

Note for the Tribal Minister for discussion on 16th August

Based on the discussion with the Minister of Tribal Affairs in March 2019, the need to provide evidence of violations and tardy implementation of FRA on the ground was felt. Accordingly reports of violations from a few States were presented to the Tribal Minister. It was however felt that a ground level study in the States where AIFF-RS was present would help give a comprehensive picture to the Minister so that a comprehensive strategy to tackle it could be found. Indian School of Business agreed to support such an initiative and accordingly a study covering 14 States including those where AIFF-RS members are already working was undertaken. The findings of the study report and reports of AIFF-RS members were then converted into a series of five policy briefs covering different aspects of the issues facing forest dwellers and forest dependent communities.

Violations related to the filing of claims

Commemorating ten years of FRA, CFR-LA came out with a promise and performance report that pointed out even after ten years, Community Forest Rights claims amounted to only three percent of the potential area that could be claimed. This figure hid something more, namely even where these claims had been approved, there were restrictions on the kind of benefits people could enjoy. Lack of a clear perspective on what constitutes correction of historical injustice and related to this a lack of clear perspective on processes to be followed to ensure they are largely responsible for this state of affairs

a. In West Bengal for instance, rights have been denied in the Sundarbans on the grounds that forests are not part of the village and hence do not come under the jurisdiction of the gram sabha. The fishing community and honey collectors who have rights are trying to assert them but due to lack of perspective on the appropriate forum to take these rights up as granting this right to the gram sabha would give rights to a majority who do not depend on the forest. The study report and policy brief on the Sundarbans highlights the issues facing the fishermen as a result of not being able to get the due rights over the forest. Suggestions on how these can be taken forward are given in both the report and the brief.

b. In Rajasthan, despite the Ministry of Tribal affairs issuing instructions that rights in PAs and Sanctuaries need to be recognised, the minutes of nine State Level Committee meetings indicate that the Government of Rajasthan was still asking for clarifications from the centre. It was only after a report highlighting this issue was publicised and the State Government taken to task for human rights violations of tribals that the process of recognising rights in sanctuaries was initiated.

c. In Himachal, the State government kept denying the need to recognise FRA claims on the grounds that the rights had already been settled. It was only the persistent efforts of some groups in Himachal that finally got the process moving.

d. The process of relocation of people from protected areas does not follow the due process of law. This has been highlighted sharply in the case study on Sariska in Rajasthan and in the policy brief on PAs and Sanctuaries as well.

In other States too there are reports of lack of movement in the filing of claims due to this lack of perspective, it can be seen that only where there have been persistent efforts from civil society organisations that some movement has taken place.

Violations related to delays in processing claims

The major violation here relates to the delay in the due process of the forest department recognising the claims and the nature of objections raised by them resulting in rejection of claims.

a. The major issue relates to the concern raised by the forest department related to violation of the Indian Forest Act 1927 and Forest Conservation Act 1980. Despite the fact that FRA states that this act supersedes other Acts, an attempt is made to point that claimants under the Forest Rights Acts are offenders under Indian Forest Act 1927 and Forest Conservation Act 1980 leading to harassment of forest dwellers and forest dependent communities. The case study on Jharkhand in particular has documented this very systematically and evidence can be given as to how genuine rights claimants are harassed. Other states too have similar stories which have been documented in the report. The policy brief on PAs and Sanctuaries give a summary of some of the violations taking place on the basis of study of 30 PAs and Sanctuaries.

b. The other issue is stalling the process of processing claims or rejecting claims on the basis of the fact that they relate to PAs and Sanctuaries despite the guidelines of the Ministry of tribal affairs related to the same. It was only recently that a Community Forest Rights claim has been recognised in Udanti Tiger Reserve in Dhamtari District of Chhatisgarh. This claim is noteworthy for it being in line with the provisions of FRA and provides a way forward to recognition of claims in other TRs as well.

Violations related to post CFR recognition

As pointed out above, many of the CFR claims recognised put restrictions on the usage of the forest in violations of the provisions of the Act. Many of them also do not recognise the traditional boundary of the gram sabha which is a serious flaw. In addition to this there have been attempts to undermine the functioning of the Forest Rights protection committees by bypassing their jurisdiction over the forest. The case studies provide evidence from all the States where CFR claims have been recognised. The need to recognise the harvesting of timber for livelihood purposes as a valid forest right has been highlighted in the case study of Palghar in Maharashtra. How this can be done without violating principles of conservation have also been spelt out in one of the briefs.

Way Forward

The series of policy briefs highlight how these issues can be addressed and while doing so advocates the creation of a federation of users that can take up the common issues facing forest dwellers and forest dependent communities. The briefs also advocate for the primacy of Community forest rights as a way of addressing multiple issues and concerns related to the process of filing of claims. This process is being taken up in a systematic way in Chhota

Udepur Gujarat. One brief also deal with the complexities faced by forest dwellers and forest dependent communities in the case where they do not strictly come under the provision of the Act. The case studies of the Pardhis in Chhatisgarh and the internally displaced persons from Chhatisgarh residing in the forests of Andhra and Telangana have been highlighted in the brief. The brief advocates for an approach similar to that spelt out for CFR to be able to meaningfully deal with the issues they face. The issue of Critical Wildlife Habitats and the guidelines of the Ministry of Environment and Forests need to clearly spell out the process that will be followed on the ground especially by the MoTA and Tribal Development Departments and nomination of people working with Adivasis and FRA on these committees.