

EQUATIONS Response to the Role Played by the Ministry of Tribal Affairs in the Matter Before the Supreme Court (WP 109/2008)

5th March, 2019

To,

**The Secretary,
Ministry of Tribal Affairs
Shastri Bhawan, Dr. Rajendra Prasad Road,
New Delhi- 110011**

Subject: Response to the proceedings in the Supreme Court in Writ Petition No. 109/2008.

Dear Sir,

This is in response to the role played by the Ministry of Tribal Affairs (MoTA) in the matter before the Supreme Court (WP 109/2008), challenging the constitutional validity of the Schedule Tribes and Other Forest Dwellers (Recognition of Forest Rights) Act, 2006 (FRA). Vide an interim order, the Supreme Court of India, on 13.02.2019 passed an order for the eviction of thousands of adivasi communities on the basis of rejected claims under the the FRA. The order, if it had been carried out, would have caused grave injustice to thousands of families living in and dependent on the forests. However, after mounting pressure from various adivasi communities and people's networks, the MoTA filed a petition asking for a stay of the 13.03.2019 order.

The order was stayed, however, the silence of the Central Government until that moment was appalling. In fact, there was no representation from the Central and State Governments for four subsequent hearings in the Supreme Court. The interim order for eviction was passed on 13.02.2019, without any counter from the Respondent State authorities, who are accountable to the adivasi communities. .

As a Ministry that is responsible for its citizens, a lack of response by the State and its authorities has had very grave consequences- the potential eviction of thousands of adivasi families. Though the order for eviction has been stayed, the matter, which challenges the constitutional validity of the FRA, continues to be pending before the Hon'ble Court. **We write to you, demanding that you defend the Act and protect the forest rights of the thousands of adivasi communities across India.**

Firstly, it is important that the "rejection" of claims under the FRA is understood after looking into the process followed for recognition and vesting of rights. As the Ministry of Tribal Affairs (MoTA) itself has acknowledged vide its various letters issued to the states concerned, on 29.06.2018, 05.02.2016, 27.07.2015, 10.04.2015 and 12.09.2014, there is a high rate of rejection of claims under the FRA. The MoTA has observed that the reasons for rejection of claims was that appropriate filing procedures were not followed or that joint verification procedures were not conducted properly or that sufficient evidence was not presented with the claims. In many instances, the reasons for rejection of the claims were not conveyed to the claimants. The letter dated 12.09.2014, had also noted the high rate of rejection in the Left Wing Extremism (LWE) states. In these areas, community claims were rejected and in many instances, were awarded to the Van Samrakshan Samiti or the Joint Forest Management Committees instead, which are not

constitutional bodies. These bodies were given primacy over the FRA, which has constitutional recognition.

In spite of the repeated letters and clarifications issued by the MoTA to various State Governments, rejection of claims has continued over the years. As the Supreme Court has also directed, it is now necessary for all the State Governments to provide detailed information regarding the reason for the rejection of claims and in a situation where the reasons have not even been recorded, to make that clear as well to the Hon'ble Court.

However, the MoTA, apart from taking the required steps in the Supreme Court of India, should also ensure the implementation of the FRA itself. Apart from the baseless rejection of claims, there have been numerous other hurdles to the implementation of the FRA. These are poor awareness and capacity building for claims to be filed, expecting evidence in the nature of geo-satellite images, which is completely contradictory to the provisions of the Act itself or refusing claims in protected areas and notification of tiger reserves, without due process. Importantly, there has been a lack of initiative of the state Forest Departments to ensure that the rights of adivasis and other forest dwelling communities are acknowledged. There has also been widespread diversion of forest for purposes such as mining, industries, construction of resorts and hotels. This has been an impediment to the process of recognition of rights itself and has restricted the adivasi communities from exercising the rights that have been vested in them.

Tourism development and the privilege given to the tourism industry has also had a huge role to play in creating hurdles for implementation of the Forest Rights Act.

Implications of Wildlife Tourism to implementation of FRA:

In protected areas, the implementation and vesting of rights under FRA has been negligible. The FRA categorically recognizes the rights of adivasi communities, irrespective of whether a particular area has been declared a protected area or not. This is seen in Section 4(1) of the Act which states that notwithstanding anything contained in any other law for the time being, the Central Government would recognize and vest forest rights in Scheduled Tribes and other traditional forest dwellers. It is only after recognition of the rights under Section 4(1) of the Act that any rights can be modified or resettled in Critical Wildlife Habitats (CWHs), as per Section 4(2) of the Act. The FRA itself defines Critical Wildlife Habitats (CWHs) as 'areas of national parks and sanctuaries where it has been specifically and clearly established, case by case, on the basis of scientific and objective criteria, that such areas are required to be kept as inviolate for the purposes of wildlife conservation'. This means that in order to notify a CWH, the Act requires that State Governments have to first establish that the presence of rights holders is causing irreversible damage to wildlife and their habitats and co-existence is not a reasonable option.

However, the petition pending before the Supreme Court asks for just the opposite. One of the prayers of the Petitioners in the original petition has been to "*direct the respondents to permit the voluntary resettlement of people residing within the National Parks and Sanctuaries, without insisting on settling their rights therein under the impugned Act*".

The prayer is completely contradictory to the provisions of the FRA and cannot be done away with and it is imperative that the FRA be defended in the Supreme Court as such. This is also be looked at in the context in which the FRA has been enacted- to remedy a historical injustice done to communities of people who have faced threats of illegal evictions and displacement on multiple occasions. In spite of the clear provisions of the FRA, adivasi communities have continued to face difficulties in having their rights recognize in protected areas.

Ironically, in the very same areas that are declared to be protected for the sake of conservation of certain wildlife species and are used to justify eviction and displacement, now have allowed for

tourism. Core areas of tiger reserves, where claims of adivasi communities have either not been allowed or have been rejected, are now places for tourism. To illustrate the seriousness of the issue, we list out a few examples from a 2012¹ study of FRA implementation in four protected areas in Southern India - Bandipur, Nagarhole, Mudumalai and Wayanad.

- In Wayanad, in some places, the Act was implemented without consultation of the people whose rights were alleged to be claimed. Many other claimants had their claims rejected, without any reason for rejection. Community rights were also denied, under the pretext that the law does not recognize rights to adivasi communities. In Kerala, there is also a State Government order that mandated that every adivasi family would receive 1 acre of land. The FRA is wrongly being used to implement this order and only upto 1 acre of land is being given under the FRA, instead of the 4 acre limit prescribed by the FRA.
- In Nagarhole, which has been the site for repeated relocations of adivasi communities, the officials from the Forest Department have filled forms on behalf of the people. In one hamlet, 54 claims were filed but these were rejected on the basis that they were not cultivating the land. However, in that area, some time in 2008, the Forest Department reclaimed the land that the people were cultivating and refused to allow the villagers to cultivate the land. In another hamlet, 60 families have filed for individual claims, but their land rights papers have recorded much less land than what they claimed for. As a result, the people have refused to take the papers.

Across the protected areas, the experience of the adivasi communities has been that tourism has disrupted their lives and livelihoods. A big part of this is because of tourism industry's myth that protected areas are devoid of any people. As a result, during safaris, the forest guards are over cautious about people entering the tourism zone and if tourists see any adivasi collecting firewood or walking around, this is reported to the Forest Department, with photographs. The photographs become tools of harassment that is used by Forest Guards.

This preference and entitlement that is allowed for tourists has made adivasi communities feel antagonistic towards the forest departments as tourists are allowed to enter the forests by paying a small fee to see the tiger and elephant, but the people who have been living there for centuries and whose lives are dependent on the forests are made to leave them.

Taking over of forest areas by the tourism industry:

The lands in and around protected areas have been coveted for the development of tourism. A study done by Ruth De Fries and Kriti Karanth titled "Nature Based Tourism in India: New Challenges for Park Management", mapped the growth of tourism in buffer areas of 10 protected areas. This study showed the exponential growth of tourist facilities in and around the buffer areas these facilities have been coming up closer and closer to the boundaries of the protected areas.

While adivasi communities have been struggling for survival and face eviction and threats of displacement in every way, tourism has been given a free reign and allowed to come up and take over land and resources, right in the periphery of protected areas. For example, in Karnataka, according to a performance audit by the Comptroller and Auditor General of India (CAG), which studied the administration of National Parks and Wildlife Sanctuaries of Karnataka, 86% of resorts in and around 6 Protected Areas of Karnataka, have been operating illegally, without approval from the Forest Department. Illegal resorts in and around protected areas have been posing a number of issues from encroaching upon forest areas, causing fragmentation of corridors and increasing pressures on the protected area.

¹ On the Brink: The Tragedy of Forest Governance, All India Forum for Forest Movements and EQUATIONS, 2012.

The tourism industry, which has been flouting laws and operating illegally, should not be given a free reign to operate, without making the industry accountable to existing laws and regulations. And tourism should not become an impediment for implementation of the FRA.

Legitimizing Joint Forest Management Committees and Eco-development Committees:

The Joint Forest Management Committees (JFMC) and Eco-development committees (EDC) were systems that were set up prior to the enactment of the FRA. However, in many forest areas, in the name of promoting ecotourism, various Forest Departments have been instrumental in setting up the JFMCs and EDCs. These committees are then used to carry out ecotourism activities in the forest areas and are given a false legitimacy by claiming that they channel benefits from tourism to the local communities. However, JFMCs and EDCs are unconstitutional bodies and the constitutionally recognized bodies, post the enactment of the FRA are the Gram Sabhas, Gram Panchayats, Forest Rights Committees (FRCs) and any other forest management committees that have been set up by the Gram Sabhas under the provisions of the FRA.

The holders of any forest rights, the Gram Sabha and any village level institution are empowered to protect the planning and management of community forest areas, which could include planning and management of tourism as well. However, instead of upholding institutions of Panchayati Raj, through the various Panchayat related legislations and the Panchayats (Extension to Scheduled Areas) Act, 1996, the structures of JFMCs and EDC's have continued to be supported, preventing the exercise of democratic rights under the Panchayati Raj institutions.

It is high time that JFMC's and EDCs are dismantled and the provisions of the FRA be implemented and the Panchayati Raj institutions be given primacy instead.

In this light, we demand that the Ministry of Tribal Affairs be accountable to its people and take serious steps to safeguard the rights of adivasi communities. It would be imperative to appear before the Hon'ble Supreme Court and take appropriate steps needed to ensure that the FRA is duly defended and established as constitutionally valid, as it rightly is. It is also important that within the ambit of power that the State and its agencies hold, the FRA is implemented and the rights of scheduled tribes and other forest dwellers are duly recognized.

Yours Sincerely,

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Programme Coordinator
Equitable Tourism Options (EQUATIONS)

Copy also sent to :

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