

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

I.A. _____ of 2019

in

Writ Petition (C) 109 of 2008

Wildlife First & Ors

...Petitioners

Versus

Ministry of Forest and Environment & Ors.

...Respondents

AND IN THE MATTER OF:

Khoj (A Quest for Knowledge, Hope, Opportunity and Justice),

Through its Programme Director, Purnima Shobhanath Upadhyay.

...Applicants/Impleader

I.A. No. _____ of 2019

Application for Impleadment

(For index see inside)

Filed on:

ADVOCATE FOR APPLICANT/IMPLEADER: SATYA MITRA

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APPLICATION FOR IMPEADMENT PARTY RESPONDENTS

IN WRIT PETITION 109 OF 2008

To,

The Hon'ble Chief Justice of India

And His Companion Justices of the

Hon'ble Supreme Court of India

The humble petition of the

Petitioners abovenamed.

Most Respectfully Showeth:

1. This Application is being filed by Khoj (A Quest for Knowledge, Hope, Opportunity and Justice), which is an organisation working in Maharashtra among tribal and non-tribal forest dwellers in the State for many years. The present matter affects the livelihood and existence of tribal and non-tribal forest dwellers and therefore, they are filing this impleadment application to place their point of view before this Hon'ble Court.
2. The principal submission made by the applicants is that The Scheduled Tribe and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (hereinafter "Act") was passed to regularise and safeguard the stay inside forest areas of eligible tribals and other traditional forest dwellers who are covered by the Act. The Union of India and all the state governments and UTs have seriously defaulted in the implementation of the Act both in respect of individual forest rights as well as community forest rights. As a result of this deliberate negligence the claims of eligible persons has not been considered at all, and if considered this consideration has not been in accordance with the law. Government officials and particularly those from the forest and revenue departments have opposed this statute right from the inception and have taken many steps to sabotage the legislation. As a result, many claims have remained unattended to for over a decade. During these proceedings this Hon'ble Court has been told that many claims have been rejected but the truth is that these

rejection orders have not been communicated to the claimant tribals. Secondly, wherever orders have been communicated these are non-speaking orders containing no reasons at all. Thirdly, no legal aid was provided to the tribals by the State Legal Aid Services Authorities and, as a result, many of them remained unaware of their rights including their rights regarding an appeal and the procedures for filing appeals. The applicants have hereinafter also dealt with the other major defaults in the implementation of the Act.

3. Strangely, this petition was filed without making any tribal organisation working on this issue and striving for implementation of the Act a party to the case. The petitioners knew well who these tribal organisations were and where they were situated. Yet they deliberately chose not to make them parties in order to take them by surprise. This Hon'ble Court has time and again held that a petition filed without impleading the necessary and proper parties deserves to be dismissed.
4. This application is adopted as a parallel impleadment application to the I.A No. 59870/2019, dated 9 April 2019, filed before this Hon'ble Court.
5. We now proceed to set out hereinafter instances of widespread non implementation of the Act across the country.

NATIONAL

6. Forest dwelling communities across the country have had long standing socio-cultural relations with the Forest. The colonial forest

governance framework disrupted the relationship by restricting local access and forest use. This resulted in the loss of access to forests as a material resource, beside loss of cultural identity and connection. Forest landscape dwelling populations are amongst the poorest of the poor. Their poverty reflects a history of institutionalised disenfranchisement; having their customary forest land expropriated, and use rights negated by feudal states, by the colonial state and subsequently after independence.

The Applicants highlight the historic injustice suffered by the forest dwelling communities through a report titled "Redressing the 'historical injustice' through the Indian Forest Act, 2006: A Historical Institutional analysis of contemporary forest rights reforms" by IPPG.

The relevant extract from the report is as under:

"The range of forest rights deprivation scenarios on the ground is very diverse and location specific depending on the prior situations of these groups, the historical processes through which the state has extended its estate and the local interpretations of rules. The major ones are summarised below:

Rights deprived during the regular forest reservation / settlement processes: As explained above, across India forest people lost rights in 'their' customary property according to due legal processes, under an annexationist regime where local people had little bargaining power.

Rights deprived during irregularities in forest settlement/reservation processes and un-surveyed village: There are a vast number of cases where the forest settlement process were either not properly conducted, not completed or people were not notified, or where all areas were not checked. Some villages have not been surveyed at all and so rights have not been recognised. A particular issue here is the declaration of vast tracts of land as 'deemed' forests where the due legal process of settlement of rights was not subsequently followed and so, with no exercise to record use rights all rights are extinguished by default.

Estate acquisition: In South West Bengal, immediately after independence, the state acquired private forest estates. However, in extinguishing the previous owners rights it also neglected the pre-existing local users arrangements with them. In failing to recognise the continuity of normal livelihood forest use rights that users had enjoyed from the previous owners, it criminalised them.

'Encroachment': This has become an over-riding category, encompassing those whose lands which were declared state forests without recognising their rights; those displaced from their ancestral lands for 'development' projects without rehabilitation who were compelled to clear and occupy new forest land, and also those who have occupied lands declared state forests either due to land scarcity / poverty

or as a consequence of their traditions of moving to new locations due to disease or declining land productivity.

'Forest villages': Bonded labour settlements were established by Forest Departments, mainly of forest tribal peoples, to provide labour for forestry operations. These villages, still existing in North Bengal, remain an anachronism in which subjects endure severely circumscribed rights and receive no social provisions other than via the Forest Department.

'Primitive Tribal Groups': Tribes who have been classified as 'primitive' (i.e. original, first, early, ancient) by the state according to anachronistic criteria. This includes 'hunter-gatherers', shifting cultivators and other non sedentary groups. These groups have endured particular deprivation because their livelihoods are inconsistent with the administrative land use categories, as they often avoid contact with outsiders, including administrators, and as they tend to be non-literate. They can more easily fall foul of legal processes which they are less likely to be aware of or contest.

Tribals without 'Scheduled Tribe' status: A large number of tribes were either left out of scheduling altogether or were scheduled in one place but who have moved elsewhere for different reasons and lost the status. Both are deprived of

the benefits of positive discrimination (including under the FRA.)

Sacred groves: There has been a widespread traditional practice of conserving local forests as sacred areas. Forest Departments have no special provisions for treating sacred groves differently from other areas of forests, and they have often been incorporated in the state forest estate and felled (destroying the biodiverse ecosystem) as part of 'normal' felling operations. Only some on private land have persisted (Deb 2007).

National parks/sanctuaries: Establishment of national parks and sanctuaries has often led to extinguishment of peoples use rights in protected areas without due legal process. Those who have inadvertently become residents of parks can also suffer from all sorts of service provision and access deprivations. As per information submitted to the Supreme Court, 60% of India's national parks and 62% of wildlife sanctuaries have not completed their process of rights settlement, subjecting hundreds of thousands of people to an extremely restrictive regime without acknowledging their rights.

Revenue forest boundary disputes: The revenue and forest departments maintain separate land records for the areas under their respective jurisdictions. But there are many anomalies between these records. Both Revenue and Forest

Departments often have the same land in their respective records. The "forest area" in the country, in the records of the Revenue Department, is 7.66 million hectares less than that recorded as such by state Forest Departments. These 7.66 million hectares (an area twice the size of Kerala) are disputed between the two departments. The government has no idea whether these areas actually have any forests or not. Revenue departments have distributed leases/'pattas' for these which the forest department terms illegal, under the Forest Conservation Act 1980.

Joint Forest Management: There are now more than 100,000 ad hoc Joint Forest Management committees formed based solely on administrative provisions with no legal basis. In some cases common forests and cultivated lands with unclear tenure have been brought under JFM by the Forest Department leading to evictions of cultivators and provoking conflict between villagers"

True copy of the report by IPPG titled "Redressing the 'historical injustice' through the Indian Forest Act, 2006: A Historical Institutional analysis of contemporary forest rights reforms" is attached with the parallel impleadement application, that is I.A. No. 59870/2019, dated 9 April 2019 as Annexure P-1. For the sake of brevity the same has not been attached again with the present impleadment application.

7. The Act recognises the historical injustice meted out to scheduled tribes and other traditional forest dwellers. It seeks to secure traditional rights over forest land and community forest resources, and establish democratic community based forest governance. The process of recognition and verification laid out in the Act is currently the only legal process for determining the rights of people on forest land. The Act has opened up avenues to reimagine forest governance, and heal and strengthen the relationship between forest and people. It has the potential to harness local creativity and ingenuity for forest conservation. The Act recognises rights over community forest resources and empowers the gram sabha to prepare conservation and management plans. There are about 200 million forest dwellers who directly depend on forest resources for livelihood. The Act has extraordinary potential for ensuring livelihood security and poverty alleviation through sustainable and community based management of forests for these people. In spite of the national protections, provided through the Act, for tribal communities', widespread violations – most notably failures to effectively implement the provisions of the Forest Rights Act – have continued. State Governments and related agencies have either refused to recognise forest dwellers' rights, or have withdrawn them after recognition; the authorities have consistently made deliberate efforts to withhold the Act' settlements and misrepresent its provisions. Land has been taken from forest dwelling communities without their consent or any consultation of the Gram Sabhas, often by force – and the perpetrators have not been punished. In many cases, the land has been acquired through

deception; since the forest dwellers are largely unaware of the Act's provisions, they are vulnerable to forgery. These communities also have received inadequate reparations for eviction. Finally, State Governments have devolved authority for the implementation of the Act to the Forest Departments; in most States, the Forest Departments continue to treat forest dwellers as 'encroachers' and thus create further obstacles for the proper implementation of the Act. The Applicants rely on the Report of the National Committee on the Forest Rights Act titled "Manthan" – A joint committee of Ministry of Environment and Forests and Ministry of Tribal Affairs, Government of India. The relevant extracts of the Report are as under:

"11.1 Status of implementation

However, the current state of implementation is characterised by a series of serious problems, including in particular:

1. Constitution of Gram Sabhas is at the panchayat level, rather than at the village/hamlet level. As is evidently clear from section 2(g) and 2(p) of the Act, the gram sabhas are to be convened at the hamlet level in schedule V areas, and the revenue village level or traditional village or habitations and settlements in other areas. However, in a number of states, such as AP, WB, and UP, these are being called at the panchayat level, which is illegal.

2. Extensive and wrong rejections/recognitions, primarily due to hasty enquiries and lack of a thorough examination of the rejected /recognized cases by senior officials or the higher level committees. Claimants whose cases are rejected are not given any "reasonable opportunity", as provided in Rule 4(c). Decision rejecting the applications has not been communicated to the claimant in writing anywhere, with the result that the people have not been able to exercise the right to appeal. The Tribal Development Departments of the state governments have neither cross-checked the work being done at the village level by the revenue and forest officials, nor did they engage any outside agency to do independent assessment.

3. Powers of the FRC and GS are exercised by the village level officials, and the non-officials of the FRC and GS are just putting their signatures to the reports written by the officials. The village level enquiry reports have not been verified (not even one percent) by block or district level officials. Neatly devised systems of processing of claims at various levels has not been operationalized, except in few areas of some states.

4. As per rule 10, the State Level Monitoring Committee has to devise criteria and indicators for monitoring the process of recognition and vesting of forest rights; and monitor the process of recognition, verification and vesting of forest

rights in the State. It was for the Tribal Department in the States to develop qualitative indicators, call meetings with peoples' representatives, hold public consultations, put pressure on the Revenue and Forest Departments at the district level to do justice to the forest dwellers, and improve communication between officials and the people. In most states, on the other hand, it appears that monitoring has been only statistical with a focus on quick disposal, rather than on ensuring that all occupations are regularised as per law, fair play is observed in the field, and adequate field verifications lead to enhanced satisfaction and improved livelihood opportunities.

5. In almost no instance has the SDLC pro-actively provided maps, documents, and evidence to FRCs and GSs, though this is required by the FRA.

6. Though the FRA provides for multi-stakeholder verification and decision-making at various levels, in many places the opinions of forest staff/officers appear to have over-ridden all else. This is due to lack of interest and capacity in Tribal Department officers and lack of confidence and concern in the Revenue Department officers to handle matters of forest rights. The Tribal departments are used to giving scholarships and grants to beneficiaries, but have no experience of dealing with programmes that require inter-departmental coordination. Most nodal officers, without

much of capacity building inputs given to them, were thus quite happy collecting statistical information (often from FD) on FRA, but took no initiative in verifying the figures, arranging for a supervision architecture, or assessing the quality of performance of districts. The Tribal Department officers are seen as very low in the hierarchy as compared to the Chairman and hence had hardly any say in the matter and hardly took any initiative. The show was seen and projected primarily as Chairman's or FD show.

7. Evictions are reportedly taking place in violation of Section 4(5) of the FRA, which states: "Save as otherwise provided, no member of FDST or OTFD shall be evicted or removed from forest land under his occupation till the recognition and verification procedure is complete". There have been widespread reports of evictions in violation of this provision, before and during the tenure of the Committee. There is little evidence that such illegal actions have been dealt with seriously by either state governments or by MoEF and MoTA.

8. OTFDs: The committee has observed that, in all the states where FRA is being implemented, OTFDs have been generally excluded from the claims process on the grounds that they have not been cultivating the claimed plot for 75 years. MoTA needs to clarify that the requirement "for at least three generations prior to December 2005" applies to

the residency clause only, and relates to the recognition of a non-Scheduled Tribe person as an OTFD under the Act; this requirement does not relate to the parcel of land for which a claim is being made, or to the forest on which other rights are being claimed. The claimant need not have occupied the land, or been using the forest, for 75 years. If s/he was primarily residing for 3 generations in forest or forest land and is dependent on the forest as of 13 December 2005 for her/his bona fide livelihoods needs as defined in Rule 2(b) of the FRA Rules, s/he would be eligible under the Act.

9. Only a few states have been able to use application of the spatial and remote sensing technology mainly GPS or PDA for demarcating the boundary and measuring area of plots for individual forest rights because of lack of capacity building in the application of this technology.

10. There are no national level data on the status of FRA implementation specifically with regard to PTGs. The various processes of the FRA have hardly reached them and the progress of implementation is very poor.

11. As per the provisions of FRA forest dwelling communities are eligible to forest rights even in the protected areas (PAs). But no consolidated picture of the status of its implementation is available at the national level. No state is maintaining such data or analyses separately,

nor are MoEF or MoTA asking for them. There is however, a clear trend of initially denying the rights under FRA within PAs at the ground level in some states. In many states it has been wrongly believed, or conveyed, that tiger reserves are exempted from the FRA. It has also been wrongly conveyed that FRA does not apply if rights of people have been previously settled under the WLPA, even if people might still be residing within or depending on the resources of the PA, and also the FRA does not apply to villages where resettlement is part of an ongoing process that began before the FRA was promulgated.

12. PESA and FRA provisions, especially on MFP, need to be rationalized so that people come forward to claim and there is no conflict later on.

13. Non-recognition of community forest resource rights and other non-land rights”

True copy of the report by National Committee on the Forest Rights Act of Ministry of Environment and Forests and Ministry of Tribal Affairs, Government of India titled “Manthan” is attached with the parallel impleadement application, that is I.A. No. 59870/2019, dated 9 April 2019, as Annexure P-2. For the sake of brevity the same has not been attached again with the present impleadment application.

8. The applicants also rely on the report titled "Promise & Performance: Ten years of Forest Rights in India", to highlight the status report regarding the implementation of the Act after 10 years of its inception. The relevant extracts of the report are as under:

"The performance of FRA has been diverse across, and even within, the states. Research for this report revealed the poor data collection and reporting system of FRA implementation in most states. In most states, only IFRs have been recognized and only a few states have implemented the CFR provision. For the whole country (excluding the five north-eastern states and J&K), only 3 per cent of the minimum potential of CFR rights has been achieved in the years from 2006 to 2016.

Analysis of the overall performance of FRA above shows a certain pattern (see data below). Laggard states have either not started implementing FRA, or have performed extremely poorly. The low performing states have a very low level of implementation compared to their potential (less than 2 per cent). IFR focused states have only implemented IFR (individual occupancy) and ignored CFR and CR implementation. CFR laggard states have implemented both IFRs and CRs, but have ignored implementation of the most important CFR rights. Finally, the better performing states show substantial efforts in implementing both CFRs and IFRs. Maharashtra stands out in the area of CFRs recognized in the

state, while also recognizing IFRs. However, it needs to be emphasized that even Maharashtra's CFR recognition drive has only achieved 18 per cent of the total potential for CFRs in the state. Similarly, Odisha, another well-feted state, has recognized barely 6 per cent of its CFR potential. Thus, the revolutionary potential of FRA remains untapped.

<i>S.No.</i>	<i>CATEGORIES</i>	<i>STATES</i>
<i>1.</i>	<i>Laggard states No or extremely poor performance</i>	<i>Assam, Bihar, Goa, Himachal Pradesh, Tamil Nadu, Uttarakhand, Haryana, Punjab, Sikkim</i>
<i>2.</i>	<i>Low performing states Achieved less than 2% of minimum potential</i>	<i>Rajasthan, West Bengal, Karnataka, Jharkhand</i>
<i>3.</i>	<i>States with only IFR Implementation.</i>	<i>Tripura, Uttar Pradesh</i>
<i>4.</i>	<i>States which have ignored CFRs but</i>	<i>Telangana, Andhra Pradesh, Madhya</i>

	<i>imple- mented CRs and IFRs</i>	<i>Pradesh, Chhattisgarh</i>
<i>5.</i>	<i>States with both IFR - CFR implementation</i>	<i>Maharashtra, Odisha, Kerala, Gujarat</i>

SECTION III: KEY BOTTLENECKS IN MEETING THE POTENTIAL OF FRA

Institutional and structural challenges: The performance of FRA has been very poor, reflecting deep structural and institutional issues. Absence of political will is the key obstacle in achieving the potential of FRA at the national and state levels. At the national level, this is reflected in the lack of capacity-building effort in the nodal MoTA and in not providing dedicated budgetary support to MoTA for FRA implementation. There is no mission mode to ground this largest land and forest reform in India's history. Lack of political will has also allowed MoEFCC to function as if FRA doesn't exist, as evidenced by its passage of Compensatory Afforestation Funds (CAF) Act, 2016 and its continued support to JFM and VFRs, all conflicting with provisions of FRA. Similar hurdles are being experienced at the state level.

Weak nodal agency: MoTA is the central nodal agency for the implementation of FRA, but is under-staffed and under-resourced to supervise this massive task. One Secretary, assisted by two Joint Secretaries, one Deputy Director General and an Economic Advisor, handle not only FRA-related work, but a plethora of other responsibilities. Against the sanctioned strength of 137 employees, only 101 are in place. No separate budget provision has been made to implement FRA.

MoTA has however, fallen woefully short of addressing the implementation challenge faced by FRA because of the above-mentioned constraints, and lack of support from the Government of India. Many states have ignored the clarifications, guidelines and directions issued by MoTA, but mechanisms for holding such states accountable within India's federal structure remain weak.

Lack of cooperation by MoEFCC and opposition by forest bureaucracy: Due to the long-standing territorial jurisdiction of forest departments on forest land and a much-empowered forest bureaucracy, forest departments of many states have been obstructing the recognition of rights. Practically all the states' promise and performance reports document several cases of the forest department obstructing the claim and recognition process by not cooperating in the verification proceedings, raising illegal

objections to the claims, imposing JFM on areas claimed as CFRs, re- fusing to sign titles approved by DLCs and carrying out evictions where claims have been filed but not yet processed. Across the country, forest departments have largely been hostile, at best apathetic, to FRA with forest bureaucracies effectively dictating the agenda of FRA implementation.

Poor functioning of DLCs and SDLCs: Formation of DLCs and SDLCs has been delayed in several states. In many cases, the composition of DLCs/SDLCs vio- lates the statutory requirement with over-representation of forest officials. Meetings of DLCs/SDLCs are not regular. The DLCs/SDLCs often send claims and titles to the forest department for approval in violation of rules and procedures.

Undermining legal authority of gram sabhas: The legal authority of the gram sabha for determining the nature and extent of rights, and governance of forests is often seriously undermined by the bureaucracy. In many states, gram sabhas are being organized at the panchayat level (Chhattisgarh, Andhra Pradesh, Telanga- na, West Bengal), although FRA mandates village/hamlet level gram sabhas. After amendment in the FRA Rules in 2012, reconstitution of FRCs with two-third ST members has not taken place in many states. There is lack of support from

the state agencies for awareness and capacity building of the gram sabha and FRCs on FRA.

Continued evictions of right holders in violation of FRA: Despite the FRA, widespread evictions of forest dwellers, severe damage to their legally mandated livelihood practices, and willful non-recognition of rights before forest diversion, have continued through the decade. These evictions have been both from Protected Areas and areas outside them. Large-scale illegal evictions of right holders in violation of FRA have been reported from Himachal Pradesh, Telangana, Andhra Pradesh, Karnataka and Assam.”

True copy of the report titled “Promise & Performance: Ten years of Forest Rights in India” is attached with the parallel impleadment application, that is I.A. No. 59870/2019, dated 9 April 2019, as Annexure P-3. For the sake of brevity the same has not been attached again with the present impleadment application.

9. The Ministry of Tribal Affairs (MoTA), (nodal agency responsible for the implementation of the Act), has been publishing status reports on the claims filed and distributed under the Act since May 2008. These reports are based on the reporting by the State Governments. The update report dated 31 October 2018, reflects that 42,10,378 claims (40,64,741 individual and 1,45,637 community claims) have been filed and 18,79,372 titles (18,08,819 individual and 70,553 community

claims) have been distributed. The Status Update Report on FRA dated 31 October 2018 by the MoTA is at Serial No. [..] of the Compilation of Documents. The data presented in these reports does not present any analysis of trends, progress and challenges in claiming and distribution of titles over CFRs. In most states, figures for claims and titles for public utilities under Section 3(2) of the Act are confused with CFRs under Sec 3 (1) and reported as 'community rights' alongside CFRs. The reports do not give disaggregated figures for rights over nistar, rights over MFP collection, and the right to conserve and manage the Community Forest Resource (CFR), etc. This is despite the fact that on 3rd December 2012, in a National Consultation organised by MoTA, with relevant officials from all state governments, the reporting format for states was revised to provide detailed and disaggregated information with respect to CFRs. Barring a few states like Odisha other states continue to provide information as before. Many states still do not report on the status of CFR implementation, indicating clearly that this is still not a priority.

10. The applicants also rely on the report titled "Trends and Directions in the Implementation of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006 after Twelve Years" by the Tata Institute of Social Sciences, Mumbai, to highlight the status report regarding the implementation of the Act after 10 years of its inception. The relevant extracts of the report are as under:

“The analysis of available database on forest rights implementation across India reveals that the level of implementation is uneven and inconsistent. Specifically, with reference to large number of rejections and pending of forest rights claims, we have observed the following major concerns–

1. The claimants are not informed or given explanation in writing the reasons for rejecting their claims by the Sub-Divisional Level Committee (SDLC) and District Level Committee (DLC) authorities.
2. There is no serious effort at the SDLC and DLC level to avail the required documents and information to the Gram Sabha to file their claims.
3. Regular meetings of SDLC and DLC are not taking place to expedite the process of pending claims.
4. SDLC members insist upon a particular type of evidence to process the claims.
5. Claims of Other Traditional Forest Dwellers (OTFDs) are arbitrarily rejected or not processed at the SDLC and DLC level. The provisions for the recognition of OTFDs rights are misinterpreted and misunderstood by the implementing agencies. Discussion with Gram Sabhas and forest rights claimants in the above states reveal that the SDLC members insist upon that the

claimant should be 75 years old and, in many cases, it is also found that the OTFDs claims are rejected because the claimant was not occupying the land for 75 years.

6. There has been no attempt to prepare Record of Rights (RoR) by the district administration in the post-recognition of forest rights claims.”

True copy of the report titled “Trends and Directions in the Implementation of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006 after Twelve Years” by the Tata Institute of Social Sciences, Mumbai is attached with the parallel impleadment application, that is I.A. No. 59870/2019, dated 9 April 2019, as Annexure P-5. For the sake of brevity the same has not been attached again with the present impleadment application.

MAHARASHTRA

11. Maharashtra has a significant forest cover of about 20 percent (FSI), in various legal categories. These forests are primarily located along the Western Ghats (Sahyadris), northern edge of the Satpura hills and eastern end of the state (Gondwana region). These forests are home to several forest dependent communities, including over 47 Adivasi (tribal) communities. Prominent forest dwelling Adivasi communities include Bhils, Gonds, Mahadeo Kolis, Pawras, Thakurs and Warlis. Three Particularly Vulnerable Tribal Groups (PVTGs) have been

identified in the state - Kolams, Katkaris and Madia Gonds. Adivasis constitute over nine percent of the total population, and along with other traditional forest dwellers (OTFDs) constitute a major forest-dependent community.

12. In Legapaani village, Toranmaal Panchayat Forest Department is imposing fee for grazing despite CFR. Moreover, Forest Department asks people to confess to encroachment in order to get rights. Other numerous violations are being done by the Forest Department in the region. Despite FRA process, which mentions that claims need to be jointly verified by the Forest Department, they do not comply with it. There are letters from at least 30 FRC's that they have asked Forest Department six times for joint verification, but they have still not conducted any. Moreover, even if people have IFR, Forest Department has come and destroyed the houses and their harvest. It has also filed false charges against people and put them in jail. In CFR cases, the Forest Department has rejected the working plans submitted by the FRC (in Nandurbar district) and has gone ahead with its own plans.
13. In a recent development, the status report of October 2018 by MoTA, the figure for the area of land on which titles under FRA were given was 73,36,192 acres, the same figures for November registered a steep decline and remained only 29,68,856 acres, or just around 40 per cent. Upon enquiry it was realised that all along this time, MoTA had been publishing wrong information about Maharashtra's FRA implementation. Turns out, the reason behind the stellar achievement — highest among all states — of Maharashtra when it comes to FRA

implementation, was nothing but a simple mathematical mistake. In Maharashtra, every month the FRA related data is collected at the taluka level and then sent to the respective district. From the district, the data is then sent to the state's FRA cell. The FRA cell then compiles the data from all the districts and sends it to the FRA cell of the MoTA. While the land data from the state sent to the ministry is in acres, someone in the FRA cell of MoTA had been under the impression that the land data from Maharashtra was being sent in hectares, substantially increasing the actual area of land given under FRA. This raises serious question about the authenticity of the data made available by the ministry of FRA implementation.

14. The applicants rely on the Report titled "Promise and Performance of the Forest Rights Act, 2006: Tenth Anniversary Report". The relevant extracts relating to the state of Maharashtra from the report are as under:

"4.2. Emerging Negative Trends

As narrated above CFR rights have led to many positive trends, particularly towards mobilisation and collective action of Gram Sabhas towards realising the potential of FRA for political, social ecological and economic self-empowerment. Simultaneously, there have also been efforts, particularly from the state Forest Department to subvert or obstruct implementation of the Act or governance and management by the Gram Sabhas.

Between 2009 and 2012, immediately after some Gram Sabhas received their CFR titles, many conflicts emerged with the Forest Department. Most of these had to do with the conflict over who had the jurisdiction over the CFRs. Some Gram Sabhas like Ghati and others in Gadchiroli, stopped selective timber felling and timber being transported out by the Forest Department from their CFRs. The timber was being felled by the Forest Department as per their existing working plan. In many such areas, the Forest Department continued to insist on implementing its own working plans in now recognised CFRs. Similarly, the lease given by the Forest Department to BILT for Bamboo extraction from the forests which were now CFRs continued despite opposition from the Gram Sabhas till 2012. The Forest Department also continued to auction tendu leaves from forests which had already been recognised as CFRs till 2013.

5.1 Hurdles and Challenges

5.1.1 Disproportionate Implementation across Districts

Two important facts emerging from the analysis of the quantitative data include that Maharashtra is ahead of all the states in the country in implementing FRA, meeting 20 percent of its minimum potential, 14 percent of mid-range potential and 12 percent of maximum potential of implementation. This is commendable and indicates coordinated action by Gram Sabhas and government and

non government agencies in some areas. Within the state, however, there are some districts where the implementation of FRA is much higher than in the others. There is also disparity in implementation within a district, with some parts performing better than the others.

As the data analysis shows, if Gadchiroli district is taken out of the picture Maharashtra's average performance of CFR implementation as compared to the minimum potential would be approximately 10 percent. Implementation of FRA is almost non-existent in districts like, Akola, Aurangabad, Bhandara, Buldhana, Kolhapur, Pune, Sangli, Satara, Wardha and Washim. This is despite a very high potential for implementation in most of these districts. While districts like Gondiya, Nagpur, Yavatmal, Raigad, Nashik, Nandurbar, Palghar and Thane have performed well, Gadchiroli district is way ahead of all other districts. One of the biggest challenges facing implementation of the Act is this disparity. Among the major reasons contributing to this disparity are some institutional challenges, operational challenges, and conflicting forest related laws and policies.

5.1.2. Institutional Challenges

The national level report on Promises and Performance: Ten Years of Community Forest Rights Implementation in India⁶², reveals that absence of political and administrative will was a key obstacle in achieving the

potential of FRA at the national and state levels. Institutional challenges have affected the overall implementation of CFR across all states, including in many districts of Maharashtra. Some of these institutional challenges/hurdles being experienced in Maharashtra include:

Continued Lack of Awareness about CFRs in Many Districts

In many districts there continues to be lack of awareness, particularly at the SDLC level and other relevant government departments, about different provisions of FRA in general and CFRs in particular. Distinction between CFR rights under Section 3 (1) I, Community Forest Rights under Section 3 (1), rights for development facilities and individual rights, as also procedures for filing claims are not clear to the concerned staff.

Functioning of DLCs and SDLCs

In some districts and talukas the membership of DLCs and SDLCs is still not clear. Till 2015, the SDLC in Khed taluka of Pune district was not constituted and no meetings of the SDLC were held. In some cases, the composition of DLCs/SDLCs violates the statutory requirement with over representation of officials and less representation from elected representatives. In some

districts meetings of DLCs/SDLCs are not regular and instead of deciding on claims in a meeting, they are sent to different departments, particularly to the Forest Department for their approval.

Lack of Dedicated Staff at SDLC and DLC Levels

In districts like Pune, it has been extremely difficult to coordinate with the over-worked staff at the SDOs office, who have been handling FRA responsibility as an additional task. There is little enthusiasm or capacity to take on a sustained campaign for either awareness or filing claims. The claims filed by some villages since 2009 remain unapproved because of lack of staff. Often sustained efforts are not possible because of transfers of concerned officials.

Lack of Trust between Gram Sabhas and Forest Department

There are serious ideological differences between the Forest Department and local communities. In spite of rights provided by law to the communities, the Forest Department continues to distrust the Gram Sabhas' capability to manage and conserve forests. In districts like Nandurbar, the Forest Department continues to regulate the management and conservation process of forests though the communities have CFR rights.

5.1.3. Operational Challenges

Some of the operation hurdles facing implementation include:

Pending Claims A large number of claims are pending at various levels all over Maharashtra. In districts like Pune, some claims have been pending since 2009 and in protected areas such as TATR since 2010. As per November 2016 data, 946 claims at the Gram Sabha level, 1238 claims at the SDLC level and 850 claims at the DLC level are pending across the state. In many cases CFR claims are pending due to objections raised by the Forest Department at SDLCs or DLCs.

As of November 2016, 522 CFR titles were yet to be distributed after being approved by the DLCs. It is not clear why such a large number of approved claims have not been distributed to the concerned Gram Sabhas.

High Rate of Rejection of CRs and CFR Rights at SDLC

November 2016 data shows that 83% of the CRs and CFR rights claims have been rejected at SDLC level. Akola, Bhandara, Gadchiroli, Jalgaon, Nashik, Palghar, Pune, Sangli, Thane and Washim are the districts with highest rejections at the SDLC level. Civil society actors on the ground say that no written explanation or reasons are given by the authorities for rejecting claims of either IFR, CR or CFR. Orally the reasons are communicated as faulty

paper work but these claims are not sent back to the Gram Sabha for correction as is required by law. As per FRA claims cannot be "rejected" at the level of SDLC, if sufficient information does not exist then the documents are to be sent back to the Gram Sabha with a request to file again. Claims can only be rejected by the DLC, and conveyed to the concerned Gram Sabha with appropriate reasons for rejection.

CFR area claimed different from area recognised

Many examples were reported where total area claimed under CFR was very different from the actual area recognised. Customary boundaries delineated by the Gram Sabha are not accepted or are changed by revenue and Forest Department functionaries during field verification. In cases where Gram Sabhas have appealed against this, their appeals are still pending. Delays in IFRs Impacting Enthusiasm for CFRs. In districts like Thane, the process of IFR claims has been very slow and there have been high rates of rejection. This has led to dejection and lack of enthusiasm about filing CFRs.

Discrepancies in the Titles and Title Correction

In the absence of a uniform format for CFR titles, CFR titles have been issued with many incongruencies, including titles with conditions (to follow the Forest

Department's working plans), titles in the name of Gram Panchayats or individuals in the village instead of Gram Sabhas, titles in the name of Joint Forest Management (JFM) committees, titles with incorrect area of the CFR, among others. In some districts like Gondiya and Gadchiroli, titles have been taken back by the district administration for corrections but have not been returned yet (See Case Study 3, Annexure 2). For example, the CFR committees in Deori and Sadark Arjuni Taluks of Gondiya district have already appealed to the district administration to speed up the process and give the titles back to the Gram Sabha, but the titles are yet to be reissued.

Conversion of Forest Villages into Revenue Villages

Conversion of forest villages and other settlements to revenue villages under Section 3(1) h remains largely unimplemented across the state. In districts like Nandurbar, Jalgaon and Dhule, the process was initiated by the district administration but has been very slow and incomplete. Officials from various departments are often unaware of the provisions under Section 3(1) (h). Some villages such as Langda Amba and Uttam Nagar in Jalgaon are struggling to convert their status into revenue villages, while many others are yet unaware of the provision and its implication.

Hurdles Related to Handholding and Management of CFRs

State and District Level Support System

As mentioned in section 2.2.2 and 4.1.3 above, since 2015, there have been efforts by the state government particularly the TDD towards systemic support for CFRs, including by issuing the GRs for constituting CFR Management Committees, District level Convergence Committees and a State level Steering Committee. In some talukas FRA coordinators have also been appointed. All of this has had desired positive impacts in some districts or in some parts within the districts (pl see section 4.1 on positive trends). This support however is not uniform across districts and within the districts as is illustrated in the section 4.1.4 and 4.2 above. Many Gram Sabhas are still unaware of CFR provisions, have not started the process of filing claims, where filed their claims are still pending or rejected without reason. Many are also struggling to find hand holding support for CFR management when most needed (See Section 4.1.4), or are struggling against FDCM (including police cases filed against them) or mining or relocation from protected areas. Unless there is help from Adivasi Movements or civil society organizations, the Gram Sabhas often do not

know how and where to avail help in these situations for filing claims, or managing CFRs.

Interference from the Forest Department

The Forest Department has resources meant for forest development. The Forest Department, however, is not always supportive of CFR management committees and often insists on the Forest Department's institutions such as Joint Forest Management Committees (JFM) to receive support even if CFR committees already exist in the village. In districts where awareness about CFRs is low, lack of resource for CFRs and resources available through JFM discourage and restrict the claiming process. Many villages where JFM is being promoted are getting confused because of multiple committees. Aggressive promotion of JFM is hampering the effective implementation of CFR and constitution of CFR management committees under Rule 4 (1) e of FRA. This is more so as JFM comes with financial allocation, whereas there is no such committed allocation for CFRs. As per the law and the directions issued from time to time by the government, the Gram Sabhas are entitled to get Transport Permit (TP) for transportation of NTFP managed and collected by them. However, Gram Sabhas continue to face problems and delays in getting TP from

the Forest Department and are often forced to make multiple trips to the local forest office.

Maintaining Records for NTFP Harvest and Sale

Some Gram Sabhas, particularly those which have literate members in the village or help from civil society groups are able to maintain meticulous records of the NTFP harvest, sold, royalties received, wages paid, profits earned and so on. Such records are useful in deciding future management strategies, in avoiding internal and external malpractices, ensuring fair prices and negotiations with the contractors and general evidence for the future. However, the situation is difficult for those Gram Sabhas which do not have people trained to maintain such records. The Forest Department maintained such records in the past but are unwilling to help communities where needed.

5.1.5 Hurdles Caused by Conflicting and Divergent Policies

The huge gap between the promise and performance of FRA can also be attributed to conflicting and divergent laws, policies and programmes. These state laws, policies and programmes are directly conflicting or seriously undermine the provisions of FRA. Some such policies are mentioned below:

Notification of Village Forest Rules

The Indian Forests (Maharashtra) (Regulation of assignment, management and cancellation of village forest), 2014, mentioned here on as VFR 2014, were notified on 13th May 2014 and amended Rules were notified in May 2016. As has been mentioned in section 4.2.1, implementation of these Rules will have a long term impact on implementation of CFRs in non scheduled areas. Without verifying whether or not CFRs are applicable for a Gram Sabha or not and clearly specifying how not the VFRs are already being implemented in various districts across the state, including states with high CFR potential, such as, Dhule, Jalgaon, Bhandara, among others. Considering a lack of systemic and suo moto support to CFRs, VFR will have financial power in areas where Gram Sabhas are not sufficiently aware. All the forest development funds coming to the Forest Department, including through CAMPA are likely to be spent by creating VFR institutions rather than supporting CFRs (see section 4.2.1 for details)

Compensatory Afforestation Fund Act 2016 (CAMPA)

The CAF Act,2016, has paved the way for releasing around Rs 42,000 crore to the states for carrying out compensatory afforestation, primarily in lieu of diversion

of customary forests of STs and OTFDs. The state institutions set up under the CAF Act are dominated by forest bureaucracy with no representation of forest dwellers. The CAF Act also provides incentives to displace forest dwellers from protected areas by making specific provision for funding relocation. Forest dwellers and STs have widely opposed the CAF Act for not requiring consent of the Gram Sabhas to use their traditional lands and forests for compensatory afforestation.

In many areas, the Forest Department has started measuring land being cultivated by people based on encroachment records available with the Forest Department, disregarding that these areas are under claim. No information is shared with Gram Sabhas prior to or during such demarcation.

Guidelines for Privatisation of Forests

MoEFCC issued guidelines in August 2015 to lease 40 percent of degraded forests in the country to private companies for afforestation. Considering that a minimum of 59 percent and a mid range estimation of about 83 percent of total forest area in Maharashtra is estimated to be the potential CFR area (see section 3.1.1), these guidelines stand in complete violation of FRA. They disregard the fact that most of these forests are either already recognised CFRs, are in the process of being

claimed as CFRs, or are potential CFRs to be claimed in the future. It is therefore unclear how 40 percent of area can be handed over to the companies without impacting the forest rights of hundreds of Gram Sabhas.

Leasing of Forests to Forest Development Corporations (FDCM)

As explained in detail in section 4.2.2. above, the Forest Development Corporation (FDC), set up since the 1970s, hold over six percent of states forests and new leases continue to be given to FDCM over potential CFR forests, leading to conflict with the surrounding Gram Sabhas (see section 4.2.2 for details).

Protected Areas and Relocation

Forest dwellers continue to be forcibly relocated from tiger reserves, in violation of FRA and provisions of the Wildlife Protection (Amendment) Act, 2006 (see section 4.2.4 for details)

Violation of FRA or Slow Implementation in Areas Marked for Forest Diversion

There are various incidents where forests have been diverted for various developmental projects without the consent or consultation of the Gram Sabhas. These include forests in Thane where Gram Sabhas are resisting

submergence of their CFRs under the Kalu Dam and hundreds of villagers in Gadchiroli, who have been demanding cancelation of over 25 sanctioned and proposed mines over 15,000 ha of diverse and dense forests across.”

True copy of the report titled “Promise & Performance: Ten years of Forest Rights in India” is attached with the parallel impleadment application, that is I.A. No. 59870/2019, dated 9 April 2019, as Annexure P-3. For the sake of brevity the same has not been attached again with the present impleadment application.

Prayer

15. In light of the facts and circumstances of this case, the Applicant prays before this Hon’ble Court as under:

- a. that the Applicant be permitted to be impleaded as a party respondent in the present Writ Petition;
- b. pass any other such order/direction as this Hon’ble Court may deem fit in the facts and circumstances of this case.

FILED BY:

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Filed on:

Place: