

An Open Letter of Appeal

To,

The Office of the Prime Minister
Government of India
South Block, Raisina Hill
New Delhi-110011

Dear Honourable Prime Minister,

The Supreme Court order of 13th February 2019 in the case challenging the constitutional validity of Forest Rights Act (FRA) directed the State governments to ensure the eviction of all forest dwelling Scheduled Tribes and other traditional forest dwellers from forest land whose claims under the Act have been rejected on or before 24 July 2019. 1 to 2 million claimants face the threat of eviction. The final countrywide numbers of forced evictions are likely to rise substantially as other states are forced to comply with the court orders.

The context in which it was pronounced was disturbing, in that the Central Government chose not to represent itself at the hearings.

The Judgement reflects a fundamental regression, when considering the purposes of the FRA, which include seeking to address 'historical injustices'. **Rather than reviewing and analysing the implementation of the Act and grounds for rejected claimants, in order to determine constitutional validity, which was what was under challenge, the Supreme Court chose to forcibly evict the people who have been living sustainably in the forests for centuries and protecting biodiversity and wild life.**

The undersigned take note that the Court has now put the ruling on hold for a period of four months. We note that this is unlikely to be sufficient to review such a large number of rejected claims. Furthermore this will be of little reassurance to the affected Adivasis who will still have the threat of forced eviction hanging over their heads.

Importance of the Forest Rights Act

The Forest Rights Act reinstated the rights to access, manage and govern forest land and resources, and resources within village boundaries, which had been controlled by the forest department since colonial times. This was reinstated by the Parliament by means of the Act, precisely because these communities had managed the forests and resources sustainably. The relationship with the ecosystem is a fundamental part of the tribal way of life, which encompasses their customs, culture, belief system, community and homes. To protect and manage the forest, the law makes the Gram Sabha the statutory body, because the Gram Sabha is best placed to understand and administer communities and their resources.

The FRA has strengthened many communities and other conservation initiatives, and this order would put that at risk. Some of the cases that may be mentioned, where the FRA has been effectively used by local communities/Gram Sabhas to strengthen protection and management of forests, are the cases of Niyamgiri (Odisha), Gadchiroli (Maharashtra) and protected areas such as the Biligirirangana Hills, Tamil Nadu (BRT Hills). The success of the management of forests in these cases clearly lies in the fact that the FRA has the potential to democratize forest governance, making it more accountable and transparent.

Conservation

The Recent Order goes against the very spirit the FRA seeks to address. The petition put forth by a handful of wildlife NGOs, forest officials, and an ex-zamindar, is not in accordance with facts, law or proper conservation principles. For this reason several of India's top environmentalists and scientists have condemned the petition. Top Conservation scientists say in a joint statement:

"We do not regard this order as pro-conservation. On the contrary, it is a real setback for conservation in India. We do not agree with the claim of the petitioners in this case that their positions represent the interests of conservation [...] We join forest people's organisations in calling upon the central and state governments to seek the reversal of this unjust (February 13 Supreme Court) order, not least because it will cause immense harm to conservation."¹

Notably, a significant force that has stopped some of the resource looting in these areas, is the local community fighting to protect their natural resources and habitats, often by using the FRA.

No diversion of forest land should be carried out in these forests until individual and community claims over them have been settled, and Gram Sabha consent obtained. Of about 5.5 million hectares diverted for non-forest purposes such as mining, development and infrastructure projects during 1950-2016, 3 million hectares have been diverted since 2008 when the FRA became operational, mostly flouting the legally prescribed procedure.

The FRA is widely regarded as one of the few laws that is in compliance with international standards on forest conservation. Further, India having one of the largest aggregations of Indigenous peoples in the world, such an ill-advised enterprise of mass evictions will create untold suffering, and generate dismay among Indigenous peoples' movements and observers across the world.

Land Rights Claims

The Order also states that every single claim that has been rejected under this law is a 'bogus' claim'. This goes against the Ministry of Tribal Affairs' findings highlighted in the status report², that less than 45% of the individual forest rights and 50% of the community Forest Rights claims were approved as of April 2018, and also that India Forest Service staff often raise frivolous objections, leading to rejections which were not in accordance with the law.

The Forest Right Act gives the tribal peoples living on forest land the rights to claim the land. The process of getting this recognition of their land has, however, been flawed.

Many Indigenous peoples have said that the entire process of filing ownership claims was flawed, as the steps required for legitimizing customary forest rights was extremely burdensome for people who have spent their entire lives in the forests. Moreover, in many cases, in spite of claimants providing the evidence required by the Act, the District Level Committees rejected claims or approved much less land than was claimed, merely on the

¹ https://www.business-standard.com/article/current-affairs/top-wildlife-scientists-ask-for-cancellation-of-sc-tribal-eviction-order-119022701133_1.html?fbclid=IwAR3f_w2BI2EoCEMEmXnKBn-ZxY7D0gsfIWKyMtnxh07sxZrUPu45tJou5l

² <https://tribal.nic.in/FRA/data/MPRApr2018.pdf>

basis of the opinion of Forest Department staff. Some claims were not entertained in cases where forest lands were slated to be diverted to extraction companies.

The irony is that tribal peoples are seen as a problem; rather, they need to be seen as part of the solution to protect and maintain the forests, as advocated by a number of recent studies by conservation scientists. This regressive Order will create a catastrophe, not only for the tribals and other traditional forest dwellers, but for the development of the nation, and for combating the adverse effects of climate change.

Appeals

We express our shock and concern at how the apex court has approached the landmark legislation in an unjust and cavalier manner, and without hearing the stakeholders – the Adivasi forest dwellers themselves. In view of it, we place our appeals to the Prime Minister of India:

- The Central government must immediately act to reverse the February 13th order, and to ensure that all rejection of claims under the Forest Rights Act are reviewed through Gram Sabhas (not only by officials).
- The Central government must ensure that, as per law, every village in forest areas in the country receives title to protect and manage their community forest resources, and to use their non-timber forest produce without any conditions or restrictions.
- All compensatory afforestation and other forestry funds (including Joint Forest Management) should only be utilised under the control of forest dwelling communities through their Gram Sabhas.
- Stop all diversion of forestland for corporate projects without consent of affected Gram Sabhas and without recognising communities' rights to land and resources.
- Ensure that all officials responsible for violating forest rights are prosecuted.

Sincerely Yours,

International Work Group for Indigenous Affairs (IWGIA)
Asia Indigenous Peoples Pact (AIPP)

Endorsed by:

1. Abhiyan Nepal
2. Amnesty International
3. Association for Land Reform and Development (ALRD)
4. Asian NGO Coalition for Agrarian Reform and Rural Development (ANGOC)
5. Center for International Environmental Law (CIEL)
6. College of Development Studies (CDS-Nepal)
7. Consortium for Land Research And Policy Dialogue (COLARP)
8. Community Self-Reliance Centre (CSRC)
9. Ekta Parishad
10. Earth Rights International (ERI)
11. Environmental Investigation Agency (EIA)
12. ILC Asia
13. International Rivers
14. Forests of the World
15. Forest Peoples Programme (FPP)
16. Minority Rights Group International

17. National Land Rights Forum (NLRF)
18. Planeta Azul & Verde Esperanza de Vida
19. The Center for People and Forests (RECOFTC)
20. Zimbabwe People's Land Rights Movement
21. Oxfam India