
MoEF/MoTA COMMITTEE ON FOREST RIGHTS ACT

IMPLEMENTATION OF FOREST RIGHTS ACT IN ASSAM

REPORT OF FIELD VISIT, 11-14 JULY 2010 AND 24 JULY, 2010

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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

1.0: INTRODUCTION-

A four day state visit was conducted in July 2010 by the National Forest Rights Act Committee to review the implementation process of the Forest Rights Act, 2006. This report summarizes the enquiries and observations recorded during field visits, along with public consultations and meetings with state officials.

FRA COMMITTEE VISIT TO ASSAM-

2.0: KAKI, NAGAON, CENTRAL ASSAM-11 JULY 2010

Around fifteen to twenty thousand people, majority of whom were poor peasants representing both ST and Other Traditional Forest Dwellers (OTFD) categories, attended the public consultation at Nagaon. It was facilitated by the Krishak Mukti Sangram Samiti (KMSS)-a platform for people's movement for organising the forest-dwellers in the state. The KMSS was requested by the committee to help in organising public consultations and field visits. Representations from speakers, both women and men, who deposed before the committee, apprised the committee that FRCs has been formed in their respective localities as per the provisions of the Act. Initially, process was initiated to form the FRCs at the level of panchayat level (as per the Panchayat Act). However, the people movement highlighted that such FRCs needed to be formed at the level of revenue village as defined under section 2(g), 2(p). Some corrective measures were taken. The Committee was also informed that most FRC's, constituted under Rule 3 of the Act had been set up at the initiative taken by the people of the locality. Significant lapses in the execution of the claims of both CFR (development rights and CRs) and IFR, submitted to the Hojai Sub-Division Level Committee (SDLC) in June 2009 were brought to notice of the Committee. The forest dwellers staked their claim of settlement and access to forest resources by virtue of their inhabiting the area for the last centuries. Several speakers explained the nature of CFR claims over water-bodies, grazing rights and fuel-woods etc. Some of them are part of the taungiya system of FD. Many narrated how they had migrated to these places away from 300 to 400 KM as they lost their land either because of the natural calamities, as the massive earthquake of 1897 and 1950 along with recurrent floods etc. They were extremely critical of the procedure of finding out written records to prove their 75 years evidence and asked the committee members whether "we do possess records of our grand-grand fathers"? Lack of legal awareness amongst the officials and their faulty interpretation of the provisions of the Act were found to hinder its effective implementation. This was revealed in the testimony of the Sub-divisional Welfare officer who admitted that his official position hardly allowed him to work independently, though he strongly feels the need of the implementation of it. For him it is a part-time job. He is

under the impression that rights under this Act has been given largely to the forest-villagers. Records related to FRA implementation were verified at the Hojai sub-division. These include claim petitions, minutes of the Gram Sabha, notification of FRC, minutes of SDLC proceedings and titles issued to some of the dwellers. Verification of records revealed that: rejection of non-ST claimants (OTFDs) had taken place on grounds like 'not belonging to ST category and they are not submitted satisfactory evidences in connection with their occupation in the forest land'. Such outright rejection is illegal on the part of the SDLC.

2.1: NAGAON CIRCUIT HOUSE -11 JULY 2010 (EVENING)

The Committee had a meeting with district officials in district headquarter of Nagaon. It was attended by ADM, DFO, SDM, Panchayat officials, Conservation groups, some FRC members etc. The Committee was updated on certain basic official statistics and assured of a fair implementation of the FRA. However, the Committee observed that the ADM contradicted several rules and sections of the Act and accepted his lack of awareness of the provisions of the Act. The ADM also brought into notice the large-scale encroachments into the RF from Bangladesh but could not give an elaborate explanation of the entire development and hinted that settlement of their rights may be an issue. Conservationists who were present there spoke about the need for restoration of Laokhowa Wildlife Sanctuary along with effective implementation of FRA.

2.2: PUBLIC CONSULTATION IN KAZIRANGA NATIONAL PARK (KNP) – 12 JULY 2010 (9-12 AM)

Around five to six thousand people attended the Public Consultation, including several park officials and representation from social welfare and revenue departments. It transpired that in the neighbourhood of KNP a few FRC's have been formed. There is no claim inside the KNP. The claims are pre-dominantly in the proposed park-addition areas. According to the people, they had rights and used these proposed addition areas for their customary practices of fishing, grazing etc in these tracts. These addition areas were largely under the revenue governance. The Park officials, though did not contradict these claims, however, they informed the Committee of the underlying complexity of the whole issue. The peasants inhabiting the neighbourhood of the KNP also do not deny the complexity of the issues at stake, which according to them, centred on two important facets: a) Bangladeshi migration into KNP neighbourhood continues unabated and they cite the larger political interests of the Government and b) Increasing commercial activity by professional traders with the approval of the Government in the sixth addition of the KNP. The officials present in the consultations did not refute both these claims. Concern over the health status of animals emerged as another key issue with the local people. The consultation witnessed extensive deliberations on the scope of people's management plan for KNP. The Committee

acknowledges the cooperative attitude of the park officials who were willing to listen to the issues raised by the local people.

KAZIRANGA NATIONAL PARK (KNP) – 12 JULY 2010 (9-12 PM)

The committee interacted with the Park officials and the district officials and discussed about the issues of FRA and Park governance. The park officials admitted that there is at present no 'encroachment' inside the core areas of the KNP. The demand for implementation of FRA is mostly inside the new extension areas. The issues of CWH came up for long discussion. Park officials were without clue for the larger implication of CWH. They agreed that further addition into park areas has always been proposed without serious scientific engagement.

2.3: PUBLIC CONSULTATION, TENGANI, GOLAGHAT-12 JUNE 2010 (2-6 PM)

An estimated fifteen thousand people along with the sub-divisional officials attended the meeting. A memorandum submitted to the Committee explained the nature of forest-dwellers movement in the area. The memorandum outlined the growth of forest dwellers movement in the Tengani area since 2002. They brought to the notice how they had downloaded the copies of the Act on the same day when the Act was notified. As per the provisions of the Act, FRCs have been constituted at the gram-sabha level in these areas. This is primarily due to a strong forest-dwellers movement in the locality. The claims of both ST and OTFD have also been filed. Most of the FRCs have decided to claim only 10 bighas of land, despite higher occupation as it would not leave any land afforestation. The locality has the presence of taungiya dwellers and FV. One key feature of this area is their nature of CFR claims. The villagers have claimed CFR rights over local river systems, protection and conservation rights. While these CFR have been accepted by the SDLC, the implementation process is yet to begin. It appears that although IFR titles have been distributed to less than 20 percent of total ST population in these localities, they have not adhered to the procedures laid down in the rules as regards such distribution. The chairman of the SDLC was of the opinion that he understands that if he could not provide certificates under the FRA to OTFD due to non-availability of evidence it will result in serious political back-lash. The Committee was also apprised of the illegal occupation of land in those areas after 2005 by some vested interests like the tea-planters. The matter was taken up with the SDO who assured the Committee of investigating the issue and of a fair implementation of the Forest Rights Act.

2.4: STATE LEVEL CONSULTATION, GUWAHATI-13 JUNE 2010 (11 AM-6 PM)

The meeting was attended by cross-section of people ranging from conservation scientists, anti-Act lobbies to the evicted populations, NGOs and FRC representatives. Ex-tea garden workers, now broadly categorized as tea-tribes in Assam but do not fall under ST category, were also represented and shared their experiences of the FRA. It transpired from the discussion that as their areas are under the jurisdiction of the Bodoland Territorial Council (BTC) which is within the purview of the Sixth Schedule Area, the process is yet to get underway. A lack of awareness about the FRA was also revealed in the course of the discussions. A representative from eastern Assam (Dibru-Saikhowa WS) pointed out how despite the presence of Forest Villages inside the WS, FRC's were not being constituted. This is due to the general impression of GOA that no claims can be made inside NP, WS etc as they are detrimental to the well-being of these special spaces. From some areas it was highlighted how titles have been distributed hurriedly and wrong entries have been made. Conservation lobbies expressed their concern about the possible misuse of the provisions of FRA.

The non-implementation of FRA in the BTC (autonomous council district) was also reported. Several members from All Assam Adivasi Student Union complained how on the one hand the FRA has not been implemented and on the other hand eviction drive has been continued. The speakers argued that the recognition of Adivasi population in Assam as non-ST has resulted in their identification as OTFD. The student union gave examples of recent eviction drive carried out in western Assam districts. They argued that their settlement inside the forested areas are mostly due to contemporary political instability of Assam and such settlement inside the forest lands needs to be seen as rehabilitation programme. The FRC representative from Forest Villages in from Kulsu forest range also narrated their experience of FRA implementation. It transpired from their submissions that both the Forest and Welfare Departments have played a pro-active role in settling IFR inside the forest villages. The state has 499 nos. of forest villages which is one-fifth of total number of forest villages of the country. FRCs in these forest villages have been formed as per the rules. The use of GPS by the forest staff in carrying out the measurements of the plots was informed to the Committee. The understanding of the villagers in terms of the efficacy of the instrument is negligible.

Several groups representing conservation also submitted their oral presentation. The key issues that they highlighted are: a) Wide-spread deforestation in recent times, particularly in the northern bank of Brahmaputra river b) Apprehensions expressed by the Conservation groups that though the Act holds promises to community's prosperity but at the same time it will be seriously detrimental to the larger issue of ecological and c) Addressing the larger concerns of the contemporary conservation debates while implementing this Act. Few admitted that they feel threatened by the implementation of

this Act as 'it seems to overpower the previous conservation Acts which back up conservation at least to some extent'. Specific questions were raised about whether the right of collecting forest products from PAs will seriously destabilize the viability of an ecosystem. Or 'who will decide the nature of sustainability, how it will be fixed and by whom and how the overexploitation will be prevented'.

2.5: MEETING AT THE SECRETARIAT, GUWAHATI-14 JUNE 2010

The meeting with Assam Chief Secretary was scheduled on 14 June. The meeting was attended by Principal Secretary, Tribal Welfare; PCCF; Principal Secretary, Revenue; Commissioner, Tribal Welfare and Principal Secretary, Forest. The meeting did not last for long as it was last day of the assembly debate and the officials were in a hurry though a separate meeting with the Principal Secretary, TW lasted long. The Committee expressed its concern at the slow progress of the implementation with a majority of cases pending at Sub Division Level Committee (SDLC).

The following issues were discussed in this meeting:

- a) Initiative was taken only to issue titles for the Forest Villagers and ST populations.
- b) No pro-active rule being played by the state government.
- c) Implementation being decided by localized political needs of Government, that there are procedural lapses (in many titles land area has been entered as 'approximately', no maps, wrong names)
- d) Non-admittance of claims in National Park and Wildlife Sanctuaries
- e) There is no attempt to integrate new IFR in the record of right.
- f) Non conversion of Forest Villages (FV) to Revenue Villages (RV) is quite evident.
- g) There is no awareness campaign even for lower staffs and officials
- h) The implications of the Gauhati HC order as a reason for the slow progress of FRA implementation.
- i) The need for incorporation of civil society groups in the SLMC for better implementation of FRA.
- j) High percentage of pending cases.

The Chief Secretary was of the general opinion that if the Act is to be implemented there will be no forest coverage to be left with. He admitted that district magistrates understand the Act variously from district to district. The state government's reluctance to process the claims of OTFDs was apparent. The Chief Secretary also informed that the Act could not be implemented in the Sixth Schedule Areas, which would require an amendment to its rule. The Government of Assam has accordingly written to Government of India to amend rules and is still awaiting a response. The Chief Secretary also carefully articulated the Government of Assam's views on the nature of claimants and categorically reiterated, "we are willing to give rights to tribals but not to non-tribals" as most of them are encroachers.

The Chief Secretary also admitted how Forest Dwellers have been resisting in many places and the Government of Assam is constantly negotiating with it. He claimed that even without the cooperation from Forest Dwellers, the Government of Assam could distribute 30,000 claims till now.

CONVERSION OF FOREST VILLAGES TO REVENUE VILLAGES: The Chief Secretary was extremely apprehensive of this clause and expected an explanation from the Committee members why such a conversion was needed when the people living inside the FV was already availing benefits etc. He argued that if one has to convert these villages, they should be denotified as per the IFA, 1927 and FCA 1980. There are 499 Forest Villages in Assam according to Forest Department. Similar was the opinion put forward by the Principal Secretary, Revenue, Government of Assam. Generally, the Assam administration was highly critical of this provision.

ONLY ST POPULATION FOR FRA CLAIM: The Chief Secretary was apprised of the fact that only the claims of the ST populations. He admitted that this has been done as the first phase of the admittance of the FRA claims.

VIOLATIONS OF PROCEDURES: That there has been rampant violation of procedures as laid down in the rules of FRA, (no mapping, boundaries of land not being shown in the certificates, over-night completion of procedures to facilitate the certificate distribution programme) was brought to the notice of the Chief Secretary who noted this point and promised an investigation into the issue. That the land titles under the FRA have not been reflected in the land records was brought to the notice of Chief Secretary. PS (Revenue) even questioned the need for such an exercise.

On the question of the OTFDs, as the claimants have not been able to provide evidences of three generations of habitation, the Chief Secretary suggested advice from the committee. On the question of Gauhati High court ruling the Principal Secretary, WPTA expressed willingness to file a review petition in SC seeking relief. The CS and PS, WPTA suggested that Government of India should file a Special Leave Petition in Supreme Court to get relief from this ruling.

2.6: JAGUN, SUB-DIVISION: MARGHERITA, TINSUKIA DISTRICT-22 AUGUST 2010

The committee organized another public consultation in Jagun in the Tinsukia district. This phase of consultations was organized while the committee was way for the Arunachal visit. Due to some unavoidable reasons, only one member could be present. District revenue and forest officials attended the meeting. The public consultation was largely attended by neighbouring populations presently living in unclassified state forest areas. The people deposed that FRCs were formed both according to the rules (at the hemlet level) and also at the larger Panchayat level. The SDO present in the meeting and Chairman of SDLC

interpreted that Gram Sabha needed to be formed at the level of panchayat. It transpired that the Assamese translation of the Act and section defining Gram Sabha is loosely translated which had resulted in the emphasis of Gram Sabha as synonymous of Panchayat.

Two crucial issues had emerged out of the public consultations; Firstly, though FRCs has been formed, they have often found to be deviating from the procedure laid down in the Rules, also the claim forms had been forwarded to SDLC. In the sub-division 13 nos FRCs were formed. All total 1100 Claim Forms have been received out of which the SDLC has forwarded 480 forms as eligible. These SDLC recommendations are forwarded to DLC for further action. Other forms are at the stage of 'pending' since 2009. Officials failed to give a reasonable explanation of this inordinate delay. Officials have admitted that process have been expedited to complete the claims of Forest Villagers inside the Dibru-Saikhowa Wildlife Sanctuary. Secondly, the application of the provisions of the FRA is also contested. Officials claimed that most of the claims are for those kinds of 'forests' whose legal status is doubtful. The people who had submitted their claims argued that these were forested land 'naturally' and hence their claims are justified. People living in non-cadastral villages have also filed claims. Problems of filing of claim forms in another FRCs area while the primary residence seemed to be in another FRCs were also reported. Complaints of unwillingness of the SDLC to receive claim forms from villages' in Assam-Arunachal border areas were also reported. It appeared that forest tracts in these sub-division falls under various legal category viz. un-classed state forests, non-cadastral villages, revenue villages and state boundaries.

KEY ANALYSIS

Following are the key analysis of the committee which is crucial in understanding the implication of FRA in Assam-

3.0 LAND AND FOREST QUESTION IN ASSAM

It has transpired from listening to large numbers of participants and careful perusal of large volumes of memorandums and interaction with various groups, government officials, academicians that an intricate land and forest question has developed in the state. The reasons for this development are both natural and historical. The geographical location of the state's Brahmaputra valley is of particular interest from the perspective of continuous pressure on the forested land. The most general attribute on the river is such: 'Immediately on emerging from the hills the river gradient changes from almost a steep one to a flat one.

Near Dibrugarh the gradient is 0.09 - 0.17 m/km. The river travels for 720 km in Assam leaving India near Dhubri to enter Bangladesh. The journey of the Brahmaputra is through a narrow valley of 80 - 90 km wide. Eastern Himalayan ranges hem the northern end of the valley and the southern end is covered by Patkai-Naga hills, Mikir hills, Khasi and Garo hills. During the monsoons, the rainfall in the valley ranges from 2480 mm to 6350 mm. Most of the rains occur during May to October. Brahmaputra watershed is a narrow fern-shaped and the excess rainfall concentrates as runoff in the tributaries and flows into the mainstream of Brahmaputra within a very short time. This enhances the peak flow and flood occurs. The river also has 28 Northern tributaries and 16 southern tributaries. The CWC records indicate that the area affected by flood ranges from 4.22 million hectares in 1988 to a low of 0.19 million hectares in 1961. In normal years about 2000 villages are affected. With the largest flood, the flood-prone area went up to 62%, which is nearly 75% of the total plain area." The impact of flood in the agrarian economy of the region is immense. River erosion also left behind an enormous impact on land available for cultivation. Apart from the human casualties and misery they cause, such disasters have serious, longer-term, social and economic consequences. The regional economy is constantly undermined by periodic, large-scale losses in agricultural production.

The impacts of 1897 and 1950 earthquake in the geographical nature of region are widely documented. The 1950 earthquake massively decreased land available for cultivation. Later reports of the Assam Disaster Management recorded widespread devastation in Upper Assam, the Abor Hills and the Mishmi Hills. The region that suffered the most damage to life and property was 15,000 square miles. Vast areas of land either were elevated or subsided, altering the drainage of the region. The Assam Forest Policy of 2004 also admits that 'the aftermath of the great Earthquake of Assam in 1950, annual recurring floods in the Brahmaputra and its tributaries, changing river courses and erosions result in lakhs of displaced people. The reserved forest of Assam throughout the 60's, 70's and even today seem to be targeted as the most suitable space for the rehabilitation of human as well as cattle population.'

Away from this geographical constraints and natural calamities, historically also the region had witnessed tremendous increase of pressure on cultivable land since the middle of the 19th century. A combined pressure of several issues, beginning with the introduction of tea-plantation since 1838 and then the introduction of jute cultivation have hugely decreased land available for cultivation. The natural pressure was on the forest land. Moreover, the legal category of Unclassed State Forests has created enough scope for the conflict between forests and agrarian boundaries.

While both these geographical and historical constraints created pressure on arable land for the Assamese agrarian society, the pressure continued to increase on the forest lands in the absence of a growth of an industrial economy. The regional industries, viz. petroleum or

tea-industry miserably failed to accommodate an increasing number of landless populations. Towards the latter decades of the 20th century, with the growth of small-tea plantations, the search for forest lands and their clearance became rapid. The pressure on forest land continued to increase.

4.0: HISTORICAL GROWTH OF FOREST DWELLERS MOVEMENT IN ASSAM

A forest dwellers movement has grown in Assam in the last couple of years. A more recent forest dwellers' movement began in the Golaghat district since 2002. From June 2002 onwards, peasants in Tengani – in Golaghat have been engaged in political hostilities with the state government. The forest dwellers took to the streets in 2002, in the wake of evictions carried out by the Forest Department. The forest dwellers demanded permanent tenurial security to land in forest lands which they had reclaimed couple of decades before. Two years on, neighbouring petty commodity producers, who also wanted their grievances addressed, joined these peasants their struggle. In the interim, the struggle had itself acquired a more structured and organised form, so much so that by 2007 the peasants involved had high hopes of realizing their goal. Over the period in question, they have made substantial progress in their political negotiation with the Assam state. Not only had they more friends – and foes – but they had also now learned how to sustain alliances and manage adversaries. As successive environmental legislation came to redefine the rights exercised by the Indian state over forests, the form taken by agrarian struggle changed accordingly. Confronted by a hostile peasantry, the Assam government conceded both that these forest reserves were already home to petty commodity producers and also that the demand by the latter for secure tenure of reclaimed land there was justified. Since the last decade of the 20th century, a series of ethnic political mobilization were also directed at land reclamation. The ideology of this land reclamation and subsequent 'encroachment' inside the forest lands is strikingly different from what can be seen in the anti-eviction mobilization in eastern Assam.

In the last two years there has been wide-spread mobilization of people living or dependent on forests for effective implementation of the FRA across the state.

5.0: THE OTFD AND THE SOCIAL STRUCTURE IN ASSAM

A broad survey of anthropological, sociological and historical literature has implied that the spatial distribution of different social groups within the social landscape is complex. There has been strong integration of different social groups and inter-mixing of social practices amongst different groups. Social and cultural isolation of STs and OTFDs is rare. They are

intimately and intricately dependent on each other for both social and economic reasons. Economic and social practices of the different communities have evolved over a long period and it has given birth to homogenous but complex social fabric. Differences in the everyday economic practices of both STs and OTFDs are barely distinguishable. The isolation and identification of STs and OTFDs as two distinct and independent communities will have serious implications for the Assamese political and social dynamism.

6.0: THE GAUHATI HIGH COURT RULING AND IMPACT IN FRA IMPLEMENTATION

The Gauhati HC ruled in 2009 that as there are no forest dwellers community in Assam. Hence even if a ST person is living inside RF before 2005 he/she is not entitled to FRA. STs in Assam do not fall under the sections 2(C) and 2(O) of FRA. The Forest Department's position was that historically there are no forest dwelling communities in Assam and hence the petitioners should be considered as encroachers and unwilling to consider their case as forest dweller. Eventually the High Court ruled these claimants need to be categorised as 'encroachers'. In several public consultations it was pointed out that the High Court ruling was largely based only on a mere 'literal' reading of 'factual' and 'technical details', the scope of the FRA is much larger.

7.0: DEFORESTATION AND RECLAMATION OF FOREST LAND

During the course of the Committee's visit, concerns were raised about the widespread deforestation in recent times. Official estimates put the figure of unauthorised reclamation of forest lands of Assam at 27 percent of entire reclaimed forest land of the country. Of particular interest are the examples of degradation of forest coverage in the north bank of Brahmaputra River since the last decade of the 19th century. The degraded forests consist of both timber and grasslands. The communities involved in this forest clearance are erstwhile tea-garden workers and Bodo tribes. The migration of ex-tea garden workers, who are chiefly composed of migrants from central and Eastern India into the tea-plantations during the colonial era, into the forest lands is conditioned by a ranges of factors. In most cases, they do not have access to arable land and they do not have any other option than to choose a livelihood dependent on agriculture. Secondly, in several pockets of their settlement, in western Assam they have faced hostile political resistance from their immediate neighbours viz. the Bodo tribes in terms of access to common natural resources. As the political will for rehabilitation of these displaced communities, the easiest option for them was to take recourse to clearance of forest lands. On the other hand, since the last two decades of the 20th century, there has been successful mobilisation amongst the Bodo seeking a political solution to their centuries of miseries and social exploitation. During the course of this political mobilisation, the scarcity of arable land had emerged as a key issue. The forest lands in their immediate neighbourhood or in distant location became a site where they can assert their rights. The forests now emerged as symbol of common

property. These two combined claims on forest land created an undue pressure of forest coverage. The support to the forest degradation was also encouraged by various interests connected with the state political parties.

A related issue is the case of Adivasi populations' settlements inside the forest lands, most particularly in western Assam. These Adivasi populations are erstwhile tea-garden workers in Assam. Their forefathers migrated to Assam from central and eastern India at different period since the middle of the 19th century to find jobs in the European tea-plantation. As they retired from plantation works, they had taken recourse to agrarian activity. Forest lands emerged as major source for their future arable land. Their rights inside the forest lands were never recognised. Over a period of time large number of them also became part of a rural mobility and began to seek land in distant forests. The contemporary political conflicts in BTC areas need to be seen in this context.

In several public consultations, the issue of 'widespread' reclamation of forest land by 'migrants' from erstwhile Bangladesh was brought to the notice of the committee. Special reference was made of recent 'encroachment' into PAs, the Kaziranga National Park in particular. Submissions were also made which suggested that the state government gives preferential treatment to this group of forest settlers from that of Assamese settlers inside the forests.

8.0: CONSERVATION AND FOREST RIGHTS

There has been wide-spread hostility from amongst the conservationists on the future implications of FRA. The primary question that they have been raising is not unique to the state. The conservation groups have registered their concerns about this rapid deforestation in selected pockets of forests. Concerned have been expressed about the need of implementation of CWH provision of the FRA. Recent increase in animal-human conflicts is largely seen as increasing forest –settlements. Conservationist also put forward the argument that settlement of people inside the PAs will lead to further fragmentation of landscape of the Protected Areas. Examples were cited from Manas National Park of crucial damages to micro-habitat due to settlements inside the Park.

KEY FINDINGS:

The committee has the following findings for the state of Assam.

SUMMARY AND GENERAL VIEW:

As a whole the official attitude towards approach to FRA and its implementation is highly bureaucratic and lacks serious engagement. The Act is being seen as another piece of Act. The strong resistance on the part of the Forest Department against the Act was visible everywhere. The Department misinterpreted the provisions of the Act. The general attitude amongst the majority of the Forest Officials is to interpret that the rural population is historically never forest dependent. Often the Act has been interpreted as an Act only meant for Forest Villagers which is a gross misinterpretation. At the same time, the department also failed miserably to stop further degradation of forest coverage in the state.

KEY FINDINGS:

1. In some places, FRCs have been formed at the level of revenue village while there is a strong tendency on the part of officials to interpret the Gram Sabha to be equivalent to that of at par with Panchayat Act.
2. Claims have been made though this is not true for all the eligible areas and people seem to be aware of the Act. The claims filed under the FRA are largely claims under 3(1) a.
3. The claims under 3 (1)(i)(that is right to protect, regenerate or conserve or manage any community forest resources which they have been protecting and conserving for sustainable use; is highly negligible. This has happened both because of lack of awareness about the provision and also discouragement to seek this right from various wings of the state government. The committee came across only one example (Tengani, Golaghat) of such claims. However, the forest villagers have expressed their willingness to seek privileges under this provision.
4. There has been lack of awareness about the implications of the CFRs. The community rights under the FRA are largely understood under section 3(2) of the Act. Similarly, applications with an aim of claiming community rights have been submitted mostly under this provision. The Assam government admitted that almost no action has been taken under sections 3(1) (b to m). Of the 623 CFR claims are granted till August, 2010 no claims have been granted under section 3 (1) (b to m).
5. The Assam government has apparently prioritized the forest-villagers and ST populations as to be given amongst all other claimants. There has been complete lack of allowing or entertaining the claims of OTFDs except those areas where there are strong and vested political interests. In fact in terms of OTFDs claims, the state's attitude is strikingly apathetic. In several areas, non-recognition of rights of the OTFDs has created strong social conflicts.
6. There have cases of outright rejection of non-ST claimants (ORFDs) on grounds of not-belonging to ST population or not being able to provide 'written' evidence which goes against the spirit of the Act.

7. A large number of genuine claimants could not file their claims in time. This is mostly due to the fact that the state government is not entertaining new claims. Though there are no deadlines set for receiving claims, apparently the state government has not encouraged any new formation of FRCs wherever there is a genuine need. Also in some places where Gram Sabhas were formed not according to the definition and rules of the FRA, the officials have not encouraged a relook into it. It is important that the state government issues regular clarification on this point, and permits the district officials to submit fresh applications.
8. Numbers of genuine and deserving claimants appear to be left out of the process entirely. This is mostly due to both lack of awareness and information about the Act. This has happened mostly in western Assam districts.
9. The PAs viz. National Parks etc. cases have not been dealt as per law. There has been total apathy on the part of the state government in such cases. The committee observed such cases in Kaziranga National Park. The officials of the Kaziranga National Park wrongly interpreted the provisions of the Act and indicated that the FRA does not have scope for implementation in the national parks.
10. A large number of petitions are either at the level of pending or rejections. In the state, almost 74 percent of the applications are in the 'in pending' category. This is highly disappointing given that the implementation of FRA, which is going since 2008. A large number of pendings or rejections are happening at the level of SDLC or DLC. Most cases of rejection are also not reported or either shown as 'pending'. Officials belonging to forest and social welfare departments are making summary enquiries to arrive at such critical decisions. The officials have not attempted to dig crucial evidences needed for the effective implementation of the FRA. On enquiry, officials failed to show any document to prove that the claimants were given any "reasonable opportunity", as provided in Rule 4(c). There is no flow of information between DLC and FRCs about decision of rejection or pending. The rejected claim forms have not been communicated to the claimant. It is natural that in the event of this the claimants have not been able to exercise their right to appeal against these decisions.
11. The senior officials of the Social Welfare Department have neither cross-checked the work being done at the SDLC or at the DLC level. The cooperation of the forest officials is strikingly poor both in terms of providing evidences and measurement. The state has not engaged any formal or informal research institutes to carry out independent assessment of the FRA implementation.
12. Importantly, in most cases, which were reported to the Committee, the gender sensitivity as embodied in the Act has been noticeably endorsed. Thus it was found that wives' names have been put in most cases and titles distributed are also entered in the name of both husband and wives names.

13. The process of entering the awarded titles in the record-of-rights of revenue department is entirely lacking. Senior officials of the state government rather expressed their unwillingness to undertake this task.
14. On enquiry, it was found that in some cases the claims of OTFDs are entertained without actually receiving the evidences while in some cases such claims are summarily rejected. In Dhemaji district of Assam, several claims submitted by OTFD have been entertained and titles have been distributed. In all the cases that have come to the notice of the Committee and on examination of records, it was found that titles are distributed despite absence of any evidence of three generations of residence or use. Accordingly, three claimants namely, Chitra Majumdar, Diganta Hati Barua and Manik Hazarika (Simenmukh, Borpathar and Silapathar areas of Dhemaji district) all belonging to OTFDs have been awarded titles under FRA. All three have claimed in the form A that they have been in occupation of the plots since the early years of 1960s. The Committee also found that those who have migrated and have been in occupation of forest land since 1990 their claims are not entertained. The committee also found that the land titles given to the claimants are not being provided with any measurement of land and plot identification.
15. The findings in No (10) have also implications for establishing the evidences for 'three generations'. Most OTFDs representations have expressed their inability to provide any evidences to prove a three-generation of stay or occupation in the forest lands. At the same time, all evidences which needed for STs to prove eligibility is not being accepted for OTFDs. It is particularly true in the cases of evidences like oral evidence and statement of elders etc.
16. There has been widespread political mobilization amongst the sizeable sections of OTFDs to declare them as STs leading to exclusion from the benefits of FRA.
17. The main underlying reason for this poor implementation of the Act is the apathy of the state government towards implementation of the Act. This is largely manifested in the attitude of the senior officials and the elected representatives to understand the historical importance of the Act and its origin. That the Act has strong potential to reduce rural conflicts in Assam and empower local communities is ignored within official discourses. This is strikingly evident amongst the lower staffs of the social welfare department. The real implementation of the Act is poor and misdirected. The Social Welfare department is also understaffed. The lack of understanding of CFR provisions is strongly visible even amongst the senior officials whether they belonged to Forest or other Departments. Also, in the state, the SLCC's ways of handling of the FRA implementation is largely in the line of any normal activity of the state bureaucracy. The primary focus of the SLCC seems to be building up is mere disposal of 'cases'. It has failed to formulate principles and social indicators for monitoring the process of recognition and vesting of forest rights.
18. From several places viz. Nameri National park, illegal deadlines were reported for filing claims. The state officials were clarified that such deadlines were not legal and eligible claimants should be allowed to file claims.

19. Another primary reason for the poor performance of the Act in the state is the role of the state forest officials. The people from the Forest Department have misinterpreted the provisions of the Act. The Forest Department continues to argue that Joint Forest Management (JFM) is a superior mechanism of participatory forest management. In no case, it has shown interest in de-centralization of forest governance under the Community Forest Rights provision of the FRA.
20. The scope and nature of the definition of 'forests' is grossly misinterpreted by the state government officials. This had led to non-implementation of the FRA in areas where the definitions of 'forests' has strong implication. This is particularly true in those areas where the state has shared boundaries with the state of Arunachal Pradesh.
21. A more crucial issue which has emerged in Assam is about those lands that have forest on them, but are legally categorized as revenue lands. Claims to these have been turned down as this is not legally forest land. An illustrative example of this is the lands where 'tauzi' fines are being regularly given. Claims to these have been turned down as this is not legally forest land.
22. Though the Social Welfare Department is the nodal agency for implementation of the FRA, the structure and presence of the department at the field level is very weak. The Committee understood that the department has not been able to provide sufficient inputs and supports, facilitating filing of form etc. Primary task is being carried out by the revenue officials and sometimes supported by the lower staffs of the forest department.
23. In the northern bank of Brahmaputra, particularly in the districts of Chirang, Baska, Sonitpur there has been examples of recent encroachment into the forest areas. On the date of encroachment there is strong dispute. On the part of the forest department, the proof of 'encroachment' is highly impressionistic. At the same time, the connection between the FRA and these recent 'encroachments' is extremely negligible and questionable. Again, in some areas, FRA is being used by rich and vested interests to occupy forest lands. This is particularly true in the district of Golaghat. Several FRCs have identified such vested interests and claim forms are rejected at the gram sabha level.
24. Despite the fact that no eviction be carried out while the process of FRA is under implementation, there are reports of eviction being carried out inside the PAs or other forest areas. In several places, there have been reports of violation of human rights while enforcing the eviction. This is particularly true for the BTC areas where FRA is yet to be implemented. There are reports of political backlash on other communities as a retaliation of eviction.
25. Historically, the state underwent through different stages of evolution of modern legal meaning of 'forests'. Accordingly, the word 'forests' has complex social and ecological underpinnings which needs to be taken care off while understanding the need for implementation of FRA.

26. There has been wide-spread demand for rethinking of the criteria of three-generations of proof of residence as eligibility criteria for OTFDs under the FRA. The public consultations have also argued that the Act interpretation of three-generations of proof of residence itself has wider scope of interpretation. Submissions made to the committee generally argued that the definition of 'Assamese' (read native/indigenous and interpreted in the Assam Accord of 1985) should be taken into consideration while rethinking the occupational criteria of the OTFDs.
27. There is wide-gap between the conservationist and forest-dwellers in understanding the implications of FRA vis-a-vis the future conservation.

KEY RECOMMENDATIONS

PROCEDURES:

- The Committee suggested that due procedure (viz. formation and composition of FRCs, definition of gram sabha as the lowest level of village structure, survey of claimed land, entry of woman names into the land titles, etc) as laid down under the rules and provisions of the Act be followed while implementing the FRA. This also implies that adhoc approach to implementation of FRA be avoided at the earliest.
- Present trend of bureaucratization in implementing FRA should be avoided.
- Details of each claim (whether accepted, rejected or in process) should be put up on a public website so that each claimant can find out the status of claims.
- Conversion of Forest Villages and other such settlements as defined under the FRA into Revenue Villages needs to be undertaken urgently. The state government's lack of willingness to comprehensively address the issue of this conversion is a matter of serious concern.
- The integration of grassroots activists and civil society organization working for a long time in FRA process into the FRA implementation process is critical to the success of the implementation. These groups need to be brought into the process at all levels as advisors and watchdogs. The State-level Monitoring Committee needs to include key persons from such groups.
- The need to organize a workshop at the state level under the leadership of Chief Secretary, inviting SLMC members, FRC representatives, Deputy Commissioner's,

Forest Department representatives, Conservationist, NGO's, People's Organisation and other interested groups.

- The State Level Monitoring Committee should take a pro-active role so that FRA can be implemented in fair and effective manner.

IMPLICATIONS OF FRA:

- As the state has wide-ranges of forest category, the Committee also recommended that the State government must chalk out proper strategy in understanding the broader scope and definition of the term 'forests'.
- The Committee suggested that the FRA be implemented in the PAs (read national parks and wildlife sanctuaries). The claims in the neighbourhood of National Parks and Wildlife Sanctuaries need urgent attention. Any land requisition for expansion/declaration of PAs needs to follow FRA implementation. Community Rights in PAs also need to be granted under FRA provision.
- The state government must be taken up seriously and urgently in addressing the claims of OTFDs. The Committee suggested the urgent need of serious cooperation in providing bureaucratic support for generating/finding evidences for the OTFDs. The government may take note of MOTA's clarification on OTFDs' definition and requirement.
- The Government of Assam should urgently take up the case of the need for the implementation of the FRA in the Sixth Schedule Areas. The specific example is that of the BTC areas. The Government of Assam should also urgently sought clarification from the MOTA in this regard.
- The committee recommended that the need for demarcation of the CWH needs to be addressed urgently while implementing FRA. The implementation of declaration of CWH should not be left only to Forest Department but the suggestions of the FRC, local communities, conservationists, other scientist, academicians, researchers, should be involved in this process.
- Notifications should be issued from time to time issuing clarification to various layers of officials involved in the implementation of FRA. Similarly the State Government should also regularly communicate with the MOTA to seek clarification.
- The Community Forest Rights claims should be encouraged. Steps should be taken for effective implementation of these rights and privileges.
- The cadastral survey of the forest land for which titles are or will be distributed may be undertaken.

ANNEXURE

FRA Facts on Assam. As of August, 2010:

Nature of rights	No of claims received by GS	No of claims forwarded by GS to SDLC	No of claims forwarded by SDLC to DLC	No of Claims cleared by DLC
IFR	118564	118564 (!)	81856	29885 (29%)

CFR	4471	4471(!)	3429	623 (13%)
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No of claims rejected by DLC	No of claims pending at SDLC	No of Claims pending at DLC
5364	36708 (30%)	45448 (38%)
22	NA	NA

Acronyms:

ADM- Additional District Magistrate
CFR- Community Forest Rights
CWH-Critical Wildlife Habitat
DFO- Divisional Forest Officer
FRA-Forest Rights Act
FRC-Forest Rights Committee
FV-Forest Village
GPS-Global Positioning System
IFR-Individual Forest Rights
KMSS- Krishak Mukti Sangram Samiti
NP-National Park
OTFD-Other Traditional Forest Dwellers
PA- Protected Area
PCCF-Principal Chief Conservator of Forest
RV-Revenue Village
SDLC-Sub-Divisional Level Committee
WS-Wildlife Sanctuary

Photograph from Public Consultations in Assam



