

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

I.A. No. \_\_\_\_\_ of 2019

in

Writ Petition (C) 109 of 2008

IN THE MATTER OF:

Wildlife First & Ors.

...Petitioners

Versus

Ministry of Forest and Environment & Ors.

...Respondents

AND IN THE MATTER OF:

Kerala Adivasi Forum,

Through its Secretary, Preetha E.A.,

Sudhikkavala, Kakkavayal P.O.,

Bythiri Taluk, Wayanad District,

Kerala- 673122.

...Applicant/Impleader

I.A. No. \_\_\_\_\_ of 2019

Application for Impleadment

(For Index, see inside)

Filed on:

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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 Kerala Adivasi Forum, which is a tribal organisation working in Kerala 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 of 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 of the 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 impleadment application, that is I.A. No. 59870 of 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 impleadment application, that I.A. No. 59870 of 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.

S.No.	CATEGORIES	STATES
1.	Laggard states No or extremely poor performance	Assam, Bihar, Goa, Himachal Pradesh, Tamil Nadu, Uttarakhand, Haryana, Punjab, Sikkim
2.	Low performing states Achieved less than 2% of minimum potential	Rajasthan, West Bengal, Karnataka, Jharkhand
3.	States with only IFR Implementation.	Tripura, Uttar Pradesh
4.	States which have ignored CFRs but implemented CRs and IFRs	Telangana, Andhra Pradesh, Madhya Pradesh, Chhattisgarh
5.	States with both IFR - CFR implementation	Maharashtra, Odisha, Kerala, Gujarat

### 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 understaffed 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, refusing

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 violates 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, Telangana, 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 I.A. No. 59870 of 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 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 3<sup>rd</sup> 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.

True copy of the Status Update Report on FRA dated 31.10.2018 by the Ministry of Tribal Affairs is attached with the parallel impleadment application, that is I.A. No. 59870 of 2019 dated 9 April 2019, as Annexure P-4. For the sake of brevity the same has not been attached again with the present impleadment application.

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 of 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.

## **KERALA**

11. The State of Kerala has failed to make satisfactory progress in the implementation process of the Act. Only 16% progress has been made in the CR and CFR recognition and not a single habitat right of PVTGs been recognised in Kerala so far. Communities have not been able to assert or practice their provisions of the IFR, CR and CFR completely even where titles were distributed. The MFP management, CFR Management, etc. are being handled by agencies other than FRA Gram Sabhas till date. The FRA is highly significant for Kerala which has 29.1% of its land area as legal forests. Of these 29.1%, 77.6% are natural forests, 13.5% are forest plantations, 5.27% are leased for various purposes, and 3.63% have been diverted for non-forest purpose under the Forest Conservation Act of 1980. Only 1.94% is the land owned by Tribal Settlements inside the forest. Kerala Scheduled Tribes constitute only about 1.45 % of the total population i.e. 484839 individuals (238203 males and 246636 females) in 107965 families spread in 4762 habitations (Census 2011). There are 36 listed Scheduled Tribes communities among them five (Kattunaikkar and Cholanaiyakkans of Malappuram and Wayanad District, Kadar of Thrissur and Palakkad District, Kurumbar of Attappady, Palakkad District and Koragar of Kasargod Districts) are PVTGs. Kerala is a state with a large extent of potential forest land and with a minority scheduled tribe population (1.5%) who have been subjected to a great extent of 'Historical Injustice' without settling their rights on land, agriculture, MFP, cultural and traditional rights

and the decision making right. PESA has not been applied to Kerala despite a series of recommendations from experts and struggles by the Adivasis. The FRA was implemented in its poorest form where most of the eligible Adivasis are still outside its purview or their villages not listed under FRA. In Kasargod district, where one among the five PVTG tribe, the Koraga community, lives, Gram Sabhas or Oorukootams are not listed under the Act . Also, SDLC and DLC have not been constituted for the Kasargod District and have been kept completely outside the purview of Act. The state's assumption of Act is as a law to vest individual land titles alone excluding all other eligible ST communities and many of the eligible OTFDs (Non ST Traditional Forest Dwellers) who have right for all or many of the other nearly 16 right provisions including community right, forest management right and decision making right. Such a presumption itself is a dilution of the law and systemic violation of the statute.

12. The applicants rely on the report titled "The Historical Injustice to the Forest Dwelling Community Continued: The process, performance and major violations in the one decade of implementation of the Forest Rights Act 2006 in Kerala". The relevant extracts from the Report are as under:

"Other records indicate existence of 4762 ST settlements and Colonies of which 72% lives within forest land or fringes of forests and all are forest dependent hence eligible claimants under FRA 2006.

However, only 592 oorkootams (village) have been listed and notified under FRA as eligible GSs. Very few districts followed the government order to elect FRCs at GS or Oorkootam level and election of FRCs were done at ward level in various districts including Thiruvananthapuram, the capital of Kerala. All of the non ST and all of the STs including Koraga PVTG in Kasargod district were excluded from the purview of forest right act in Kerala as per the recommendation of the working group [vide. G.O. (Ms) No. 62/2008/SCSTDD], committee to decide on the matters of the FRA in Kerala or as per decision of the government. Hence FRC, SDLC and DLC were not constituted in Kasargod district and non ST forest dwellers in many district including Thiruvananthapuram. Also, mangrove dependant community in northern district (Kozhikode, Kannur and Kasargod) were not included in FRA.

### **1. Progress and Performance of Individual Forest Right (IFR) in Kerala**

A total of 33778.11 acres of IFR have been issued against 25081 title in the state so far which is an average of 1.34 acres per titles issued. If we estimate the potential according to the forest department data 2013 (an area of 345.044 sq km (86260 acre) (2%)

of forest area belong to the 869 tribal hamlets), the performance is only 39%. In this estimate tribals settled just outside forest area or within forests creating revenue lands or settled as part of TRDM or while creating Tribal Cooperative societies, those have IFR eligibility in many cases and CR and CFR eligibility in almost all cases are omitted. If we estimate it with actual potential tribal people (72% of the total population) and considering 1.34 acres of land per titles as per the current state average (STD, 2017) the performance come down to 33% alone.

The FRA 2006 provides an eligibility for each family or claim maximum upto 10 acres. If we estimate the potential with 50% (5 acre per claim) the present IFR performance will come down to only 8% of its potential.

The progress of FRA implementation has been very slow in the recent years in Kerala. There was an increase of 34% in 2015 when compared with 2014 and since then, the increase is only less than 2.5 %. Indicating poor performance of the government mechanisms in these years.

## **2. Total CFR recognition in Kerala**

A total of 779 community claims including CFR claim were passed by GS of which only 328 have been



passed by the DLC and only 164 titles have been issued so far. The performance is only 16% of the total potential CFR area of the state.

The progress in CFR recognition has been very slow initially always. The official data was showing only 4 titles issued prior to 2014, 21CFRs in 2014, then there is an increase into 146 titles in 2015-2016 and finally is 164. The official records still lack the total area and our estimate from the district wise records and verification of the maps indicate the total CFR area declared comes around 298340 acres (16 %).

### **III. Major Issues and violations**

#### **a. Recognition of FRA GramaSabha (GS) and selection of FRC: All the eligible Oorukootams were not listed under FRA**

According to FRA, the Oorukootams which can claim IFR and CR/ CFR are eligible to be listed as village and Gram Sabha under Section. 2 (p) and Section 2 (g). In all of the districts except Thrissur, eligible Oorukootams have not been recognized as GSs under FRA. About 72% of the tribal people are forest dependent and most of them live near to the forest land and their settlements alone excluded from the forest boundary due to various rehabilitation and land

assignment process by various agencies of the Government. The government had considered eligibility for the claims under FRA 2006 only based on their actual occupation in the forest land on 15th December 2005, loss of agricultural land and habitation due to forest conservation, developmental and rehabilitation process etc were not considered as part of the historical injustice. Hence many eligible Gram Sabhas were kept outside the purview of FRA since their hamlets are in revenue lands. The government has not considered the dependence of such scheduled tribes forests for MFP and other community rights

**b. FRCs constituted at cluster/Ward Sabha level**

In many of the districts especially, Thiruvanthapuram, Kannur, Malappuram and Idukki, FRCs are not elected either as per law or through Government directions. They are elected at the ward Sabhas of the Grama Panchayaths or by combining many Oorukootams at different levels. This has created challenges in regular functioning of Grama Sabhas constituted under FRA. This will have an adverse impact on the post claiming process. For eg. 36 FRCs in Thiruvananthapuram.

**c. FRCs were not active and quorum incomplete**

Many FRCs have not been convening GSs at Oorukootam level for many years hence it is technically defunct. This is because FRCs were convened combining different Oorukoottams or are convened at ward sabha level or FRC members are taking unilateral decisions without any consultation with Oorukootams. In many areas, the FRC members elected during 2009 period are not present in the GSs resulting in the absence of a full eligible quorum.

### **Major human right violations associated with FRA 2006 implementation in Kerala**

1. There has been illegal eviction of Tribes from Vayanad District including KattunaikkaPVTG 2010-15 period without recognition of their rights, consent of the GS and without compliance with FRA 2006 (Violation of Sec 4(2) of the Act).
2. No Habitat right of the PVTG and Pre-agriculture community conferred so far in Kerala. Kadar community managed to get CFR right for half of the village (8 villages in Thrissur District) but the rest in Palakkad District including the Parambikulam Tiger Reserve area are pending.
3. There are pre –Agriculture community like 'Malampandaram' in the Pathanamthitta and Idukki

district but not even considered for Community, CFR and Habitat Right.

4. Only 579 Oorukootams or GSs have been listed eligible under FRA 2006 (Nearly 2500 hamlets or 1500 GS are eligible under FRA if we consider the IFR and Community Rights)

5. None of the GS or Oorukootam from Kasargod District listed by the Government. (violation of section 2A by state government)

6. FRC constituted at different level, Ward Sabha level (Thiruvananthapuram, Kollam, Kozhikode etc.), Actually this has to be elected at GS/Oorukootam level (violation of Sec. 3(1) of the rules, state agencies )

7. There are nearly 6 types of gatherings or bodies operated in each Adivasi village formed by various govt mechanisms/schemes, (VSS/EDC/SHGs/TCS etc) still operating on the same mandate where rights were conferred under FRA 2006. State departments not supporting FRA GSs (violation of sec. 6 (m) of rules by SDLC, sec. 8(a) rules by DLC).

8. CFR Recognition: 327 recognised, 155 titles distributed, and 172 pending with various DLC (as per data of ST department October 2016).

9. In Vazhachal – Malakkappara (Kadar PVTG area of Thrissur District) region the CFR for 40000 ha forest obtained in 2012. CFR Management Committee was formed by Malakkappara GS in 2014 and requested for support from FD, STD, Collectorate and other Govt Agencies.

10. 52 CFRs were mapped by Community and claims were put with proper maps in the Thrissur District, Central Kerala and all approved at DLC in 2012 & 2013. But only 21 titles issued rest 31 pending for the last three years because the DFR refused to Sign. (violation by DLC)

11. In Wayanad 124 given but the area of CFR is only 2-200 acres, most of the cases in the KattunaikkaPVTG it is only 2-20 acres alone. That means a tribal village collecting honey and other MFPs from a distance of few hundred meters traditionally?. It is the biggest violation of Human Right because the maps were prepared by Forest Department Officials and not by GS/FRC. No traditional boundaries, landmarks in local/tribal language are written. (violation of Sec 12 (f,g)of the Rules). It could be an offence under ST Atrocity Act.

12. As per the Trissur district experience the CFR area or the Traditional forest dwelling area of community

in Kerala range from 1000 -8000 ha for Agriculture based Tribes and 10000-20000 ha for PVTG tribes.

13. Proposed Athirapilly Hydroelectric Project got clearance two times from MoEF and one of the EIA prepared by TBGRI recorded that the Vazhachal Kadar GS is 5 km Away from the proposed Dam site. The ST commission formed to enquire the complaint from 'Geetha' Chieftain of Vazhchal Kadar GS, reported that the Vazhachal Settlement is just 400m from the Dam site and will be effected. The second EIA by WAPCOS not mention about the Village. Now the government is going ahead with same old notion and taking 'violators' of the ST right as 'experts' and their 'expert opinion' have been used to obtain technical sanction and forest clearance for the project.

14. Minor forests have been handled by VSS/EDC of the Forest Department or Tribal Cooperative Societies in which the FRA Grama Sabhas or FRC has no role. (Violation of Section 3(1)c of the Act and 2(d), explanations in the Rules 2012.

15. The most important MFP 'Bamboo' is still handled by Bamboo Corporation with consent from FD without involving GS or CFRmC

16. But still the MFP is handled by agencies other than GS CFR mC. (VSS/EDC or Tribal Cooperative Society).

True copy of the report titled "The Historical Injustice to the Forest Dwelling Community Continued: The process, performance and major violations in the one decade of implementation of the Forest Rights Act 2006 in Kerala" is attached hereto as "**Annexure A-1**" at page no. \_\_\_\_ to \_\_\_\_.

#### Prayer

13. In light of the facts and circumstances of this case, the Applicant/Impleader 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

SATYA MITRA

Counsel for the applicants

Drawn by: Siddharth Seem

Date:2.7.2019