

02 February 2016

Interim Report: Observations and Recommendations of the Panel

(Public Hearing held on 31st January 2016 at Gosaba Islands, Sundarban, West Bengal)

The Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, henceforth FRA, is a landmark legislation in which the Indian state has recognised that it has historically done a grave injustice to forest dependent people. This Act which applies to the whole country, came into effect in 2007, but nine years later, the forest department of Sundarban seems blissfully unaware that they are part of the country, and that they are violating the rights of the people of the Sundarban. The preamble of the FRA recognises that it is through the FRA that the very survival and sustainability of the forest system depends.

From the depositions made by the people from the forest dependent communities, which detailed the illegal acts and atrocities perpetrated on them, the Panel is alarmed at the non implementation of the FRA in spite of nine years of its existence in such critical eco habitats. It is particularly surprising that despite all national and regional political parties having unanimously supported the passing of the Act, none has taken the lead in implementing this important legislation in West Bengal. After going through the written and oral testimonies from the community, the Independent Public Hearing Panel made the following **observations and recommendations**:

1. The Panel is also shocked to find that the state government and related departments/ministries have made no effort to spread awareness about such an important legislation, among the people, the police department and the forest rangers/officers. It came out from the public hearing that the State Government is not eager to implement the provisions of the FRA, for reasons best known to it. The Panel recommends that the state government constitute functional Gram Sabhas in all villages of Sundarban. The Panel acknowledges the important provision in the FRA, namely the faith unanimously put by the Parliament on the role of Gram Sabhas and holders of forest rights in protecting of wildlife, forest and biodiversity.
2. The Panel also observed that the Forest Department, Revenue Department and the state police are exploiting the lack of awareness of the FRA among the forest dependent communities. It recommends that the State Government should provide training to the Forest Department/Revenue Department/Social Justice ministry officials and the State police to familiarise them with the provisions of the FRA so that they are aware of the rights of the communities and also to prevent the community from suffering arbitrary and illegal actions as well as harassment from such government officials. The Panel wishes to put on record that the FRA itself

clearly mentions offences and penalties where any authority contravenes any provisions of the act/rules concerning recognition of the FRA.

3. The Panel seriously notes that the depositions made by the women community members that have raised very serious charges of molestation, verbal and physical abuse by FD staff. The Panel demands immediate penal action against the involved FD staff, ensuring protection of victims and their identities from violence and the vindictive action for the depositions made in front of the Panel. The Panel demands setting up of Special Women's Cell in the region to protect the women forest workers and register cases when reported.
4. As per complaints made by villagers through submissions to the Panel it is evident that there are prima facie reasons to file cases against the FD staff and State Police under sections of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act. The Panel recommends that the State Government immediately take measures to institute a compliance mechanism as mandated under the SC/ST (PO) Act.
5. From the testimonials by the people from the forest dependent communities, the Panel concluded that there is a total violation of the rights of the communities in terms of the monopoly exercised by the Forest Corporations in the trade of minor forest produces (MFPs), particularly, honey. The condition imposed by the FD that license is required for the purpose of honey collection by such communities is a gross violation of the FRA and leads to corruption and arbitrary harassment and gives excessive and arbitrary power to the FD. The Panel recommends that in accordance with the 2012 amended ground-rules of the FRA, the forest dependent community should take steps towards the formation of co-operatives/federations, which should be allowed full freedom to sell such MFPs to anyone or to undertake individual or collective processing, marketing, value addition for livelihood within and outside forest area by using locally appropriate means of transport. The Panel recommends that instead of creating any hindrance, the State Government is duty bound to these communities that the honey and other MFPs collected by them is sold at remunerative prices and that in such process the transit/permit and other necessary help is extended to them.
6. Another issue of grave concern, as raised by the community members through testimonials was the corruption and illegal money transactions involved in the allotment and usage of the Boat License Certificates (BLC). Although non-transferable, most of the BLCs are given on rent by the owners. Like the MFPs, the other community rights of uses/entitlements such as fish/other products of water bodies, grazing, etc. have been vested in the communities. Any harassment/arbitrary action by the forest officials in creating hindrance or obstruction in realisation of

these community rights is contrary to the provisions of the FRA. The Panel therefore recommends that any control or check exercised by the FD or any other government authority such as police or Revenue Department, in exercising the rights of the forest dependent communities such as fish and other products of water bodies is totally uncalled for. The Panel recommends that the State Government should issue directions to the concerned officials of the Forest/Revenue department or the concerned authorities not to create such obstruction or public hindrance, which is illegal and against the provisions of the FRA.

7. The Panel was taken through the provisions of the Wildlife Protection Act which provides the procedure for creation and declaration of buffer and core area. It is concerned about the problems being faced by the communities when area is demarcated (arbitrarily) as buffer/core area or core area is further extended. The Panel was appalled to find out that from the community that the trawlers and tourists are allowed in to the core areas, whereas the villagers are kept out. The FRA categorically states that the rights of the forest dependent communities in critical wildlife habitats of national parks and sanctuaries shall not be affected for the purpose of creating inviolate areas for wildlife conservation unless the process of recognition and vesting of rights is complete in all the areas under consideration. It is evident that the said provision was not followed either when the buffer area and core area was formed or when the core area was extended—making the demarcation both unscientific and illegal. The Panel is of the firm view that under the cover of changing the core areas, the forest rights of the forest dependent communities cannot be affected. The FD's insistence on continuing the arbitrary processes is reflective of its colonial history that is linked to the principle of 'eminent domain'.
8. The Panel went through the celebrated judgment given in case of Niyamgiri where in the Supreme Court of India has considered and asserted the provisions of the FRA as well as the guidelines dated as issued by the Ministry of Tribal Affairs. The Apex Court has also taken into consideration the individual, traditional and customary rights in the judgment and has held that the Dongria Kondh community has a right to preserve and protect the base of the worship namely Niyamraja. The Apex Court has also discussed vesting of forest rights by virtue of enactment of the FRA. The Panel suggests that the forest dependent community should take inspiration from this case and fight for assertion of their legal and constitutional rights as provided in the FRA.
9. The Panel reminds the West Bengal Government of the decision taken by the then UP Government in settling the claim by the traditional forest dwelling community in Surma village. It is an instance where, despite the opposition by the forest lobby and those who believed that settling of forest land rights of communities will unsettle

conservation efforts. The Panel hopes that similar efforts to serve the people's interests will be taken by the WB Government.

10. The Panel has been apprised of the efforts being made to dilute the provisions of the FRA by vested interested parties including mining lobbies. The Panel condemns any such effort being made and submits that any dilution of the FRA will neither be in the interest of the communities nor in the interest of the protection of the wildlife, forest and biodiversity. The vesting of forest rights is absolute in nature and can be tinkered only after verification and determination of these forest rights by the Gram Sabha. It must be remembered that the Ministry of Tribal Affairs has given detailed guidelines to the State Government and UTs on how to make the forest rights given to the forest dependent communities effectual.
11. The Panel strongly recommends that all existing laws have to be brought in harmony with the provisions of the FRA. The Panel also would like to point out that when the Central government has shown extraordinary hurry to amend the Land Acquisition Act, in comparison it is disregarding an existing central legislation that empowers people and recognizes their traditional land rights.
12. Along with the failure of implementation of the FRA, the Panel finds that the Sundarban region reflects a basic failure in governance and the Panel finds it disturbing that the only forms of governance familiar to the people are the Khakhi clad men, the Forest Department and the Police. This is a very poor reflection of the state of affairs in the state and country. The Panel asserts that there is no role assigned in the FRA for the forest officials and revenue officials/police to obstruct or cause harassment to the forest dependent community in any manner.
13. Some of the testimonies that were collected from the area for the public hearing, reflect a growing trend of attack by the tigers on habitats and people. However, the overall impression of the Panel through testimonies is that people are more scared of the FD than the tigers. While individual cases of attack by tigers have increased due to the excessive outsider presence in the forests, the Panel strongly believes that the human-animal conflict can never be resolved by the eviction of traditional forest dependent communities. The Panel feels that the trivialized implementation of technological solutions as part of campaign to save tigers will only underestimate traditional wisdom and cause more havoc in such forest regions. Panel recommends the creation of stronger ecological habitats, with the community playing the lead, as the only solution to save the Royal Bengal Tigers.
14. The testimonies reflect the related social and economic hardships faced by the people of Sundarban; like mass migration of men, human trafficking including flesh

trade, ransom based dacoit kidnaps, etc. It is not surprising that in a region where the state has failed in assuring the basic livelihood rights of people, the communities are victimized.

The Panel reasserts the preamble of the FRA that is meant to address the long standing insecurity of tenurial and access rights of traditional forest dependent communities, which is applicable in Sundarban as well. The Panel recommends that immediate measures be taken to implement the FRA in Sundarban and steps be taken to bring to an end the illegal activities of the FD. The Panel would like to warn the State and Central Governments and their related departments that non-implementation of the Act is not only a contempt of the Indian Parliament, but also one that negates the verdict of the Apex Court of the country.