

Regional Consultations on Implementation of the Forest Rights Act:

Amendments in the Rules and the Way Forward

Brief Synthesis of Regional Consultations

List of Regional Consultations on Forest Rights Act, 2006 (FRA) organized by Ministry of Tribal Affairs in collaboration with UNDP hosted by the State Tribal Welfare Departments.

S.No	Date of Consultation	Location	Participating States	Local support
1	21-22 September 2012	Bhubaneshwar, Odisha	Odisha, West Bengal, Chhattisgarh and Jharkhand	Tribal Welfare Department, Govt. of Odisha
2	25-26 September 2012	Nagpur, Maharashtra	Maharashtra, Gujarat, Goa and Rajasthan	Tribal Welfare Department, Govt. of Maharashtra
3	16-17 October 2012	Hyderabad, Andhra Pradesh	Andhra Pradesh, Karnataka, Tamil Nadu and Kerala	Tribal Welfare Department, Govt. of Andhra Pradesh
4	9-10 November, 2012	Bhopal, Madhya Pradesh	Uttarakhand, Uttar Pradesh, Madhya Pradesh, Bihar, and Himachal Pradesh	Tribal Welfare Department, Govt. of Madhya Pradesh
5	19 November, 2012	New Delhi	Assam, Nagaland, Manipur, Mizoram, Meghalaya Tripura, Arunachal Pradesh and Sikkim	FRA Unit Ministry of Tribal Affairs, New Delhi

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1. Background

Forest dwellers are among this country's poorest people. For many tribal people and other forest communities, forests are the source of livelihood, identity, customs and traditions. The forest dwelling Scheduled Tribes and other traditional forest dwellers inhabiting forests for generations and were in occupation of the forest land for centuries. However, their rights on their ancestral lands and their habitats had not been adequately recognized despite it being integral to the very survival and sustainability of the forest eco-system. The traditional rights and interests of forest dwelling scheduled tribes and eligible other traditional forest dwellers on forest lands were left unrecognized and unrecorded through faulty reservation process during consolidation of State forests, in the past. The problems of these communities were further compounded after the passage of the Forest (Conservation) Act, 1980 when even the development activities in their habitations were termed as non-forestry activities. They did not have a homestead and as such address of their own. On account of non-recognition of their forest rights, they had come to be erroneously looked upon as encroachers of forest lands, resulting in a sense of insecurity of tenure and fear of eviction.

The forest dwelling tribal people and the forests are inseparable, a factor that also ensures conservation of ecological resources stemming from the very ethos of tribal life. The conservation processes for creating wilderness and forest areas for production forestry somehow ignored the bona fide interests of the tribal community from legislative framework in the regions where tribal communities primarily inhabited. The simplicity of tribals and their general ignorance of modern regulatory frameworks precluded them from asserting their genuine claims to resources in areas where they belonged and depended upon. The modern conservation approaches also advocated exclusion rather than integration. It was much later that forest management regimes initiated action to recognize the occupation and other rights of the forest dwellers and integrated them in designs of management. Insecurity of tenure and fear of eviction from the lands where they had lived and thrived for generations were perhaps the biggest reasons why tribal communities felt emotionally as well as physically alienated from forests and forest lands. This historical injustice needed correction and, therefore, the Government enacted the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, or Forest Rights Act (FRA). The Act was notified for operation with effect from 31.12.2007 and the Rules for carrying out the provisions of the Act were notified on 1.01.2008.

The Forest Rights Act 2006 represents a major paradigm shift in approach towards recognition of broadly three kinds of forest rights relating to:

- (i) Tenurial security providing relief against the persistent physical and psychological threat of alienation from land to the Scheduled Tribes and Other Traditional Forest Dwellers (OTFDs);
- (ii) Livelihood in terms of the agriculture on 'as is where is basis' and the ownership of MFP including rights to collect, trade and process the same; and
- (iii) Traditional, customary and developmental rights.

FRA provides an institutional mechanism for establishing individual and community rights. It provides a process to establish community/people centric transparent and democratic institutions around a set of 13 rights. The major rights recognized under this Act are the right to hold and live in the forests for habitation or self cultivation for livelihood; right of ownership, access, use or dispose of Minor Forest Produce; rights to community forest resource; community rights of uses or entitlements such as fish and other products of water bodies or grazing etc and any other traditional right customarily enjoyed by the forest dwellers.

The Preamble to FRA outlines the need and intention of the law explicitly. FRA aims "to *recognise and vest the forest rights* and occupation in forest land in forest dwelling Scheduled Tribes and other traditional forest dwellers who have been residing in such forests for generations but whose rights could not be recorded; to provide for a framework for *recording the forest rights so vested* and the nature of evidence required for such recognition and vesting in respect of forest land" (emphasis added). The recognition of forest dwellers at the core of forest ecosystem conservation marks a bold and decisive step towards community forest management. The Act goes on to confer the community of rights-holders with the "responsibility and authority for sustainable use, conservation of biodiversity and maintenance of ecological balance".

The democratic and transparent process of recognition of rights is both for determining the rights of the communities initially and later for forest governance by Gram Sabhas. This is to be facilitated by the sub-divisional and district level committees consisting of the revenue, tribal and forest departments along with the representative of the local self-governing structures of the Panchayats.

Not only does this Act provide tenurial security, it also confers governance powers on the right holders under the Act. The recognition of individual and/or collective rights to land,

and community rights and other traditional customary rights along with the right to protect, regenerate, conserve and manage any community forest resource mark a decisive step forward in resource governance itself. Hailed rightly as a milestone in the history of tribal peoples' and forest dwellers' movements, the Act endeavors to facilitate their political empowerment to govern the forests for sustainable use and conservation. Precisely for these reasons, it becomes important to take firm proactive steps to make the necessary paradigm shift, particularly by the State governments.

2. About the Regional Consultations

2.1 The Rationale

The Act has been in operation for more than four years now with the efforts of various State Governments on implementation of this Act. Since its operationalisation in January, 2008, more than twelve lakh and seventy thousand titles have already been distributed to eligible forest dwellers, following a due process, through a 3-level scrutiny process. Despite this progress made in the last 4 years due to certain bottlenecks, the flow of the intended benefits of this legislation to the forest dwellers had remained constrained. Several operational issues due to some lacunae in the Rules had also come to the notice of the Ministry which were impeding implementation of the Act in letter and spirit. Some of the major concerns regarding implementation of this Act were related to non-recognition of unhindered absolute rights over the minor forest produce (MFP) to forest dwellers; imposition of several restrictions, like, transit permit for transportation of MFPs, levy of fees, charges, royalties on sale of MFPs; exclusion of certain types of MFPs, in contravention of the definition of MFP given in the Act; continuance of monopoly of the State Agencies in the trade of MFP, especially in the case of high value MFP, such as, *tendupatta*; non-recognition of some community rights, such as, *nistar* rights, conversion of all forest villages, old habitations, un-surveyed villages and other villages in forests, whether recorded, notified or not into revenue villages; non-recognition of community forest resource rights relating to protection, regeneration or conservation, or management of any community forest resources under Section 3(1)(i) of the Act etc. In many areas, the tribal people and other forest dwellers were reportedly facing harassment and threats of relocation from forest lands or displacement from the areas proposed for development projects without settlement of their rights or due compliance with safeguards in violation of the provisions of the Act. The claims were being rejected in some States as the officials were insisting on certain types of evidences and the new technology, such as, satellite imagery, was being used as the only form of evidence for consideration of a claim, instead of using the same to supplement the evidences submitted by the claimants in support of their claims. Inadequate public awareness about the provisions of the Act, particularly the provisions relating to the filing of petitions by the persons aggrieved by the decisions of the authorities prescribed under the Act, inadequate training of the implementing officials etc. were also some of the reasons for non-implementation of the Act in its letter and spirit.

In order to address the above concerns and to ensure effective implementation of the Act, the Ministry undertook an exercise to arrive at certain provisions/steps which would facilitate robust implementation of the Act. The Ministry of Tribal Affairs issued

comprehensive guidelines to the States in July 2012 and notified amendment to the FRA Rules in September 2012.

In order to develop further clarity on the interpretation of the Act and to streamline its implementation by the States, the Ministry took up an intensive exercise through organizing Regional Consultations in collaboration with UNDP.

2.2 The Objectives

The Regional Consultations were a part of Joint Action Plan between UNDP and Ministry of Tribal Affairs on FRA. It brought together national and state level functionaries across four key Departments to develop a common understanding on FRA, discuss its scope as well as challenges. The workshops aimed at

- (a) sharing the recent changes made through the guidelines and amended Rules.
- (b) eliciting the views of state governments on these changes from the perspective of various right holders and stakeholders (including key departments) and also orient them with regards to the recent Amendments in the Rules
- (c) collectively identifying a way forward for effective implementation of the Act
- (d) creating an opportunity for district authorities to share their experiences
- (e) creating a platform to generate suggestions on better implementation of FRA
- (f) reviewing progress, especially on the new guidelines issued by the Ministry and bringing clarity on operational issues
- (g) helping states prepare a time bound state-specific and realistic Action Plans for operationalizing this law.
- (h) mutually agreeing on the next steps for effective implementation of FRA for empowerment of tribal and other traditional forest dwelling communities, by providing feedback to states on Action Plans.

Each of these Regional Consultations brought together participants from the States which included Chief Secretary as chairperson of State Level Monitoring Committee, Secretary, Commissioners and Heads of Department from Tribal Welfare Department; representatives from the Forest, Revenue and Panchayati Raj Departments, District Collectors of two well performing districts besides representatives from MoTA and UNDP. Experts on FRA were present to provide clarification and understanding on the Act. Selected representatives from the civil society organizations also participated in these Regional Consultations.

The Consultations provided a unique opportunity for its participants to deal with a gamut of issues around FRA. Among a number of issues that emerged out of these Consultations, the major focus was given to the following

- the background to the Act and the need for such a path-breaking legislation
- clarification of the Act and particularly the amendments to the Rules
- overview of the status of implementation at the national level with critical observations
- overview of the status of and progress in implementation in the
- state specific issues and bottlenecks
- holding Gram Sabha meetings at the village level
- process of recognition of individual and community rights
- conditions applicable for Other Traditional Forest Dwellers
- conversion of forest villages into revenue villages
- rights over Community Forest Resources in the light of active and functional Joint Forest Management Committees and Van Suraksha Samitis
- legitimacy and recognition of land titles
- collection of information of cases under Section 3(1)(b) to (m) separately from Section 3(2)
- restrictions on what is considered as evidence under Rule 13
- effectiveness of State Level Monitoring Committees

3. Issues of Implementation

3.1 Understanding on the Forest Rights Act (FRA)

The Regional Consultations also provided platform to share the status of implementation of the Act and also pointed to the fact that non implementation in some States and uneven implementation in some others were arising out of -

- misunderstandings and misinterpretation regarding the scope of the Act, particularly in relation to other forest laws, both central (such as Indian Forest Act 1927, Wildlife Protection Act 1972 and Forest Conservation Act 1980 which are yet to be amended to be in consonance with FRA) and state laws, and court orders prior to the enactment of FRA
- misunderstandings and misinterpretation of FRA as a welfare legislation to distribute land to the landless and other user rights to the marginalized forest dwellers rather than recognition of existing rights
- misplaced fear that forests are being distributed to all the forest dwellers which would lead to ultimate decimation of forests
- the question of applicability of FRA in the north-eastern states with special Constitutional provisions, particularly in Nagaland and Mizoram; in unclassed and community forests, and in situations where the customary community rights are already recognized under various state laws
- exclusion of non-Scheduled Areas, Protected Areas (National Parks and Wildlife Sanctuaries), from the application of the Act; inadequate training and awareness at all levels, particularly the authorities constituted under FRA
- non-provision of claim forms
- imposition of cut-off dates for filing of claims contrary to the provisions in the law
- inadequate financial and administrative support to implement the law

3.2 Authorities under the Act

The discussion also focused on the various authorities as laid down in the Act and it was noted that there was difficulty in implementation as incorrect constitution and/or functioning of authorities under the Act was result of

- incorrect convening of Gram Sabha at Gram Panchayat level due to the misinterpretation of Gram Sabha with Gram Sabhas under the State Panchayat law
- incorrect constitution of Forest Rights Committees and Sub-Divisional and District Level Committees

- by-passing of Gram Sabha and/or Forest Rights Committees by Sub-Divisional and District Level Committees or their members
- interference in the recognition of rights process.

3.3 Forest Rights under FRA

FRA recognizes around a set of 13 rights, both individual and collective and it was realized that non-recognition, partial recognition or denial of forest rights and violation of forest rights had resulted due to

- relocation from Protected Areas in violation of law
- exclusion of rights to protect, conserve and manage Community Forest Resources areas under Joint Forest Management of the Forest Department being kept out of the purview of FRA
- obstruction of individual and community rights claims in Protected Areas
- ignorance of community rights
- preference to individual rights over community rights
- failure to survey the land where rights are claimed
- non-recognition of the rights of Particularly Vulnerable Tribal Groups, especially habitat rights
- non-conversion of forest/unsurveyed villages into revenue villages
- non-recording of women's names in joint titles
- restriction of rights to ownership of minor forest produce in terms of the area (national parks) and list (leaving out economically valuable produces such as tendu leaves in the name of protecting the collectors from exploitation by traders, and bamboo in the name of sustainable harvesting), prescription to rights limiting to own use only, non-recognition of Gram Sabha as the authority to issue transit permit.

3.4 Eligibility

The Act and the Amended Rules clearly laid down the eligibility for becoming a claimant. It was found that due to misinterpretation of these eligibility criteria, there were rejection at the grass root level on grounds that:

- only Scheduled Tribes (STs) are eligible for rights under the Act
- absence of ST community certificates and difficulty in obtaining them

- insistence on occupation of land for three generation (75 years) prior to the cutoff date of 13 December 2005 for non-ST other traditional forest dwellers
- insistence on residence in forest land to make claims.

3.5 Evidences

It was also found that Rejection of claims took place as only certain types of evidences were being accepted and due to absence or inadequacy of evidence arising from -

- failure of the sub-divisional and district level officials to provide records to Gram Sabha as mandated by law
- insistence on particular types of evidence
- insistence on official documentary evidences over other evidences
- rejection of evidence other than official documentary evidences.

3.6 Reporting, Monitoring and Evaluation

The State governments submit a summary monthly statement on claims received and distribution of title deeds. The use of <http://www.forestrights.gov.in> as a Forest Rights Act Monitoring System is yet to effectively take off pending population of the website. In the absence of any other effective reporting, monitoring and evaluation system, a progressive feedback and rectification mechanism is yet to be in place leading to -

- inadequate monitoring system at the national level
- lack of adequate monitoring by State Level Monitoring Committees
- absence of the function of monitoring and evaluation at the district and sub-divisional level
- non-availability of reliable and disaggregated data
- non-availability of a problem identifying and problem solving mechanism that is accessible to forest dwellers at sub-divisional, district, state and national level

3.7 Creation of Record of Rights for the right holders under FRA

Though the Rules provide for the format for issuance of titles in the case of individual rights, community rights and now for community forest resource rights, the actual process of creation of record of rights and issue of titles have faced problems such as -

- non-communication of decisions with reasons related to modification or rejection of claims approved by the Gram Sabha to the claimants and to the Gram Sabha thereby denying the right to appeal to the aggrieved
- imposition of extra-statutory and extraneous conditions in the title for recognised rights

- lack of clarity on how rights recognized are to be recorded in revenue/ forest records and the status of land after recognition of rights.

3.8 Post-recognition Issues

Recognition of forest rights would become meaningful only if other rights and benefits denied as a result of such non-recognition are also extended due recognition. There is a lack of clarity on these due to -

- lack of awareness on the amendment rules which now provide for post-claim support to the forest rights holders from the various State Government departments;
- absence of specific instructions on extension of government schemes to the right holders; and
- non-availability of credit for the land rights which is not an alienable property.

4. Recommendations from the Regional Consultations

The expert panel during all the Regional Consultations provided clarity and explanations to different provisions of the Act and the major recommendations that emerged were:

- FRA only formalizes the existing arrangements; it does not cause damage to the forest areas
- Gram Sabha at the village/ hamlet or habitations level is the key authority under the law; therefore, empowerment of Gram Sabhas is fundamental for the successful implementation of FRA
- Responsibility for successful implementation of FRA lies with the facilitation of the process by the revenue, forest and tribal departments as well as the panchayats, with the tribal department taking the lead as the nodal agency
- FRA should be dealt in conjunction with Panchayat (Extension to Scheduled Areas) Act 1996 where applicable
- FRA must be implemented with rigour, in letter and in spirit; implementation has to be backed by passion and commitment
- Completion of recognition of rights of occupants of forest land under FRA is mandatory before any relocation from the forests; further all ineligible claimants are not necessarily illegal for they might have rights/privileges under provisions of other laws
- Amongst rights, the primary focus has to be Community Forest Resource (CFR) rights and Community rights; therefore these are to be taken up on a priority basis; every Gram Sabha should have its CFR area demarcated, and its management committee [Rule 4.1(e)] elected and in place (if not, the reason should be placed on record)
- All forest villages should be converted to revenue villages forthwith to ensure that development activities denied due to such non-conversion are overcome
- Where ever community rights are claimed, protection of wild life, forest and biodiversity, and regulation of access to resources falls within the powers of the right holders and the Gram Sabha; exercised through its committee
- States should support strengthening of institutions created under FRA not only to understand and implement FRA, but also post-implementation facilitation of the rights holders.

5. Implementation of Action Plans

States presented their Draft Action Plans at the Regional Consultations. The Action Plans were thoroughly discussed and deliberated. The expert panel and the Ministry further provided inputs and guidance extensively and suggested necessary changes to further develop these Plans. It was suggested that the States could finalize their Action Plans through holding State level meetings with various departments. It was suggested that Plans should be discussed with the respective State Level Monitoring Committee (SLMC) as it required coordination among different departments such as Revenue, Forest, Panchayati Raj besides Tribal welfare department as the nodal agency for implementation of FRA.

Regional Consultations provided a platform where in-depth insight into the ground reality in diverse situation across the country could be obtained. They helped bring conceptual clarity and provided a list of areas that needed to be prioritized. These are:

- Each State is to demarcate exact areas where FRA is to be implemented listing out all such habitations which have a forest interface, whether such habitations are recorded or unrecorded, whether they are in forest land or outside
- Each State is to develop a state-specific strategic action plan for implementation of FRA in the light of amended Rules; different states are at different stages of implementation of FRA, and Action Plans must be designed accordingly also highlighting the post claim processes; a special meeting of State Level Monitoring Committee may be convened for this purpose to finalize the state level plan; this strategic action plan is to be the new phase of the FRA implementation based on this renewed initiative and understanding
- MoTA to prepare a Training Manual on FRA to help State Governments undertake training of State level functionaries
- Similar consultations on FRA to be held at state, district, and block levels
- Good practices to be documented with regard to implementation of FRA and post-implementation process
- A 'Resource Centre' for FRA may be set up in a States where FRA is being implemented well. This could further be developed as a National Centre on FRA;
- Building a network of Panchayat elected representatives, people's organizations, voluntary organizations etc in mobilizing the community for implementation of FRA.

6. The Way Forward

The Regional Consultations held across the country were unique as well as introspective. They also underlined the importance that the Ministry of Tribal Affairs accords to the implementation of FRA as a land mark legislation for forest dwellers, and particularly Scheduled Tribes.

To take forward the issues discussed at the Regional Consultations, a National Meeting on Forest Rights Act is being organized by Ministry of Tribal Affairs on 3rd December, 2012 in New Delhi to be chaired by Hon'ble Minister of Tribal Affairs wherein different States would be required to make presentations on the Final Action Plans prepared by them for implementation of FRA in their States. The status of implementation of FRA in States and UTs would also be discussed and reviewed by the Hon'ble Minister of Tribal Affairs.

With the continued efforts by this Ministry, it is hoped that that the implementation of the Forest Rights Act particularly recognition of community rights and Habitat rights of PTGs will gain momentum in all the States. The State Governments will need to take forward the implementation of the final Action Plans in a mission mode to realize the purpose of this historic Act in letter and spirit at the ground level.
