

MoEF/MoTA Committee on Forest Rights Act

Public consultation for Maharashtra, Pune, 12 June 2010

Detailed Report

(to be read with Summary Report)

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.

This report has been prepared with the help of National Centre for Advocacy Studies, Pune.

Introduction

Three members of the Committee, Dr. A.K. Jha, Dr. Ravi Chellam, and Dr. 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 (TRTI), Government of Maharashtra.

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 District), Vidarbha, Marathwada, and western Maharashtra, with larger proportion being from Konkan and Vidarbha. Several media persons were also present.

Discussions

The consultation began with a welcome message by Lata Pratibha Madhukar, NCAS, Pune. She greeted the Committee members and participants and explained the objective of the open consultation. Lata also gave the background of FRA. This was followed by self

introduction by the Committee members, and a brief introduction to the Committee's work.

Madhav Gadgil, who was requested to chair, stressed on the need to have a framework to put in the case stories related to claims under FRA from different regions. He said a number of things were necessary to ensure that FRA does not meet the same fate as the Panchayat (Extension to Scheduled Areas) Act 1996. In many places, he said, CFRs (Sec. 3(1)) were being taken to mean only development facilities (Sec. 3(2)); he also suggested that the translations of the Act/Rules by the government needed to be simpler so that people could easily understand it.

Thereafter, oral submissions were invited in the following order: Communities (region-wise), NGOs, and Government officials. Community representatives including FRC heads like Rupchand Dakhane and Ankush Wagh, members of tribes like Nilkanth Shinde (Dhangar), Aiya Sombat Ekam (Kolam PTG), Lalsu Narote (Maria PTG), and representatives of people's movements or NGOs like Indavi Tulpule (Shramik Mukti Sanghatana), Pratibha Shinde (Lok Sangharsh Morcha), Vaishali Patil (Adivasi Hakka Sangharsh Samiti), Ulka Mahajan (Sarvahara Jan Andolan), Kaustubh Pandharipande (Samvedana), Ajay Dolke (SRUJAN), Krishna Srinivasan (Econet), and Pradeep Chavan (Kalpavriksh). A number of participants were also from protected areas like Tadoba Tiger Reserve, Bhimashankar Sanctuary, and Pench Tiger Reserve. They spoke about the experiences faced in applying for and obtaining rights under FRA. Special concern was expressed by many about the state government's announcement that the process should finish by end of June, and that there was no need for measurement and mapping of forest lands (on which forest rights were claimed) before giving titles; they emphasized that even if it takes a bit longer, due process must be followed so that there are no conflicts later on.

Representatives of the mass movements (under the banner of Jungle Adhikar Sangharsh Samiti) mentioned that they were in principle against a committee set up by the Union Ministry of Environment and Forests since this was the main agency behind blocking implementation of the Act (through the Forest Dept); however they had decided to participate today to make the Committee aware of the ground reality.

Arvind Patil, DCF, West Nasik, also spoke, emphasizing that there were many false claims made by people. He gave instances of false evidences being used by claimants as evidence. These were 'forged' money receipts printed illegally, xeroxes of one money receipt used by many in their

claim cases, multiple claims on same piece of land etc. There were large number of cases in which the only the SDO had signed as chairman with all other members mentioned as absent and submitted case papers to the DLC. There was large scale encroachment done after December 2005 and claims submitted for them.

Tushar Dash of Vasundhara, Orissa, spoke about the experiences of FRA process in Orissa and some key lessons that could be applied to Maharashtra. He informed that a case of habitat rights was cleared in Orissa. The application was directly submitted to the SDLC. Dr. Jha however said that it was essential to pass the Gram Sabha resolution strictly following the procedure under the Act to ensure participation of at least two third of the members of the Gram Sabha. Only then it should be submitted to the SDLC.

Apart from oral presentations, the team received about 25 written submissions, all from communities and NGOs. These have been summarised in English, and annexed to this report (some of the submissions that were similar and from the same organisation or network, or region, have been clubbed together to avoid repetition).

This open consultation gave a good opportunity to the community people to directly interact with the Government officials and get their grievances and problems heard by the Committee members.

Conclusion

Clarifications were made by the Committee members wherever necessary and a brief concluding statement on subsequent steps to be taken was made by the three committee members. They offered to request the Committee Chairman to write to the Ministry of Tribal Affairs, requesting it to instruct the state government to withdraw the deadline for completion of the land claims process and to ensure land measurements to be carried out as part of the claims process before disposing of the claims.

Dr. Arvind Jha in his concluding statement said that it was necessary that the Act is implemented judiciously and there needs be a demarcation between facts and sentiments. He promised to make necessary intervention wherever TRTI, Pune could, and also pointed out that many of the documents and interpretations that would help find answers to the issues can be found in the website of the TRTI.

Dr. Ravi Chellam stressed that the Act was as much about responsibilities (for conservation, sustainable use, etc) as about rights, and this needs to be part of people's articulation.

Ashish Kothari said that the entire process of the Committee would be transparent, all reports would be put up for public access, and the submissions given today would be sent to the state govt for necessary action. He also asked for subsequent submissions by anyone interested, especially on issues like future role of the Forest Department and other policy changes necessary.

The meeting ended at 6 PM with the vote of thanks by Lata Pratibha Madhukar, Program Coordinator, NCAS, Pune. In this she also suggested that TRTI set up a FRA helpline, and that it should invite experienced NGOs and community persons as resource people in training sessions.

Report by Ravi Chellam, A.K. Jha, and Ashish Kothari
13 September 2010

Annexure

Submissions received by FRA Committee, Maharashtra state level consultation, Pune, 12th June 2010

(Note: most submissions were received in Marathi. Given below are summarised English translations, prepared by members of National Centre for Advocacy Studies and Kalpavriksh. The full submissions have been sent by the Committee to the respective state authorities for consideration and appropriate action)

Adivasi Hakka Sangarsh Samiti – Raigad, Maharashtra

AHSS is a Tribal union fighting for their Constitutional rights for past 17 years. But today it is in a dilemma because despite having submitted around 2000 Forest Rights claims complete with all necessary documents such as, residential proof, Panchanama of neighbours, trees, affidavit of an elderly person from the village etc only a few claims have been granted. Particularly, in Pen taluka, out of 148 claims only 4 have been finalized. In a letter written to the Chair person, Joint Committee to Review Implementation of FRA, AHSS has attempted to draw the attention to the claims rejected on the following grounds:

1. No Caste certificate.
(Applications were submitted for issuing Caste certificate but the SDO office hasn't done much in the matter)
2. No proofs have been given.
3. Forest department Form no 1A not attached. This condition is not mentioned in the Law.

Shramik Mukti Sanghatana, Thane, Maharashtra

Shramik Mukti Sanghatana in their application to the Chair person of the Joint Committee to Review Implementation of FRA'2006 have tried to draw attention towards illegal and faulty implementation of the FRA. The cases mentioned in their complaint are as followed.

1. Sub-division level committees are changing or overruling decisions of the first authority, i.e. Gram sabha either without reasons or solely depending upon opinion of the forest department. Neither the claimant nor the Gram sabha is given an opportunity to have a "say" before rejecting or changing such decisions.

2. Cases of decisions by SDLC are based on false submission by the Forest Department without verifying or hearing the claimant.
3. Cases of SDLC seem to be based on “Lies” because the documents in the claim do not match with the statements made in the decision.
4. Cases of misinterpretation of procedure are evident for claims of community rights which are different from claims under sec 3(2) for use of forest land for development purpose.

In a quest to mitigate the injustice that they are facing, they demand the following:

- 1 All such decisions of FRA claims should be declared null & void and cases reviewed.
2. Rule 13 of the FRA doesn't prioritise various evidences listed in it. Therefore the usage of the concept of “Concrete” evidence by the Forest department is illegal and hence should be stopped immediately.
3. The Gram Sabha and Gram Panchayat is the best judge whether a claimant is from other traditional forest dweller family or not. Therefore certificate by Gram Panchayat & decisions by Gram Sabha should also be accepted as evidence for eligibility of OTFD claimant.
4. There should be review of decision regarding claims in the Municipal areas in the light of the Section 3(g) & 2(h) of the FRA and it be applicable to all types of Forest lands, be it in Panchayat areas or Municipal areas.

Sarvahara Jan Andolan, Raigad, Maharashtra

SJA, Raigad in its application to the Chairman, Joint Committee to Review Implementation of FRA have tried to bring to notice issues, as below:

1. Unnecessary influence is being exercised by the Forest officials during measurement of claimed lands.
2. While measuring the land, rather than measuring the total area under possession, only the land under paddy cultivation is considered.
3. Form A is to be submitted by the Forest representative to FRC before Gram Sabha. But contrary to this the Forest officials are presenting the same at the SDLC level.
4. In spite of demands from the Forest Rights Committees, GPS maps are only provided to SDLC.

5. The claimants are not rendered acknowledgment by the Secretary, FRA.
6. In Raigad district, out of a total claims of 18,716 only 4325 are declared eligible which stands at not even 25% of the total claims made.
7. For recognition of the claims only documentary evidence is taken into consideration. It's leading people to a lot of problem who are unable to produce such proofs. Claims are being also rejected for failing to submit caste certificates even if all other proofs are produced.
8. The claims of Dali land holders are rejected although the Maharashtra Government had granted those lands to the occupants in 1971. However, this claim is rejected by the SDLC and DLC. The total area claimed by the claimant is not considered and the old records made before 1970 are referred for ascertaining the names of the Dali land holders. Contesting this a detailed memorandum to the Secretary-Tribal development has been submitted by SJA.
9. In some cases the total area claimed by the claimant is reduced without the claimant's knowledge. The claimant only learns about it when he is given the final certificate as neither the SDLC nor DLC cares to communicate him about the changes made.
10. Many claims are missing at the Tahsil level due to irregularities by the Tahsildar, Talathi & Forest officials.
11. Community Forest Rights claims are getting rejected. No clarity on the issue is provided. No document is made available to FRC.
12. The whole process of FRC and Gram Sabha decisions are made superfluous by the Officials at the SDLC and DLC level.

Sarvahara Jan Andolan, demands that, undue and unnecessary intervention by Forest department should be curbed in order to enable people get their rights.

Jungle Adhikar Sangharsh Samiti, Maharashtra

JASS in its letter to the Chairperson, Joint Committee to Review Implementation of FRA have shown their dissent over the review of the Forest Rights Act implementation by a committee constituted by MoEF. The issues raised by JASS on this regard are as below:

1. MoEF has been responsible for diverting thousands of hectares of Forest land without recognizing Forest rights, clearly violating the provisions of the act.

2. The MoEF through National afforestation programme, spent huge amounts for plantation. This is against the provisions of the Forest Act which has empowered the Gram Sabha to manage its Community forest resources.
3. The MoEF has been investing thousands of crores into joint forest management which is needless and unlawful.

Gram Sabha, Ghati

(Rupchand Dekhane, chairman Forest Rights Committee)

This Grampanchayat wrote a letter to the Forest Dept. about :

- a. Violating / flouting Forest Rights and
 - b. Asking the state coordination committee to recognize their forest rights.
1. The forest rights committee had submitted a claim to protect conserve and rejuvenate and manage community forest resources. However the document received by the FRC does not mention that this claim has been recognized.
 2. Though FRA rules / provisions recognize rights of gramsabha to manage Community Forest Resources, these claims are not being recognized.
 3. Forest Dept. has written to them that in case of any dispute on aforementioned claims, the decision of the district level committee will remain final. This condition flouts Rule no.10.
 4. Claims had been made on a 913.13 ha piece of forest land, but the letter from the FD says 521.31 ha piece of land has been granted recognition.

Degaon (Kamshet), Adivasi wadi / Baudhhawadi Taluka Mangaon, Raigad district

1. 35 lessees formally recorded that the plot of leased land admeasures 94.30 (ha). The rate of lease is Rs.11.00.
2. The Maharashtra State government has made a decision that ownership of the entire leased area will be permanently transferred to the lessees. This decision should be implemented.

Group Grampanchayat, Vile Post off. Vile, Taluka Mangaon, Raigad district

1. Villagers of Vile, Adivasi wadi and Dhangar wadi brought a total of 45 individual claims on leased land to the gramsabha. Panchnamas and the report submitted by the FRC show that of

- these 45 claims, only 16 families are cultivating leased land, whereas the remaining 29 have done no cultivation on leased land.
2. Land leased to 16 families was measured using GPS equipment. Since the remaining 29 families do not cultivate on leased land, no measurements were taken for them.

Lok Sangharsha Morcha

There are 48 grampanchayats in Akkalkuva taluka. These include 190 villages and a total of 124 forest rights committees have been formed.

- 124 FRC have admitted 10,934 claims
- FRC has investigated 3,819 claims
- Gram sabhas have recognized 1,912 claims
- GPS equipment has been used to measure lands covered by 1,485 claims
- 211 claims have been sent and the district level committee has given recognition to 8 claims

With reference to CFR, the taluka has a number of forest hamlets, forest villages and abandoned villages and there is significant dependence on forests for livelihood and nistaar rights. However, little effort has been put into staking claims for community rights.

Shoshit Jan Andolan

On 14 Jan 1970, the state government of Maharashtra passed a resolution to transfer ownership of leased lands to the respective lessees. A decision was taken through an amendment, on 26 July, 1971, to transfer the title for leased land without checking whether the land was actually being cultivated or not. The state govt. has repeatedly given assurances that it is bound by the said amendment. That is why:

1. Title to all the land area that is recorded in the land lease record (of the state government) has to be transferred.
2. All the other rights that have been recorded in the Land lease book, for e.g. forest litter, dry cow dung etc. collected for preparing the soil for plantation, grazing land, fuel wood, water bodies, approach roads, pyre sites, etc. are included. All these rights would have to be considered in the context of transfer of titles.
3. In the context of land under individual cultivations, 2 kinds of cultivation will have to be considered
 - Repeated cultivation on a specific parcel of leased land
 - Shifting cultivation within the specified boundaries of leased land
4. It has been clarified by Mr. Jha - the Director TRTI that the provision of the FRA in regard to the limit of 4 hectare is not

applicable to the already leased land. Section 3(i) g of the FRA is applicable to such leased lands. Thus when read in the context of section 4(6) regarding the limit, this section is not applicable to section 3(i) g.

5. The original lessees have been ousted using various means. In such cases the rights of the original lessees should be recognized. These are of the following types:
 - 1 Where original lessee was Katkari - land now cultivated by non-advasi.
 - 2 Where original lessee was Katkari- land now under control of Thakur Advasi
 - 3 Where original lessee was Katkari – now under control of Katakari's from a different hamlet
 - 4 Those lessees who have been displaced, either for government or other projects, without any compensation (ref: section 4(8)).

In first three cases mentioned above the rights of the original lessees should be recognized while in the fourth case claims made under section 4 (8) of the FRA should be accepted.

Gram Panchayat Eklahre, Taluka Murbad, District Thane

1. As out of the 17 claims received by the FRC, 3 belonged to village Dahigaon Chake and 4 to village Talavali, these were transferred to the respective grampanchayats.
2. All of the remaining claims have been recognized

Gram Panchayat Chowk (Morbe project affected)

(Ankush Wagh, FRC Chairman)

1. 32 acres of land belonging to Katkari advasi (of) Rosawadi was submerged
2. In accordance with the government resolution of 1971 (regarding lease lands), title of leased lands should be transferred to the lessees.
3. Instead of individual claims by families, there should be a community claim for the entire village land
4. Permission to cultivate millets like nachani and varai, pulses and grass as crops should be granted
5. The condition of 50 years (residence) for granting certificate of caste should be abolished

Claims made: forest rights for 192 leased plots, Rejected: 72.
