

LEGAL BRIEF ON THE SUPREME COURT ORDER ON FRA EVICTIONS

On 13 February 2019, the Supreme Court (SC) ordered evictions of those whose FRA claims have been rejected, in a case where retired forest officials, zamindars and wildlife NGOs challenge the constitutionality of the Forest Rights Act (FRA). The SC put this order 'on hold' **on 28 February**, giving us temporary relief to fight back. But by calling 'rejections' as 'encroachments', the SC fundamentally reverses the letter and intent of FRA, which recognizes so-called 'encroachers' under colonial laws as rightsholders to their land and forests. Unless we act fast, the law meant to prevent evictions will be turned into an instrument for dispossession and to dilute the authority of our Gram Sabhas!

SC order dated 13 February 2019	SC order dated 28 February 2019
<ol style="list-style-type: none">1) Chief Secretary to furnish affidavits on steps taken towards evictions of those whose claims have been rejected with finality2) Chief Secretary to ensure that such evictions are carried out by 24 July 20193) Where processes of review of rejected claims have been initiated by state governments, they should be completed within four months4) Forest Survey (FSI) to undertake satellite survey of encroachments before and after evictions	<ol style="list-style-type: none">1) State governments to furnish affidavits on process followed for rejection of claims2) State governments to furnish affidavits clarifying under what law evictions may be carried out3) Order dated 13 February 2019 put on hold until further notice4) FSI to undertake satellite survey of encroachments

As 13 Feb order put 'on hold' indefinitely, there can be no evictions of any forest-dweller until the SC decides on the matter!

Who all does this order apply to?

- (1) STs and OTFDs living on forest land,
- (2) who have filed claims for recognition of individual rights to such forest land under the Forest Rights Act (FRA), and
- (3) whose claims have been rejected with finality after following due process of law.

The order applies to only those individual claims that have been rejected with finality after following the due process of law!

WHEN DOES REJECTION OF FRA CLAIM ATTAIN FINALITY?

Claims rejected at the level of Gram Sabha

- ✓ *Gram Sabha to communicate decision of rejection to the claimant in person*
- ✓ *Claimant may petition the Sub-Divisional Level Committee (SDLC) against the decision of Gram Sabha within 60 days, further extendable by 30 days*
- ✓ *SDLC to afford claimant with reasonable opportunity of being heard before disposal of petition*
- ✓ *SDLC to provide detailed reasons for recommending rejection of claim, and remand claim to the Gram Sabha for re-consideration*
- ✓ *Claimant may further petition the District Level Committee (DLC) against the recommendation of SDLC, following the same process as a petition to SDLC*

The **Gram Sabha** and **Forest Rights Committee (FRC)** are the primary bodies to verify, approve and reject claims, as per procedure laid down in **Section 6 and Rule 12A**.

Claims rejected at the level of DLC

- ✓ *DLC to record detailed reasons in writing for rejecting claim*
- ✓ *DLC to serve copies of rejection order with reasons to the claimant/ Gram Sabha*

After completion of the FRA process, the claimant can approach the **High Court under Article 226 of the Constitution** to challenge the rejection order of the DLC, and further to the **Supreme Court in appeal under Article 136, or under Article 32** if it involves a violation of fundamental rights.

As per **Guideline dt. 3 August 2009** issued by the **Ministry of Environment, Forests and Climate Change**, Gram Sabha is the rightful authority to certify the completion of the rights settlement process.

The centrality of the Gram Sabha to decision-making processes over forest lands has been approved by the **Supreme Court in the Niyamgiri judgment (2013) 6 SCC 476**, which is law of the land under **Article 141 of the Constitution**.

Therefore, rejection of FRA claim attains 'finality' only when the Gram Sabha certifies that the rejection process has been completed.

During this time, the FRA protects against eviction and dispossession of forest-dwellers under Section 4(5)!

DOES REJECTION OF FRA CLAIM AUTOMATICALLY LEAD TO EVICTION?

No, rejection of claims does not imply that the claimant is an encroacher who needs to be evicted. FRA is meant to correct historical injustice against adivasis and other forest-dwellers by vesting and recognizing their forest rights, via processes centering the Gram Sabha.

- **The FRA nowhere provides for eviction of rejected claimants**, as it would be grave violence on the spirit of the law, but instead it protects against evictions.
- The FRA vests a bundle of rights under Section 3(1), where individual *pattas* are only one kind. Rejection of one claim does not imply that the claimant is not entitled to other rights under FRA.
- Majority of claims have been wrongfully and illegally rejected, and taken up for *suo moto* review by the state governments in ongoing processes.
- Those ineligible for rights under FRA may be eligible under other central or state laws.

As per S.3(1)(g) of the SC/ST (Prevention of Atrocities) Act, wrongful dispossession of SC and STs from their land, and interference with their enjoyment of forest rights, is an atrocity, inviting criminal prosecution upon the wrongdoers!

For evictions under separate central and state legislations, the procedure under the laws differs, but the common minimum requirements are:

- ✓ Issuing adequate notice of eviction by competent authority to the affected person(s)
- ✓ Affording reasonable opportunity to the affected persons to be heard and to present their case
- ✓ Recording reasons for evictions in writing, and furnishing copy of the same to affected persons
- ✓ Providing just, fair and reasonable compensation and rehabilitation package/ alternative land
- ✓ Appeal or review of eviction orders before higher authorities/ High Court/ Supreme Court

No evictions can be undertaken unless the due process under relevant central or state laws are complied with, and the affected party has accessed their constitutional remedies!

WHAT CAN YOU DO?

The petitioners are trying to displace the protectors of forests in the name of 'conservation' and 'development'. It is important that we **continue to assert our right to decision-making over forests, and to defend our forests against destruction.**

- Immediately **claim your Community Forest Resource (CFR) rights** under Section 3(1)(i) and **Gram Sabha authority** for management and protection of forests under Section 5, FRA
 - Establish CFR Management Committees with Gram Sabha members under Rule 4(1)(e)
 - **Challenge tree-felling and forest destructive activities** in your village by the Forest Department, Forest Development Corporations, timber mafia, mining and other industries!
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- Pass resolutions in your Gram Sabha declaring that the rights settlement process is still ongoing, and that no person may be evicted without the free, prior and informed consent of the Gram Sabha
 - In case of wrongful rejection of claims by the Gram Sabha, immediately pass a resolution declaring that the claims have been wrongfully rejected and are under review
 - Demand from your state government to initiate *suo moto* reviews of wrongfully rejected claims
 - Approach the Chief Minister and Chief Secretary of your state demanding information on the affidavit to be filed in the Supreme Court
 - Undertake documentation on status of claims in your area and share with the Chief Secretary for inclusion in the affidavit. Include the following information:
 - Claims filed by STs and OTFDs: number of, and which rights have been claimed?
 - What is the present status: recognized/ pending/ rejected (at what stage)
 - Since when have your claims been pending, and at what stage
 - Whether due process has been followed before rejecting claims
 - What reasons for rejection
 - Whether the Gram Sabha in your area have been properly constituted
 - Whether the Gram Sabha in your area is able to function freely
 - Demand from your state government to press for the constitutional challenge to the FRA be referred to a 5 Judge bench of the Supreme Court
 - In case of attempted evictions:
 - Ensure that the rejection of FRA claim has achieved finality
 - Ensure compliance with due process for evictions under relevant central and state laws
 - Immediately alert the Gram Sabha, Collector, Secretary of the ST Department etc.
 - Challenge illegal evictions before the State Level Monitoring Committee (SLMC) and the High Court of your state
 - Demand free legal aid from your District Legal Services Authority
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- **EDUCATE!** **AGITATE!** **ORGANIZE!**