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## LIVELIHOOD ISSUES

### Not out of the woods yet

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**The promise of the FRA remains largely unfulfilled, says a committee set up by the Ministries of Environment and Forests and Tribal Affairs.**

PICTURES: ASHISH KOTHARI



**IN THE KARLAPAT Sanctuary in Orissa. The committee has recommended the denationalisation of non-timber forest produce like bamboo, which has significant livelihood and commercial implications for forest-dwellers.**

IT seems hard for a government used to controlling most of India's common lands to let go of them. Even though it has passed a law mandating more decentralised governance of forests, the government itself is proving to be the biggest obstacle in its implementation.

Other than in parts of north-eastern India, most of the country's forests have for decades been under the control and management of the Forest Department. In 2006, the United Progressive Alliance (UPA) government brought in the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act in an attempt to undo the injustices heaped on forest-dwelling communities since colonial times. The Forest Rights Act (as it is more popularly known), or the FRA, promises livelihood security of forest communities through the recognition of land and resources rights and more decentralised and democratic management of forests by them. The Rules were promulgated in January 2008. However, a committee set up jointly by the Ministry of Environment and Forests (MoEF) and the Ministry of Tribal Affairs (MoTA) in the middle of 2010 has concluded that the FRA has reached only a fraction of its intended beneficiaries and has hardly begun the journey towards changing governance.

NIKHIL ROSHAN



**AN ORISSA VILLAGER showing the title deed he received under the Forest Rights Act.**

In its final national report, submitted in mid-December, the committee, consisting of 20 members from varied backgrounds (activists, researchers and government officers), has detailed the gaping holes in the implementation of the FRA. It has strongly recommended independent oversight of the process, involvement of civil society at all levels, and the formation of a national council that can boost the implementation of the Act.

It is important to understand how the committee went about its work. Demands for a more inclusive process began the very day the MoEF announced a review committee (in February 2010) whose composition was heavily skewed in favour of the Forest Department and the terms of reference were not very clear. Civil society organisations had to bear down on the MoEF to alter the composition of the committee substantially. As a result, many of them were brought on board, and the committee was announced as a joint MoEF-MoTA body. The MoTA, too, nominated some members. The committee was finally constituted in mid-April with a retired Indian Administrative Service officer, N.C. Saxena, in the chair. A retired Indian Forest Service officer, D.N. Pandey, was made the vice-chairperson.

Over a seven-month period, the committee conducted public consultations and field visits in 17 States. Tens of thousands of people from forest-dwelling communities attended the consultations and meetings and made oral or written submissions. Grassroots people's movements participated in all the States, including, for instance, the Jangal Jameen Jan Andolan in Rajasthan, the Orissa Adivasi Manch, and the National Forum of Forest Peoples and Forest Workers in Uttarakhand. Hundreds of civil society organisations working on issues of forest rights, conservation and development engaged with the committee as did senior government officials (in most cases Chief Secretaries of States and heads of tribal, forest, and other departments concerned), political leaders and officials at the field level. Thematic discussions were encouraged and a national workshop on Particularly Vulnerable Tribal Groups (PTGs) was organised along with civil society organisations.



**VILLAGERS IN JAGATSINGHPUR, Orissa, whose lives and livelihood are threatened by the Posco steel plant, waiting to depose before the committee.**

The committee maintained full transparency, with all its minutes as well as records of consultations and visits in the States made available to the public. Visits were announced in advance so as to enable the public to participate.

There, of course, have been a number of shortcomings. For instance, all of India's States could not be covered owing to a shortage of time and the fact that all committee members were working voluntarily. Nor could the committee reach all those who may have had important inputs to provide. And both the Ministries that set up the committee hardly participated in the discussions or State-level consultations even though they provided the back-up support.

### **Systemic failures**

It is hardly a surprise that a century-old system is refusing to change fast. What is crucial is to identify the basic faults in the law or in its implementation that can defeat the objectives of the law for years to come. The committee has identified several such systemic faults.

Possibly the biggest failure is institutional. Various bodies that have been authorised or set up to implement the FRA at the local, State and national levels have in most cases simply not delivered, the committee notes. One big reason for this is the lack of information among them and the potential beneficiaries about the FRA or the processes involved in implementing it. At several of its field visits, for instance in the hills of Uttarakhand and in the deep-forested areas of central India, the committee found that there was either total ignorance of the Act or a severely distorted understanding of its provisions. Many States have undertaken orientation programmes for government staff and panchayat bodies, but these have usually not been as sustained or in-depth as required.

At the Centre, the Ministry of Tribal Affairs, the nodal agency for the implementation of the FRA, has been at best sporadic in its action. Its monitoring is restricted to asking States for aggregate data on the implementation of the Act or arranging an occasional State-level visit; its monthly update of the progress of implementation does little to analyse trends, causes or consequences.



**WOMEN OUGHT TO be the primary beneficiaries of the Act, but they have been left out.**

However, it has issued some useful circulars to States, clarifying certain aspects of the law (for example, the fact that “forest-dwellers” do not necessarily need to be staying inside forests or on forest land to be eligible for claiming rights under the Act). But these have been few and far between. There are many other aspects that require clarification, such as the interpretation of what makes a non-tribal forest-dweller eligible or the appropriate level of village assembly where the processes should be carried out.

A couple of the MoTA's circulars are, in fact, even violative of the FRA. For instance, a circular says that a compensatory afforestation plan is required for development facilities to be undertaken by communities on forest land. But the FRA clearly says that such facilities are exempt from such requirements that are otherwise imposed under the Forest Conservation Act (FCA). The MoEF, too, has done little to curb the violation of the law by its own agencies, especially the Forest Department. The committee found several instances of illegal eviction of occupants of forest land, including those who had claimed rights under the FRA. Conversely, there were fresh cases of encroachment of forest land in the hope of getting land titles. The committee also noted that plantation and afforestation programmes in several States (using funds from the MoEF or from donor agencies) were being undertaken forcibly on lands that were under claims or that should be recognised as community forest resource areas. Development projects requiring forest land continue to be given permission by State and Central governments though such land may have claims or rights on it. Such violations have been repeatedly brought to the MoEF's notice, but no corrective action has been taken.

State-level monitoring committees (SLMC) established in most States have hardly functioned. Some have even been regressive; the Maharashtra SLMC, for one, has issued deadlines and instructions regarding land measurement that are creating massive confusion on the ground.

The Orissa SLMC, on the other hand, has been proactive. It does fortnightly videoconference monitoring, besides issuing clarificatory circulars, which have helped in the implementation of the Act. Other empowered institutions set up under the FRA, the district-level committees (DLC) and the sub-divisional level committees (SDLC), suffer from serious drawbacks such as having an improper constitution (like not including panchayat members), allowing forest officials to have an illegitimately dominant say in decision-making, and asking claimants to take steps that the FRA itself does not require. SDLCs have on their own rejected claims, often *en masse*, and in most States without giving claimants a chance to appear before the committees. These are violations of the Act.



**A COMMUNITY FOREST protection group deposing before the committee in Udaipur, Rajasthan.**

There have been refreshing exceptions, though. In Aurangabad district (Maharashtra), a Sub-Divisional Officer (SDO) went out of his way to help thousands of potential claimants get their caste certificates, which are necessary to prove eligibility under the FRA. In Dediapada (Gujarat), a Divisional Forest Officer (DFO) proactively helped provide documents that could serve as evidence to claimants.

The committee further noted that Forest Rights Committees (FRCs) set up at village levels were often only on paper, were improperly constituted, or ran under the influence of government officials. At many places women or special minority groups were not included in the FRCs. Gram sabhas were mostly formed or recognised at the level of the panchayat and comprised multiple villages (in West Bengal, for instance, over 10 on average), causing enormous problems of access to those wanting to make claims. Locally powerful people often hijacked the process.

### **State of implementation**

The result of these and other systemic weaknesses is poor or distorted implementation. According to data gathered by the MoTA from States, as of November 2010 about 30 lakh claims were made. Of this over 80 per cent were disposed of. Approximately 10 lakh were accepted for titles. This implies a high rate of rejection.



**AN NGO MEMBER making his point before the committee in Ahmedabad, Gujarat.**

Claims have been rejected *en masse* in many States. In places where they have been accepted, the numbers are very low. Undoubtedly, some of these are false claims – to plots freshly encroached by cultivators hoping to pass off as eligible claimants. But a vast number of them appear to be the result of bureaucratic apathy. In States such as Gujarat, Chhattisgarh, Rajasthan, Andhra Pradesh, Maharashtra and Uttar Pradesh, the committee came across many cases where claims with full evidence were rejected. Often the reasons for rejection were not conveyed to the claimant.

The vast majority of the claims processed so far have been for individual plots of land. Of greatest concern, therefore, is the extremely poor implementation of provisions relating to community forest rights (CFRs). For several hundred million people, secure access to forest produce is a crucial boost to livelihood security. The FRA provides a chance for communities to manage sustainably and protect the forests they use or live alongside. Such legal backing is a huge opportunity for thousands of existing community forest conservation initiatives.

According to a 10-year-old estimate by the Forest Survey of India, about 170,000 villages have forests within their boundaries. So there should have been at least as many CFR claims. But according to the MoTA, only about 50,000 CFR claims have been made so far. The situation is actually worse: the committee found that many or most of these were claims to development projects that the FRA allows (roads, transmission lines, health and educational centres, and so on) and not to the use and management of forest resources. Most States have not made an attempt to disaggregate these two different kinds of community rights, and the MoTA does not seem to care.

The abysmal failure with respect to CFR is a result of several factors. There is widespread resistance from the forest bureaucracy, which feels threatened by the community empowerment that would ensue. Or it simply fears that communities will not be able to ensure the protection of forests.

Several senior forest officers, including those on the committee, however, agree that CFRs are the fulcrum of the FRA and are crucial to ensure both livelihood security and sustenance of forests. Unfortunately, even civil society organisations championing the cause of the FRA initially focussed only on individual land rights as that evoked greater political response. Recently, the MoTA had to issue a circular to States asking them to give CFRs more attention.



**AT KARLAPAT SANCTUARY in Orissa, which also comes under FRA claims.**

The potential of CFRs is beginning to be felt wherever there have been proactive organisations or officials. Several hundred villages in Orissa, southern Gujarat, western Rajasthan, eastern Maharashtra and elsewhere have made claims totalling hundreds of thousands of hectares. This includes contiguous forest blocks that could enable landscape level community management over several hundred square kilometres such as in the Badrama and Karlapat Sanctuaries in Orissa and the Biligiri Rangaswamy Temple Sanctuary in Karnataka, which are protected areas.

Several villages that have got rights are planning CFR initiatives (Mendha-Lekha and Marda villages in Maharashtra are among the first). Dozens of villages in Dangs and Narmada districts of Gujarat have formed committees for protection, and some have already caught truckloads of stolen wood or stopped bamboo felling by a pulp mill.

The implementation of the FRA has been at its worst in wildlife protected areas where for a long time officials have maintained that the Act is not applicable. Also severely disprivileged so far have been groups like pastoralists (especially nomadic ones, for whom there is no separate procedure to make claims across their entire migratory route); Particularly Vulnerable Tribal Groups, many of whom will not even understand legal procedures, let alone confront official agencies; and shifting cultivators (who cannot continue their practice if restricted to a four-hectare maximum limit the FRA sets for titles to cultivable land). Women are the worst off among all these.

The committee has recommended a series of measures to correct the systemic faults in the FRA's implementation. These are increased involvement of civil society, independent oversight and monitoring, special provisions for the disprivileged sections, and a full-scale second phase of outreach, awareness and facilitation of the rights process across the country.

**Development projects**



**A TRIBAL PERSON in Hamragarh, Maharashtra, with his title deed.**

In July 2009, the MoEF issued a circular stating that the completion of the FRA process and the consent of relevant gram sabhas were required for the diversion of forest land for any non-forest purpose. Such diversion requires the Central government's clearance under the Forest Conservation Act, but so far it has not involved any consultation with communities that may have rights or dependence on the land being diverted. A just reading of the FRA would make it obvious that where communities and individuals have rights to forests and forest lands, these rights cannot simply be ignored in granting such areas for industrial, infrastructural or other non-forest uses. The MoEF's circular was thus very welcome, even if belated.

However, the committee recorded that the MoEF had itself failed to implement the circular in most, if not all, cases of diversion. There is little evidence that the Forest Advisory Committee, which looks at all the proposals for diversion, has been checking to see whether the circular's requirements are being met. Examples of such gross violation include forest clearances given to the Posco steel plant in Orissa, the Polavaram dam in Andhra Pradesh and several mining projects in the country. Among the few exceptions is the proposed Vedanta mining project in Orissa, whose rejection by the MoEF has unfortunately hidden the clearances given for many projects that can be equally destructive.

Noting the grave situation, the committee has recommended that the requirements contained in the MoEF circular be given legal backing through amendments to or rules under the Forest Conservation Act and the FRA, that public hearings be made compulsory for all proposals of forest diversion, and that the Forest Advisory Committee be made fully responsible for ensuring compliance.

### **Post-rights scenario**





**A COMMUNITY FOREST protection group during the committee's field visit in Mayurbhanj, Orissa.**

Very little thought has gone into the issues of governance of forests once communities are vested with FRA rights. In particular, into where communities will get the right to manage and protect forests, what powers they will get to enforce this right, what arrangements will be necessary to ensure conservation and sustainable use, and what the role of official agencies such as the Forest Department will be. Neither the MoTA nor the MoEF has given this much attention, but they made this one of the committee's mandates.

The committee's recommendations point to a change from a state-managed to a more community-based approach to the governance of forests, with the gram sabha having to play a central role. It notes that where the FRA rights are vested, committees set up under the gram sabha should have full control, with legal powers to enforce its decisions. The Forest Department's role will be one of facilitation and guidance where the community wants.

The committee has also suggested changes that could come about in forest governance even where the FRA is not implemented or does not apply. In places where community institutions have been managing forests, as for instance the van panchayats in Uttarakhand or the self-initiated community forestry initiatives in Orissa, Maharashtra and Jharkhand, the committee recommends that appropriate legal backing be given through other laws. Opinion is divided on joint forest management (JFM) arrangements, with one group in the committee recommending that these continue but under the control of the gram sabha and the other suggesting that JFM committees be dissolved and replaced by gram sabha committees akin to those under the FRA.

On the issue of large-scale forest governance, there is substantial disagreement within the committee. Ten members suggested that the current Forest Development Agencies, which are meant for coordination at the divisional level, be replaced with democratic district-level bodies in which gram sabhas, the Forest Department and civil society organisations are represented. These district committees, they say, should have the responsibility and powers to ensure that both the Forest Department and the gram sabhas are enabled to do their jobs and that they fulfil their responsibilities in conserving forests and achieving equity in decision-making and sharing of benefits. The committee's chair and a few other members, however, do not agree with this, and the main report is therefore silent on larger-level governance changes other than to set up State-level councils for forest management.

**ONLINE**

The full report of the committee and individual State visit/consultation reports are available at

<http://fracommittee.icfre.org>.

An alternative summary/conclusion that reflects some alternative views of 10 members on future governance

recommendations is available at

<http://www.kalpavriksh.org/laws-a-policies/tracking-forest-rights-act->.

The committee has also recommended denationalisation of non-timber forest produce (NTFP). This is crucial given the fact that state monopoly over NTFP (such as bamboo and tendu leaves), which has significant livelihood and commercial implications, has deprived millions of forest-dwellers of their rightful earnings. NTFP trade is worth several thousand crores of rupees in India and there is no reason why forest-dwellers should not get the major share of this to use for appropriate development and livelihood amenities. What else would the ownership of NTFP, provided for both in the FRA and in the much earlier Panchayat (Extension to Scheduled Areas) Act, mean?

Three years into its implementation, the FRA's potential remains largely unfulfilled. A recent note by the National Advisory Council, which has suggested a series of clarifications and new rules for the MoTA to issue, mirrors quite a bit of what the committee has come up with. However, the MoTA has the standard response that such changes are not needed.

If the UPA is to deliver on its promises, it would do well to act on the recommendations of the committee and the NAC, both for better implementation of the FRA's provisions and for long-term changes in forest governance.

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