal” and will deprive gram sabha members from democratically electing a fresh FRC.

Source: Press release from Siliguri forest wokers' organisation / <http://sanhati.com/news/724/>

Karnataka:

Jan 24th: Kodagu Zilla Panchayat to Constitute “gram samitis”

The Kodagu Conservator of Forests, G.A. Sudarshan has written to the CEO of the Kodagu Zilla Panchayat requesting him to constitute “gram samitis”, SDLCs and DLCs for the purpose of the Act.

Source: The Hindu, 24.01.08 / <http://www.hindu.com/2008/01/24/stories/2008012450880300.htm>

Chhattisgarh:

Mar 23rd: Appeal to CM to suspend implementation of Act in Salwa Julum Areas

Civil society organizations have written to the Chief Minister, Raman Singh to suspend the implementation of the FRA in areas where the Salwa Julum movement against naxalites has forced lakhs of tribal people to flee from their villages. In about 1,200 villages in Dantewada and Bijapur District, approximately 3.5 lakh people have been displaced. The letter states that of those displaced, 47,000 are living in government roadside camps, 40,000 have fled to Andhra Pradesh and the whereabouts of 2,63,000 is unknown. Organizing gram sabha meetings in abandoned villages will not be possible and implementing the Act at this time would deprive many of their rights. The letter requests that implementation be suspended while facilitating the speedy return of tribals to their villages. In the mean time, no land is to be allocated to outsiders, no leases or licenses for mining of minor minerals is to be given as specified under PESA, since these require the permission of gram sabhas.

Source: The Hindu, 23.03.08 / <http://www.hindu.com/2008/03/23/stories/2008032354940900.htm>

Gram sabhas organized, convened in unsystematic manner

The special gram sabha meetings that were organized for the constitution of the “van adhikar samitis” were unsystematic. Civil society organizations have reflected on a number of problems that they feel have been the cause for the confusion:

- Information regarding the gram sabha was delayed and in many places. Even in cases where the information reached in advance, villages were notified during the morning, a time when most people are away in their fields, or for work.
- FRCs were constituted despite the lack of required quorum. In some places, even absentee villagers were selected as members of the FRC.
- In a few areas, the constitution followed a reverse process where the Chairperson of the FRC was elected first and then the committee members.
- Gram Panchayat members were unclear about the exact process to be followed in the formation of the FRC. For example, many were unaware that there needed to be a Chairperson to chair the whole proceedings. It is reported that even in cases where the Sarpanch and GP members were aware, they were apathetic about the whole process.
- In Marwahi, Gourella and Pendra districts, only pink claims application forms, which was for OTFD was distributed. While in some places, applications forms were not received at all.
- Roles and responsibilities of FRCs were not explained during the gram sabha meeting. FRC members were unaware of the claims verification process and relevant training had also not been scheduled.

Source: Report: Chhattisgarh Van Adhikar Abhiyan by Nadi Ghati Morcha and Lok Shahbhagi Manch, Chhattisgarh

Madhya Pradesh:

Jan 9th: MP chalks out training programmes for implementation of the Act

The Madhya Pradesh State Government chalked out a training programme for officials from the Departments of Forest, Panchayati Raj, Revenue and Tribal Welfare related to the implementation of FRA. Training programmes were to be held from Jan 11th to the 18th in Bhopal, Jabalpur, Indore and Gwalior for State, District and Sub-divisional officials about the provisions of the Act and relevant responsibilities, with the aim that the Subdivisional and District officials would eventually impart this training to villagers during village level meetings that are to commence from Jan 26th. Officials would be trained to discourage new encroachments and take caution when recording rights of a large scale. In addition, the Tribal Welfare Department had been instructed to constitute the SDLC and DLC including public representatives and NGOs as per the Act.

Source: Central Chronicle, 16.01.08 / <http://www.centralchronicle.com/20080117/1701026.htm>

Andhra Pradesh:

Feb 1st: State Government to distribute forestland to tribals

On February 1, the Andhra Pradesh Tribal Welfare Department announced that it would distribute 2.36 lakh hectares of forestland to every tribal who has been in possession of 4 or more hectares before 2005. The announcement also said that the government would implement the Act from July.

Source: The Hindu, 1/2/08 / <http://www.hinduonnet.com/2008/02/01/stories/2008020154580700.htm>

Feb 25th: Road map for implementation ready in Khammam District

The Khammam District Collector, near X forest block commented that the infrastructure, systems required for the recognition of rights process was ready. The SDLC had already met to discuss the Act and develop a timeline for implementation. FRCs were to be given barefoot surveyors for the claims verification before Feb 19th. Digitised forest maps showing land occupation were to be ready by the end of February. Orientation programmes for the FRC was to begin before March 15th. The SDLC was to submit all applications for vesting of rights to the DLC from May 16th onwards. The finalisation of claims and granting of titles and deeds was to be completed by the end of October 2008.

Source: The Hindu, 25/2/08 / <http://www.thehindu.com/2008/02/25/stories/2008022556800500.htm>

4th Mar: Gothkiya's ineligible for rights in Khammam District

The Gothkiya forest tribe in Andhra Pradesh represent a case that could become more and more common as implementation begins and eligibility of communities is determined. The tribe migrated from strife-torn Bastar region in Chhattisgarh many years ago. Their migration appears to be depriving them of recognition of rights both in Chhattisgarh, since they cannot show current occupation of forestland, and in Andhra Pradesh where they are not a Scheduled Tribe. Although they make a considerable presence in Bhadrachalam and Palvancha divisions with a population of 15,000, the District Administration has made it clear that they will not merit any consideration under the FRA.

Source: The Hindu, 4/4/2008 / <http://www.hindu.com/2008/04/04/stories/2008040455800800.htm>

Himachal Pradesh:

Mar 25th: Implementation of the Act to begin in tribal areas first

The Himachal Government has decided to first implement the FRA in the state's tribal districts. A spokesman of the Tribal Welfare Department said that the exercise would begin on April 6 and gram sabha meetings would be held to create awareness about the law; its salient features and procedure to determine rights. In the first phase, the Act is to be implemented in the districts of Kinnaur, Lahaul-Spiti, Pangi and Bharmour areas of Chamba. The spokesman stated very clearly that only members of Scheduled Tribes who were dependent on forests for livelihoods and had in possession forestland before December 13, 2005 and continued ownership till January 2, 2008, could present their claims under the FRA.

Source: The Tribune, 26.3.08 / <http://www.tribuneindia.com/2008/20080326/himachal.htm#2>

Punjab Newsline, <http://www.punjabnewsline.com/content/view/9720/93/>

IMPORTANT EVENTS

No reported events.

*Newsletter compiled by Kalpavriksh Environment Action Group as a part of a process to
“Track the Social and Ecological Impacts of the Forest Rights Act”*

Some questions that we’re asking:

- How is the Act being interpreted in its implementation?
- Which are best-practice cases of its implementation?
- What are the implications of ‘Critical Wildlife Habitats’ and how are they being implemented on the ground?
- What are the implications of Section 3(i) and how are forest-dwelling communities claiming the right to protect and conserve forests?
- How are the provisions of the Act being misused?
- Are fresh encroachments occurring as a result of the Act?
- What is the impact of tenure and livelihoods security of forest-dwelling communities on biodiversity?

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Next issue on Critical Wildlife Habitats !