

An investigation into reasons for rejection of cases under the Forest Rights Act, 2006

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2010

Introduction :

The Schedule Tribes and other traditional Forest dwellers (recognition of forest rights) Act, 2006 was published in the Government Gazette dated 2nd January, 2007. The rules under the act were notified by the Government on 1st January, 2008. The Act is in force since that day.

At the Gujarat State level, the process for the implementation of the Act has been started since 20-2-2008. The Tribal Development Department, in capacity of the nodal agency for implementation of the Act, has undertaken the main responsibility of implementation of the Act according to the guidelines provided under the provisions of the Act since then. From 43 talukas of 12 tribal districts, totally 1,90,000 claims have been received for holding of land in forest area for housing purpose or for earning of livelihood through individual farming on forest land or for community holding from the forest dwelling schedule tribe members or from traditional forest dwellers, according to the provisions contained in the Act or in the rules made thereunder. All these applications for claim on forest land are required to be processed as per provisions of the Act and may be accepted or rejected. Initially, the claim applications are placed before the Gram Sabha by the Forest Right Committees which is functioning at the village level. The Gram Sabhas forward such applications, to the Taluka level committee at the Sub-divisional level after passing appropriate resolution in the Gram Sabha meeting. The Sub-divisional Committee thoroughly reviews such applications and then forwards the recommended claim cases to the District level Committee. Thus the rejection or acceptance of the claim applications are according to the provisions of the Act. In this process, many claim applications are rejected also. The principal Secretary, Tribal Development Department Shri A.M. Tiwari, IAS had entrusted the responsibility of investigating into the causes of refusal or rejection of such applications, through a sample survey process to the Tribal Research and Training Institute, Ahmedabad. The present report is a part of fulfillment of such responsibility by the Institute.

It is clarified at the outset that this is only a sample survey, for which 5 to 7 villages and 5 percent of samples of rejected applications have been selected on random basis from some of the talukas; and the causes of rejected cases have been collected from such selected applications.

Details about Sample Districts, Taluka and Villages :

Districts	Talukas	Villages
Sabarkantha	Meghraj	(1) Rola (2) Zarda (3) Moti Paduli (4) Juni Vank (5) Navagam
Dahod	Zalod	(1) Dantiya (2) Raliati (3) Bhura (4) Pethapur (5) Chakaliya (5) Moti Handi
Panchmahal	Lunawada	(1) Madhwas (2) Libodara (3) Karan Bariya Muwada (4) Navagam (5) Kantar
Narmada	Dediyapada	(1) Gangapur, Peta Para Kanbipitha (2) Mediya sag (3) Golwan (4) Kakarpada (5) Dabka (6) Shisha (7) Devmogra
Surat	Umarpada	(1) Sulkhadka (2) Vadpado Zarawadi (4) Chakra (4) Haripura (5) Sampura
Tapi	Vyara	(1) Pipalwada (2) Haripura (3) Ambapani (4) Dholka (5) Kowada (6) Katkui

Thus for the purpose of our study, 36 sample villages were indentified. In the villages, there were both accepted and rejected claim applications. We identified 5 of these rejected applications from each village through random sampling method. Thus totally 180 rejected claim applications had been identified. The basic causes of rejection of these applications have been studied. In Rule No. 13, there is a provision to submit the evidences for forest right. We have emphaised on these applications which have been rejected on the ground of lack of adequate evidence for establishing forest rights. The intention of the Act was to establish the forest right in favour of those people who lived in forest but who were not registered on forest record having been dwelling on forest land. The Act intended to provide such schedule tribe people and other traditional forest dwellers with their rights on forest land. But many a times, the people in greed to establish their forest rights have gone to the extent of creating false fake evidences to gain the benefit from the provisions of the Act, and claim on forest Ind. The

Act is so liberal that out of several such evidences, only two evidences will suffice to prove the claim. It was easy to collect two evidences; one of which will be only a statement from an elderly person and another would be any written document. In fact, the demands for claim on forest land for agriculture purpose did continue since 1980. There was some amendment in the original Act, in the year 1992. Thus, there were pending cases before 1980. Then came those cases under amended act of 1992; and thereafter came the Forest Rights Act of 2006; which also motivated many persons to submit claim applications for forest land. The Act also provided that a person, above the age of 18, being a major person, can also file a claim application as a separate family holder. Thus, the number of applications for rights on forest land went on increasing. To add fuel to the fire, the Gram Sabhas also extended the time limit for submission of claims through separate resolutions. These are the reasons why there is constant increase in the number of claim applications, giving rise to the administrative process.

The Act provides that the forest rights can be assigned to those having the possession of forest land before 13-12-2005 and till 31-12-2007, or to those who have been dwelling on forest land by constructing a house over there. Such forest rights were to be assigned after verifying the evidences and after making a physical verification on the place. In order to ensure that there is no injustice to those who are genuinely entitled to get forest rights and also to see that those who are not entitled to get such rights according to the provisions of the Act are not misusing the provisions of the Act, there is a provision to submit the written evidences. One of such evidences could be on the basis of the collective maps of superimposed satellite imageries on the combined maps of villages of Revenue and Forest Departments, which have been taken by a satellite device by Bhaskaracharya Institute of Space Application and Geo-Informatics (BIOSAG), Gandhinagar during November-December, 2005 and November - December, 2007. In these composite maps, where there is an agricultural activity (tilling of land) in both these periods (2005 and 2007) and out of these two, in which of the case, the forest land under tilling is least is to be mapped and then it could be tallied with the longitude and latitude of the land under tilling with maps and/or compact disc (CD) and such an evidence is accepted for the purpose of the Act.

Considering these norms vis-a-vis the evidences placed in the claim applications, the reasons for refusal/rejection of the claim applications could be seen very obviously :

Reasons for rejection of claims under FRA, 2006 in Meghraj Taluka of Sabarkantha District :

- (1) The tribe-certificate not enclosed or evidence of last 75 years' dwelling not submitted;
- (2) Claimant is a Government Servant;
- (3) The evidence based on record not submitted;
- (4) The evidence regarding land-tilling is not produced;
- (5) The original receipt of fine not enclosed or the receipt is doubtful;
- (6) The holding is not continuous (and the land under claim has forest plantation);
- (7) If two members of the same family have submitted application (one is sure to be rejected);
- (8) The satalite imagery doesnot indicate tilling of land;

Reasons for rejection of claims under FRA, 2006 in Zalod Taluka of Dahod district :

- (1) Incomplete application;
- (2) Recommendation of Forest Department regarding land tilling is absent;
- (3) The statement of elderly person not enclosed;
- (4) The resolution of Gram Sabha not enclosed;
- (5) Incomplete information regarding tilling of land;
- (6) There is no signature/thumb impression of the claimant (such applications are rejected as a doubtful case);
- (7) The opinion of Forest Right Cimmittee is not enclosed or the area is not properly indicated;
- (8) Tribe-Certificate not enclosed;

The reasons for rejection of claims under FRA, 2006 in Lunawada Taluka of Panchmahal Dist. :

There were more number of applications from traditional forest dwellers as compared to the S.T. persons. The claim applications were rejected for lack of evidence of continuous living in forest areas.

Reasons for rejection of claims under F.R.A. 2006 in Dediapada Talukas of Narmada District :

- (1) The application was in the name of the wife; whereas all the evidences etc. were in the name of the husband;
- (2) The application contained submission regarding agricultural activity before 1980; but the land is not hold by the applicant presently;
- (3) The application doesnot contain the details about heirs and their names. The application is incomplete;
- (4) The forest department in capacity of the respondent indicated the land in question to be reserved forest area;
- (5) The receipt of fine and the application contain different names. (Name donot talley);
- (6) There are different receipts of fine; but the holding is not continuous;
- (7) The enclosures as shown in the application form are actually not enclosed;
- (8) The tribe certificate has photographs of two different individuals;
- (9) The replies given in Government correspondence are shown as evidence in the claim application;
- (10) The claimants are shown as aged 70 and 68. The enclosed ration card shows 8 dependents; but in the application, the no.of dependents column is blank;
- (11) The witness page is blank-without details and without signatures or thumb impression;
- (12) No evidences shown about land holding;
- (13) The application indicates demand for land being in possession before 1980; but there is also a reply from Dy. Conservator of Forest that there is no evidence about tilling of land and therefore nothing was required to be done by their office;

- (14) The respondents have replied that;
- (1) There is no receipt regarding tilling of forest land,
 - (2) That the area is eco-forest area,
 - (3) That the area is critical wild life area,
 - (4) That the area is protected forest area,
 - (5) That the applicant claimant is not a heir of family in third generation.
- (15) The application of claim is rejected at the Forest Rights Committee level and Gram Sabha level for want of evidences.
- (16) The receipt of fine is indicated in the list of enclosures, but actually it is not enclosed in the file nor could it be confirmed with Crime Register.
- (17) The evidences are doubtful. e.g. the claim is for 5 acres of land; whereas the receipt of fine is for 1.20 hectares; the elder person mentions in his reply for 1 acre of land; whereas in a Panchnama it is for about 2 acres. In short, there are discrepancies.
- (18) The photograph indicates it to be a rocky land, not useful for agriculture purpose. The evidences such as receipt of fine etc. are not enclosed.
- (19) The Rojkam mentions the name of only a beat guard.
- (20) There is a great discrepancy in the land indicated in a claim application, in Panchnama and in crime register, 2003. Besides, it is not proved who possesses the land presently. Hence, application stands rejected.
- (21) 38 applications of the village Gangapur, Tal. Dediypada are rejected. The claim application is for land being tilled agriculturally before 1980; but the Crime Register entry no. 431/436 indicates 25 hectares of land under encroachment. The present possession cannot be proved. The demand is made for land as per the resolution before 1980 as well as post-1992.

The Dy. Conservator of Forest, Rejpipla-East of forest department have replied vide letter dt. 25-8-2004 that the application was received after 30-4-1995 and that the holder had no evidences about tilling of land etc., hence nothing was required to be done.

In the process under Forest Rights Act, 2006, the Forest department had not submitted any reply/opinion. The investigation at the place indicates only a photograph of beat-guard; but there is no name, no signature and no opinion whatsoever.

- (22) The respondent forest department have replied that,
- (1) the tilling of land is after 2005,
 - (2) that there is no receipt of fine;
 - (3) that the area is protected forest area,
 - (4) that the evidences submitted by the claimants are doubtful
- (24) The panchnama contains no signature/thumb impression except that of the claimant. There is no verification about the statement of an elderly person or in the statement of a witness. All details are incomplete.
- (25) There is no receipt of fine nor there is any crime in the name of claimant in crime register. The land in question is under Government possession.
- (26) The list of enclosures indicate a receipt of fine before 1980; but in check-list as well as in actual enclosures, there is no such receipt enclosed.
- (27) The Panchnama doesnot contain names/signatures/thumb impressions of Panch.
- (28) There are no evidences of holding/possession of forest land in File Folder checklist which is kept totally blank.
- (29) The evidences of respondents are blank.
- (30) The Gram Sabha resolution simply mentions that claim no. 1 to 45 could be accepted partially.
- (31) The memorandum was submitted to the District Collector, Narmada district on 3-1-2003 in which it was indicated that the land was put to agricultural use before 1980; but no receipt of fine is enclosed in the application to prove it.
- (32) There is no reply from the respondent forest department.
- (33) A number of families including those from Maharashtra and Gujarat were residing around Devmogra temple for several years for merchantile activity. 60 such applications were

submitted under Forest Right Act, 2006 but they are rejected because there is change of purpose. Besides, the some of applicants are non-tribals from Maharashtra.

Reasons for rejection of claims under Forest Right Act, 2006 in Vyara Taluka of Tapi district :

There were as many as 2336 applications; from which only 12 claims are accepted, and 2324 claims are rejected for following reasons :

- (1) There are no record-based evidences;
- (2) The agricultural activity cannot be traced out from satellite imageries, during 13-12-2005 to 31-12-2007;
- (3) Most of the applications also contain affidavit on Rs. 20/- stamp paper; which is not necessary under the provisions of the Act.
- (4) The claim applications also contain affidavit made by office bearers or Bhagat Bhoova.
- (5) All the applications indicate measurement of land under agriculture use alongwith a number of trees on land; which makes it impossible to till the land. (The no.of trees are shown to be more than 95 and upto 200)
- (6) There are no evidences of revenue land.
- (7) The Panchnama mentions that agricultural activity is found to have been continued only since the current year.
- (8) There are no evidences of possession or use of land which could be verified from the record.
- (9) The satellite imageries indicate the land of plot no.11 to be rocky, which cannot be used for agricultural purpose.
- (10) As per remarks of the Range Forest Officer (RFO) that the claimant in the current year (2009) monsoon had cleansed the land and have planted the crops. But the record doesnot prove the claim of the claimant.
- (11) The BIOSAG map indicates that in Dholka Taluka there is agricultural activity on Revenue land.

- (12) The remarks of the Panch at Katkui Tal. Vyara during visit by Forest Right Committee members and Panch at the site of land reads; "It can be seen that the land under question has been found to be placed under agricultural use only during the current year 2009-2010 and that there was no possession of the claimants on land before 13-12-2005;
- (13) The site visit indicated barren land at some places.
- (14) As an Id-proof, there is a receipt of house tax; which also shows that most of the claimants own vehicles. (They have paid vehicle tax as well).

Reasons for rejection of the claims under FRA, 2006 in Umarpada Taluka :

In Umarpada taluka of Surat district, 1432 cases were rejected in 17 villages; but the sample of 6 villages is taken from this taluka. The reasons for rejection of claims in these villages are as follows :

- (1) There is no forest in Nana Sutkhadka village. The carry out agriculture activity in forest of Vadpada village.
- (2) The forest area in survey no.1 is the village land. There is no agricultural activity there. It is residential area with kutcha houses. The 7/12 register indicates Govt. unused land under Gauchar (Pasture) head. It is 7 hectares, 87 R.A. It is shown as Jarayat.
- (3) Some applications have not mentioned the sq. area of land.
- (4) The Panchnama contains only a thumb impression but not even the name.
- (5) The Rojkam indicated only the name of the village. There is no name or signature of applicant, respondents etc.
- (6) The affidavit of the witness is the blank draft. It doesnot have any signature also.
- (7) There is a certificate of Forest Right Committee; but there is no mention of place, date or signature.
- (8) The application contains a copy of the case paper of a complain of land made in Umarpada Police Chowky and Mongrole Police chowky dated 5-9-2007; wherein there are excuses and counter-excuses. (Misc. Criminal Application No. 2033/07).

- (9) There was a complain against 25 individuals. The application contains the court paper of these complains, but there are not any evidences enclosed.
- (10) The photograph shows the forest land, not under agriculture use.
- (11) 50 applications of Vadpada village are rejected. The copies of the Rehabilitation agitation Committee's memorandum to the Prime Minister of India, the application of bond for 25 accuses made on 5-11-2007 to Principal District and Sessions Judge, Surat, application made to collector Surat on 21-8-08, the application made to Forest Rights Committee, etc. are enclosed. The affected people from Ukai Rehabilitation Project came to Umarpada for agricultural activity on forest land are being attacked, which should be stopped by police for which an application is made with copies to D.I.G.; D.S.P.; P.S.I.; M.P. etc.
- (12) The Panchnama doesnot indicate the presence of any Forest Staff.
- (13) The Lok Sangharsh Morcha has also made representation for the villages of Moti Devrupan and Rudhigavan.
- (14) The photographs donot indicate any agricultural activity on proposed land.
- (15) The four direction of the land have also been incomplete in many applications.
- (16) The representation made by Sangharsh Samiti doesnot indicate any evidence of possession/holding of land before 13-12-2005 and upto 31-12-2007.
- (17) The claimants of Zarawadi village have made claim on land as well on houses. It is registered in Register No.7/12. The land revenue is paid since 1986. (it is composite land revenue on alternative farming). The Govt. record doesnot show the name of the farmer; but shows it to be a barren land. There are photography alongwith crops taken on land. The claims of the villagers art rejected dispite they having the evidences; becuase the Govt. record indicates it to be barren land.
- (18) The Rojkam doesnot contain remarks or claim by the forest officer.
- (19) The application files from Haripura village are not as per checklist. There are Rojkam, Panchnamas, Statements by elderly people etc., but some of the details are incomplete.

- (20) In Haripura, the survey no.191 is shown to be barren land possessed by Govt. Yet, there is agricultural activity on some of its part. However the enclosures submitted by claimants (copy of 7/12) show it to be Government land.
- (21) The claim applications are incomplete. The tick mark (✓) is at wrong place. The applications contain copy of house tax receipt, APL card, photographs alongwith crops, mapping of land etc. but all the forms are incomplete, unclear and some are without signature of the claimants. The claimants are shown to be tilling on Government barren land. The copy of 7/12 is also submitted as an evidence; but it is not clear, how much of forest land is being tilled. The applicant says he is having agricultural activity for last 46 years.
- (22) Each application contains the Panchnama with official seal of Mamlatdar Office/Circle Office. But the Panchnama contains that no Government orders are received for land.
- (23) In Nava Chakara Village, many of the applications are incomplete. The Forest Rights Committee indicates knowing the applicants for 15 years and carrying out agricultural activities before 2005. It also contains compartment number and evidence that they are tilling on forest land; and earn livelihood. This is also verified by the Forest Rights Committee. But such applications have blank affidavit by the witness. The photograph also does not clearly show the land being used for agricultural purpose. The FRI enclosed is dated 6-9-07; but it not clearly legible.
- (24) The statement by on elderly person, the Panchnama, the Rojkam etc. are without proper signature. No comments by the respondent. The certificates etc. are also without signature. The affidavit by witness is totally blank. The signatures only from the applicant claimant and from the Forest Rights Committee. No signature from any body else.
- (25) In the village Nava Chakra, almost all application files are incomplete in various details. The photagraph indicates grass crop on open land but no agricultural activity. Besides each of the applications contain the matter regarding conflict with the forest staff during 2007. There are no clear, reliable evidences of agricultural use of land or evidences based on record. Each of the claimants have put a claim for 4 hecters of land.