

MoEF/MoTA Committee on Forest Rights Act

Public consultation for Maharashtra, Pune, 12 June 2010

Summary report

(longer report will follow)

Note: This report is written for the purposes of the Committee's ongoing work; any views contained in this are not necessarily those of the entire Committee and are not to be taken as final views or recommendations by the Committee

1. The programme

Three members of the Committee, Dr. A.K. Jha, Dr. Ravi Chellam, and Ashish Kothari, conducted a public consultation for the state of Maharashtra, in Pune on 12th June 2010. The consultation was organised by the National Centre for Advocacy Studies and the Tribal Research and Training Institute, Pune.

Organised from 10 am to 6 pm at the Gandhi Smarak Nidhi, Gandhi Bhawan, the consultation had been publicized through relevant listserves, press releases, and individual emails/phone calls/invitations to several NGOs, community representatives, and officials. About 100 people participated, mostly from local communities and civil society organizations. A few forest officials also participated, one of whom spoke; none from other government departments including the tribal agencies attended, though they were specifically invited. Most regions of the state were represented, including Konkan (Thane and Raigarh areas), Vidarbha, northern Maharashtra, and western Maharashtra, with larger proportion being from Konkan and Vidarbha. Several media persons were also present.

Apart from oral presentations, the team received about 25 written submissions, all from communities and NGOs.

After some initial remarks from the Committee and the organizers, and from Prof. Madhav Gadgil (who had been requested to chair the session), submissions were invited in the following order: communities, NGOs, and government officials. Where necessary clarifications were given by Committee members, and a brief concluding statement on next steps was also made by the three committee members.

2. Key issues / findings

Oral and written submissions by several communities and organizations reported the following:

1. FRA implementation is seriously distorted across the state, in many ways (see below). People are extremely worried that the state government (Chief Secretary) has announced a deadline of 30th June 2010 to complete the procedures

- (reportedly with the threat to officials including the ACS(Forests), Pr. Secretary(Tribal), Commissioner(TRTI), Commissioners and Collectors that their CR would be spoilt if not done), which could only mean a further distortion as district collectors rush to examine and dispose of claims.
2. The state has also announced that it will not undertake land measurements during the process of claims, but will issue titles and then do the measurements....this combined with the rushed process could lead to serious problems in what people get, in conflicts between multiple claimants, complete sidelining of verification processes, and so on.
 3. Though the state reports, on paper, that there is good progress with setting up of FRCs, SDLCs, and DLCs, in a number of areas there is a serious problem with their formation and/or functioning, as reported during the consultation. For instance, FRCs have been formed in many areas without a proper gram sabha assembly, under influence of government agencies along with local elites, or in other ways illegally/improperly; at several sites the gram sevak or panchayat head has been made the FRC Secretary; there is even a March 2008 circular by the state govt specifying that the gram sevak would be a member of the FRC. This has been contested but the circular is yet to be withdrawn. Verification processes are often left by the SDLC to Tahsildars or at times to only forest staff, or not undertaken at all, with only the 'evidence' of the forest dept being considered. The legitimacy of the gram sabha's resolution is often undermined by the SDLC's rejection of claims, including using illegitimate/ vague reasons such as that the evidence is not 'concrete'.
 4. A number of unnecessary and illegitimate requirements (such as the one on gram sevaks cited above) by the state govt have been issued in 2008; despite objections by the nodal officer (the TRTI, commissioner) these are yet to be withdrawn.
 5. Awareness of the FRA and its procedures is low amongst nomadic, PTG and some other communities, within many protected areas, and in 'remote' areas, esp. where there are few or no civil society groups working. Little has been done by official agencies in such cases.
 6. Similarly, there has not been much pro-active move by agencies to help in finding evidence. Gadchiroli collector's pro-active move of sending full documentation to each village, to help in the claims process, was cited as 'best practice' that could be replicated elsewhere.
 7. Training of officials has been undertaken in various places, but is very inadequate, as it is clear from the inability or lack of understanding of ground level staff in many areas.
 8. The Act and relevant documents have been translated into Marathi, but the language used is extremely hard to understand, especially for communities.
 9. In several specific cases people have been told they are not eligible, e.g. within some protected areas, or with communities like Dhangars (nomadic pastoralists).
 10. PTGs like the Madia and Kolam have discussed and initiated the process of making claims, but are confused about how to claim 'habitat' rights, since these extend well beyond individual gram sabhas. SDOs have refused to accept such claims by the traditional institution of the PTG. The Committee members suggested that they may apply for the entire habitat on behalf of the tribe, get the

- claim processed through one gram sabha, simultaneously sending a copy of the claim to the SLMC for information and guidance; this may not however solve the problem and may need further deliberations.
11. Nomads have had similar problems since their area of operation and dependence extends well beyond individual gram sabhas; apart from the general lack of capacity to participate in difficult official processes; for OTFD nomads there is an additional problem of proving 75 years.
 12. The problem for the nomadic groups is exacerbated by the fact that their annual movement patterns are often dictated by local weather conditions, especially the monsoon. This results in them following different routes in different years. This is an issue that needs to be addressed carefully.
 13. Forest Dept's obstructions to the process were reported to be widespread, including misleading information and interpretations of the Act, refusal to consider evidences generated by communities, taking into consideration only their own records (mostly outdated), deliberately distorting or 'losing' claims received, being absent when invited for verification, victimizing claimants, dominating the SDLCs, and so on.
 14. There was a specific instance mentioned (from Gadchiroli) of the FD undertaking felling operations after CFR claims were filed, using the argument that they were following the working plan.
 15. There is widespread use of GPS instruments for verification/measurement, but these are reportedly monopolized by the forest dept and results are kept in their offices, inaccessible to claimants. (It was clarified by Dr. Jha that GPS training was given to staff of other depts. and non-government agencies too, and that instruments were given to Collectors for further deployment. A copy of the printout of GPS measurement is to be attached with the case paper of concerned claimant as per procedure laid down by TRTI). In some places the SDLC/DLC is only accepting satellite imagery as evidence, ignoring other kinds of evidence; where this imagery is unclear, claims are pending for a long time. It was clarified by Dr Jha that government had informed all collectors that satellite imagery was to be considered as just one of the evidences. One case was reported of land measurements being done without the claimants or FRC being present.
 16. The peculiar problem of customary rights in areas that are now towns/cities, where nomadic populations still take their livestock, has not been resolved; according to MoTA while issuing a clarification to TRTI, rights cannot be claimed or given in urban areas, since SDLCs and DLCs cannot be formed. This needs to be resolved. Also, the high value of land especially near urban centres like Mumbai and Thane is vitiating the process.
 17. CFRs have been claimed in many areas, but rarely granted; in some cases those granted are with severe conditions that maintain forest dept domination; examples like Mendha-Lekha and Marda where full rights have been granted are so far exceptional.
 18. Even in these two villages, the extent of the rights is not clear, as they have been denied transit permit to take their bamboo out. This and many other issues of the coordination and complementarity or contradiction between FRA and other laws/institutions need resolution.

19. Rights to fish in reservoirs have been claimed (e.g. at Totladoh, Pench Tiger Reserve) but not yet processed.
20. A Maharashtra-specific issue is of 'dalli' lands, areas given on lease during the British times, for a mix of cultivation (including shifting), grazing, and other commons; in most cases only the cultivation rights are being accepted in the claims, leaving out the non-cultivated commons, or the areas currently under fallow.
21. Nowhere have claimants been given a chance to appeal, since information on their individual cases does not come back to them in time, or with reasons for rejection. In many places titles have been distributed, without any chance given for appeal in cases where less land than claimed has been given; district officials intimidate claimants saying if you don't take what we are giving, you won't get anything at all.
22. There are many villages (123 reported in northern Maharashtra alone) that are reportedly not in forest dept records at all.
23. It would help to have an information officer dedicated to the FRA, in each block or tehsil; also for TRTI to have a FRA helpline for immediate assistance and facilitation.

An oral submission by Shri Arvind Patil, DCF, West Nasik, had the following key points:

1. There are many cases of false claims, e.g. one person making claims in two villages in the same name, or Xeroxes of the same money receipt being used in several claims. Distortions have also come in sometimes because of confusion between acres and hectares ; the claims have the former, but the titles have the latter. There are instances where the case papers with SDLC proceedings signed by the SDO only, with all other members shown as absent, are submitted to the DLC. There has reportedly been a spurt in the encroachments post FRA. Sometimes more than a thousand claims are received in a day and there is a pressure from the Chairman and Tribal Department to just sign so that targets are met. Money receipt book of East Nasik Division is fraudulently being used to create evidences for old encroachment. Currently the titles are being processed and finalized without surveying the forest land under claim.
2. The forest dept has no extra funds or human resources to carry out the work entrusted to it under FRA.

An oral submission by Vasundharad, a NGO from Orissa, made the following additional key points:

1. It is important to go into the history of 'forest lands', separating various legal categories of forest land, lands that were revenue/private and converted to forest, lands brought under the forest dept pursuant to the Godavarman case, and so on.
2. Conversion processes for forest into revenue villages are very confusing.
3. There is little move towards a knowledge-based structure to resolve issues like PTG 'habitat' claims, nomad claims, etc. A proper baseline data would help SDLCs in pro-actively locating potential claimants.

4. All claimants must get back information on their claims (as done by Orissa govt order)
5. Disaggregated information is crucial at state and central levels, to assess progress in recognizing various kinds of rights.
6. Rights related to displaced people are inadequately defined.
7. Operationalising gram sabha powers after the claims are granted, under Section 5, requires clarity in relationship between this and other laws, and gram sabhas and govt agencies.
8. The role of Supreme Court orders in relation to protected areas, e.g. on collection of NTFP, is unclear in the post-FRA scenario; the continuing role of the CEC in passing orders on this adds to the confusing situation.

3. Some reflections on process

1. The NGOs are quite active and have been participating in the process and interacting with the Nodal agency. The substantial participation from communities and NGOs in this consultation process was largely due to the networking by NCAS. A few forest officers were present due to TRTI's invitation. However, perhaps a lack of communication from the team to the Chief Secy and/or Secy Tribal hindered official participation.

2. A combination of official and NGO members was useful; it was also good to have the nodal officer of the state (in this case also a Committee member), as immediate clarifications could be given. However there may have been a bit of a conflict of interest issue, as sometimes the TRTI itself was being criticized, e.g. on the issue of making satellite image use mandatory, and for language used while seeking from GOI a clarification on the applicability of the Act in Municipal; this led to some tension, largely contained as the Commissioner preferred not to respond to the allegations.

3. Informing the local press was important both for generating interest in the consultation and for informing the public subsequently.

4. Since many people/groups gave in written submissions, it had to be repeatedly clarified that the Committee did not have the mandate to deal with individual cases, but could forward them to the state government.

5. Some groups, on behalf of the state network Jungle Adhikar Sangharsh Samiti, stated that they continued to have an objection to the Committee per se, but were nevertheless making submissions.

6. Apart from people from a state being able to give information and inputs, these public consultations are also proving useful in the exchange of experiences and innovative implementation strategies amongst participants, both within the state and also between states where people from other states are present. This aspect of the Committee's work, that of indirectly providing forums and processes that aid in implementing the Act, is a significant benefit that we should keep track of.

7. Prof. Gadgil and the Committee members also mentioned that if there are some issues that cannot be taken up through the Committee (e.g. the issue of amendments), Shri Saxena had offered to bring these up at the NAC. The use of other such forums may be considered by the Committee.

4. Follow up

1. A longer report is being prepared by NCAS, and will be sent as a draft to Committee members to finalise.
2. All submissions are being xeroxed, and the original set sent to the state govt with a request to deal with as appropriate.
3. We propose an immediate letter from the Committee to MoTA, expressing concern about the state govt deadline of 30th June 2010 for completion of the process, and about the decision to not measure lands during the claims process.
4. Field visits and meetings with senior govt officials will need to be scheduled soon.

Report written by:

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