

The Forest Rights Act is floundering

An eight-month investigation into the implementation of the Forest Rights Act by a committee that travelled across 17 states has identified several systemic faults.

[Ashish Kothari](#) reports



One of the flagship programmes of the UPA government, the Forest Rights Act, is floundering. An eight-month investigation across 17 states by a committee set up jointly by the Ministry of Environment and Forests and the Ministry of Tribal Affairs, has pointed out gaping holes in implementation. It has strongly recommended independent oversight of the process, involvement of civil society at all levels, and a national council that could boost implementation to levels that will make a real difference on the ground.

The Forest Rights Act (FRA) recognises the rights of forest-dwellers over land they have been cultivating or residing on prior to December 2005, as also rights to use, manage, and protect forest resources. Promulgated in 2006 and operationalised with a set of Rules in January 2008, the FRA has only just begun to reach its intended beneficiaries. In a way this is not surprising because it hopes to set right injustices that began more than a century ago, when the colonial government took over vast areas of land. Even in independent India the state has denied the legitimate rights of people to the areas they live in or have used for generations.

However, the systemic faults identified by the Committee are serious enough to bedevil implementation for years to come, unless corrective action is taken. The problems start with the central government. The FRA's nodal agency, the Ministry of Tribal Affairs (MoTA), has taken only a lackadaisical interest in it. Its monthly update of the progress of implementation does little to analyse trends, causes and consequences, and it has only occasionally issued clarificatory circulars on the many complex issues of the law. The other relevant central body, the Ministry of Environment and Forests (MoEF), has done little to curb the violation of the law by its own agencies. It commendably issued a circular in July 2009 requiring completion of the FRA process and consent of relevant gram sabhas for the diversion of forest land for any non-forest purpose, but has failed to ensure its implementation even in its own forest clearance procedures.

State-level monitoring committees, while established in most states, have hardly functioned. The other empowered institutions set up under the FRA, district- and subdivisional-level committees, have often been improperly constituted, and have allowed forest officials to have an illegitimately dominant say in decisions. At the ground level, Forest Rights Committees set up at the village level have often been only on paper, improperly constituted, or run under the influence of government officials. Gram sabhas have mostly been formed at the level of the panchayat, comprising of multiple villages (in West Bengal, for instance, over 10 on average!), causing enormous problems of access to those wanting to make claims. At all these levels, there is serious lack of understanding of the law, and inadequate capacity to handle its various processes.

The result of these and other systemic weaknesses is very poor or slow implementation. According to MoTA, about 30 lakh claims have been made, of which over 80% have been disposed of, and about 35% (approximately 10 lakh) accepted for titles. This implies a high rate of rejections. Claims have been rejected en masse in many states, or drastically reduced in area even where accepted. Undoubtedly some of these are false claims, eg to plots freshly encroached by cultivators hoping to pass off as eligible claimants. But a vast number appear to be the result of a bureaucracy not wanting to apply its mind, or simply not wanting to give people their due. In Gujarat for instance, the Committee came across many cases of claims with full evidence being rejected, and often the reasons for rejection not being conveyed to the claimant. The FRA's provision to hear the claimant before disposing of the claim, has almost never been utilised.

Most serious, however, is the abysmal progress with community forest rights (CFRs). For several hundred million people, secure access to forest produce would be a crucial boost to livelihood security. Moreover, the FRA provides a chance for communities to sustainably manage and protect forests they use or live alongside. For several thousand existing community forest conservation initiatives, such legal backing is a huge opportunity. According to MoTA, about 50,000 CFR claims have been made so far; this sounds impressive, until one realises that many or most of these are claims to development projects that the FRA allows (roads, transmission lines, health and educational centres, etc). Most states have not made an attempt to disaggregate these two different kinds of community rights, and MoTA does not seem to be asking. Compare this also with the fact that there are, according to the Forest Survey of India, about 170,000 villages that have forests within their boundaries. CFR claims have a long, long way to go. And as everyone, even those skeptical of the FRA agree, CFRs are crucial to ensuring both livelihood security and the long-term sustainability of the forest itself. Unfortunately even civil society organisations championing the cause of the FRA focused initially on individual land rights since that evoked greater political

response.

In the midst of this overall gloom, there are some very bright lights. The Committee has recorded a number of examples of district collectors and subdivisional magistrates who have gone out of their way to help claimants. Where the FRA has been somewhat better implemented, it is often due to the work of civil society organisations. Some state-level agencies such as in Orissa, have been quite proactive in monitoring implementation, issuing clarificatory circulars, and involving civil society. These positive examples could well have been documented and disseminated by MoTA, to inspire similar actions elsewhere.

Equally crucial is action on the post-rights governance of forests that communities will have a right to. Communities in Maharashtra, Orissa, Gujarat and Rajasthan have claimed forest management and protection rights over tens of thousands of hectares, and in many cases formulated or strengthened community rules for conservation even before the rights are vested. The Committee in two sets of alternative recommendations, has pointed to a change in governance from state-managed joint forest management to one where the gram sabha is in control. The FRA's most revolutionary potential is indeed in such a transformation. But if this is to benefit both communities and the forests, there is a great need to help communities build or strengthen capacity and institutions that will withstand powerful forces of commercialisation and individualisation that can undermine community initiatives. Unfortunately neither states nor the centre have even begun to think of actions needed on this front.

As the third anniversary of its coming into force approaches, the FRA remains a severely stunted law. If it is to deliver on its promise of greater livelihood security and stronger forest conservation, the government would do well to act on the systemic faults pointed out by the Committee, and its recommendations on governance changes.

Note: The full report of the Committee, and individual state visit/consultation reports, are available at <http://fracommittee.icfre.org>.

Infochange News & Features, January 2011