

Chargesheet on Government's Violations of Forest Rights Act



THE GOVERNMENT'S VIOLATIONS OF THE FOREST RIGHTS ACT

A Chargesheet

Passed in December 2006, the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act was hailed as a historic step towards recognising the rights of forest dwellers and correcting a gross injustice. Almost three years later, it is clear that the government has no intention of allowing it to be implemented.

Illegally Robbing People of Their Lands and Forests

One and a half years after the law came into force, the Environment Ministry finally issued orders this July that barred handing over people's lands and forest resources to corporates or projects without their consent. Yet no action has been initiated against the officials responsible for the illegal forest diversion of the preceding year and a half, and meanwhile State governments are continuing to threaten people with illegal eviction for large projects in Chhattisgarh, Madhya Pradesh, Orissa, Jharkhand, Andhra Pradesh and elsewhere. The same story of illegal threats is being repeated in wildlife sanctuaries, national parks and tiger reserves.

What can the government do? : Comply with the law and stop expropriating resources.

What has the government done? : Both Centre and State are still violating the law.

Forest Department Illegally Blocking People's Rights to Their Homes, Lands

The law lays down a clear three stage process for recognition of people's rights. It also defines what constitutes admissible evidence. The Forest Department has a role at the district and sub-divisional levels, but only as one of the parties involved. But the Department has made every effort to give itself illegal veto powers to deny rights. In most States the Department is refusing to be present at the time of verification by the Forest Rights Committee, and then demanding that the claim be rejected at the screening stage as they did not attend. In several major States, only rights of those on Forest Department lists of "pre-1980 encroachers" are being recognised. In Rajasthan, the State government illegally insists that the signatures of the forest beat guard and other officials are required on every claim, resulting in harassment and extortion. The net result of this kind of interference is that the majority of eligible claimants are being rejected.

What can the government do? : Issue clear orders against such interference and take disciplinary action against the officers involved.

What has the government done? : The Central government has done nothing. No State government has taken action either, and many – Chhattisgarh, Rajasthan, West Bengal, etc. - have issued illegal

orders favouring the Forest Department or giving them extra powers in the process.

Denying People's Control Over Their Forests

The Forest Rights Act not only provides for rights to individual landholdings – it also recognises that communities have the right and the power to protect and manage their forests, and to prevent land mafias, corrupt officials and government agencies from damaging or destroying them. But these rights and powers are not being recognised anywhere. No procedures have been provided for most of them, and no system is in place to ensure they are respected.

What can the government do? : The Central government can issue clear Rules and procedures for the recognition of all rights in the law. The State governments are required by law to recognise and respect them.

What has the government done? : The rights in sections 3(1)(b), 3(1)(c), 3(1)(d), 3(1)(e), 3(1)(i), 3(1)(m) and 4(8), pertaining to nistari rights, ownership of minor forest produce, grazing areas / water bodies, habitats, community forest resources, illegal evictions and displacement respectively, are ignored in the Rules, effectively rendering them meaningless. All State governments have hence been conveniently ignoring and often violating these rights as well.

Imposing Joint Forest Management Instead of Respecting People's Rights

The flip side of denying community forest rights is the promotion of dangerous sham “participatory” schemes, particularly Joint Forest Management. Indeed, huge amounts of money are being pumped into “plantation” programmes in forest areas, mostly to be run through these Joint Forest Management Committees. These Committees, though nominally “participatory”, are in fact controlled by the Forest Department, as the forest guard is the member-secretary. The result is that these Committees are controlled by contractors and others who are close to the Forest Department, and in practice function as proxy troops, engaging in plantations, evictions etc. in place of the Department itself.

Most such plantations are done on people's lands, to which they have unrecorded rights, or in common lands; after which these lands are illegally converted into reserved forests without following due process of law. Plantations deprive large numbers of people of their lands every year, even after they were barred from doing so by the Forest Rights Act. But, despite this, the government is pumping hundreds of crores into these programmes every year, both from the Compensatory Afforestation Fund and from international bilateral loans to State governments. If the government is truly interested in 'participatory' forestry, why is it not respecting the law and implementing these programmes in accordance with people's will as expressed through their community institutions? Why is it violating the law and democracy in favour of illegal “afforestation”?

What can the government do? : Shut down the Joint Forest Management programme and ensure that all schemes in forest areas are undertaken with the consent of and under the control of the communities.

What has the government done? : Both Central and State governments have Intensified their

offensive against community rights even in the face of public and Parliamentary criticism. Several States – West Bengal, Kerala, Andhra Pradesh, Gujarat, Rajasthan, Orissa etc. - have accelerated JFM Committee formation after the passage of the Forest Rights Act.

Officials Illegally Taking Over Process

The Forest Rights Act requires that all rights be recognised through a transparent, public process, where the gram sabha or village assembly is central. Instead of following that process, government officers are imposing their own diktats. Gram sabhas are being deliberately called at the panchayat level or even larger units in Andhra Pradesh, Chhattisgarh and elsewhere– where they are too large for adivasis and forest dwellers to have their voices heard. This is in direct violation of the Act, especially in Schedule V areas. Even where gram sabhas have functioned and recommended claims, in Madhya Pradesh, Gujarat, Andhra Pradesh and other States, the area over which rights are being recognised is being illegally reduced. People cultivating an acre of land file claims for it, have their claims duly verified, and find that the actual title is given for a tenth of the area. Arbitrary criteria are imposed, such as making those who own revenue land ineligible for rights, as has happened in Tamil Nadu. Claimants are not being intimidated of rejection and not being allowed to appeal.

What can the government do? : The Central government should clarify that this kind of interference is illegal and a criminal offence, and State governments should take action against their officers.

What has the government done? : The Central government has made space for further interference by issuing ambiguous orders. State governments are encouraging interference by issuing illegal orders on gram sabhas and eligibility criteria.

Terminating the Process Before People Can File Claims for Rights Recognition

The Act does not provide any timeline for implementation. Under the Rules, only the gram sabha has the power to fix when the three month filing period will begin, and can also extend that period.. Yet State governments are arbitrarily imposing cutoff dates and threatening people that claims will not be accepted after that. Now the Central government wants to rush the major States into completing implementation in December 2009, when it has barely begun and is riddled with illegalities.

What can the government do? : Ensure that officials and State governments comply with gram sabha decisions on the timeline. Make sure all eligible claimants know how and when to file for rights and are able to file appeals.

What has the government done? : Imposed illegal deadline after illegal deadline.