

## **Government's failure to defend FRA in the Supreme Court forces eviction of millions of Adivasis and forest dwellers**

Joint Statement by CFRLA, AIFFM, MAKAAAM, ABMKSS

The Central government's inaction on the constitutional challenge to the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights ) Act (FRA) continues the historic injustice against millions of tribals and other traditional forest dwellers as they are wrongfully treated as encroachers and ordered to be evicted pursuant to the 13 February 2019 order by the Supreme Court.

**Retired forest bureaucrats, ex-zamindars and a handful of wildlife organisations- the petitioners in the case- have managed to mislead the Supreme Court into passing an unjust order by equating 'rejection' of claims, as part of ongoing process for verification and recognition of rights, with 'encroachment' of forests, in the process treating all 'rejected' claimants as encroachers. This forces a mass eviction of about 20 lakhs tribal and OTFD (Other Traditional forest dwellers) households, including men, women and children, by July 2019.**

The order is inconsistent with the law as FRA does not provide for eviction and on the contrary it protects the tribals and forest dwellers from eviction as their rights get recognized and vested (section 4 (5)). Nowhere have rejection of claims attained finality, contrary to the assertion of the petitioners, as numerous state governments have acknowledged that claims have been illegally and wrongfully rejected, and have initiated *suo moto* processes of review. The FRA provides for verification and rejection of claims through a process which includes the claimants right to be heard in person, to be served rejection orders with reasons in writing, the right to appeal, review and re-verification by the Gram Sabha, which has not been followed in a majority of rejected claims. Further, mandating evictions on the basis of 'rejection' of individual claims illegally dispossesses claimants from their community forest resources, and divests claimants of their right to manage and protect their forests as members of Gram Sabhas. **Therefore the order effectively allows for a major dilution of the FRA, reversal of a democratic process to secure rights and justice formillions of tribals and other forest dwellers in India and in effect undermines the centrality of Gram Sabha, a Constitutional Body.**

Two thirds of this country's forests are in areas that constitutionally belong to tribals under the Fifth and Sixth Schedules of the Constitution. Therefore the SC order is also inconsistent with the special provisions in Constitution of India, and PESA (Panchayat Extension to Scheduled Areas Act), which protects rights of tribal communities in areas governed under fifth schedule of the constitution as well as fundamental rights to life and livelihoods protected under Article 21 of the constitution.

The Ministry of Tribal Affairs, Government of India, in a letter written on 29<sup>th</sup> June 2018 to the chief secretaries of the states admitted that wrongful rejection of claims had apparently been reported from across the country, besides stating that the forest authorities were attempting to evict people whose claims under FRA had been rejected without waiting for decision on pending reviews or appeals ostensibly using the order of March 2018 from Supreme Court in the FRA matter. Several other government and independent reports show large scale rejection of claims throughout India where due legal procedure has not been followed.

The Central Government and the Ministry of Tribal Affairs, main respondents in the case, have put up a weak defence by not engaging senior counsels and by choosing to remain silent in recent hearings (**facts relating to wrongful rejection of claims and eviction attempts by forest authorities, though in the knowledge of ministry as per the letter of June 2018, have not been brought to the notice of the court**). This has allowed the SC to accept the versions of the petitioners- handful of wildlife NGOs and retired forest officers – whose original petition challenged the Constitutional validity of FRA. It is also a matter of grave concern that the SC has passed this order without hearing the tribals and other forest dwellers who are party to the case.

**While leading to a nationwide outrage, the order has been widely opposed by forest rights groups, civil society organizations, activists and intellectuals. The order, besides threatening eviction of tribals and other forest dwellers, may also potentially affect,**

- *Conservation and ecological restoration by communities-* Empowerment of forest communities and recognition of their forest rights in FRA have strengthened customary and existing community conservation processes, besides leading to many new initiatives. Successful examples of conservation and regeneration efforts by local communities and gram sabhas have been reported from various parts of India, including the states of Maharashtra, Odisha, Chattisgarh, Madhya Pradesh, West Bengal and Karnataka. It is surprising that the SC order comes even as the Government of India's Forest Survey of India report 2017 and earlier reports show an increase in the forest cover in India in the tribal areas. Considering that the forest cover has continued to increase even a decade after the enactment of the Forest Rights Act clearly indicates that recognition of rights of the forest dependent communities only leads to improvement of forest cover.

In several places, on the strength of forest rights, forest-dwelling communities have successfully challenged ecologically devastating diversion of forests for mining and other industrial activities without proper environmental clearances, which is the leading cause of forest destruction in the country today, as clearances have been approved for 6000 new projects between 2014-18; illegal tree-felling by Forest Development Corporations; and the wide-spread takeover of biodiversity-rich community lands for monoculture commercial plantations under CAMPA.

Instead of supporting community-centered conservation under the FRA the wildlife organizations, petitioners in this case, have ignored the conservation potential of FRA and the progressive shift in conservation approach at the international level that recognize tenure security and community control as integral part of forest and biodiversity conservation. They have also ignored facts that forest communities of this country have successfully invoked their powers and rights under FRA to stop potential deforestation from large scale environmentally destructive projects. The Supreme Court has in the past taken cognizance of these powers and rights (e.g. Niyamgiri).

- *Tribal economy, livelihoods and employment-* It is estimated that about 20 lakh tribals and forest dwelling families, whose claims have been arbitrarily and often illegally rejected, face threat of eviction, but the actual population that might get affected would be almost about 1 crore. As pointed in the Preamble of the FRA 2006, the forest communities in India since the colonial period, are facing injustice due to non-recognition of their rights on ancestral lands and habitats leading to lack of secured land tenure and access to forests resulting in livelihood distress, food insecurity, poverty and destitution. Even a minimal FRA implementation in the last ten years has

made gains in improving socio-economic and livelihoods status of tribals and forest dwellers in the forest areas of Maharashtra, Odisha and other states. The order for mass eviction is feared to undermine such gains, leading to distress situations in tribal areas. Women, having significant contribution to tribal economy and livelihood activities relating to food, MFPs and fodder needs are likely to face this distress the most.

- *Vulnerable communities*-The SC order is likely to further marginalize a large population of vulnerable communities who are the particularly vulnerable tribal groups (PVTGs), nomadic and pastoral communities, dalits, women, residents of forest villages and unsurveyed villages and displaced communities. The rights of these communities and their claims have been largely ignored and also rejected in most cases.
- *Atrocities against women, tribals and forest dwellers*-There is already evidence that the forest rights claims and assertion of rights by forest communities have met with severe resistance and oppression by the forest department. There are reports of atrocities and harassment by forest officials related to many incidents of carrying out forcible plantations and fencing in lands claimed under FRA, diversion of forest land for mining in violation of forest rights and without mandatory consent from Gram Sabha, and eviction drives against forest dwellers from forests and the Protected Areas. The SC order will most surely be misused, by the forest officials and other state agencies, to carry out more such atrocities and violence against tribals and other forest dwellers especially on women for whom the access to forests is a matter of everyday existence.
- *Conflicts in tribal areas*-High percentage of rejection (about 70 to 80 percent) in sensitive and conflict-prone regions will most definitely lead to more disaffection and unrest. There is genuine apprehension that the SC order for eviction and consequent actions by the authorities can only increase conflicts.

The failure of the Government of India in defending FRA has led to the present quagmire and created a situation which affects the country's tribals and other forest dwellers. This has clearly discernible links with the present government's systematic indifference in implementing FRA, coupled with efforts to undermine and dilute the Act through series of conflicting enactments and policy interventions. Forest lands have consistently been diverted for corporates without consent of the Gram Sabhas and in violation of forest rights. The Compensatory Afforestation Fund Act has been passed without complying with FRA and allowing illegal transfer of huge fund (about 90,000 crores) to the forest department, thereby allowing further violation of rights by illegal plantations. Land banks have been proposed by acquisition of revenue forests and community-controlled common lands for industrial and plantation projects in violation of FRA and PESA.

**We therefore call upon the central government to** immediately take all necessary steps to review and reverse the February 13th Supreme Court and halt any eviction of forest dwellers and ensure that all rejections are either reviewed or withdrawn.

**We also call upon the Constitutional bodies** such as the NCST and NCSC to intervene in the court to ensure proper representation of the voices of the tribals and forest dwellers.

**We demand the Central and state governments to,**

- Take steps to effectively implement Forest Rights Act, ensure recognition of individual and community forest resource rights, ownership rights over minor forest produces, governance and management rights over community resources, rights of PVTGs and vulnerable communities and rights of women provided in the Act.
- Repeal or modify all conflicting enactments and policies (CAF Act, draft NFP, Land Banks, forest land diversions) which violate FRA and legal rights of forest dwellers.

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