

GUJARAT

Scheduled Areas
of Eastern Tribal Belt

Promise and Performance of Forest Rights Act: The Tenth Anniversary Report

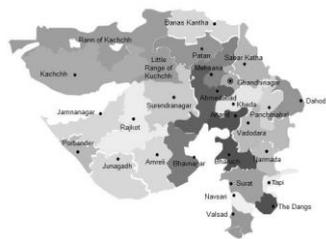
Contributing Organizations and Individuals

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Produced as part of



COMMUNITY FOREST RIGHTS
LEARNING & ADVOCACY PROCESS



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of Eastern Tribal Belt

Promise and Performance of Forest Rights Act:
The Tenth Anniversary Report

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ABBREVIATION

FRA: Forest Rights Act

PESA Act : Panchayats Extention to Scheduled Area Act

ST : Scheduled Tribes

OTFD: Other Traditional Forest Dwellers

CFR: Community Forest Resource Rights

CR: Community Right

IFR: Individual Forest Rights

PA : Protected Area

PVTG : Particularly Vulnerable Tribal Group

NTFP : Non Timber Forest Produce

FRC : Forest Rights Committee

FPIC : Free Prior Informed Consent

SLMC : State Level Monitoring Committee

SDLC : Sub-Divisional Level Committee

DLC : District Level Committee

JFM : Joint Forest Management

LWE : Left Wing Extremism

CFR-LA : Community Forest Rights Learning and Advocacy

FSI : Forest Survey Of India

FD : Forest Department

FCA : Forest Conservation Act

MoTA : Ministry of Tribal Affair

MoEFCC : Ministry of Environment Forest and Climate Change

CAMPA : Compensatory Afforestation Management and Planning Authority

MGNREGA: Mahatma Gandhi National Rural Employment Guarantee Act

IAY : Indira Awas Yojna

CAF : Compensatory Afforestation Fund

VFR : Village Forest Rule

VSS : Vana Samrakshana Samiti

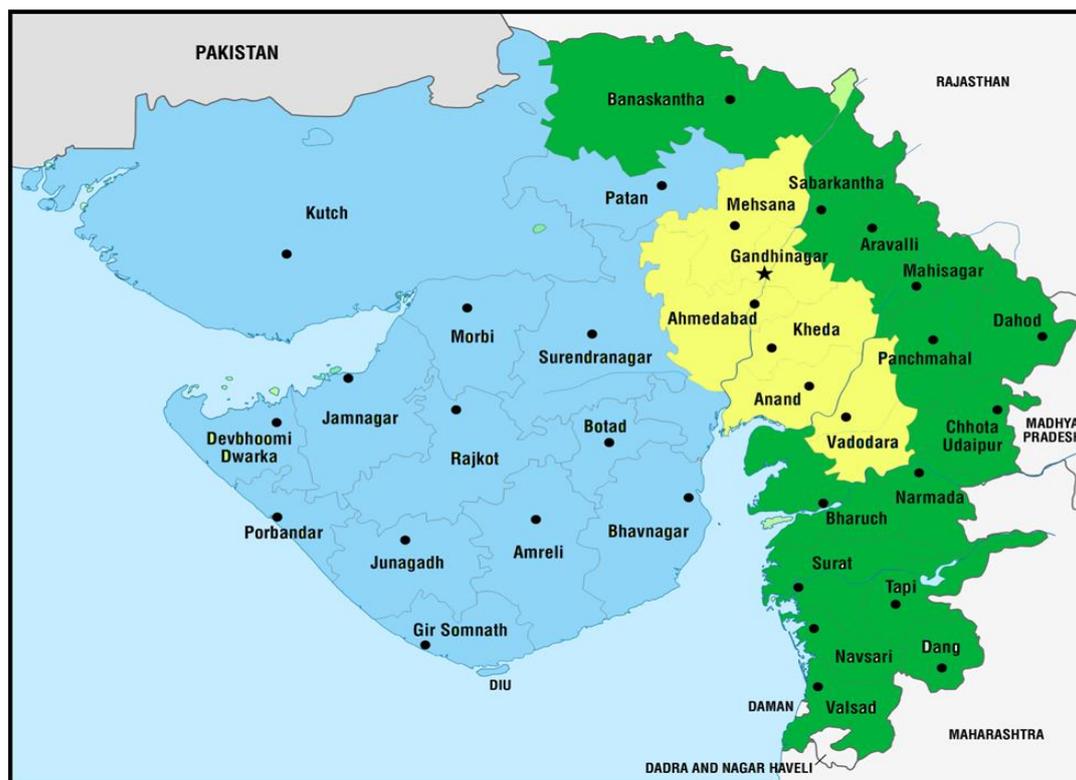
INTRODUCTION

In December, 2006, both the houses of the Indian Parliament unanimously passed the historic Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, known as Forest Rights Act (FRA), in short. Rules under the Act were notified in December 2007, and from 1st January 2008, the Act became effective for implementation in all the states of India excepting Jammu and Kashmir. The Act states in its Preamble that rights of the Scheduled Tribes (STs) and the Other Traditional Forest Dwellers (OTFDs) on their ancestral lands and habitats were not recognised in the consolidation of state forests during colonial rule as well as in Independent India. This resulted in historical injustice to these communities who are integral to the survival and sustainability of the forest ecosystem. Recognising and vesting of these rights is, thus, the primary objective of this Act.

These rights include individual rights over forest lands, the right to hold forest lands under occupation for habitation / self cultivation, community rights over forest resources, the right to own, access, use and dispose of all minor forest produce (including bamboo), and the right to protect, regenerate, or conserve or manage forest resources as community forest resources for sustainable use. This is to facilitate the protection of forests and biodiversity, while ensuring livelihood and food security of the forest dwellers. The Act also establishes a three-tier, quasi-judicial system of authorities and framework of procedures, for determining the nature and extent of the rights. It recognises Gram Sabha as the authority to initiate this process by receiving claims, verifying the same, passing appropriate resolutions and then forwarding them to the Sub-Divisional Level Committee (SDLC) for further action. The SDLC is mandated to examine these resolutions, prepare a record of forest rights, and forward the same to the District Level Committee (DLC) for the final decision.

Geographically, Gujarat is divided in three distinct categories of areas. The first zone is hilly and comprises of tribal districts from Banaskantha in the North up to Valsad in the South. The Scheduled Areas of Gujarat with a significant tribal population also fall within this area. The second zone is on the coast, especially in the western peninsular Gujarat comprising largely of Saurashtra and Kutchh. The third zone is the middle industrial belt which is also known as the golden corridor of Gujarat. As the tribal districts and some parts of coastal areas have forest lands, the FRA is applicable in these two areas. However, unfortunately, in 2008, the Gujarat government decided to implement the Act initially in the tribal belt only. Implementation of the FRA in non-tribal areas was initiated in the year 2013, and is proceeding at a very slow pace. This report covers the FRA implementation only in the districts of the eastern tribal zone.

At present, Gujarat remains in the middle rung with regards to implementation of the Act. In the Scheduled Areas, approval rates of individual rights are on an average 40%; the filing of CFR claims is very low when compared to potential claims. One positive aspect of the process of implementation of FRA in Gujarat is that it is one of the few states where CFR rights in a Sanctuary (the Shoolpaneshwar wildlife sanctuary) have been recognised.



OBJECTIVES OF THE STUDY

This study gives an approximate estimate of the potential forest areas that can be covered under the FRA in Gujarat. The idea is to compare and assess the actual status of the implementation with regards to the potential. This study also provides an overview of the implementation of the Act, together with highlights of both positive and negative aspects of the process and outcomes. It also points towards the necessary future measures and course of action to be undertaken for fair implementation of the Act, both by government as well as by communities and organizations working for implementation of the FRA.

METHODOLOGY

Estimating the Potential

Scheduled Tribes (STs) and Other Traditional Forest Dwellers (OTFDs) have derived their livelihood, cultural and spiritual needs from forests. This usage is not constrained by the administrative categorisation of forests. In Gujarat and Western Maharashtra, which were part of the then Bombay province, all Reserved, Protected or Un-classed Forests are located within the revenue boundaries of villages. These are, thus, accessed and used by STs and OTFDs living within and around these villages. This is unlike states such as Odisha, Chhattisgarh and Madhya Pradesh, which were part of the then British Province of Orissa and Central Province respectively, where reserved forests are situated outside the administrative boundaries of revenue villages.

This means that in Gujarat, the rights of STs and OTFDs can potentially be recognized over all forest areas of the eastern tribal districts under the FRA, especially CR and CFR rights. Villages with large tracts of forests, with little or no people living in or around them would be the only exceptions.

To arrive at an estimate of the actual area that must be brought under the FRA, this study has examined the figures of district-wise recorded forest areas as provided by the Forest Department (FD) and also the forest areas as provided in the 2011 Census. There was a large discrepancy between the two, with census data under-reporting the extent of forest areas. Data from the FD is based on the actual areas covered in the notifications under the Indian Forest Act, (IFA), 1927. This data is more reliable than information from the Census based on irregularly updated land use data reported in village records. Using census data, the study also calculated the population that lives in villages that have forest land within administrative revenue village boundaries. This estimate is an approximation of the number of people whose rights can be recognised under the FRA.

Measuring Performance

The data on rights recognition under the FRA was obtained from official reports of the state government submitted to the Ministry of Tribal Affairs (MoTA). District level information has been obtained from status reports regularly generated by the State FRA cell at Gandhinagar. This information is based on reports submitted regularly by the districts to the State Government. Efforts were made to crosscheck the Government data with other sources of information, including published reports, grey literature and primary sources of information.

Way forward and Recommendations

The recommendations in the study draw from both its findings as well as from discussions with key actors who are involved with the FRA implementation process in Gujarat.

POTENTIAL OF THE FRA IN GUJARAT (SCHEDULED AREAS)

Extent of Forest Area Potentially claimable under FRA

Table 1 provides comparative figures for total geographical area and total forest area in the Scheduled Area districts of the state, as per Forest Department data as well as Census 2011 data.

Thus, according to the Forest Department data, the Scheduled Area districts of the eastern tribal belt of Gujarat have a total forest area of about 10.65 lakh hectares (Ha.), which is 18.19% of the total geographical area of 58.51 lakh Ha of the state. Of this, about 9.07 lakh Ha. (85.27%) comprises of Reserved Forests, 0.24 lakh Ha. (2.29%) is Protected Forests and 1.32 lakh Ha. (12.44%) consists of is Un-classed Forests. But, as per 2011 Census data, these districts have a total forest area of about 8.35 lakh Ha., which is 15.47% of the total geographical area of about 53.97 lakh Ha.

There is, thus, a huge discrepancy between these two data sets, not only in the figures of forest area (2.29 lakh Ha.), but also in the total geographical area (4.54 lakh Ha.). The Forest Department figures are based on Gazette notifications under the Indian Forest Act (IFA), which have details of each survey number in all the villages sought to

Table: 1 Comparative figure for total geographical area and total forest area in the 12 Scheduled Area districts of the State

AREAS IN HECTARES								
Sr. No.	District	Forest Department Data					2011 Census Data	
		Geographic Area of District	Reserved Forest	Protected Forests	Un-classed Forests	Total Recorded Forest Area	Total Geo Area	Total Forest Area
1	Banaskantha	1,075,700	51,974	1,326	57,445	110,745	1,020,701	77,658
2	Sabarkantha	739,000	72,541	122	53,974	126,637	699,165	96,718
3	Dahod	364,600	87,079	369	930	88,378	357,854	81,128
4	Panchmahals	522,000	118,962	460	1,975	121,397	504,840	93,988
5	Vadodara	754,900	69,724	570	3,854	74,148	713,235	59,332
6	Narmada	275,500	108,353	127	6,289	114,769	268,234	79,261
7	Bharuch	652,700	23,338	0	6	23,344	507,684	19,504
8	Surat	441,800	46,174	6	1,485	47,665	367,481	32,870
9	Tapi	323,900	91,268	197	2,558	94,023	300,500	92,678
10	Navsari	220,900	60,627	0	3,233	63,860	214,094	27,061
11	Dangs	176,400	86,417	19,071	358	105,846	171,306	92,086
12	Valsad	303,500	91,529	1,859	322	93,710	271,856	83,077
	Total	5,850,900	907,986	24,107	132,429	1,064,522	5,396,950	835,362

Source: Gujarat Forest Department website for FD data and Census 2011 for Census data

be declared as forest area under it. The Census figures are largely derived from the land use data from the village revenue records, which may or may not be regularly updated. We checked the validity of the Census-based information with village level data in one district – Narmada, for which we have first-hand knowledge as well as access to actual notifications and Working Plans of the FD. We found that the FD data is more accurate than the census data. With regard to total geographical area, we compared these figures with the actual geographical area of these districts, as calculated from the district boundaries. We found that the figures given by the FD are more accurate than that of the census.

Extent of Potential Forest Area Covered under the FRA

In the Fifth Schedule Area districts of the eastern tribal belt of Gujarat, the total forest area is about 10.65 lakh hectares. All of this land falls within village boundaries and are accessed and used by people living in and around the villages. This is also true for areas that fall under National Parks and Sanctuaries. Hence, all these forest areas can and ought to be covered under the FRA. Thus, the Potential Forest Area that can and should be covered under the FRA in the Scheduled Area districts of Gujarat is about 10.65 lakh Ha.

Number of People who would be potentially benefitted by FRA

As per figures of Census 2011, there are 3200 villages with forest areas in the 50 Scheduled Area blocks of these districts. These villages have 875,759 households and a population of 47,51,773. All these people are potential right holders under the FRA, especially of CR and CFR rights. About 75% of this population is that of Scheduled Tribes, while the rest is that of OTFDs.

Estimating the potential number of rights holders having individual rights on forest lands is difficult. But about 183,000 families from these villages have already filed claims for individual rights under the FRA. Most of these claims were filed in 2008, as people were generally aware about this Act and the administration also took proactive measures. There are reports of some families who could not file claims. But their number is not expected to be large. One can safely say that potential claimants for individual rights would be around 190,000 families.

PERFORMANCE OF THE FRA IMPLEMENTATION PROCESS

The FRA became operational from 1st January, 2008. Initially, the Government of Gujarat (GoG) was not very keen on implementing the Act. But then, in February, 2008, the Gujarat police shot at and killed two tribals and seriously injured three, at Antarsuba, in Vijjaynagar Block of Sabarkantha district. An inquiry commission appointed by the GoG held the negative attitude of the FD responsible for this incident. They recommended speedy implementation of the FRA in the state. Thus from March, 2008, the GoG started implementing this Act in the Scheduled Area districts. It took steps like holding Gram Sabha meetings in all the individual villages of Scheduled Areas for formation of Forest Rights Committees (FRCs), printing and distributing Forms A (for Individual claims) and Form B (for community rights claims), forming Sub-Divisional Level committees (SDLCs) and District Level committees (DLCs) and preparing and publishing booklets explaining provisions of the FRA and Rules in Gujarati. The FRCs then started the process of receiving and verifying claims for individual and community forest rights; these placed their findings before the Gram Sabhas in 2009 and then submitted the claims to the SDLCs along with the Gram Sabha resolutions. This created a hope that Gujarat would be in the forefront of implementation of this Act.

PROBLEMS WITH RECOGNITION OF INDIVIDUAL FOREST RIGHTS

Extremely High Rate of Rejection

After a year or so of beginning of the implementation of the Act, the GoG, publicly claimed that only 10 % claims were genuine and all the others were bogus. And, this was done when most of the claim files were still with the FRCs/ GSs. This sent a strong signal to the district authorities that only a few claims were to be approved. Instructions were also issued that only claims with record-based evidences – meaning FD's pre-1980 cultivation lists and fine receipts and lists of persons approved by Forest Settlement Officers in their reports were to be considered, ignoring all other -

evidences listed in Rule 13 of the FRA Rules. By doing this the cut-off date for occupation of forest lands was illegally changed from December, 2005 (as provided by the FRA) to 1980. The scope of acceptable evidences was severely restricted to FD lists or Forest Settlement Officers' Reports. Physical evidences and other proof acceptable under Rule 13 were ignored.

Thus, by the end of April, 2010, only about 17,000 claims (9%) from a total of 182,000 claims were approved by the SDLCs and DLCs. There were widespread protests against this, to which the state government's response was that this was just the first round, when undisputed claims were cleared. Other evidences would be considered in the next round. Thereafter, in December 2010, the state government decided to use satellite images for disposal of pending claims. Bhaskaracharya Institute of Space Applications and Geoinformatics (BISAG), a premiere GoG agency, was asked to acquire satellite images of 2005 and 2008 from National Remote Sensing Agency (NRSA) and to prepare maps with village boundaries, showing forest areas under cultivation. From April 2011, these maps were given to the District authorities for deciding claims. The whole process was carried out in a great hurry without taking due care. By June 2011, additional 19,000 claims were approved and about 113,000 claims were rejected.

According to the GoG, these claims were rejected because they were not supported by evidences as required by Rule 13 of the FRA and by satellite images of 2005. Contrary to the claims of the GoG, most of the claims had provided the necessary two evidences acceptable under Rule 13 and were supported by satellite images, if scientifically used. Most of the SDLCs sent the claim files to the FD for its opinion, and then recognised only those claims that were recommended by the latter. The SDLCs had recognised only those areas recommended by the FD, which was generally much less than that claimed by the claimants. This pattern was observed in all the Scheduled Area districts.

Positive Role of FRCs / Gram Sabhas

In contrast to the government's role, the Gram Sabhas and the FRCs, by and large, carried out their tasks, entrusted in the Act and Rules, in a responsible and fair manner. The FRCs distributed claim forms to the claimants and helped them in filling them and getting eligible evidence. They carried out the field verification of each and every claimed plot after giving notice to the departments of forest and revenue to be present. They prepared Rojkam (a description of the whole process of preparing Panchnama), Panchnama (description of the field during field verification observed and duly signed by independent observers, i.e. Panchs) etc. They also verified statements given by village elders and other witnesses and arrived at the finding as to whether it was approvable or not. They then presented these findings to the Gram Sabha, who after considering these passed appropriate resolutions and forwarded the same together with original claim files to the SDLC for further action. This was the procedure adopted by most of the FRCs. When their claims were rejected, they immediately filed appeals. In the case of approved claims with less area FRCs also filed review applications before the DLCs.

Gujarat High Court Judgment of 2013

Because of the wide-spread rejection of claims, a writ petition (ARCH V/s. Gujarat Government - WP No. 100/2011) was filed in August 2011. The High Court accepted the petitioners' arguments and documents. In its judgment of 3/5/2013, it gave stringent directions to the GoG to reconsider and review all rejected claims. It directed the State Government to approve or reject on the basis of all evidences attached by the claimants and acceptable under Rule 13. It instructed the GoG not to insist on any particular type of evidences and to carry out this task in a time bound manner. The administration is not following the latter direction and is implementing the former partially.

By June 2011(at the time of filing the petition in the High Court of Gujarat), total 36,860 IFR claims were approved, which were 20% of the total 182,869 claims. By June 2016, this number of approved claims had reached 80,540, which is 44% of the total claims filed, while, 102,329 (56%) claims are still pending. Table 2 gives district-wise comparative figures of claim approval status in April, 2010, June 2011 and June 2016.

After the High Court Judgment: Use of GPS & Satellite Images

From 9% in April 2010 and 20% in June, 2011 the approval rate has risen to 44% in June 2016. Yet, looking at the evidence attached with the claims in almost all the districts, this is still not adequate. The fact that more than 100,000 claims are still pending, with the SDLCs and DLCs not taking any decisions regarding them, is certainly not satisfactory. Another wide-spread problem is that of the area approved, which is abysmally low compared to the claims.

The GoG has started surveying lands over which rights have been recognized and issuing final titles. But only the areas approved by the DLCs are being considered during this survey and not the actual area under the claimants' occupation. There is widespread resentment against this. Many claimants, especially in the Narmada district, are not

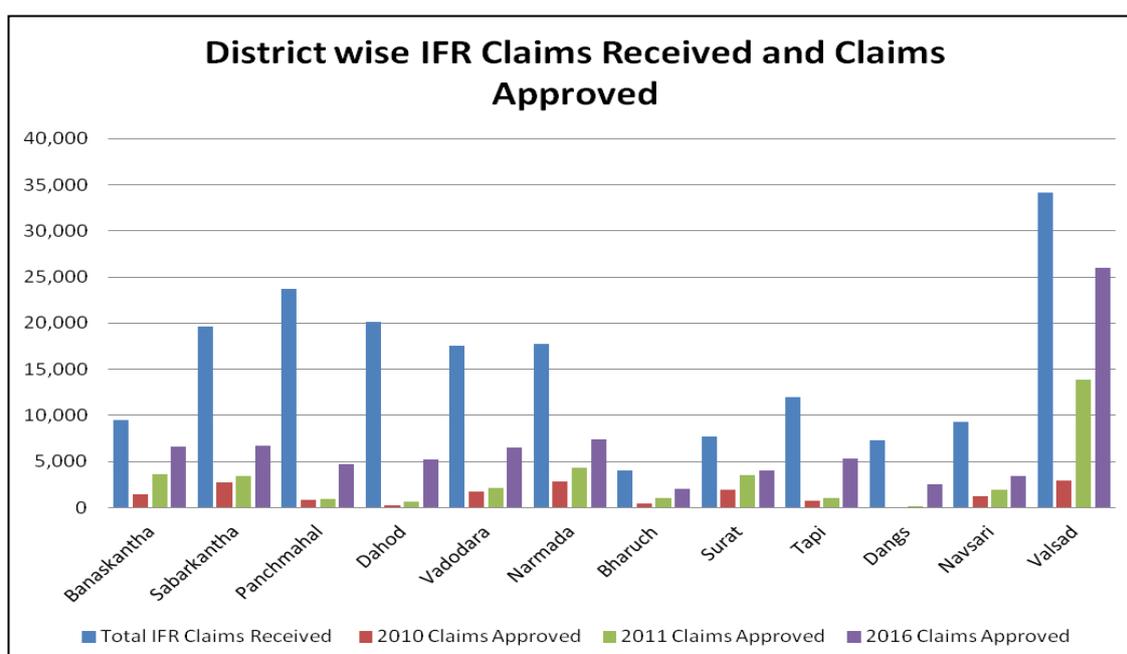


Table 2: District wise Approval of IFR Claims by April 2010, June 2011 and June 2016

Sr. No	Name of District	No. of Villages	Total IFR Claims Received	April, 2010		June, 2011		June, 2016		
				Claims Approved	% Approved	Claims Approved	% Approved	Claims Approved	% Approved	Area Approved Ha.
1	Banaskantha	188	9488	1,422	15%	3,665	39%	6,584	69%	3,526
2	Sabarkantha	409	19625	2,726	14%	3,425	17%	6,679	34%	3,730
3	Panchmahal	568	23666	845	4%	972	4%	4,771	20%	2,074
4	Dahod	426	20150	271	1%	692	3%	5,185	26%	4,489
5	Vadodara	337	17557	1,741	10%	2,116	12%	6,545	37%	4,528
6	Narmada	250	17783	2,862	16%	4,310	24%	7,363	41%	6,148
7	Bharuch	83	4076	432	11%	1,062	26%	2,034	50%	1,994
8	Surat	133	7747	1,909	25%	3,492	45%	4,070	53%	2,619
9	Tapi	83	11947	702	6%	1,053	9%	5,286	44%	5,220
10	Dangs	209	7341	77	1%	197	3%	2,584	35%	1,409
11	Navsari	267	9322	1,197	13%	1,979	21%	3,447	37%	2,699
12	Valsad	246	34167	2,963	9%	13,897	41%	25,992	76%	8,012
	Total	3199	182869	17,147	9%	36,860	20%	80,540	44%	46,448

Source: Commissioner, Tribal Development Office, Gandhinagar

in favour of the survey going ahead. To counter this, FRCs, with help of CSOs/ NGOs, have started doing GPS surveys of the claimed lands, getting them superimposed on 2005 NRSA and Google satellite images. They are getting maps prepared for each claimed plot. Around 30,000 plots in almost all the Scheduled Area districts have been surveyed and overlaid on satellite images in such voluntary surveys by the FRCs. This process has given them confidence. It is also a tool in their hands to objectively counter the government's claims.

Non Recognition of the Rights of Other Traditional Forest-Dwellers (OTFD)

As the Act was implemented in the tribal districts first, the OTFD population of these districts was covered; but they have not been treated in a fair manner. Even though most of the claimants have submitted revenue records (of their private lands) of as early as 1930s, most of their claims were rejected on wrong and flimsy grounds or without any reasons at all, before the HC judgment of 2013. Even after the judgment, most of their claims have not been approved till date.

THE PERFORMANCE OF COMMUNITY FOREST RESOURCE (CFR) RIGHTS

When the GoG started implementing the FRA, it simultaneously printed Form B (for Community rights) and Form A (for individual rights). In most of the villages where there was awareness of CFR rights, mainly because of NGOs/ CSOs/ Grassroots organisations, FRCs prepared claims for CFRs and submitted them almost simultaneously with Form A in 2008-09. The anomaly in form B of non-mention of claim for CFR rights under section 3 (1)(i) (right to protect, sustainably use and manage community forest resources) was sought to be rectified by getting approval from the Secretary, Tribal Department. The FRCs also inserted the claim under sec. 3(1)(i) in the form and completed all the requirements and submitted forms for all these rights.

Initially, for a long period, district authorities did not take any decisions regarding these claims for Community Forest Rights (CR) and Community Forest Resource Rights (CFR). After the High Court Judgment, however, the GoG have taken actions for recognising CR and CFR rights. The FD has not opposed this process. Even then, there seem to be many discrepancies between the number of claims and the area recognised as CFR area, as described in the following subsection.

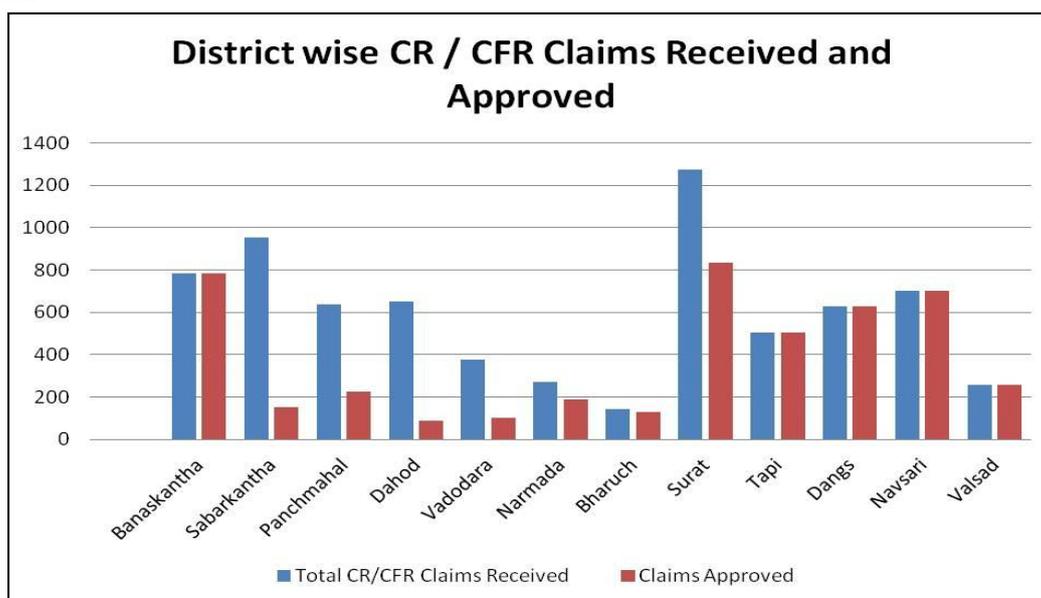


Table 3: Approval of CR / CFR Claims by April 2010, June 2011 and June 2016.

Sr. No.	Name of District	No. of Villages	CR / CFR Claims Received by SDLs	April, 2010		June, 2011		June, 2016		
				Claims Approved	% Approved	Claims Approved	Claims Approved	% Approved	Claims Approved	% of Claims Approved
1	Banaskantha	188	784	43	5%	187	24%	784	100%	53,936
2	Sabarkantha	409	953	50	5%	91	10%	153	16%	32,930
3	Panchmahal	568	639	0	0%	0	0%	227	36%	50,150
4	Dahod	426	651	0	0%	0	0%	89	14%	6,278
5	Vadodara	337	377	3	1%	3	1%	103	27%	24,950
6	Narmada	250	273	0	0%	0	0%	190	70%	64,476
7	Bharuch	83	141	0	0%	0	0%	131	93%	5,547
8	Surat	133	1275	55	4%	119	9%	833	65%	19,060
9	Tapi	83	506	0	0%	210	42%	506	100%	49,682
10	Dangs	209	626	10	2%	626	100%	626	100%	20,378
11	Navsari	267	700	107	15%	107	15%	700	100%	30,737
12	Valsad	246	257	0	0%	0	0%	257	100%	74,509
	Total	3,199	7182	268	3%	1,343	15%	4,599	64%	432,633

Source: Commissioner, Tribal Development Office, Gandhinagar.

Discrepancies in the number of claims and the area recognised as CFR area

- CFR Rights have been recognised only in the districts of Narmada, Tapi, Bharuch, Vadodra and Dangs (partially). In all other districts, only CR rights have been approved and those too only partially (see below).
- In many districts, like Banaskantha, Surat, Tapi, Vadodara and Dangs, all different types of community rights claimed by Gram Sabhas were shown as different rights and so the figures of claims received/approved are overstated, which were later corrected in Narmada district.
- In many districts, the area approved remains the same, even though the claims approved have increased. So, there seems to be a clear mistake in reporting.

/// POSITIVE HIGHLIGHTS: //

CRs and CFR Rights Recognized in Protected Areas

There are, however, some positive developments with regards to approval of CFR and CR rights in Gujarat. Many GSs/FRCs had submitted claims for Community Forest Rights (CRs) as well as Community Forest Resource (CFRs) rights in 2008-09. In many districts such as Narmada, Tapi, Bharuch, the Dangs, and Vadodara, not only CR, but CFR rights have also been recognized. Moreover, in Narmada district, they have also been recognised in villages within the Shoolpaneshwar Wildlife Sanctuary area. Many of these villages in this Sanctuary have already formed Community Forest Resource Management Committees (CFRMCs) and have started protecting their forests from fire and illicit cutting. They are also in the process of preparing rules and forest management plans for them.

Ownership rights over Minor Forest Produce (MFP)

Many GSs have started exercising their rights on MFPs (especially on harvested dry and mature bamboo), and have earned lakhs of rupees after selling them to paper mills. This could happen in in Shoolpaneshwar Sanctuary villages also. During the period 2014-2016, tribal families of 30 villages earned around 11 crore rupees as labor. GSs of these villages earned around seven crore rupees as income. They deposited the amount in their bank accounts and spent a portion of this amount on land and forest improvement. But, the problem of transit permits persists. The authority for issuing these permits remains with the FD. This is contrary to the provisions of the FRA Rules empowering the gram sabhas to issue their own permits.

/// PROBLEMS //

Low Rate of Submission of CR /CFR Claims, Lower Rate of Recognition, and Misreporting by the Government

Although approval of 64% of claims for CR/CFR rights seems impressive, when we compare their area of 4,32,633 hectares with the potential area of 10,65,000 hectares in 3200 villages, it is clear that there is still a long way to go as rights have been recognized over 40.6% of the potential area. There are two major problems with implementation of the FRA with regards to CFR / CR rights. The first is the very low rate of submission of claims

by the Gram Sabhas for community rights in general and CFR rights in particular. In many districts, where the GSs/ FRCs were not aware of CFR rights under sec. 3(1)(i), the SDLCs/DLCs did not initiate any action or awareness drive to make FRCs/GSs fill up the relevant Form B formerly (and Form C subsequently), despite the amended 2012 FRA Rules mandating that the DLCs recognize CFR rights of all villages with eligible forest dwellers.

Another problem pertains to reporting by government authorities. Initially there was no awareness among the SDLC/DLC officers about differences between community rights under section 3(1) and diversion of forest land for infrastructure development (to be claimed by government agencies) under section 3(2) of the Act. In many districts, where the Gram Sabhas /communities were not aware and had not submitted forms for Community rights, the officers considered only section 3(2) proposals as community rights claims and reported accordingly. Where they got CFR claims under Section 3(1) from Gram Sabhas, they mixed the two up and reported both as community rights.

Problems with Community Rights Titles

Another major problem is non-recognition of all community rights by authorities. In many districts like Sabarkantha, Banaskantha, Dahod, Panchmahal, and Valsad, only grazing rights and rights on fuel wood have been recognised. Rights over Minor Forest Produces have not been recognized. In some districts, like Vadodara, Dangs, and Bharuch, CFR rights under 3(1)(i) are stated as rights for JFM (Joint Forest Management) which does not recognize any rights, instead of CFR rights. In some districts like Sabarkantha and Panchmahal, the titles are recognized in the name of the Sarpanch (elected head) of the Gram panchayat. In Bharuch and some tehsils of Panchmahal, titles have been issued in the name of the President of the FRC. In districts such as Narmada and Tapi, both CR and CFR rights are properly recognized in the names of Gram Sabhas of individual villages, including hamlets (as per PESA).

THE FRA AND WOMEN

The FRA is an empowering law for women. In all the districts of Gujarat, as far as individual land rights are concerned, provision of the FRA to recognise individual titles in the names of both the spouses have been complied with. Even though the lists in some districts only mention men's or the first applicants' names, the final titles are issued in the names of both the spouses. However, there are genuine concerns whether widows or single women have been able to fill and submit forms with adequate evidence and documents to the GSs, and whether all such forms have been approved and forwarded by the GSs to the SDLCs.

General awareness regarding the importance and implications of CR and CFR rights is very low among women as well as men. The FRCs and the subsequently formed CFRMCs have the required number of women as members. But most of the women, except in a few pockets, are not active in the process. Awareness of the FRA implementation process amongst women has increased, even though to a lesser degree compared to men. The FRA has had an impact on women's awareness and economic power as well, as they are the main collectors of MFPs, on which the Gram Sabhas have full ownership and authority now.

Conversion of Forest Villages into Revenue Villages

Forest villages (FV) should have been converted into revenue villages (RV) long time back based on the MoEF's 1990 order. Even though the FRA and the subsequent circular by Ministry of Tribal Affairs (MoTA) provide clear guidelines for doing this, the GoG did not undertake actions to comply with these provisions. The Government Resolution (GR) by GoG giving directions to convert 196 recorded FVs into RVs does not follow the guidelines by MoTA. It directed that villages with more than 75 original land-holders should be declared as separate revenue villages and those with less than 75 should be merged with nearby revenue villages. This does not take cognisance of the ground level reality that even villages with less than 75 original land-holders are big villages today with large populations. The number of IFR claimants/title holders in them under the FRA is far greater than 75, and they deserve to be declared as separate revenue villages. Many such GSs have petitioned against this provision of the GR and the matter is yet to be resolved.

Particularly Vulnerable Tribal Groups and their Rights

Kathodi, Kotwalia, Padhars, Siddis and Kolghas are the Particularly Vulnerable Tribal Groups(PVTGs) in Gujarat. They are spread over the eight districts of Surat, Tapi, Valsad, Navsari, Dangs, Bharuch, Narmada and Sabarkantha covered under the Tribal Area Sub-Plan. Adequate steps have not been taken by the GoG to ensure that the habitat rights of these particularly vulnerable tribal groups are recognised under the FRA.

RECOMMENDATIONS

From the above discussion, a few pertinent issues needing urgent attention emerge.

Individual Rights:

- The approval rate is low and the quality of examination of claims by the SDLCs/ DLCs is dismal. These committees do not look into the evidence attached with the claims and only depend on the FD's opinion/recommendation for approval and for determining the area to be approved. Almost all the claims of OTFDs have been rejected on inadequate grounds. In almost all the districts, SDLC/DLC meetings have not been held in the last two years. There is a palpable perception at the SLMC level as well as at the levels of SDLCs and DLCs that all approvable claims have been recognised; because of the apprehension of the ire of the High Court, no claims are to be rejected and should be kept pending. SDLCs/ DLCs should approve each and every eligible claim based on evidence.
- There should be a special effort on the part of the administration as well as CSOs/NGOs to ensure that all widows, single women, disabled persons and PVTG families submit their claims with proper evidence and get their claims recognised as soon as possible.
- GSs/FRCs, with the help of CSOs/NGOs, have been preparing maps of their plots (both for pending claims as well as for those partially rejected) based on pre-2005 satellite images with GPS data overlaid on them. This process needs active support by the government.

- After getting titles, the rights holders under the FRA should be immediately brought under various schemes for land improvement and irrigation (such as those related to wells, bore-wells, solar pumps, and check dams).

Community Rights and Community Forest Resource Rights:

- There is an urgent need to start an awareness drive both by government authorities and CSOs/NGOs and grassroots-level organisations to explain to people residing in or near forest areas the need to file claims for community forest rights.
- The GoG needs to direct the SDLCs/DLCs to approve both types of rights, Community Rights (such as rights over MFPs, grazing and water bodies) as well as Community Forests Resource Rights under sec. 3(1)(i).
- As per the FRA and the Rules framed under it, the GSs have the full ownership of the MFPs, including bamboo. The Rules state that the procedural requirement of transit permits shall in no way restrict or abridge the right of disposal of MFPs; Gram Sabhas can issue transit permits themselves. The state government should direct the FD to immediately stop issuing transit permits and empower the Gram Sabhas willing to handle the disposal of MFPs of their forest areas to issue transit permits.
- After getting CR and CFR titles, the communities/GSs have to protect, regenerate and manage their forests. If required and desired by them, they should be assisted either by NGOs/CSOs and/or the concerned government departments.
- The GoG should modify the Government Resolution regarding conversion of Forest Villages into Revenue Villages in line with the relevant guidelines of the MoTA.
- The FRA is the best instrument to help overcome poverty and to provide food security. If the process of implementation of the Act recognised all the relevant individual and community claims and entitlements of people, then they will no longer be dependent on alms or charity of the government. They will have rights on crucial natural resources like land, forest and water. Well-researched studies on the impact of FRA on poverty alleviation, food security, forest growth and climate change should be undertaken.

ABOUT CFR-LA

The Community Forest Rights-Learning and Advocacy Process was initiated in 2011 to facilitate the exchange of information and experiences and to reinforce national level efforts for evidence-based advocacy on Community Forest Rights (CFRs), as provided by the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (FRA).



COMMUNITY FOREST RIGHTS
LEARNING & ADVOCACY PROCESS

A website
(<http://fra.org.in>)
and a list serve based discussion group
(<https://groups.google.com/forum/#!forum/CFR-la>)
have been created as part of CFR-LA

To know more please log on to
www.cfrla.org.in