An impressionistic painting of a forest scene. The style uses thick, visible brushstrokes and a rich, textured palette. The upper portion of the image is dominated by a dark brown horizontal band containing white text. Below this band, the painting depicts a dense forest with a variety of green and yellow-green foliage. In the center, a figure wearing a bright orange jacket and dark pants is walking along a path. The ground is rendered in shades of brown, tan, and purple, suggesting fallen leaves and earth. The overall composition is dynamic and emphasizes the textures and colors of the natural environment.

# Rights to the Forests:

Report on Forest Governance, Implementation  
of the Forest Rights Act and Conservation

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**Report on Forest Governance, Implementation  
of the Forest Rights Act and Conservation**

**Partners in Justice Concerns-India  
December 2020**

Partners in Justice Concerns – India (PJC-I) formed in the year 1984 works with collectives of fishworkers, forest workers, handloom weavers, bamboo workers, coastal communities, agriculturists and pastoralists. It is driven by the commitment towards natural resource based working communities. PJC-I also works closely towards people’s cultural assertions as a part of the larger realisation of celebration of the plurality and preservation of people’s narratives.

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## **Introduction and Context Setting**

The forests in India have been a matter of significant debate and discussion where the issue of conservation is primary but with no consensus on what it entails. Historically, the governance of the forest has been a contested issue, with the state always exercising its right over its administration while never taking appropriate measures for its conservation. Despite the colonial times being behind us, there still exist several legal and policy measures taken by the independent Indian state, without considering the role and relevance of forest dependent communities who have traditionally been the dwellers and caretakers of these forests. This has led to many historic battles and uprisings by the community such as the Santhal Hul and Munda rebellion. The fight has often been with the Forest Department (hereafter FD) that has taken over the role of the British (in looting the forest resources) and in the name of governance and conservation pitted the forest dependent communities against forest and wildlife.

The Scheduled Tribes and Other Forest Dwelling Communities (Recognition of Forests Rights) Act 2006 (hereinafter known as FRA or the Act), a legislation which was passed after years of consistent work by forest dependent communities and solidarity groups is intended to correct the 'historical injustices' perpetuated on the forest dependent indigenous community and clear the path for revisiting community-led forest governance and conservation. However since it came into effect, the provisions of the Act have been systematically undermined by the government and FD. In several states, there are loopholes in the claim verification process and perceived conflicts with other Acts governing the forest and wildlife which has contributed to its poor implementation.

Arguing that the forest dwelling community is a hindrance to the forest and the biosphere, wildlife conservational societies—Wildlife Trust, Nature Conservation Society and the Tiger

Research and Conservation Trust—and retired forest officials filed a batch of pleas demanding that the state prioritise forest conservation. To everyone's including the petitioners' surprise, the Supreme Court (SC) passed an order on February 13, 2019 demanding "eviction of all the encroachers/claimants whose claims have been rejected" and a submission of a report with details after doing an assessment regarding the total extent of the area to be evicted within a short time period (See Annexure 1). This order stirred a huge uproar within the country as it would impact the lives of almost two million people dependent on the forest and lead to their eviction from their homes. This also brought the Ministry of Environment, Forest and Climate Change (MoEFCC) under attack since they did not assert the constitutional validity of the FRA during the course of the proceedings. The state governments have been contradicting this stand and, in many places, stay orders have also been issued. On February 28, 2019, following widespread protests by the community and land rights movement groups and a review petition filed by Ministry of Tribal Affairs (MoTA), the apex court stayed its own order.

These legal and political acts have huge implications with the current regime that has several land and coast related projects in its pipeline that require huge occupation of land, particularly forests and the coasts. In this context, it is needed that the arguments that brought the FRA into existence and the role of forest dwelling communities in conservation be revisited and discussed. It is also important to look critically at the role of the state players in the governance of forest and how their activities would be impacted by such a move by the SC.

A day long round table conference was organised in New Delhi on July 23, 2019 which proposed to understand the ground realities of forest governance, conservation and the implementation of the FRA. The meeting proposed to cover other angles, but the core of the entire discussion remained the dialectic between the different ideas of conservation, one

as proposed by the state bodies and one of the people living in the forests. According to the understanding of FD, the idea of conservation of forests is devoid of forest dwelling communities who consider themselves a part of the forest. Whereas, the roots of FRA reside in the forest dwelling communities who can support the ecosystem; an ecosystem in which animals and humans live together. An integral component of the forest is the human-animal relationship which requires a revival of understanding to counter the state's actions in perpetrating outright injustice against the people in the name of conserving the forest. The sessions tried to address the questions regarding: who are the people who are actually 'conserving', and who are the people who are hindering the process.

The Round Table Conference was jointly organised by the All India Union of Forest Working People (AIUFWP) and The Research Collective (TRC). The programme was attended by people belonging to the forest dependent communities from Lakhimpur Khiri and Sonbhadra in Uttar Pradesh (residing in Dudhwa National Park), Sundarban islands of West Bengal, Bargarh in Odisha, Ramnagar and outskirts of Rajaji National Park in Uttarakhand. The gathering included senior advocates, journalists, filmmakers, academicians, students, researchers and people working on various human rights issues. This report was put together by Kaveri Choudhury and Aswathy Senan of TRC with the help of Dr Aparna Sundar.

The meeting started with a reporting from the people about the mass opposition the SC order was met with from various parts of the country, and how people had taken to the roads. The members of AIUFWP shared their anger with the gathering that the protests were not covered by the media, and how the corporate media tried to restrict their voices through a 'blackout'. They also added that the mass protests across the country resisting the uprooting of the forest dwellers is a cause for celebration. The meeting had four sessions which deliberated on the legal, social, ecological and practical

aspects of conservation with regard to FRA. The first session began with the context setting and perspectives about co-existence and relevance of forest dependent communities in conservation. The second session revisited the debates and discussions about the forest and wildlife at the time of the drafting of FRA. Following this, the legal aspect was in focus, with the discussion leading to the challenges that people face in claims making and claims review process. The session continued with a discussion on community initiatives in the management of wildlife and forest resources. It pointed out the complications that people face during the processes of filing for claims and the reasons for their rejection, and the status of implementation of FRA in protected areas and tiger reserves. The meeting concluded with the gathering putting forward various suggestions to tackle some of the issues that were raised and to take the struggle forward and ways.

The conference was an attempt to hear the various actors in the field of conservation at a crucial point in history on the purview of FRA and its legal and ecological implications. Having members of the forest dwelling community respond and intervene at every point of the conversation to throw light upon the reality of certain aspects of conservation and the laws governing forests, expanded the scope of the idea of conservation. Having women leaders who are petitioners in the case challenging the SC order reinforced the proactive role women in the forest dwelling community take in demanding and asserting their rights. The conference was directed towards bringing forward the community's role in the sustenance of the forest and emphasising the co-existence of humans and animals. It also probed to show the conflicts between the forest administration and the forest dependent communities inside the forest.



### **FRA PREAMBLE**

An Act to recognize 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. WHEREAS the recognised rights of the forest dwelling Scheduled Tribes and other traditional forest dwellers include the responsibilities and authority for sustainable use, conservation of biodiversity and maintenance of ecological balance and thereby strengthening the conservation regime of the forests while ensuring livelihood and food security of the forest dwellings Scheduled Tribes and other traditional forest dwellers; AND WHEREAS the forest rights on ancestral lands and their habitat were not adequately recognised in the consolidation of State forests during the colonial period as well as in independent India resulting in historical injustice to the forest dwelling Scheduled Tribes and other traditional forest dwellers who are integral to the very survival and sustainability of the forest ecosystem; AND WHEREAS it has become necessary to address the long standing insecurity of tenurial and access rights of forest dwelling Scheduled Tribes and other traditional forest dwellers including those who were forced to relocate their dwelling due to State development interventions. BE it enacted by Parliament in the Fifty-seventh Year of the Republic of India as follows:-

## **Contested Realities: Challenges to Human-Animal Co-existence in Forest**

*The session proposed to deal with the meaning of 'historical injustice' in FRA and the ground reality with regard to the relation between forest dwelling communities and the forest. It highlighted various perspectives about animal-human co-existence and the relevance of forest dependent communities in conservation. It also aimed to understand the role of the FD and other substructures of the state in the implementation of FRA.*

The dynamics of conservation of forest is linked to the livelihood of the people which is crucial for our understanding of Forest Rights Act. The FRA is a document which can be traced to a long lineage of various forest protection acts and came into existence after a long struggle to rectify the 'historical injustice' done to the forest dwelling communities which also include Other Traditional Forest Dwellers (OTFD). It is a document that clearly defines the rights of the state and the rights of the people, though there have been concerns about its effective implementation [Refer infographics (i)].

### **Understanding the origins of FRA**

The speakers in the session explained how historically, especially under the British rule, the forest dependent people were restricted and sometimes denied access to the forest. They mentioned how 'conservation' of forests in colonial India was a cover up to appease the requirements of the imperial market. This linkage of the forest and its exploitation can be understood by how the East India Company started its construction of the railway network for which a steady supply of timber was needed. In places like Uttarakhand, areas of forests would be cut and timbers transported through the river. This exploitation of forests was devastating for the people residing

in the forest then. This was done by introducing a set of new laws and changes in the legal system. The first Indian Forest Act (the abbreviation IFA has been used in some contexts) was passed in 1864 and came into being in 1865<sup>1</sup> leading to the implementation of the Indian Forest Service which appointed a cadre of forest officers to take over the maintenance of the forests. The IFA 1865 marked the beginning of forest acts in India. These acts fenced and also restricted the people's use of the forest. In the 1878 Indian Forest Act, three different demarcations were made for the forest: Protected forests, reserved forests and village forests.<sup>2</sup>

It was explained that these acts were made because the British realised the need for a different kind of infrastructure and policy within the forest to extract resources and colonize the people living inside those forests apart from the institutions of police and army. This also had gazette notifications which allowed the state to declare and allot land for its use.

After independence activists and community leaders have been demanding for a more just representation of the forest dwellers and their rights. In 1972, the Wildlife (Protection) Act (WPA) was passed by the Indian Parliament for protection of all animals and plants. This led to declaring of forest lands as national parks, reserve forests and sanctuaries, but regardless of the existence of protected areas, poaching of animals continued. Hunting was legally bequeathed to all those who owned a licence and many rulers of the princely states and 'Maharajahs' were beneficiaries of this provision. This continued well into the years after independence. The

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1 The 1865 Forest Act was the first act passed by the British Government for management and preservation of Government forests. The Act gave the power to the government in declaring land covered with trees, brushwood or jungle as government forest land. The Act provided, "that such notification should not affect any existing rights of individuals or communities" Kulkarni, Sharad. "Towards a social forest policy." Economic and Political Weekly (1983): 191-96.

2 Guha, Ramachandra. "Forestry in British and post-British India: A historical analysis." Economic and Political Weekly (1983): 1882-1896. p.4

felling of timber was financially beneficial, particularly for businessmen. The coming of a forest act marked the turning of these businessmen into new forest conservationists for whom the presence of the forest dwellers posed a problem.

From the very beginning of forest conservation, there have been attempts in calculating financial value from the conservation of forests but when it came to the rights of people living within the forest, the administrators could not find a viable solution. The FD in India has had a contentious relationship with the forest dwelling people since colonial times. This relationship has been one of difference and has gone through decades of conflict and compromise. Forest law and its history must be understood before we even begin to challenge it. The founding of FD has its foundation on ideas that see the forest in a different way than the people living inside the forest. The atrocities that the forest dwellers have faced by the ruling power continue till date, though today it is by their own government through bodies like the FD. Even after independence and the immense work done by the groups which led to the passing of the historic FRA, the Act hardly got any time to breathe. Cases were filed within a couple of years by the wildlife conservationists against the forest dwellers for putting animals into danger. Neither the FRA nor the WPA could be pushed to be implemented properly. The absence of any constructive conversation between those in these groups and those who filed the petition has resulted in a lot of unwarranted animosity. A conversation between these parties is integral for the petitioners to understand the ground realities. The discussion aimed to reflect and touch upon these various aspects of forestry in India.

### **The Role of Forest dependent Communities in Conservation**

Within the FRA, the rights of the forest dwelling people to forest land and forest produce are well defined. The implications of what conservation is within the purview of FRA

can be understood by bringing attention to the ground reality. The difference in opinion on what conservation means to the 'wildlife conservationists' demanding protection of forests from the people living there and the forest communities who see the forest as their home is the main cause for the debate. Apart from this, the state also has its own way of looking at the forest which has led to a continuation of the 'historical injustice' towards the forest dependent people. In this venture, various speakers brought out the intangible relationships that the forest dwellers have with the animals and the forest itself. This conversation allowed for the participants to hear about the forest from the forest dwellers themselves, rather than from conservationists or 'experts'.

The relationship was highlighted by one of the participants who mentioned the Indian People's Tribunal that was conducted in Rajaji National Park.<sup>3</sup> This tribunal discussed the people's rights inside the forest, contrary to the picture painted by conservationists. It was pointed out that the people's narratives in that Tribunal regarding forests and its conservation were instances from their lives. Justice PS Poti, who was one of the jury members of the Tribunal, pointed out the relevance of the human-forest relationship to the FD officials. He highlighted the three organs of the forest- the plants, animals and the humans, and their interdependent relationship which is crucial for their existence.

Speaking on this relationship with the forest, people from the forests of from Rajaji and Corbett National Park narrated instances of human and animal interactions that are part of their daily life. They shared their experiences about the indispensability of the animals and their movement in rejuvenating the forest. They also stressed the ways in which animals and the forest dwelling people live in close proximity and how in the face of danger, the animals huddle near the

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In 1994, an investigation in the Rajaji National Park was done when the authorities wanted to remove the Van Gujjars from living there. Justice PS Poti submitted a report stating that removing the people will not ensure the survival of the forest.

villages where the people reside. Representatives from the Van Gujjar community<sup>4</sup> also spoke about their relationship with animals and stated how animals often take refuge near where the communities stay when faced with danger. When the people migrate from one place to another within the forest premises, the animals also relocate with them. The dispersal of seeds and maintenance of the tree cover inside the forest is taken care of by the moving animals, mostly cattle. This dispersion ensures the forest cover in their area. They contradicted the FD officials' claim that deer is responsible for dispersal of seeds inside the forest, which is untrue.

*"During the evening time when we give food to our animals, the wild animals have it too. The FD in Rajaji National Park stops us from feeding the animals. When we resisted this through the FRA, they create further problems for us through other means."*

– Mir Hamza Van Gujjar Community, Uttarakhand

The forest area they inhabit is also shared with the animals that eat along with them, but restrictions posed by the FD have put a strain in this relationship. They stated that the FD in Rajaji does not let the people give food to the animals anymore. When the people resisted this, citing the provisions of FRA, the FD tried different ways to create problems for them. However, most Van Gujjar communities still maintain a relationship with the animals. Throughout the meeting, people highlighted the FD's lack of understanding of the rhythm and working of the forest; but the power that they are bestowed with allows them to do as they deem fit.

The testimonies by the forest dwellers in the meeting helped in furthering an understanding of the status of the implementation of FRA and of realities inside the forest. It gave an insight into the rising human-animal conflict which the conservationists attribute to the living of the people inside the forests. The

discussion by the speakers hence brought attention to the fact that proper implementation of FRA is indispensable since it recognises the relationship of the people with the forest.

### **Challenges faced by Forest Dwellers**

While the forest dwelling community stated the importance and necessity of human-animal interaction, they also detailed the ways in which the state and its infrastructure restrict this. The colonial infrastructure of enclosing the forest and distancing the people from there has hampered co-existence between animals and humans. This same infrastructure which continued after independence has proven to be a challenge to the communities for leading their way of life smoothly, in spite of laws being in place.

The FRA which endows them the forest workers right to way of life has also been challenged through petitions alleging them to be putting animals and wildlife into danger. It was pointed out that the absence of any constructive conversation between the communities from the forest and those who filed the petition has resulted in a lot of unwarranted animosity. The speakers pointed out that in spite of implementing the FRA, the people are further stripped of their rights to the forest. People have been framed in false cases, harassed by FD officers and alleged of encroaching forest land. There are several instances of forest dwelling people being charged with allegations of poaching too. Van Gujjars from Rajaji National Park have shared how there are cases against them in the High Court and Session Courts filed by the FD for poaching tigers and cheetah. Similarly, in Saranda forest in Jharkhand, the FD claims that the forest dwellers are illegal encroachers. It was also mentioned that there is an attempt to remove the forest dwelling community through force by charging them with illegal cases. The CRPF has also camped in these forests for the same purpose. With these concerns in mind, the discussion moved forward to hearing testimonies of people living inside

or near the forest.

The speakers from Sonbhadra, Uttar Pradesh gave a detailed picture of how the authorities interfere in their daily lives and harass them because they educate the community about the provisions of FRA and encourage them to assert their rights. The constant vigilance and questioning from the police officers and pestering from the FD officials hamper their way of life and living.

Testimonies from the people of Sundarbans informed the gathering about the power relations between the community and the FD that they experience on a regular basis. The speakers elaborated how a paucity of livelihood options in the Sundarbans had already reduced people's vitality in the islands, and how the constant policing and harassment inflicted by the FD officials has added another stressor.<sup>5</sup> The people from Sundarbans shared about various hardships that those living in the islands have to face. There are around ten lakh people in the Sundarbans who traditionally engage in fishing and honey collection from the jungle. During honey collection season, they stay in their boats for days, eating and sleeping on it or inside the forest. For honey collection, there is a particular time period of around twenty days where they take along food and other amenities. It is mandatory that those who go inside the jungle on their boats require a Boat License Certificate (BLC). There are around 923 BLCs, out of which only 700 are active. They were told that in one BLC, a maximum of 5-7 people can go fishing, but after filing an RTI, they got to know that 10 people can actually go. This implies that around 7000 people from the island can go inside the jungle on boats. A total number of 26,000 people can go inside the village legally but only into the buffer area. The forest dwellers in Sundarbans are also constantly harassed by the FD in the name of tiger protection.

5 For more details on the violation of the forest dwellers' rights in Sundarbans, refer to Visible Tiger, Invisible People: Study and Report Based on the Public Hearing held at Sundarban Islands, India (2017).



The people also detailed the condition of fisherpeople who are bullied by the rangers. After taking away their boats, utensils and tools, they are charged with high fines for retrieval of their boats. The FD further harasses the people by taking away their fish catch, and by compelling them to sell their honey at a lower price or snatching any of the minor forest produce<sup>6</sup> that they collect. The FRA grants traditional rights to the people like grass cutting, collecting of leaves, and other activities and the freedom to do it with dignity. It is also observed that the state gives primacy to tourism and developmental activities for which most of the buffer areas are used. However, certain areas are strictly demarcated for the forest dwellers and violation of any kind leads to serious consequences, but this is mostly on paper. It was stated how this kind of behaviour is an outright rejection of human rights and is a violation of the FRA. Several people have also been falsely charged with procuring timber from the forest, but the locals claim that they only take *jalan lakdi* i.e., little twigs or branches that have already fallen down to use as firewood. The regular interaction between the FD officials and the people has led to tussles between the two. The speakers stated that neither the previous CPI-M led state government nor the current TMC government has done anything to resolve this situation. They also shared the difficulties they face in making a Gram Sabha in West Bengal where CPI-M and TMC governments insist on bodies functioning through the political party and not independently.

The speakers from Uttar Pradesh also shared their distress about the making of tiger reserves in areas like Lakhimpur Khiri, Palia Tehsil, Dudhwa National Park and several other places, which has led to restrictions in their access. They informed the gathering about the situation in these areas before the U.P

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6 The FRA states in section 4(2)(i)- minor forest produce includes all non-timber forest produce of plant origin including bamboo, brush wood, stumps, cane, tussar, cocoons, honey, wax, lac, tendu or kendu leaves, medicinal plants and herbs, roots, tubers and the like.

Transit of Timber and Other Forest Produce Rules, 1978<sup>7</sup> and about the atrocities inflicted on the people by the FD after its implementation. They appealed that those involved in these issues not look into merely what the document says but also listen to what people have to say about the reality of events over a period of time.

The Tharu Adivasi people<sup>8</sup> spoke about how they look after those who come into the forest; how they treat them like guests and take care of them. But the British or the FD merely took over the forests. What the people would give them as offerings; they gradually started taking over as their right. When Dudhwa National Park was formed in 1977, 44 out of the 46 villages (all the 46 villages are comprised of Tharu Adivasis and are surrounded by forest) were taken under the ambit of the park and hence came under the supervision of the FD. They emphasised how earlier the forests belonged to the people, but after the establishment of the national park, it became a property of the FD leading to the FD constantly harassing them to evict from their own houses. They also pointed out how even the legal system and the government authorities seem to be against the people. However, the FRA coming into being was an important moment for them since it made the people fight for their rights, strengthen the union and form certain organisations. They also shared that the unity with which the people fought and compelled the UP government to take measures through legal and justice department following which the order to evict people from Surma and two other villages was lifted and their rights to the land was recognised.

The journalists present in the meeting also shared their own

7 On 27 September, 1978, The U.P. Government passed the U.P. Transit of Timber and Other Forest Produce Rules, 1978. This rule was based on the Indian Forest Act, 1927 which defined the rights of the state government to forest produce. This led to restricted access and harassment of people for taking any forest produce.

8 The Tharu Adivasi people are a community indigenous to the southern foothills of the Himalayas. Most of them live in the Nepal Terai, but a significant number of the population live in Uttar Pradesh, Uttarakhand and Bihar.

experiences of interacting with the FD which also were mainly regarding how the community was treated by the authorities. One of the speakers shared how the park rangers of Dudhwa National Park passed derogatory remarks about the Tharu Adivasi women while he was there to cover a story about illegal hunting in protected areas. These statements revealed the hypocrisy that lies within the functioning of the FD. One of them also raised concerns about the issue of irresponsible journalism. It was pointed out how when the discussions on the SC judgement was going on, most of the English media reports were filled with highly provocative and erroneous reports regarding how Adivasis are inherently a threat to the forest which strengthens the state narratives against the forest dwellers. The gathering also alerted to the possible introduction of a provision which grants shooting rights to the FD officials and warned of the possibility of further militarisation within the forest, which signals a more dangerous future for the people whose livelihoods depend on the forest.

The discussion also aimed to address the agency of the state in determining the interaction of the forest dwelling communities within the forest and what kind of ideologies govern it. Tribal communities are subjected to 'otherisation' in their resource allocation, education and all kinds of civic welfare. The state polarises the community in this way because their way of life does not identify with the 'mainstream' culture.<sup>9</sup> It was pointed out how there is a Sanskritisation of people and laws, attempt to change their food habits and eviction from their lands, allegedly facilitated by the state. The speakers also spoke about how the bureaucracy tries to suppress any act of resistance by the community and make a new narrative out of it. It was also added how the fishworkers' unions, inspired by the forest workers, are attempting to draft an act applicable to fishworkers considering the way the coast and its resources are being taken away from them through various state activities.

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9 Kastelic, Sarah, Taking Back "Tribalism": What we all can learn from Tribal Nations, Non-Profit Quaterly, July, 2019

The gathering was reminded of how the earlier forest laws had contributed to the looting of the forest, the Adivasis and other forest dwelling communities over a long period of time. It was understood that the FRA was a rejection of the British forest laws which also acknowledged the Adivasis' role in taking care of the same forest areas which were turned into protected areas.

The first session with these detailed depositions and reporting by the forest dependent communities and members of their unions set the tone for the debate which brought out the reality regarding the implementation of FRA and the way in which animals and humans coexist in the forests.

## **Applicability of FRA: Challenges and Possibilities**

*'The second session dealt with how the people from the community experienced the legal mechanisms of claims-making and review process of claims under FRA. It also dealt with FRA and the possibility it offers to women and their role in the fight, the attempts to dismiss their right to life and livelihood.'*

## **Complexities in the Claims-making Process**

The session started by reminding the gathering about how 'Azaadi' resonated in the Adivasi communities with the coming of the FRA, but the state and its machineries has been ineffective in granting that to the community. Before a claim goes for a review process, there are various perceptions of forest land which makes the claims-making process difficult. Individual and collective claims are perceived by the state and the conservationists differently, and it was discussed how forest working unions should respond to questions regarding this. 'Conservationists' assume that if individual claim is granted, it will be damaging whereas community claim would not. It was here that the question of '*patta*'<sup>10</sup> was brought up: some asked whether *pattas* on forest land can be turned to titles. The people have been farming in the same forest land for almost 23 years, but if they are stopped from farming on those lands, only a few will stay there.

The state asks for evidence that the land has been occupied by a family for almost 75 years, but producing this evidence might be difficult for most of the people, particularly the nomadic tribes. Many have put in their claims but they have been asked to evict due to such reasons. The discussion ventured to bring out the question of what FRA promises to OTFDs and the

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10 A patta is a legal agreement under which someone pays money to another person in exchange for the use of a space or piece of land for a specified period of time. Section 3 (g) of FRA states- "rights for conversion of Pattas or leases or grants issued by any local authority or any State Government on forest lands to titles;"

status of its implementation. A concern was raised regarding the inclusion of OTFDs in FRA which could have annulled the possibility of mobilising the issue at national level with the support of these groups. It was urged that the people also resist the Indian Forest Act (IFA) 1927 in the coming months.

The speakers brought to the table the predicament of the people whose claims to land were rejected. It was suggested that these rejections be challenged by questioning the grounds of rejection, which would turn out to be mostly baseless. It was pointed out how the conservation lobbies play a role in influencing the idea of people's rights to forest land. The same concerns of rejected claims were raised at the Indian Parliament which were discarded and the issue taken to the SC. A review of the progress of implementation of FRA will show that it has a lot of discrepancies and filing of claims, the rejections and the pending figures are ambiguous. However, the SC order is making it look as if this review process has ended and hence, the eviction order needs to be followed.

The community representatives clarified that individual rights do not mean cutting up the forest and giving it to people, rather it is a matter of land distribution that guarantees one's right to land and to till it. It is about dignity and if people have 2 hectares, then they can get only 2 hectares and if they have 4, they get 4; but even if they have 40 hectares, they get only 4 hectares.<sup>11</sup>

It was also pointed out how time consuming and complicated the process of claiming rights can be. As a solution to these challenges, the speakers suggested that there be small FRA training workshops for lawyers who can help the community in the filing process. They added that lawyers like Shomona Khanna (legal expert on FRA) could conduct such workshops

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<sup>11</sup> Section 3 (4) (6) states as such- "Where the forest rights recognised and vested by subsection (1) are in respect of land mentioned in clause (a) of sub-section (1) of section 3 such land shall be under the occupation of an individual or family or community on the date of commencement of this Act and shall be restricted to the area under actual occupation and shall in no case exceed an area of four hectares."

in Robertsganj and Banaras, Uttar Pradesh. Apart from legal workshops there has to be training and sensitisation workshops for media professionals who report on such issues.

### **Dilemmas in Defining**

While drafting the law, one of the concerns raised with regard to the claim process was that it will never be over. The gathering was informed how the farmer's union All India Kisan Sabha (AIKS) impleaded that there are several claims still pending. Until people get a response saying that their claim has been rejected and with the stated reasons for the rejection, no claim can be considered rejected. Though people have evidence to attest to their ownership of the land, they are rejected without any basis. The government discards most of the claims as false because each family has around five to six people who file for a claim. But, the definition of family is ambiguous: should we consider the wife, husband and children as one family or six families living under one roof as one family? The arguments for the rejection of the claims that the courts have raised are repetitive, but since the FRA has not been scrapped as yet, these baseless rejections can be challenged in the court. The speakers demanded that these discrepancies be presented in the court and discussed even in the public forums.

The confusion in FRA regarding the definition of 'a forest' was also pointed out, which allowed the FD to harass the forest dwelling communities as forest encroachers. However, not having a proper definition for forests also proves detrimental to the resistance against the FD. There might then be no agreement on a definition of forest land either. This non-coherence in the meaning of forests has brought attention to the problem of twisting of the laws under FRA. Under Section 2 (d) of the FRA, the forest land is defined as "land of any description falling within any forest area and includes unclassified forests, undermarked forests, existing or deemed forests, protected forests, reserved forests, Sanctuaries and

National Parks” which included certain areas which were not earlier under forest land to be turned into one.

Sometimes, it leads to the government declaring any land as forest land. The definition of forest land has been changed without any regard for the people who actually saw it as ‘land’ that they used to cultivate. Several activists have fought for this, but different groups perceive ‘conservation’ differently, some of which are contrary to how the forest dwelling people view this. When it comes to having difficulties in presenting evidence for claims to such lands, the FD officers says it cannot be granted. The current government is encouraging these moves to hinder the work of the activists who have been struggling to gain these rights for a long time. It was further questioned how the SC can pass such an order which would lead to the eviction of more than 10,000 people from their homes. So, in one blow, people’s right over the forest land granted through the FRA gets taken away.

To this discussion, the crucial case of other minority communities including various nomadic tribes were put forward, who also fall within the ambit of the rightful owners as per FRA. The FRA as a document has been the result of a continued struggle of the marginalised and the oppressed tribal communities whose lives have been dependent on the forest. This is the first time in legal history that a law came into place which recognised these communities and dilution of FRA impacts various communities who fall under OTFDs as well. The speakers highlighted the inclusive nature of FRA and the historical understanding of the role of forest dwelling communities in conservation that was considered while drafting the FRA which will all be taken away once the SC order comes in place.

The meeting then detailed the events after the SC order of February 13, 2019 was passed. The Ministry of Tribal Affairs (MoTA) had moved the court to reconsider its verdict and review the process of rejection by the state governments,



following which a stay order was granted. It is to be noted that although the petition was filed against the Ministry of Environment, Forest and Climate Change (MoEFCC), they ignored the proceedings of the court throughout. This reiterates the position of the speakers which questions the state's role in ensuring the proper implementation of FRA. They also reminded the gathering of strength of this law that keeps a check on the government and impels the government to reconsider denied justice.

The Central government has a big role in influencing the rejection of claims. An instance was quoted from when the Central government vanished after hearing the pleas of the various people on their rejected claims. During 2008-16, the number of hearings has been reduced substantially and only three judges have been hearing them. In the SC too, the benches kept changing. In July 2014, MoTA had drafted an affidavit against the petitioners and it is this body that filed for a review of the February order. The written documents supported the claims of the people that after FRA came into being, the forest has increased and not decreased, but the judiciary and the executive fail to recognise it. In Maharashtra, even before the arrival of the notice of the SC order to the FD office, officials were heard saying, "If you cut even one tree, we will charge you with murder."

In February 2018, seven to eight states submitted reports stating that the claim processes under FRA shall never end. While working on a petition, a team researching FRA found various issues the people face from the government during the process of filing. In 2014 and 2018, MoTA had written two letters where it stated how the centre has told the states to not expedite the process. The state governments were informed to do it step by step keeping the Gram Sabha informed. The question remains as to how in spite of such documents, the SC can pass such an order of eviction. Apart from that, even in a case of lack of evidence there cannot be rejection of claims,

and rejection cannot be the sole reason for eviction.<sup>12</sup>

### **Women's Role within the FRA**

Usually, those who do not have any land (women, Dalits, Gujjars, and nomadic tribes) are compelled to move from one place to another. But for the first time, through FRA, women were granted rights on land and natural resources, which is why women should fight to retain it. It is imperative to note that this also draws strength from the provision within the FRA which allows land rights to women within the community as well.

It was also reported that eight petitions have already been filed countering the SC order by various groups. Though the Andhra Pradesh High Court and Tamil Nadu High Court gave the stay order, the SC vacated the stay. The SC has heard testimonies of people like Sukalo Gond and Nivada Rana (both petitioners of the case and members and senior leaders of the AIUFWP) which are first hand stories (See Annexure 2). It was collectively decided that the petition will go in the name of the women leaders of AIUFWP and Citizens for Justice and Peace. This tells us the importance of women's rights within the FRA which facilitates women leadership and allows women members to be independent within the family and community. When the struggle has strong leadership, it can move to availing land rights: at individual and community level. Sukalo, Nivada and other women members of the union are in the forefront of this struggle against the attempts to dilute the rights that they have been granted through the FRA.

*"Every year tigress comes into the village and takes poultry and cattle. This has been happening for years. Women know how animal give birth and what kinds of trees grow in the forest. After FD came into being, the number of trees that have been cut and as result the number of birds that have fled and animals killed is huge."*

– Nivada Rana, Tharu Adivasi community, Lakhimpur-Khiri

Studies based on ethnographic field survey enable us to understand that the tribal women have a long tradition of conserving forests. The commercial plantation inside forests has rendered the forest a market for different kinds of timber. Women around the subcontinent have organised themselves to refuse compensatory afforestation programmes which are particularly monocultures that destroy the diversity in a forest. Women from Rajasthan, Uttarakhand, Odisha, etc. have been practicing conservation methods for years. Hence the role that women play in the legal space becomes an extension of their role in protecting the forests and its resources.<sup>13</sup>

This session ended with words of caution being exchanged regarding how the government will dilute the FRA and possibly scrap it anytime. It was proposed that the groups need to devise a system of working along with the state governments through which a counter could be formed when the centre makes laws but keep provisions to abort or not implement them.

This session deliberated on the legal aspects of FRA and the possibilities of using lawyers and the legal network in taking the struggle forward. It also proposed practical ways of dealing with crackdown by the state and the role of women and other forest dependent communities in resisting the order.

## **Dilemmas inside the Forest: Challenges of community initiatives in forest management, and troubles with the Forest Department**

*The third session deliberated on the community initiatives in management of wildlife and forest resources. It also proposed various ways of spreading this information which would highlight the role of the community in forest resource management and sustenance.*

### **'Managing' of the Forest by the Forest Department**

The session began by highlighting a debate around the drafting of FRA which weighed the pros and cons of individual rights of forest dependent people on forest land. Certain wildlife conservationists claim that if individual rights to forest land are given under FRA, it will destroy the egalitarian nature of tribal communities both in terms of how they share land and the resources from the land.<sup>14</sup> It was also claimed that amidst all the chaos rising from the break-up of a tribal egalitarian society there would be rampant privatisation and 'corporatisation' of forests. However, this debate stood poorly against Adivasi concerns regarding their dependency on the forest which the government could not choose to ignore.<sup>15</sup>

On top of this criticism, the people living in the forest have to also resist the atrocities by the FD. The FD who has the responsibility of 'protecting' the forest creates a misconception that it is indeed the saviour of the forests. Reiterating some of the instances from the first session, the community members stated how it is actually the FD that permits the chopping of trees for commercial purpose which in fact has led to the ruining of homes of several species of birds and animals. On

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14 Thapar, Valmik (2005): 'The Tribal Bill, Moving beyond Tigers', The Indian Express, October 21.

15 Rangarajan, Mahesh. "Fire in the forest." Economic and Political Weekly (2005): pp. 4888-90.

reporting about the death of animals, the people in turn are interrogated about their whereabouts and often, cases are filed against them. One speaker brought to notice the depletion of black deer in his village in Bundelkhand because of neglect. He also pointed out how the FD recruits people from Allahabad and Satna to clear the forest because the forest dwellers refuse to do that. The control of the FD has left the people fearful of their own surroundings. A spokesperson from Lakhimpur Khiri told the gathering how every year during her gestation period, the tigress comes near the village for protection from male tigers. When she takes poultry and cattle from the village people show no hostility towards her. Such narrations are a challenge to tiger conservation lobbyists who claim that people are the biggest threat to tigers.

The people at various points have called out the reality of the FD's operations inside the forest. The political culture inside the forests has changed with an armed force being deployed against the people. People living outside the forest seem to have more authority on the forest rather than the communities who are traditionally dependent on the forest for their livelihood. They reported that these issues were of utmost concern since the influence of FD has not diminished. It was also pointed out how the FD is getting access to arms and is using them on the people at various places. In the forests, most of these events of attack go unheard and may go unreported too. The violations that the government is doing in these regards were termed as 'judicial genocide'.

The speakers also pointed out the danger posed by the Compensatory Afforestation Fund Management and Planning Authority Act (CAMPA).<sup>16</sup> CAMPA fund might benefit the FD in taking away agricultural

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16 The Compensatory Afforestation Fund Management and Planning Authority Act (CAMPA) is a legislation that seeks to promote afforestation and regeneration activities as a way of compensating for forest land diverted to non-forest areas.

and forest land.<sup>17</sup> There is already a problem of the revenue increase in forest land and amendments in forest which has made things challenging for people.

*"We are pressurised to tell people about the animals that are dead. Then if we report on such issues, they question regarding the details and then eventually charge us with poaching."*

– Safi, Van Gujjar Community, Uttarakhand

Community initiatives in forest management are linked to people's dependence on the forest for their livelihood. It was pointed out what kind of damage the plantation companies do with the support of FD. Some speakers shared their attempts to grow different kinds of leaves that they use like 'mahua' and 'tendu'. One speaker from Uttarakhand talked about the zeal of people in taking care of the forest even with repeated obstructions from the FD. Traditional forest dwellers have knowledge about which trees help grow the forest and some that damage it. They weed out the species of plants that might be of harm to the forest or to the animals. But, the forest officials' persistent attempts in throwing them out of their homes have proven to be a disadvantage to the forest.

### **From the Ground: Developments since the SC order**

On talking about the SC order of Feb 13 2019, a speaker from Odisha detailed about the evictions which have already started in his area. They are constantly asked about their documents whereas the forest officials themselves do not maintain the documents of the people properly and they often get damaged due to rain or fire. People have also been lured in the false hopes of being given a considerable amount of money as compensation, but this is never granted. People also face the

harassment from the FD by restricting their entry to the forest giving clauses of buffer and core areas.

Adv. Sanjay Parikh (Lawyer, Supreme Court) who was present in this session pointed out two sections of the FRA which helps in countering forceful and illegal evictions: Section 4<sup>18</sup> of FRA which assigns rights to Forest dwelling Scheduled Tribes and OTFDs; and Subsection 5 of section 4<sup>19</sup> which says that verification and determination of the rights is essential and this verification should be done by the Gram Sabha. If these clauses are applied, there can be no question of eviction; no specific law mentions that people can be evicted. However, in the case of eviction, notices must be sent to the people within a particular time period. If someone has been living in a place for thirty years, it is important to give them ample notice to vacate. He raised his strong apprehension with regard to the actual implementation of this order and its legal and constitutional validity. He also deliberated on the various laws pertaining to forests and the need to understand them thoroughly. He also pointed out a positive affect that FRA had on the Wildlife Protection Act 1972 (WPA 1972). After the enactment of FRA, there was an amendment in the WPA 1972 which extended the implementation of FRA in protected areas. While discussing the possibility of using satellite imagery to counter the SC's order, Adv. Sanjay Parikh explained that when evidence of tree cover damage inside a reserve forest is found, then, the allegations are put on the people who are termed as 'encroachers'. Some satellite pictures show that certain places do not even have trees yet they are declared as forest land. Such official discrepancies are done to make more revenue out of an area. Sanjay Parikh recommended filing writ petitions to the satellite divisions to obtain information about the tree cover of an area and bring the attention of the SC to such

18 Section 4 of FRA recognises and vests forest rights to Forest dwelling Scheduled Tribes and other traditional forest dwellers.

19 Subsection 5 of Section 4 states, "save as otherwise provided, no member of a forest dwelling Scheduled Tribe or other traditional forest dweller shall be evicted or removed from forest land under his occupation till the recognition and verification procedure is complete."

discrepancies.

It was further pointed out that the government gives more primacy to other laws and creates hurdles for the implementation of FRA. It was added how The Forest (Conservation) Act, 1990 and the Indian Penal Code (IPC), are used to criminalise people who demand their rights as per FRA. Responding to this, one speaker added how he, being the first one to file a claim from his area, is constantly targeted with several charges filed against him. Another speaker commented on this by depicting the problems one might face while fighting for the collective, individual and customary rights promised through the implementation of FRA. He warned that the officials will make things more difficult for people and the fight will be very complex, with work pending at the court and the need to find evidence for claiming a piece of land. Additionally, the attempt to criminalise the forest dwellers will be another challenge.

It was asked whether the officials could be charged with Scheduled Castes and Tribes (Prevention of Atrocities) Act, 1989 and various charges that would fall within the ambit of atrocities on women, since their actions violate the rights of the Adivasis and women. On this, a speaker brought attention to the attack on minorities due to a feudalistic attitude of the government and the huge number of Adivasis who have been shot dead by the armed forces.

The government is not happy about the power that the Gram Sabha has and the various provisions that FRA offers, and the people are demanding the proper functioning and monitoring of the committees. FRA and IFA (Indian Forest Act, 1927) provides for two parallel systems of forest conservation. Despite attempts to dilute and curb implementation of FRA, the existence of the law has successfully managed to democratise the management of forest resources. In a three-tier appellate system, it allows Gram Sabha to act as a quasi-judicial body to adjudicate on the title claims of Individual Forest Rights



(IFR), Community Rights (CR), and Community Forest Resource (CFR).

Remarking on the viability of the forest laws, another speaker demanded that an assessment of the situation be made before the implementation of the forest laws. In some areas of Niyamgiri, Odisha, the state has brought out guidelines on educating people about their rights which is an essential step. The session also pointed out how some laws become invalid over a period of time and suggested that a judicial body need to be instituted to take a call for repealing such laws.

The discussion then, moved on to deliberate on certain aspects of FRA on which much work has not been done. Several suggestions were made in which people from the community could also be involved and supported. It was also suggested that a committee be created for the people who needed to assert their rights inside a National Park. This committee could be formed by the community, experts and social activists. The meeting suggested that a movement to implement FRA and counter any dilution of FRA needs to be strengthened. Following the SC order, an interim application<sup>20</sup> was also filed by academicians and legal experts.

This session brought out various issues with regard to the legal aspect of FRA and the way in which governmental bodies restrict means for its implementation. The suggestions that came up in the discussion are summarised in the next section.

## **Way forward: Recommendations and Strategies**

The concluding session aimed to plan out the future course of action and strategies to counter the unjust order.

The discussion remembered Dr Ramdayal Munda, who through his research and cultural activism reiterated the greater role of forest dwellers in protecting the forest than the state or FD. Keeping this spirit in mind, activists started an 'Andolan' in Jharkhand where they propagated for a community forest plan. Such movements which merge the cultural and community rights and heritage of the people need to be revived. The session deliberated on the need to claim community rights on the forest and asserted the importance of it. The permit or

the claim to take responsibility of the forest is a declaration to the government that the people will now take the initiative to restore the human-animal relationship. The essence of FRA also allows the people to apply their indigenous knowledge in the forest. The younger generations also need to be part of this fight against the hegemony of FD, traders and the corporates and stop activities that endanger the forest and the animals like mining, and reclaim the slogan, 'The forest is ours'.

However, it was stressed that the power of the people in getting laws implemented should not be underestimated quoting examples of Right to Education and Right to Information, all of which got implemented through the consistent collective efforts of people. Those present also spoke about the need to share each other's victories and struggles and help each other in strengthening the 'Andolan'. It was reiterated that sustained efforts are needed to strengthen the 'Sangathan' and to make it financially independent. For this, occupying land, farming in those places and making a livelihood out of it are crucial.

The forest working people were compared with fish workers and the role of both communities in taking care of the natural resources was stressed. There is a need to extend the struggle by having more people join it to have a pan-Indian representation. It is also important to understand the conditions and status of forest dwellers from the Western-Ghats region as well. There is urgent need to document and to bring out every-day violations of FRA and atrocities faced by the communities in these areas. Legal and media workshops should be planned and more people need to be trained to explore the possibilities of social media spaces.

The meeting concluded with everyone agreeing that though the specificity of the work of various groups is different, the strength of the struggle lies in sharing experiences, planning strategies and executing them together.

## **Recommendations:**

In the light of the observations, the gathering made the following recommendations: -

1. Carry out proper documentation of daily occurrences of injustices in the forests by the state, FD and corporates.
2. Address the issue of an overwhelming danger of climate change induced environmental problems to the people who do not have the means to avoid it.
3. Review the progress of implementation of FRA to depict the discrepancies in it.
4. File writ petitions to the satellite divisions for satellite imagery of forest land.
5. Bring out guidelines and educate people about their rights taking example of earlier struggles such as Niyamgiri, Odisha.
6. Focus on updates from forest dwellers on the situation in forests rather than conservationists and FD.
7. Do a study to understand how militarisation in the name of conservation is taking place in India.
8. Monitor and document how state governments are responding to changes to FRA and keep track of functioning of committees that implement FRA at the ground level.
9. Organise the affected people by making them part of unions working on implementation of FRA.
10. Conduct workshops on FRA for the community members, lawyers and media professionals and sensitise them on how to report such issues.
11. Bring more women members to the ambit of the forest unions and to lead the struggle.
12. Translate the FRA document into various regional languages and distribute them amongst the community.
13. Organise and train volunteers who can help communities in filing claim applications
14. Create a judicial body to repeal laws which have become invalid.

15. Gather more understanding about FRA and its implementation process in various parts of the country, particularly those in the Western Ghats region.

**The meeting was attended by:**

Sukalo Gond (AIUFWP, Sonbhadra, Uttar Pradesh)  
Roma (Deputy General Secretary, AIUFWP)  
Ashok Chowdhury (General Secretary, AIUFWP)  
Nidheesh J Villatt (Independent journalist)  
Karuna (Sundarban Jana Sramajibi Manch, West Bengal)  
Nivada Rana (AIUFWP, Lakhimpur Khiri)  
Amir Hamza (AIUFWP, Rajaji National Park)  
Ishan Kukreti (Senior correspondent, *Down to Earth*)  
Tapas Mondal (Sundarban Jana Sramajibi Manch, West Bengal)  
Rajnish Gambhir (AIUFWP, Lakhimpur Khiri)  
Sanjay Parikh (Lawyer, Supreme Court)  
Smita Gupta (Researcher)  
Aashima Subberwal (General Secretary, Programme for Social Action)  
Vijayan M J (General Secretary, Pakistan India People's Forum for Peace and Democracy, India)  
Kamal Nayan Choubey (Faculty, University of Delhi)  
Anil TV (Coordinator, Delhi Forum)  
Mohammed Safi (AIUFWP, Ramnagar, Uttarakhand)  
Emlon Tirkey (SRUTI)  
Aparna Sundar (Azim Premji University)  
Birenchi Bariha (Gram Pragati Parivesh Vikas Pratisthan, Odisha)  
Musthafa Chopra (Uttarakhand)  
Matadayal (Manikpur, Chitrakoot)  
Karuna (Sundarbans, West Bengal)  
Tarun Joshi (AIUFWP, Haldwani)  
Ashok Sharma (Delhi Forum)  
Mujahid Nafees (Minority Coordination Committee, Gujarat)  
Jibin Robin (Delhi Solidarity Group)  
Zuha (Independent lawyer)

Aditi (Researcher, Himdhara)  
Ayaz Ansari (Delhi Solidarity Group)  
Kaveri Choudhury (The Research Collective)  
Aswathy Senan (The Research Collective)  
Himanshu Damle (Public Finance Public Accountability  
Collective, Delhi)  
Pavitra (Sundarbans, West Bengal)  
Arun Mohan (The Media Collective)  
Musthujab Makkolath (The Media Collective)



CORAM : HON'BLE MR. JUSTICE ARUN MISHRA  
HON'BLE MR. JUSTICE NAVIN SINHA  
HON'BLE MS. JUSTICE INDIRA BANERJEE

Counsel for the parties  
Mr. Ajit Kumar Sinha..

UPON hearing the counsel the Court made the following

O R D E R

RE: AFFIDAVIT OF STATE OF ANDHRA PRADESH

Perused the affidavit.

The affidavit indicates that the extent of land covered by rejections in respect of STs is 1,14,400 acres and 66351 claims have been rejected. But the action taken indicates that not even a single order has been complied with.

Once the orders of eviction have been passed, the eviction ought to have taken place. Let the Chief Secretary to the State of Andhra Pradesh file an affidavit as to why the orders of eviction have not been carried out so far in respect of the incumbents whose claims have been rejected as per the affidavit filed on 24.04.2018 filed by Mr. Gandham Chandrudu, Director of Tribal Welfare Department. Let action be taken on or before next date.

Let the requisite affidavit be filed with necessary details and other matters mentioned in the order on or before 12.07.2019.

RE : AFFIDAVIT OF ASSAM

The following information has been given in the affidavit filed by the State of Assam :-

- "4. It is stated that the total number of claims belonging to*
- a) Scheduled Tribe - 74,364*
  - b) Other Traditional Forest Dwellers - 19966*



5. *The following are the total number of claims rejected in the State of Assam:-*

a) *Scheduled Tribe - 22398.*

b) *Other Traditional Forest Dwellers - 5136*

6. *It is stated that total extent of land as claimed*

a) *Schedule Tribe - 10128 hectares*

b) *Other Traditional Forest Dwellers - 561.4 Hectares*

7. *It is further stated that the Divisional Forest Officer within their jurisdiction have submitted proposal to the Principal Chief Conservator of Forest & Head of the Forest Force to carry out eviction in respect of claims rejected by the District Level Committee.*

8. *It is stated that steps are already taken for eviction of all the encroachers/claimants whose claims have been rejected. The total extent of area to be evicted is assessed and will be submitted within a short time of period."*

The Chief Secretary to the State of Assam is directed to file an affidavit stating whether the incumbents in respect of whom the rejection orders have been passed, have been evicted or not and if not, the reasons for the same. In case the eviction orders have attained finality, we direct the concerned authority including the Chief Secretary to ensure that the eviction is made on or before the next date of hearing.

I.A.No. 69409 of 2018 - application for waiving of the costs imposed vide order dated 18.04.2018 is rejected.

RE: AFFIDAVIT FILED BY THE STATE OF BIHAR

In the affidavit filed by the State of Bihar, the following facts have been mentioned in Paragraph 7:-

*"7. That as per report submitted by the concerned District Magistrates, total claims comes to 4696. Out of that total 2976 applications are related to STs and 1720 to OTFDs (Other Traditional Forest Dwellers). The total number of claims rejected comes to 4354 out of which rejected claims of STs are 2666 and*

*OTFDs are 1688."*

A detailed statement has been filed indicating that in some of the Districts, action is being taken for eviction and in some of the Districts, it is not treated as the persons who were found not occupying the area over which they had raised the claim.

Let detailed affidavit be filed by the Chief Secretary to the State of Bihar in respect of the number of claims settled and in the cases where claims have been rejected and have attained finality, whether eviction has been ordered and possession has been taken or not. Let full status be disclosed in the affidavit. It is further directed that the cases in which the orders have attained finality, let eviction be made forthwith. In case of non-compliance of this order, the same shall be viewed seriously.

RE - AFFIDAVIT FILED BY THE STATE OF CHHATTISGARH

The affidavit filed by the State of Chhattisgarh indicates that against 20095 claimants, whose claims have been rejected, have to be evicted, whereas action has been taken only against 4830 claimants of STs and OTFDs.

Let the Chief Secretary to the State of Chhattisgarh ensure, by way of an affidavit, that where the eviction orders have attained finality, whether orders are carried out. It shall also be indicated in the affidavit as to how many claims are still pending for verification. A compliance report be filed on or before the next date of hearing.

RE: AFFIDAVIT FILED BY THE STATE OF GOA

We have perused the affidavit filed by the State of Goa. It appears that 6094 claims have been filed by STs and 4036 claims have been filed by OTFDs.

Let the Chief Secretary to the State of Goa indicate, by way of an affidavit, as to how many claims have been adjudicated. In case eviction orders have attained finality, whether those incumbents

have been evicted or not. The Chief Secretary shall ensure that eviction is carried out and compliance report be submitted to this Court on or before the next date of hearing.

RE: AFFIDAVIT FILED BY THE STATE OF GUJARAT

The affidavit filed by the State of Gujarat indicates that 1,68,899 claims have been filed by STs and 13,970 claims have been filed by OTFDs. Let Chief Secretary to the State of Gujarat indicate, by way of an affidavit, as to why after the rejection of the claims, which have attained finality, eviction has not been made.

The Chief Secretary shall ensure that where the rejection orders have been passed, eviction will be carried out on or before the next date of hearing. In case the eviction is not carried out, as aforesaid, the matter would be viewed seriously by this Court.

RE: AFFIDAVIT FILED BY THE STATE OF HIMACHAL PRADESH

The affidavit filed by the State of Himachal Pradesh indicates that 2131 claims have been filed by STs and 92 claims have been filed by OTFDs. Let the Chief Secretary to the State of Himachal indicate, by way of an affidavit, as to why after the rejection of the claims, which have attained finality, eviction has not been made.

The Chief Secretary shall ensure that where the rejection orders have been passed, eviction will be carried out on or before the next date of hearing. In case the eviction is not carried out, as aforesaid, the matter would be viewed seriously by this Court.

RE: AFFIDAVIT FILED BY THE STATE OF JHARKHAND

The affidavit filed by the State of Jharkhand indicates that 1,07,187 claims have been filed by STs and 3569 claims have been filed by OTFDs. Out of the above, 27,809 claims of STs and 298 claims of OTFDs have been rejected.

Let the Chief Secretary to the State of Jharkhand indicate, by way of an affidavit, as to why after the rejection of the claims, which have attained finality, eviction has not been made.

The Chief Secretary shall ensure that where the rejection orders have been passed, eviction will be carried out on or before the next date of hearing. In case the eviction is not carried out, as aforesaid, the matter would be viewed seriously by this Court.

RE: AFFIDAVIT FILED BY THE STATE OF KARNATAKA

The affidavit filed by the State of Karnataka indicates that 48,432 claims have been filed by STs and 2,27,014 claims have been filed by OTFDs. Out of the above, 35,521 claims of STs and 1,41,019 claims of OTFDs have been rejected. Let the Chief Secretary to the State of Karnataka indicate, by way of an affidavit, as to why after the rejection of the claims, which have attained finality, eviction has not been made.

The Chief Secretary shall ensure that where the rejection orders have been passed, eviction will be carried out on or before the next date of hearing. In case the eviction is not carried out, as aforesaid, the matter would be viewed seriously by this Court.

RE: AFFIDAVIT FILED BY THE STATE OF KERALA

Let verification/re-verification process be concluded within four months from today.

The affidavit filed by the State of Kerala indicates that 39,999 claims have been filed by STs, out of which 894 have been rejected. Let the Chief Secretary to the State of Kerala indicate, by way of an affidavit, as to why after the rejection of the claims, which have attained finality, eviction has not been made.

The Chief Secretary shall ensure that where the rejection orders have been passed, eviction will be carried out on or before the next date of hearing. In case the eviction is not carried out, as aforesaid, the matter would be viewed seriously by this Court.

RE : AFFIDAVIT FILED BY THE STATE OF MADHYA PRADESH

The affidavit filed by the State of Madhya Pradesh indicates that

426105 claims have been filed by STs and 153306 claims have been filed by OTFDs. Out of the above, 204123 claims of STs and 150664 claims of OTFDs have been rejected. Let Chief Secretary to the State of Madhya Pradesh state, by way of an affidavit, as to why after the rejection of the claims, which have attained finality, eviction has not been made.

The Chief Secretary shall ensure that where the rejection orders have been passed, eviction will be carried out on or before the next date of hearing. In case the eviction is not carried out, as aforesaid, the matter would be viewed seriously by this Court.

RE: AFFIDAVIT FILED BY THE STATE OF MAHARASHTRA

The affidavit filed by the State of Maharashtra indicates that 2,54,042 claims have been filed by STs and 105681 claims have been filed by OTFDs. Out of the above, 13712 claims of STs and 8797 claims of OTFDs have been rejected. Let the Chief Secretary to the State of Maharashtra indicate, by way of an affidavit, as to why after the rejection of the claims, which have attained finality, eviction has not been made.

The Chief Secretary shall ensure that where the rejection orders have been passed, eviction will be carried out on or before the next date of hearing. In case the eviction is not carried out, as aforesaid, the matter would be viewed seriously by this Court.

RE : AFFIDAVIT FILED BY THE STATE OF ODISHA

The affidavit filed by the State of Odisha indicates that 5,73,867 claims have been filed by STs and 31,687 claims have been filed by OTFDs. Out of the above, 122,250 claims of STs and 26,620 claims of OTFDs have been rejected. It is stated that the rejected claims are being reviewed. Let the review process be completed within four months. Let the Chief Secretary to the State of Odisha indicate, by way of an affidavit, as to why after the rejection of the claims, which have attained finality, eviction has not been made.

The Chief Secretary shall ensure that where the rejection orders

have been passed, eviction will be carried out on or before the next date of hearing. In case the eviction is not carried out, as aforesaid, the matter would be viewed seriously by this Court.

RE: AFFIDAVIT FILED BY THE STATE OF RAJASTHAN

The affidavit filed by the State of Rajasthan indicates that 73,578 claims have been filed by STs and 597 claims have been filed by OTFDs. Out of the above, 36,492 claims of STs and 577 claims of OTFDs have been rejected. Let the Chief Secretary to the State of Rajasthan indicate, by way of an affidavit, as to why after the rejection of the claims, which have attained finality, eviction has not been made.

The Chief Secretary shall ensure that where the rejection orders have been passed, eviction will be carried out on or before the next date of hearing. In case the eviction is not carried out, as aforesaid, the matter would be viewed seriously by this Court.

RE: AFFIDAVIT FILED BY THE STATE OF TAMIL NADU

The affidavit filed by the State of Tamil Nadu indicates that 31,821 claims have been filed by STs and 2,481 claims have been filed by OTFDs. Out of the above, 7,148 claims of STs and 1881 claims of OTFDs have been rejected. Let the Chief Secretary to the State of Tamil Nadu indicate, by way of an affidavit, as to why after the rejection of the claims, which have attained finality, eviction has not been made.

The Chief Secretary shall ensure that where the rejection orders have been passed, eviction will be carried out on or before the next date of hearing. In case the eviction is not carried out, as aforesaid, the matter would be viewed seriously by this Court.

RE: AFFIDAVIT FILED BY THE STATE OF TELANGANA

The affidavit filed by the State of Telangana indicates that 1,83,252 claims have been filed by STs. Out of the above, 82,075 claims of STs have been rejected. Let Chief Secretary to the State of Telangana indicate, by way of an affidavit, as to why after the

rejection of the claims, which have attained finality, eviction has not been made in spite of the order passed by this Court.

The Chief Secretary shall ensure that where the rejection orders have been passed, eviction will be carried out on or before the next date of hearing. In case the eviction is not carried out, as aforesaid, the matter would be viewed seriously by this Court.

RE: AFFIDAVIT FILED BY THE STATE OF TRIPURA

The affidavit filed by the State of Tripura indicates that 166584 claims have been filed by STs and 33774 claims have been filed by OTFDs. Out of the above, 34483 claims of STs and 33774 claims of OTFDs have been rejected. Let the Chief Secretary to the State of Tripura indicate, by way of an affidavit, as to why after the rejection of the claims, which have attained finality, eviction has not been made.

The Chief Secretary shall ensure that where the rejection orders have been passed, eviction will be carried out on or before the next date of hearing. In case the eviction is not carried out, as aforesaid, the matter would be viewed seriously by this Court.

RE: AFFIDAVIT FILED BY THE STATE OF UTTARAKHAND

The affidavit filed by the State of Uttarakhand indicates that 90 claims have been filed by STs and 119 claims have been filed by OTFDs. Out of the above, 35 claims of STs and 16 claims of OTFDs have been rejected. Let the Chief Secretary to the State of Uttarakhand indicate, by way of an affidavit, as to why after the rejection of the claims, which have attained finality, eviction has not been made.

The Chief Secretary shall ensure that where the rejection orders have been passed, eviction will be carried out on or before the next date of hearing. In case the eviction is not carried out, as aforesaid, the matter would be viewed seriously by this Court.

RE: AFFIDAVIT FILED BY THE STATE OF UTTAR PRADESH

The affidavit filed by the State of Uttar Pradesh indicates that







# Round Table Conference on Forest Governance, Implementation of the Forest Rights Act & Conservation

23 July, 2019

India Islamic Cultural Centre, New Delhi

All India Union of ... working ... the Research Collective





31,846 claims have been filed by STs and 50,442 claims have been filed by OTFDs. Out of the above, 20494 claims of STs and 38167 claims of OTFDs have been rejected. Let the Chief Secretary to the State of Uttar Pradesh indicate, by way of an affidavit, as to why after the rejection of the claims, which have attained finality, eviction has not been made.

The Chief Secretary shall ensure that where the rejection orders have been passed, eviction will be carried out on or before the next date of hearing. In case the eviction is not carried out, as aforesaid, the matter would be viewed seriously by this Court.

RE: AFFIDAVIT FILED BY THE STATE OF WEST BENGAL

The affidavit filed by the State of West Bengal indicates that 95958 claims have been filed by STs and 36004 claims have been filed by OTFDs. Out of the above, 50288 claims of STs and 35856 claims of OTFDs have been rejected. Let the Chief Secretary to the State of West Bengal indicate, by way of an affidavit, as to why after the rejection of the claims, which have attained finality, eviction has not been made.

The Chief Secretary shall ensure that where the rejection orders have been passed, eviction will be carried out on or before the next date of hearing. In case the eviction is not carried out, as aforesaid, the matter would be viewed seriously by this Court.

RE: AFFIDAVIT FILED BY THE STATE OF MANIPUR

The learned counsel appearing for the State of Manipur has stated that they are going to file compliance affidavit within four weeks from today. Let it be filed within four weeks.

It is directed that where the verification/reverification/review process is pending, the concerned State shall do the needful within four months from today and report be submitted to this Court.

Let Forest Survey of India (FSI) make a satellite survey and place

on record the encroachment positions and also state the positions after the eviction as far as possible.

Let the requisite affidavits be filed on or before 12.07.2019.

List the matters on 24.07.2019.

(JAYANT KUMAR ARORA)  
COURT MASTER

(JAGDISH CHANDER)  
BRANCH OFFICER

## **Annexure 2: Application for Intervention against the SC order of 13 February 2019**

IN THE SUPREME COURT OF INDIA

(Civil writ jurisdiction)

I.A. No.OF 2019

IN

Writ petition (Civil) No. 109 OF 2008

IN THE MATTER OF:

WILDLIFE FIRST ... Petitioners

**Versus**

MINISTRY OF FOREST AND ENVIRONMENT ...Respondents

AND IN THE MATTER OF:

SOKALO GOND& ORS. ...Applicant/Intervener

APPLICATION FOR INTERVENTION

IN THE SUPREME COURT OF INDIA

CIVIL WRIT JURISDICTION

I.A. No.OF 2019

IN

WRIT PETITION (CIVIL) NO. 109 OF 2008

IN THE MATTER OF:

WILDLIFE FIRST ...Petitioner

**VERSUS**

MINISTRY OF FOREST AND ENVIRONMENT ...Respondents

AND IN THE MATTER OF:

1. SOKALO GOND ...Applicant/Intervener No. 1
2. NIVADA RANA ...Applicant/Intervener No. 2
3. All India Union of Forest Working Peoples ...Applicant/  
Intervener No. 3
4. Citizens for Justice & Peace .....Applicant/Intervener No. 4

**APPLICATION FOR INTERVENTION**

TO

THE HON'BLE CHIEF JUSTICE OF INDIA

AND HIS LORDSHIP'S COMPANION JUSTICES OF THE  
SUPREME COURT OF INDIA

THE HUMBLE APPLICATION  
OF THE ABOVE NAMED  
APPLICANTS

MOST RESPECTFULLY SHOWETH:

1. That the present Writ Petition is pending before this Hon'ble Court.
2. That the Applicants herein seek to intervene in the present proceedings since the Writ Petition concerns the constitutionality of a legislation i.e. the Schedule Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (hereinafter referred to as "FRA 2006") that protects the rights of these Applicants and a large majority of the population who are similarly placed.

### 3. Background of Applicants

a. The applicant no.1, Sokalo Gond, is an Adivasi woman leader and organiser of the All India Union of Forest Working People (AIUFWP) and has been actively demanding the implementation of the forest rights envisaged under FRA 2006 since 2006. She is also a national executive member of the 3rd Intervener/Applicant, the All India Union of Forest Working Peoples (AIUFWP) and also president of Village Level forest rights Committee, Birsa Nagar Tola, Village Majhali, Tehsil Dudhi, Sonbhadra, UP. She has been at the forefront of the movement for reclaiming "forest" lands since 2004, even before the historic legislation became a reality. She has pursued these initiatives despite great adversities including being put in a prison a couple of times. She along with her community members are protecting thousands of acres of their ancestral land as a community resource; this land is in the collective possession of women of the community. Over 20 thousand hectares of land in the Sonbhadra Kaimur region alone has been thus re-claimed under the leadership of such dynamic women.

b. Nivada Rana, the second Applicant is a Tharu Adivasi woman leader residing at Village Soda, Tehsil Palia Kalan, District Lakhimpur Kheri, Uttar Pradesh. She is a resident of Suda village, located in Dudhwa National Park, which is situated exactly on the Nepal border. A Tharu Adivasi, Nivada has been associated with the third intervener, the All India Union of Forest Workings People (AIUFWP) since its foundation in 2005 and has been at the forefront of the struggle to claim land and forest rights. Nivada Rana is now the Vice-President of the local organization "Tharu Adivasi Mahila Majdur Kisan Manch" and is the National Executive member of applicant no. 3.

c. The applicant nos. 3 and 4, All India Union of Forest Workings People (AIUFWP) and Citizens for Justice and Peace (CJP) have been actively supporting India's Adivasis and Other Traditional Forest Dwellers (OTFD) in staking their claim to forest land, which was finally recognised as their right under the FRA of 2006. While



formally formed as the AIUFWP in 2013, with a membership of 25,000 forest dwellers, the organisation was earlier known as the "National Forum of Forest People and Forest Workers" (NFFPFW). This Forum (NFFPFW) was a joint forum of many organisations working in around 17 states on the forest rights and governance issues and NFFPFW was essentially and seminaly involved in ensuring that the FRA 2006 was passed as an Act of Parliament in 2006. Organising OTFDs and Adivasis in 13 states of the country, with a vision to reclaim land from the forest department and other dominant feudal overlords. This is essentially a forest and land rights struggle and AIUFWP has, so far, collectively reclaimed more than One Lakh hectares of land that is now being cultivated collectively under the leadership of women. The AIUFWP works throughout Uttar Pradesh in districts such as Sonbhadra, Mirzapur, Chanduali, Chitrakoot, Lakhimpur Kheeri, Lalitpur, Bhariach, Pilibhit (areas of the Terai, Kaimur), in the Shivalik area of Uttrakhand, Bihar, Jharkand, Bundelkhand in Madhya Pradesh and the Sundarbans area of West Bengal.

4. That, the Applicants state that, furthering the statutory Constitutional rights outlined in Schedules V and VI of the Constitution, FRA 2006 for the first-time vested Women Adivasis and Traditional Forest Dwellers equal and independent rights over forests and forest land. Revenue laws and all other land laws vest this right on women only after marriage and not as an independent right.

5. The Applicants seek to place before this Hon'ble Court aspects of the reality on the ground that we humbly believe are being concealed from this Hon'ble Court.

6. That in 2008, one year after FRA 2006 was formerly notified as law, the Petitioners had filed the present batch of Writ Petitions challenging the constitutional validity of the Act as well as the legislative competence of Parliament to enact the Act. It is towards this end that the Petitioners have sought for steps to be taken at the instance of this Hon'ble Court to evict persons whose

claims to forest land have been rejected since those persons are encroachers according to the Petitioners. It is submitted that while the Petitioners' concern may be the preservation of forest and wildlife, such preservation cannot come at the cost of the rights of traditional forest dwellers who have lived on these lands for generations and are dependent upon the forests for their livelihood. It is in recognition of their rights that FRA 2006 was enacted to recognise and vest forest rights in forest dwelling Scheduled Tribes and other traditional forest dwellers.

7. In this context, it is crucial to note that, fifty six years after the enactment of the Constitution, it was in 2006 that the FRA 2006 was enacted recognising this historical injustice of traditional forest dwellers and Adivasis being excluded from their rights over lands, despite the existence of Schedules V and VI of the Constitution. That, in this context, the only issue in question before this Hon'ble Court is whether the original prayers of the petitioners should be intervened at all; that whether FRA 2006 is violative and ultra vires of the Constitution.

8. That at the outset, the Applicants state that FRA 2006 and the concerned 2008 Rules (and thereafter) are a historic milestone that ensure the rights and livelihood of forest dwelling communities. The enactment of this crucial legislation, through an Act of Parliament, was the result of a decades long struggle and articulation of India's indigenous, Adivasi, other traditional forest dwelling communities and, in fact, marks a much needed shift in jurisprudence by empowering local communities and their Gram Sabhas not only with governance but also protection of their livelihoods, forests and lands. The FRA 2006 recognises the rights and occupation of forest dwelling Schedule Tribes and Other Traditional Forest Dwellers, on forest land, who have been residing in such forest for generations. At this juncture, the Applicants place reliance on the Preamble of FRA 2006 as quoted hereunder:

"An Act to recognize 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."

9. That the Applicants submit that Section 4(5) of FRA 2006 provides absolute status to forest dwellers by laying down that the displacement of people from forests shall not be done until the recognition and verification procedure is complete. Under the well-defined scheme of the Act, there is no scope for "inadequacy", delay, or incomplete submission of claims to lead to evictions. Regardless of the number of pending appeals and the claims which are still to be appealed, prima facie, it is not within the purview of the Act to allow for eviction of people by terming them as encroachers. Section 4(5) of FRA 2006 is quoted here under:

"Save as otherwise provided, no member of a forest dwelling Scheduled Tribe or other traditional forest dweller shall be evicted or removed from forest land under his occupation till the recognition and verification procedure is complete."

10. That FRA 2006 under Section 6(1) vests the power to initiate the process of recognising individuals' claim to forest rights in Scheduled Areas with the Gram Sabha. There could be no more powerful or legitimate recognition of local self- government than this. It must be noted that under the Act, these claims are examined by the Gram Sabha and the Gram Sabha is then empowered to pass a resolution based on evidence adduced regarding individual or community claims.

If any person is aggrieved by the resolution of the Gram Sabha, he may appeal to the Sub-Divisional Level Committee under Section 6(2). If any person is aggrieved by the decision of the Sub-Divisional Level Committee, he may appeal to the District Level

Committee under Section 6(4). Under Section 6(6), the decision of the District Level Committee is final and binding. However, it is pertinent to note that at no point does the Act refer to eviction of people from the forests once their claims are rejected. The Act lays down that a mandated period of 3 generations of living in forests is required for a person to get his/her rights recognised under the Act.

11. That all India official figures show that, of 20 crores of our population directly dependent on the forest there is another 10 crores indirectly dependent on them. It is only after this statutory enactment that these vast populations who, for decades have tended tilled and protected our forests and lands were vested with a recognition of these rights that they held until 150 years ago when British colonial administrative practice and law had snatched them away. That, at stake is the livelihood, right to life and cultural existence of as many as 30 crores of the Indian population, its traditional forest dwellers and Adivasis.

12. That, the applicants/interveners would like to point out that the prime objective of the National Forest policy 1988 is to provide ecological security to the nation and aims to have a minimum of 1/3 of the total land of the area of the country under Forestry cover.

13. The applicants would like to draw attention especially to consistent steps taken by the Central Government through its Ministry of Tribunal Affairs (MoTA), since the enactment of the statute under discussion, to raise awareness of the law, and ensure that power balances shift towards the empowerment and recognition of rights of traditional, forest dwellers and Adivasis. In the affidavits filed in the present petition that are part of the pleadings these form part of the record and need to be assessed by this Hon'ble Court.

14. The interveners/applicants state that this Act under challenge by the Petitioners, actually recognises and emphasises the rights of forest dwellers and scheduled tribes in due acceptance of the

fact that these communities have always been at the receiving end of exclusion. In fact, the act was enacted so that the rights of these marginalised communities could be formally recorded. Under British colonial rule, at least around 150 indigenous tribes were brutally criminalised by a foreign and hostile administration, that also gave permission to the police and administration to constantly monitor them. The demand for timber made the British exploit the habitat of these communities for commercial ends.

15. That, in a sense, after Independence this exploitation did not wholly stop despite the enactments of Schedules V and VI of the Constitution. Not only was the 1927 colonial Indian Forests Act not repealed to bring law in tune with Schedules V and VI of the Constitution that protected the rights of traditional forest dwellers, scheduled tribes and Adivasis but with the establishment and emphasis on industry for boosting economic growth, this exploitation continued.

16. As a detailed study of the history behind this law coming into force will show, thousands of villages before 1927 were simply not shown as Forest Villages but Cadestral Maps and Gazetteers contain detailed evidences of the traditional forest dwellers and Adivasis living here before they "vanished" from 'official British records.' It is this historical wiping out of India's traditional forest dwelling people from its map and participation in governance that has been sought to be set right in 2006.

17. That, it is pertinent in this context to note that, in exercise of its powers under Article 243M (4) (b) of the Constitution, Parliament enacted the Panchayats (Extension to Scheduled Areas) Act, 1996 (hereinafter "PESA") which extended the provisions of Part IX of the Constitution to the Scheduled Areas (under Article 244 read with the Fifth Schedule) with certain exceptions and modifications. The said statute, in recognition of the continued importance of community self- governance among tribal communities, inter alia required that State statutes on panchayats must empower the Gram Sabha: a. "[to be] competent to safeguard and preserve

the traditions and customs of the people, their cultural identity, community resources and the customary mode of dispute resolution" (Section 4(d)); b. "[to] be responsible for the identification or selection of persons as beneficiaries under the poverty alleviation and other programmes (Section 4(e)(ii)); c. "(with) the ownership of minor forest produce" (Section 4(m)(ii)); d. "to exercise control over institutions and functionaries in all social sectors" (Section 4(m) (vi)).

18. That, in this particular context, attention may be drawn to Section 4 (i) of PESA which states that: "the Gram Sabha or the Panchayats at the appropriate level shall be consulted before making the acquisition of land in the Scheduled Areas for development projects and before resettling or rehabilitating persons affected by such projects in the Scheduled Areas". The Applicants crave leave to rely on the relevant sections of the Panchayats (Extension to Scheduled Areas) Act, 1996. It is pertinent to note that the Eleventh Schedule to the Constitution of India enumerates the subjects upon which Panchayats may have powers and responsibilities, as per Article 243 G of the Constitution.

19. The applicants would like to FRA, 2006 is applicable to forest regions across India. Despite the Act being in force for the last 11 years, individual and community claims of the Adivasi and other forest dwellers are yet to be recognized. Over a period of time, decades prior to this enactment even, a powerful nexus between the local mafia, police and Forest department officials has emerged, and they have, regularly and systematically, exploited and oppressed the forest dwelling communities. Despite the enactment of a law that aims to set this right, the prevalence of this entrenched nexus and the existent state of affairs has allowed a "historical injustice" to be perpetuated, despite the laudable and emancipatory objectives behind the law (FRA 2006). The applicants would like to state that this state of affairs is in clear contravention of the Preamble to the FRA 2006 which requires the State to act to mitigate the 'historical injustice' on the forest people.

20. The Ministry of Tribals Affairs (MoTA) of the government of India, itself newly created in recognition of this articulation in 1999, has, since the enactment of the law taken several steps to ensure that state government of issues and local governance institutions are equipped with knowledge of the act including on how to translate its provisions at the grass roots with forest communities that are often at the margins of society. In the years since the law came into force the MoTA has taken several measures to enable communities to also understand the process involved in filing claims and securing the rights that they are entitled to.

21. The Applicants submit, that as repeatedly explained in the publications produced by MoTA, the schedule tribes live in contiguous areas unlike other communities. In order to protect the interest of schedule tribes article 244 of the Constitution has made provision for 'Administration of schedule areas and tribal areas'. Within the scope of the Indian constitution, according to the provisions enshrining in the Vth (Fifth) schedule and the VIth (sixth) schedule, on the issue of land and other social issues. The Vth schedule and the article 244 (1) of the Constitution defines "Schedule Areas" as those areas as the President may by order declare to be Schedule areas. These areas can be altered by the President of India, after consultation with the Governor of that state under article 244 (2).

22. The Applicants would like to elaborate on how complex and arduous this process has been, given the objectives of the law which is and were to shift the balance of power away from vested interest towards India's traditional forest dwelling communities. To simply lay out, in the initial years after the enactment of FRA 2006, the Standing Committee on Social Justice and Empowerment of the fifteenth Lok Sabha (2010-2011 report) made a scathing indictment of the Ministry of Tribal Affairs for not implementing the law with rigour. This report criticised the Ministry for failing to provide a leadership role in the implementation of laws and schemes for Schedule Tribes in Schedule Areas. In this report, the Committee, especially observed and commented upon the slow implementation of the Forest rights Act 2006. However, five

years after this first report (2010-2011), largely because of the widespread people's mobilisation and advocacy around FRA 2006, the implementation of the law has seen remarkable advances. The petitioners would like to submit that despite the fact that the implementation of FRA 2006, remains uneven across states, there have been remarkable success stories both in the area of community and community forest resource rights and individual forest rights.

23. That, it is inter-relationship between the Panchayats Extension to Scheduled Areas Act, 1996 and the Forest Rights Act has been elucidated by this Hon'ble Court in Orissa Mining Corporation vs. Ministry of Environment and Forests &Ors (2013) 6 SCC 476 (@ paras 57-59) re-affirming the importance of Gram Sabhas in examining the claims of individuals and communities. The relevant portion of the judgment is reproduced hereunder:

"59. Under Section 6 of the Act, the Gram Sabha shall be the authority to initiate the process for determining the nature and extent of individual or community forest rights or both and that may be given to the forest dwelling STs and other TFDs within the local limits of the jurisdiction. For the said purpose it receives claims, and after consolidating and verifying them it has to prepare a plan delineating the area of each recommended claim in such manner as may be prescribed for exercise of such rights. The Gram Sabha shall, then, pass a resolution to that effect and thereafter forward a copy of the same to the Sub-Divisional Level Committee. Any aggrieved person may move a petition before the Sub-Divisional Level Committee against the resolution of the Gram Sabha. Sub-section (4) of Section 6 confers a right on the aggrieved person to prefer a petition to the District-Level Committee against the decision of the Sub-Divisional Level Committee. Sub-section (7) of Section 6 enables the State Government to constitute a State-Level Monitoring Committee to



monitor the process of recognition and vesting of forest rights and to submit to the nodal agency. Such returns and reports shall be called for by that agency."

24. That, even before this verdict of this Hon'ble Court, in another landmark judgment, Samatha vs. State of Andhra Pradesh & Ors. [(1997) 8 SCC 191] this Hon'ble Court has noted that agriculture is the only source of livelihood for the Scheduled Tribes apart from collection and sale of minor forest produce to supplement their income. Land is their most important natural and valuable asset and imperishable endowment from which the Adivasis and Traditional Forest Dwellers derive their sustenance, social status, economic and social equality, permanent place of abode, work and living. Consequently, Scheduled Tribes have great emotional attachments to their lands. It is a recognition of this reality that the FRA 2006 was enacted into a law.

25. That, to the knowledge of the applicants, across the country, various claims have been filed under the Act. However, these claims get unilaterally rejected with no hearing. Corrective action in this regard was initiated at the ministry level with instructions given to all the State regularly. The applicants are aware of regular instructions given in this regard since 2010.

26. That in June 2018, vide letter no. 23011/3/2016-FRA dated 27.06.2018, the Ministry of Tribal Affairs (FRA Division) wrote to the Chief Secretaries of all concerned States with regard to resolving pendency and rejection under FRA 2006. The letter notes that in many cases either the claimants are not informed about the rejection of their claims or they are merely given a speaking order without reasons. Furthermore, the letter notes that such non-communication of rejection deprives the aggrieved persons from taking appropriate legal recourse. The letter also raises concerns about the manner in which tribals are evicted by forest officers once their claims are rejected. The relevant portions of the aforesaid letter are reproduced hereunder:

"Further, non-communication of rejection and when conveying rejection not assigning reasons for rejection at each level results in preventing the claimants from exercising their right to appeal/review. In this regard, MoTA vide its letter No. 23011/24/2009-FRA dated 15.7.2010 has requested the States to provide the reasons for rejection of claims to claimants and also directed States to cite the same in Quarterly Progress Report sent by the State Governments to MOTA. Hence, while rejecting the claims, reasons must be cited by concerned authorities and communicated to the claimants as a speaking order."

"Such an action while depriving aggrieved persons the opportunity to prefer appeal before SDLC or DLC, as the case may be, violates the spirit of FRA 2006 besides creating grounds for unrest and agitation and also fuels extremism. In such cases, aggrieved person must be given due opportunity and time to file appeal before authority. Moreover, as discussed during Review cum Consultation meeting, States are to undertake suo motto review of rejected claims. Hence, it may be ensured that no eviction of FRA claimants takes place during pendency of review or appeal/review."

"It has recently come to notice of MOTA that state forest authorities move immediately to evict people whose claims under FRA are rejected without waiting for decision on review or appeal or allowing time for filing appeal/review ostensibly under the garb of the Order of March 2018 from Hon'ble Apex Court in CWP No. 50/2008 with other bunched CWPS."

A true and correct copy of the letter no. 23011/3/2016-FRA dated 27.06.2018 (29.06.2018) sent by the Ministry of Tribal Affairs (FRA Division) to the Chief Secretaries of all concerned States with regard to resolving pendency and rejection under FRA 2006 is marked and annexed herewith as ANNEXURE .

27. That, even before this communication, in 2014, vide letter no. 23011/14-2008- FRA (Vol. II) dated 12.09.2014, the Ministry of Tribal Affairs (FRA Division) previously wrote to the Chief Secretaries of all concerned States with regard to resolving the problematic methodology being employed by the bureaucracy in various states regarding claims, their pendency and so called rejections under FRA 2006. This letter of 2014 (23011/14-2008-FRA (Vol. II) dated 12.09.2014) also raises concerns about the manner in which the claims filed by Adivasis and Other Traditional Forest Dwellers (OTFDs) are handled.

28. That, both these communications clearly show how, even after 13 years of the existence of this law, FRA 2006, its fair implementation remains obstructed by an ill-trained bureaucracy and state machinery. That, it in this overall context that a fictitious set of arguments claiming "degradation caused by encroachers" and "depletion of natural resources" that have been advanced by the Petitioners herein periodically and with vehemence need to be assessed, and in the applicants view, discarded, by this Hon'ble Court.

29. That the Applicants have been working at the grass roots level to ensure that the Act is implemented. To this end they have been peacefully and democratically organising the Adivasis and Other Traditional Forest Dwelling Communities (OTFDs) to legitimately make claims over their community lands. It is submitted that while they were trying to get the provisions of the act implemented and the rights enshrined therein realised, they have faced significant resistance from those with vested interests who intend to take over the forest land for commercial purposes.

30. For example, to give the most recent example, the first Applicant, Sokalo Gond, along with 15 other Gram Sabha members (as provided for under FRA 2006) filed community resource claims through Form "C" on March 23, 2018 at the district headquarters of Sonbhadra, Robertsganj. The significance of this action is far

reaching as the first claimants of these vast resources are women and the second claimants are their husbands or the kin within the family. Through this process, they have claimed their rights as women and asserted that the forest belongs to women and that they have the first rights over the forest produce and forest land. Over 20 thousand hectares of land in the Sonbhadra Kaimur region alone has been thus re-claimed under the leadership of such dynamic women. Women today have collective ownership of the land and are undertaking collective cultivation and preservation of the natural resources collectively, here. The second applicant, Nivada Rana has also participated in filing the community resource claim Form C along with 23 Gram Sabha in the area of the Dudhwa National Park on July 22, 2013. These claims have been submitted to the authorities, supported by substantive documentation on the grounds that women should be the first owners of the vast natural resources. But to date no community rights have yet been conferred to women in Dudhwa.

31. Last year, in June 2018, while in several parts of the Sonbhadra region, Adivasis and villagers, led by women like Sokalo Gond, were ensuring that legitimate claims under the FRA 2006 were filed, the state police decided to launch a vendetta campaign against strong leaders of the movement such as Sokalo. She, and another leader Kismatiya Gond were illegally picked up by the police just after they were returning from a meeting with state Forest Minister Dara Singh Chouhan and the Forest Secretary in Lucknow. This prompted the organisations, AIUFWP and Citizens for Justice and Peace (CJP) to file a Habeas Corpus Petition in the Allahabad High Court. The court not only directed explanation from the authorities for the detention, but also ordered that the women be produced before it. The women were not produced and while the police claimed they released the women, they remained untraceable for a long while. Finally, after persistent efforts she was released from the Mirzapur Jail, in November 2018.

32. That the applicants state that the history of this litigation is curious. From the time it was filed, for eleven long years, the

premise and scope was simply and only for testing the constitutional vires of the FRA 2006 as prayed for. The applicants would like to submit that by 2016 when this Hon'ble Court began final hearing the petitions and there was a burden on the original petitioners to prove the constitutional vires (validity) of the law (FRA 2006), the attempts to deflect attention from the original prayers began in right earnest, through applications made and arguments advanced. This was also pointed out before this Hon'ble Court at the relevant time and has been countered in detailed by counter affidavits of MoTA and the even the States.

33. That vide order dated 07.03.2018 passed by this Hon'ble Court in Writ Petition (Civil) No. 50 of 2008 (tagged with Writ Petition (Civil) No. 109 of 2008), all State Governments were directed to file tabular statements in the form of an affidavit indicating the following information as quoted from the aforesaid order:

“(i) The number of claims for the grant of land under the provisions of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006;

(ii) The claims should be divided into claims made by the Scheduled Tribes and separately by other traditional forest dwellers;

(iii) The number of claims rejected by the State Government in respect of each category;

(iv) The extent of land over which such claims were made and rejected in respect of each of the two categories;

(v) Action taken against those claimants whose claims have been rejected;

(vi) The status of eviction of those claimants

whose claims have been rejected and the total extent of area from which they have been evicted;

(vii) The extent of the area in respect of which eviction has not yet taken place in respect of rejected claims.”

A true and correct copy of the order dated 07.03.2018 passed by the Hon’ble Supreme Court in Writ Petition (Civil) No. 50 of 2008 is marked and annexed herewith as **ANNEXURE**.

34. That pursuant to order dated 07.03.2018 passed by this Hon’ble Court, affidavits in compliance were filed by the respective State Governments. Pursuant to order dated 13.02.2019, this Hon’ble Court was approached by the Centre to bring forth issues with the data placed by the respective State Governments of claims under the Act. Vide order dated 28.02.2019, this Hon’ble Court directed the State Governments to file detailed affidavits with regard to the details of the procedure followed for settlement of claims, the main grounds on which claims have been rejected, whether the Tribals were given opportunity to adduce evidence and to what extent and whether reasoned orders have been passed regarding rejection of the claims. Through order dated 28.02.2019, evictions pursuant to order dated 13.02.2019 were also stayed by this Hon’ble Court and the said stay is currently in operation. A true and correct copy of the order dated 28.02.2019 passed by the Hon’ble Supreme Court in Writ Petition (Civil) No. 109 of 2008 is marked and annexed herewith as **ANNEXURE**

35. In the specific context of the arguments, in the view of the applicants fallacious regarding “evictions” and “false claims” advanced by the petitioners, the applicants would like, among other parts of the extensive pleadings in this litigation, point to the 175-page Affidavit with Annexures of the Ministry of Tribal Affairs (MOTA) filed dated July 9, 2014 which convincingly makes a case for the dismissal of these petitions, points to the motives of the petitioners who have in many ways digressed from the original

prayers apart from deliberately and consciously concealing vast jurisprudence that has evolved on the subject matter of this litigation. The applicants crave leave to extensively rely on the submissions made in the affidavit of MoTA herein.

36. This counter affidavit of MOTA (July 9, 2014) contains invaluable details of the long history and rationale for getting the FRA 2006 enacted, the necessary shift in jurisprudence therein. Moreover, it goes into the most vital details like explaining the democratic power vested in the Gram Sabha, the actual process of 'claims' and more especially the complete absence of coercive terms like 'evictions' etc. Most significantly, the affidavit gives extensive data of the increase in forest cover after the enactment of the legislation from the Forest Report of 2013(referred to in detail below). In fact this affidavit of MoTA dated July 9, 2014 elaborates how, the "rejection of claims' under this law, in no way means, either, that those living there are doing so "illegally", nor that communities living here are "encroachers." In fact, this verbiage is against the spirit of the legislation in question. For the first time, FRA 2006, recognised the individual and community rights of traditional, forest dwelling communities, Adivasis over land that they had protected and tilled for generations; vested power in the Gram Sabha to adjudicate on the claims; gave a special place to Women over production and ownership and provided for a meticulous appeal procedure.

37. That, the applicants would like to rely up the excerpts from the aforesaid affidavit dated July 9, 2014 that refers to 'The Panchayats (Extension to Scheduled Areas Act), 1996 and moreover asserts the legality of Gram Sabha and the constitutional mandate on the same as follows:

*"36. The Petitioner/ Applicant, in its eagerness to advert to half-truths and assumptions, conjectures and surmises, has completely failed to place before this Hon'ble Court the constitutional mandate relating to the tribal and forest dwelling communities in the country, by which the Answering*

*Respondent in particular, and the Government of India in general, is bound.*

*37. Article 40 of the Constitution of India contemplates the village panchayats shall be organised as units of local self-governance, which principle is further effectuated through the village level Gram Sabhas and Panchayats under Part IX of the Constitution of India. These principles of decentralized governance find further strength in Article 243-G and Article 244. Scheduled Areas under Paragraph 6(2) of the Fifth Schedule of the Constitution of India have been declared by Presidential Orders dating back to 1950, in a total of 9 States in India, namely, Andhra Pradesh, Gujarat, Himachal Pradesh, Maharashtra, Odisha, Rajasthan, Madhya Pradesh, Jharkhand and Chhattisgarh.*

It is to be noted that with respect to Forest Cover, there is no data to show depletion of forest cover or degradation to the environment caused by the recognition of rights of traditional forest dwelling communities and Adivasis. To the contrary, the most recent "India's State of Forest Report 2013" reveals that in 189 tribal districts in the country, there has been a net increase in forest cover of 2,396 square kilometres during the relevant assessment period. A true and typed copy of the relevant extract from "India's State of Forest Report 2013" dated July 2014 is marked and annexed herewith as **ANNEXURE** . **It is submitted that the Petitioners have selectively relied upon portions of the report as refuted by the affidavit filed on behalf of the MoTA.**

38. That the Applicants submit that the affidavit of the Ministry of Tribal Affairs (July 9, 2014) also strongly counters the petitioners claims about the damage forest dwelling communities allegedly do to forests. In this connection the MoTA affidavit states that:

"Para 50. In the aforesaid context, the basic premise of the Application under reply, namely, that forest dwelling communities



are a threat to the conservation and preservation of wildlife, biodiversity, forests and forest resources, runs contrary to international best practice, constitutional mandate, as well as the statutory provisions. Indeed, the notion that tribal and forest dwelling communities are a threat to environmental conservation has been discarded as out-dated especially in the context of a culturally diverse and civilizationally evolved country such as India where the symbiotic relationship between tribals and forests goes back many centuries.

"Para 51. The importance of the symbiotic relationship between forests and forest dwelling communities finds recognition in the National Forest Policy, 1988, which states: "Having regard to the symbiotic relationship between the tribal people and forests, a primary task of all agencies responsible for forest management, including the forest development corporations should be to associate the tribal people closely in the protection, regeneration and development of forests as well as to provide gainful employment to people living in and around the forest." (@ para 4.6)

"Para 52. In this context it is also pertinent to note that the participation and active involvement of local forest dwelling and forest dependent communities in decision-making processes relating to development is in keeping with the current understanding of good environment and wildlife conservation practice at the international level as well. The close relationship between forest dwelling communities and the protection of the environment is recognised by a host of international conventions, including the Universal Declaration on Human Rights, the UN Declaration on Rights of Indigenous People (Article 26), the Convention on Biological Diversity (Article 8 (j)), the Rio Declaration on Environment and Development (Principle 22) and the Convention on Right to Development.

"Para 53. International conservation organisations in recent years have strongly advocated respect for the relationship between communities and forest conservation. For instance, in 1999 the IUCN World Conservation Union - the world's largest conservationist organisation - and the World Wide Fund for Nature issued a joint document titled "Principles and Guidelines on Indigenous and

Traditional Peoples and Protected Areas" which under Principle 2 Guideline 2.2 states:

"the following indigenous and other traditional communities' rights should be respected in relation to the lands, territories, waters, coastal seas and other resources which they traditionally own or otherwise occupy or use, and which fall within protected areas: a) rights with regard to sustainable, traditional use of their lands, territories, waters, coastal seas and other resources that fall within protected areas, xxx e) rights to use their own traditional institutions and authorities to co-manage their terrestrial, coastal/marine and freshwater areas, as well as to defend them from external threats, subject to agreements with the agencies in charge of national protected area systems, f) rights to require that States obtain the free and informed consent of the respective communities, prior to the approval of any project affecting their lands, territories, waters, coastal seas or other resources, xxx i) rights not to be removed from the zones they have traditionally occupied within protected areas. Where their relocation is considered as an exceptional measure, it should take place only with the free and prior, informed consent of the indigenous and other traditional peoples affected, and with appropriate compensation."

39. That the Applicants submit that the affidavit of the Ministry of Tribal Affairs (July 9, 2014 ) also strongly counters the petitioners claims that FRA 2006 does not contain enough safeguards for protection of environment. The Forest Rights Act attempts to undo a historical wrong which persisted for more than 150 years. The State governments and implementing authorities have required and continue to require considerable hand-holding, monitoring, and course correction, which the answering respondent Ministry has made efforts to provide.

40. The interveners/applicants would like to adopt these contentions of the Ministry of Tribal Affairs (MOTA) affidavit dated July 9, 2014 more particularly to refute allegations to the effect that the act is bestowing unentitled rights to people. The relevant

part is extracted as under:

"The contents of para 1 of the Application under reply, insofar as they are not a matter of record, are denied as wrong, baseless and designed to prejudice the mind of this Hon'ble Court. It is denied that the implementation of the Forest Rights Act has resulted in any threat to the forest and wildlife conservation in this country. It is further denied that the Forest Rights Act has resulted in indiscriminate, or any, distribution of forest lands or created commercial rights thereunder. It is denied that there is any "scientifically accepted" proposition that forest dwelling communities are a threat to the nation's invaluable biodiversity. The Answering Respondent takes strong objection to the averment of the Petitioner/ Applicant that the Forest Rights Act is giving "freebies" to ineligible and bogus claimants or is driven by "political expediency" of any kind as alleged or at all. The use of such terminology to describe the rights of a vast section of marginalized citizens of this country demonstrates the negative prejudice of the Petitioner/ Applicant to the poor and marginalized tribal peoples this country of."

41. The Applicants state at the outset that they are intervening with the sole purpose of arguing for the peremptory dismissal of the petition and moreover seek legal and jurisprudential understanding of this Hon'ble Court over the questions that this litigation raises and calls into question. The Applicants would like to state and argue that it the Applicants, as Adivasis, indigenous populations and other traditional forest dwellers who have the greatest rights and responsibilities over the land, forests and resources and it is the constitutional duty of this Hon'ble Court to give first priority to these voices to be heard.

42. The Applicants would like to point to the consistent and persistent repression and violence that Adivasis and Other Traditional Forest Dwelling Communities are facing over ensuring their rights are realised under FRA 2006. For example, even in the area where Applicant No 1 Sokalo Gond lives, after her release from unfair incarceration last year in November 2018, repression

against the forest dwelling communities continued. False cases have been filed against hundreds of forest dwellers in a bid to prevent them from filing claims under the FRA 2006.

43. The Applicants would like to point to the consistent and persistent repression and violence that Adivasis and Other Traditional Forest Dwelling Communities are facing over ensuring their rights are realised under FRA 2006. Recent violent incidents across many states including Telangana, Madhya Pradesh and Uttar Pradesh, following the passage of the Order of 13.2.2019 and despite the subsequent direction to withhold implementation are examples that bear this out.

44. That this Hon'ble Court may allow the Applicants herein to make submissions for proper adjudication of the above-mentioned Writ Petition (Civil) No. 109 of 2008 since their livelihood and other rights are likely to be gravely affected.

45. That the present application for intervention is bona fide and made in the interests of justice.

**PRAYER**

In the facts and circumstances stated hereinabove, it is Most Respectfully submitted that this Hon'ble Court may be pleased to:

- a. Allow the present application and permit the Applicants herein to intervene in the aforesaid Writ Petition (Civil) No. 109 of 2008; and
- b. Pass such other order or orders as this Hon'ble Court may deem fit in the facts and circumstances of this case.

Dated: 22/07/2019  
ADVOCATE FOR THE APPLICANT

MS APARNA BHAT

## **ANNEXURE 3: News Release on the Supreme Court Order on Forest Rights Act**

**News Release 21.02.2019**

### **The Supreme Court Order on Forest Rights Act does not affect genuine claimants**

On February 13th 2019, a three-judge bench of the Supreme Court headed by Justice Arun Mishra issued an extremely important order in WP 109 of 2008 to ensure protection of forests, which have been severely affected due to ineligible/bogus claimants under the Forest Rights Act (FRA). Such claimants continue to occupy a huge area of forestland, including within National Parks and Sanctuaries, even though their claims have been rejected after due verification and an appeals process.

Wildlife First, along with Nature Conservation Society and Tiger Research and Conservation Trust, the petitioners in this matter, wish to present key facts regarding this case since there appears to be a lot of misunderstanding in the media on the latest Order of the Supreme Court.

Upon hearing Sr. Advocate Shyam Divan and AOR PK Manohar in great detail, and considering the magnitude of bogus claims and the never ending process of re- verification, the Supreme Court passed an important Order containing the following key directions to 17 States. These States had filed affidavits admitting the quantum of **rejected claims, which add up to 11, 91,327**. The Order directs that:

*"...The Chief Secretary shall ensure that where the rejection orders have been passed, eviction will be carried out on or before the next date of hearing. In case the eviction is not carried out, as aforesaid, the matter would be viewed seriously by this Court..."*

*"...It is directed that where the verification/reverification/review process is pending, the concerned State shall do the needful within four months from today and report be submitted to this Court.*

*Let Forest Survey of India (FSI) make a satellite survey and place on record the encroachment positions and also state the positions after the eviction as far as possible.*

*Let the requisite affidavits be filed on or before 12.07.2019. List the matters on 24.07.2019".*

This makes it amply clear that the Supreme Court is presently focusing only on recovery of forest land from bogus claimants whose claims stand rejected. In other words, it has not directed any action in its 13.02.2019 Order against lakhs of claimants who have been granted titles over a whopping 72.23 lakh hectares of forest land as per the September 2018 official statement of Ministry of Tribal Affairs (MoTA).

Background:

1. The FRA is a law meant for recognizing pre-existing forest rights only and thus not a land grant or land distribution act. Only those people in actual occupation of forest land as on 13th December 2005 are eligible as per law. Further, people belonging to Other Traditional Forest Dwellers (OTFD) category, who form the bulk of the claims, have to establish a continuous 75-year occupation for eligibility.
2. After the enactment of the FRA in 2006, as per the September 2018 statement of MoTA, a total of 42 lakh claims over forest lands including within pristine National Parks and Sanctuaries were filed by tribal people and 'Other Traditional Forest Dwellers' (OTFD), a nebulous category of people not defined in the Constitution.
3. An analysis of the said official data reveals that a total of 18,89,835 titles have been granted and a massive

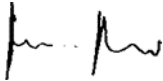
72,23,132 ha or 72,000 sq km of public forest land (almost the size of Assam State) have been granted and converted to individual and community ownership in bits and pieces across the country.

4. Apart from loss of forests, granting such wide ranging rights in scattered parcels of forest land is causing deleterious impact in the form of habitat fragmentation or breaking up of large forest blocks into smaller pieces. Fragmentation has been scientifically established as the most serious threat to long-term conservation of forests and biodiversity.
5. Based on due process prescribed under law with two levels of appeal, a total of 19,34,345 claims stand rejected as on 30.09.2018 as per the MoTA statement of which individual claims are 18,88,066. **Importantly, 14,77,793 claims have been rejected at the Gram Sabha level itself as per the said statement.**
  1. While MoTA statements do not provide data on actual extent of forest land occupied by rejected claimants, the estimated area could be in excess of 19 lakh ha by applying the average area of an approved individual claim.
  2. Several independent agencies including the Saxena Committee appointed by MoTA itself, TERI appointed by Maharashtra Government and Bhaskaracharya Institute of Space Applications for Gujarat Government have already documented fresh clearing of forest land after the 2005 cut-off date by satellite imagery analysis. Satellite imagery evidence of forest encroachment / loss has been considered by the CAG as well and accepted by the Supreme Court and High Courts in many other cases.
  3. In order to protect National Parks and Sanctuaries, which are sensitive habitats of highly endangered

wildlife, and which occupy just less than 5 % of India's landscape, one salutary clause was included in the FRA. This provides for notification of National Parks and Sanctuaries as Critical Wildlife Habitats from where people can be resettled. Shockingly, even though over 72 lakh ha of forestland has been granted under the FRA since 2008, **not one hectare of Critical Wildlife Habitat has been notified as yet.**

We request you to kindly publish the correct position based on the Order of the Supreme Court. We also request that this factual note be shared with those who report on this subject and to the edit desk, to ensure accuracy of reporting on this complex subject.

Sincerely  
For Wildlife First



Praveen Bhargav

And on behalf of Kishor Rithe - Nature Conservation Society and  
Harshwardhan Dhanwatey – Tiger Research and Conservation  
Trust





**Most respectfully sheweth: -**

1. This application is filed by Respondent No.2, Union Ministry of Tribal Affairs ("**Applicant**") seeking modification of order dated 13.2.2019 passed by this Hon'ble Court in the present writ petition. By the said order, this Hon'ble Court had directed various State Governments to evict the "forest dwelling Scheduled Tribes" (**FDSTs**) and "other traditional forest dwellers (**OTFDs**), whose claims have been rejected under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 ("**Act**"). A copy of order dated 13.2.2019 is annexed as Annexure A- 1.

**Background of forest rights of tribal**

2. It is a historical fact that in the colonial era, British had diverted abundant forest wealth of the nation to meet its economic needs. While procedure for settlement of rights was provided under statutes such as the Indian Forest Act, 1927, these were hardly followed on the ground. As a result, tribal and forest dwelling communities, which had been living within the forests in harmony with the environment and the ecosystem; continued to live inside the forests in a precarious state of tenurial insecurity, a situation which continued even after independence due to highly marginalised nature of such communities.

3.The importance of the symbiotic relationship between forests and forest dwelling communities also found recognition in National Forest Policy, 1988, which states as under: -

*"Having regard to the symbiotic relationship between the tribal people and forests, a primary task of all agencies responsible for forest management, including the forest development corporations, should be to associate the tribal people closely in the protection, regeneration and development of forests, as well as to provide gainful employment*

*to people living in and around the forest.”*

4. Under the aforesaid context, the Parliament enacted the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (“Act”) after rigorous and democratic consultative process, including examination by a Parliamentary Committee.

5. This statute was enacted with an intent to correct the historical process by which tribal and other forest dwelling communities in the country, were alienated from their right to habitation and right to occupy and hold forest land and forest produce. The statute is predominantly enacted to protect the marginalized socio-economic class of citizens and balances the right to environment with right to life and livelihood. The Act followed a series of legislative precedents and administrative measures by the Central government and various State governments, to recognize forest dwellers rights over land, community lands, forest produce and ancillary matters, with a respect for both forest ecology and the right to livelihood of forest dwellers.

6. The Act is an example of the constitutionally mandated protective legislation under Article 15(4) of constitution of India which specifically empowers the state to make special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.

7. This Hon’ble Court in the case of **Orissa Mining Corporation v. Ministry of Environment and Forests, (2013) 6 SCC 476** recognized the Act as an embodiment of the fundamental right to life with dignity enshrined in Article 21, as also the right to protect and preserve religious and cultural rights enshrined in Articles 25 and 29 of the constitution of India. The Act also enfoldes the fundamental duty to protect the natural environment including forests, as enshrined under Article 51-A(g) of the constitution.

8. In the case of **Banwasi Seva Ashram v. State of Uttar Pradesh**

**&Ors., (1986) 4 SCC 753**, this Hon'ble Court took judicial notice of the fact that Adivasis have been using the forests as dwelling place for generations and using the forest produce for their livelihood: -

*"1... It is common knowledge that the Adivasis and other backward people living within the jungle used the forest area as their habitat. They had raised several villages within these two tehsils and for generations had been using the jungles around for collecting the requirements for their livelihood-- fruits, vegetables, fodder, flowers, timber, animals by way of sport and fuel wood."*

9. This Hon'ble Court in the case of **Animal and Environment Legal Defense Fund v. Union of India &Ors. (1997) 3 SCC 549** held that while every attempt must be made to preserve the ecology of forests, the right of tribal living in the forests must also receive proper consideration:

*"11. Therefore, while every attempt must be made to preserve the fragile ecology of the forest area, and protect the Tiger Reserve, the right of the tribals formerly living in the area to keep body and soul together must also receive proper consideration."*

10. The aforesaid constitutional provisions and judicial precedents demonstrate that the residing of forest dwellers in forest areas and sustaining through traditional practices is not antithetic to the environment and forest ecosystem, but rather integral to the same. The implementation of the Act in letter and spirit is therefore not only a legislative requirement, but a constitutional imperative.

## International covenants

11. The close relationship between forest dwelling communities and protection of the environment is recognised by a host of international conventions and declarations, which are binding on India: -

i. The **“United Nation Universal Declaration on Human Rights”**, to which India is a signatory, takes into account the fact that recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world;

ii. The **“UN Convention Concerning Indigenous and Tribal Populations, (1957)”**, - this Convention, which has been ratified by India, relates to “protection and integration of indigenous and other tribal and semi-tribal populations in independent countries”. Under the said convention, a commitment is made to include protection of customary and traditional rights of such tribal and semi tribal communities, and the protection of their right to ownership, collective or individual, over the lands which they have traditionally occupied;

iii. The **“UN Declaration on Rights of Indigenous People”**, to which also India is a signatory, adopted on 13 September 2007, urges the member countries to recognize the rights of indigenous peoples. A key provision of the declaration contained in Article 26 enjoins members states to protect the rights to the lands, territories and resources which they have traditionally owned, occupied and used;

iv. The **“UN Convention on Biological Diversity”** to which India is a party, advocates preservation of indigenous knowledge and practices under Article 8(j);

v. The **“Rio Declaration on Environment and Development”** proclaims (Principle 22) that indigenous peoples and tribal communities and other local communities have a vital role in environmental

management and development because of their knowledge and traditional practices;

vi. The **“Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests (UN Food and Agriculture Organisation, 2012)”** provides detailed Guidelines on protection of traditional tenurial rights of indigenous peoples and other communities, towards the advancement of the goal of eradicating hunger;

12. Further, international conservation organisations in recent years have strongly advocated respect for the relationship between forest dwelling communities and forest conservation. For instance, in 2000 the IUCN World Conservation Union – the world’s largest conservationist organisation – and the Worldwide Fund for Nature issued a joint document titled **“Principles and Guidelines on Protected Areas and Indigenous / Traditional Peoples”** resolved that “there should be no inherent conflict between the objectives of protected areas and the existence, within and around their borders, of indigenous and other traditional peoples.”

13. At the international level, India has actively participated in the formulation of these legal principles and is constitutionally bound to ensure that these are implemented within the country in letter and spirit.

#### **Scheme of Forest Rights Act**

14. The preamble inter alia provides the object of the Act to: - “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)

15. Thus, the Act is made with an object to recognize the rights in “forest dwelling Scheduled Tribes” (**FDST**) and “other traditional forest dwellers” (**OTFDs**) who have been residing in forests for generations but whose rights have not been recorded.

16. Section 2(c) defines FDSTs as the members or community of the Scheduled Tribes who primarily reside in and who depend on the forests or forest lands for bona fide livelihood.

17. Section 2(o) defines OTFDs as any member or community who has for at least three generations prior to the 13th day of December, 2005 primarily resided in and who depend on the forest or forests land for bona fide livelihood needs.

18. Section 3 defines the rights of FDSTs and OTFDs such as right to hold and live on forest land; community right of nistar; right to collect forest produce; right to access biodiversity etc.

19. Section 4 vests the rights available in Section 3 to FDSTs and OTFDs.

20. Section 5 enumerates the duties of holders of forest right like duty to protect the wildlife, forest and biodiversity etc.

21. Section 6 provides the procedure and vesting of forest rights. Section 6(1) provides that Gram Sabha shall be the authority to initiate the process of determining the nature and extent of forest rights of FDSTs and OTFDs by receiving claims, consolidating and verifying them and preparing a map delineating the area of each recommended claim. The Gram Sabha would then pass a resolution to that effect and forward the copy of the same to the Sub-Divisional Level Committee. Under Section 6(2) any person aggrieved by the resolution of Gram Sabha may prefer a petition before the Sub-Divisional Level Committee, which shall consider and dispose of the petition. Under Section 6(4) any person aggrieved by the decision of the Sub-Divisional Level Committee may prefer a petition before the District Level Committee, which shall consider and dispose of

such petition. Under Section 6(6), the decision of the District Level Committee is final and binding.

22. From the scheme of the Act, it is evident that the implementing the Act and procedure of vesting of rights of FDSTs and OTFDs is with the state governments.

23. The applicant has been periodically monitoring the implementation of the Act with the state governments. In its review of implementation of Act in states hit by left wing extremism, which have high tribal populations, the applicant in its letter dated 12.9.2014 noted various problems in the implementation of the Act. It was noted that the rejection of claims under the Act was found to be very high, which was due to wrong interpretation of the Act. Appropriate procedure for filing of claims was not being followed due to lack of awareness at Gram Sabha level. Reasons for rejection of claim was not communicated to claimants and thus they are not able to prefer appeals. In view thereof, various directions were issued to the state governments. A copy of letter dated 12.9.2014 is annexed as **Annexure A-2**.

24. In its letter dated 10.4.2015, the applicant reiterated the concerns that had come to its knowledge like high rate of rejection of claims; non-communication of rejection order; State Level Monitoring Committee meetings not taking place regularly who have to ensure that no tribal is removed till the process under the Act is complete. The state governments were called upon to remedy the situation for effective implementation of the Act. A copy of order dated 10.4.2015 is annexed as **Annexure A-3**.

25. Again, in its letter dated 27.7.2015, the applicant noted that a large number of cases are rejected due to lack of evidence or incomplete evidence. It was directed that the district administration is expected to assist the Gram Sabhas by providing forest and revenue maps. It was stated that the claims rejected for insufficient evidence or which requires additional examination, may be re-examined. It was requested that technology such as



satellite imagery may be used for consideration of claims. Detailed guidelines are issued for using technology for ascertaining the claims under the Act. A copy of letter dated 27.7.2015 is annexed as **Annexure A-4**.

26. In the letter dated 12.8.2015, the applicant raised concerns regarding imposition of unrealistic timelines in deciding the claims under the Act. It was stated that the timelines must not deprive rightful claimants of their rights under the Act. A copy of letter dated 12.8.2015 is annexed as **Annexure A-5**.

27. It is submitted that this Hon'ble Court by order dated 29.1.2016 in W.P. (C) No.50/2008 had directed the state governments to furnish data regarding number of claims rejected and the action taken after the rejection of claim.

28. After the aforesaid order was passed, the applicant on 5.2.2016 had addressed a letter to all state governments that in order to place the complete information before this Hon'ble Court, it may be necessary to provide the details of the process of rejection of claims including communication of reasons of rejection; opportunity of appeal; and claims which were being re-examined due to improper rejections. A copy of letter dated 5.2.2016 is annexed herewith as **Annexure A-6**.

29. The applicant by letter dated 29.6.2018 addressed to all state governments noted various issues that arose in implementation of the Act including high rejection of claims; non-communication of rejection orders; lack of reasons in the order; raising of frivolous objections etc. It was noted that forest authorities are immediately attempting to evict tribal where rejection is made even without awaiting the decision of appeal. A copy of order dated 29.6.2018 is annexed as **Annexure A-7**. This was contrary to Section 4(5) of the Act which restricts the eviction till the recognition and verification procedure is complete.

30. In terms of order dated 29.1.2016 in W.P. (C) No.50/2008, some

of the state governments filed the data of rejection of claims. However, the said data did not provide the details of rejection as was requested by the applicant in its letter dated 25.2.2016.

31. It is under aforesaid background, this Hon'ble Court, based on the data provided by the state governments, by order dated 13.2.2019 directed that the FDSTs and OTFDs whose claims have been rejected must be evicted.

32. It is submitted that as a result of the order dated 13.2.2019 passed by this Hon'ble Court a large number of tribal and other forest dwellers would be liable to be evicted by the state governments without observance of due process of law. In the respectful submission of the applicant, under the Act, the rejection of a claim does not ipso facto lead to eviction of a tribal. There is no provision in the Act that provides for eviction after a claim is rejected. If a claim is rejected, then the appropriate state government would be obliged to resort to appropriate provisions to evict a person from the forest in accordance with law.

33. Further, the applicant respectfully states that the Act is a beneficial piece of legislation and deserves to be construed liberally in favour of the FDSTs and OTFDs. The FDSTs and OTFDs are extremely poor and illiterate people and not well informed of their rights and procedure under the Act. They live in remote and inaccessible areas of the forest. It is difficult for them to substantiate their claims before the competent authorities. The applicant has time and again attempted to sensitize the state governments while deciding their claims. However, notwithstanding, it has come to light that the claims of FDSTs and OTFDs were rejected in a summary manner where no due opportunity is provided to the claimants. The rejection orders are not communicated or the same are without reasons. It is also noted that in certain cases, eviction orders are issued even before the appeals under the Act are exhausted.

34. In such circumstances, it is uncertain whether the data

furnished by the state governments accurately indicates whether the rejection orders were passed after observance of due process of law; compliance with principles of natural justice and whether appeal mechanisms have been properly exhausted. Without such information and compliance with the mandate of law in letter and spirit, the eviction of such tribal, would amount to serious miscarriage of justice.

35. It is, therefore, respectfully prayed that this Hon'ble Court may consider modifying its order dated 13.2.2019 and direct the state governments to file detailed Affidavits regarding the procedure followed and details of the rejection of claims and till then the eviction of tribal may be withheld. The eviction of tribal, without such information would cause serious prejudice to such tribal who have been residing in forests for generations.

36. The applicant has prima facie case in his favour and the balance of convenience is in favour of the applicant and against the Petitioner/ other Respondents. The applicant would be greatly prejudiced if the present application is not allowed. An order allowing the present application would achieve the ends of justice.

#### **P R A Y E R**

In the facts and circumstances the above Petitioner respectfully prays that this Hon'ble Court may be graciously pleased to: -

- (a). pass an order modifying order dated 13.2.2019 and directing the state governments to file detailed Affidavits regarding the procedure followed and details of the rejection of claims of FDSTs and OTFDs under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 and withhold eviction proceeding till such time; and

(b). pass such other and further order(s) as may  
deem fit in the circumstances of the case.

**AND FOR THIS ACT OF KINDNESS THE APPLICANT AS IN DUTY BOUND SHALL  
EVER PRAY.**

Place: New Delhi

Date: .2.2019

ADVOCATE FOR APPLICANT

The Scheduled Tribes and Other Forest Dwelling Communities (Recognition of Forests Rights) Act 2006 intended to correct the historical injustice done to the forest dependent indigenous community and clear the path for revisiting community led forest governance and conservation. However the State and the Forest Department have systematically undermined all provisions of the Act and restricted its implementation. The Supreme Court order of February 2019 which directed the eviction of forest dwellers whose claims have been rejected led to huge uproar from the community and widespread protest which made the court put a hold on the order. Rights to Their Forests is a report of the one day round table conference on 'Forest Governance, Implementation of the Forest Rights Act and Conservation' organised in Delhi by All India Union of Forest Working People and The Research Collective.

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