

To,

Shri Jual Oram

The Minister of Tribal Affairs

Ministry of Tribal Affairs

New Delhi

1st September 2014

Sub: Civil Society and Adivasi *sangathanas* concerned about contradiction of Maharashtra village forest rules 2014 with Forest Rights Act 2006 and Panchayat Extension to Scheduled Areas Act 1996

Honorable Sir,

The Indian Forest (Maharashtra) (Regulation of assignment, management and cancellation of village forest), 2014, mentioned here on as VFR 2014, were notified on 13th May 2014. At the outset it is important to mention that these rules have been notified without much public consultation. Additionally, efforts were immediately made in various districts of the state to push for a speedy implementation of these Rules. Certain provisions of VFR 2014 and the manner in which these were being pushed, are of grave concern to all of us directly involved in implementation of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006 hereon FRA.

We would like to bring to your notice that the VFR 2014, in its Rule 1(3) mentions that "these rules shall not be applicable to such forest areas covered under or to communities who have already acquired community forest rights under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006". The rules however contradict this statement in the very next sentence by stating "Provided that any gram sabha may, *suo moto*, takes a decision, by resolution, to adopt these rules". Consequently, resolutions were prepared by the forest department to be passed during the gram sabha of 15th August towards adopting these rules (please see a translated copy as annexure 2). These rules were distributed in many villages in Gadchiroli district – a district which has received highest number of CFR titles in the state.

Importantly, efforts to push for VFR 2014 were being made in other scheduled V areas of the state as well. After objections were raised by civil society organizations, village representatives and protests by *sangathans*, like the Lok Sangharsha Morcha, the state forest department finally did not push the resolutions and some resolutions which had already been passed e.g in *Chalisgaon*, were withdrawn after a rally by Lok Sangharsha Morcha.

As is clearly mentioned in the FRA and further clarified in the Rules under FRA, the provision of Community Forest Right (CFR), which vests the right of use, management and conservation to the Scheduled Tribes and Other Traditional Forest Dwellers is applicable to all forest land where forest dependent communities live. VFR 2014 Rule (3) is contradictory to the FRA by suggesting that there are forest lands where FRA may not be applicable. Additionally, the

provision stating that the Gram Sabha can *suo muto* take a resolution to adopt these Rules, indicates that these rules will indeed be implemented in Scheduled Areas and/or areas where CFR rights are being/could be claimed by the local communities.

This is a matter of great concern as this provision of VFR 2014 clearly appears to be intended at bringing all forest areas back under the jurisdiction of Indian Forest Act, effectively nullifying all rights and powers vested in the gram sabhas by FRA and PESA. It must be noted here that FRA and PESA were brought in after much struggle by Adivasi communities and traditional forest dwellers to establish their rights over their traditional forest lands which had been denied to them under the Indian Forest Act of 1927 and other forest laws and policies.

If due to lack of clarity or being pushed by any agencies the gram sabhas do *suo muto* take the decision to adopt these rules, this will lead to many violations of various provisions of FRA and PESA, defeating the very purpose of enacting and implemented these laws! (please see some contradictions attached as annexure 1). We express our concern against such efforts to subvert the rights of scheduled tribes and other forest dependent communities in the state of Maharashtra. The provisions under VFR 2014 violate the superior rights vested by these two central legislations with non-obstante clauses.

In the above context we highly appreciate the letter sent by MoTA to the Chief Secretary of Maharashtra (Letter no. 23011/17/1014 – FRA, dt. 13th August 2014) recognizing that the VFR 2014 are prima facie in violation of the Forest Rights Act and the Rules and directing to keep the VFR 2014 in abeyance till further legal examination. Despite the letter from MoTA, the forest department has continued to organize meetings in Gadchiroli and other areas. Some gram sabhas have passed the gram sabha resolution in favour of adopting VFR 2014, while many others have given resolutions against the rules (please see attached letter from Devaji Tofa). We request you to kindly expedite the process of examination of these rules with the legal counsels as mentioned in the MoTA letter and issue urgent directions to prevent violation of FRA through such processes. As the nodal agency for implementation of FRA for protection of rights of STs and OTFDs we look forward to MoTA's proactive intervention in this matter.

Yours sincerely,

Pratibha Shinde, Lok Sangharsha Morcha, Nadurbar

Mohan Hirabai Hralal, Chandrapur, Gadchiroli

Devaji Tofa, Mendha-Lekha village, Gadchiroli

Keshab Gurnale SRUSTI, Gadchiroli

Dr Satish Gugulwar Amhi Amchya Arogyasathi, Gadchiroli

Pravin Mote Amhi Aamchi Arogya Sathi, Nagpur, Maharashtra

Vijay Dethe Paryavaran Mitra/CORD, Chandrapur

Smita Kamble Paryavaranmitra, Chandrapur

Neema Pathak/Pradeep Chavan/Meenal Tatpati, Kalpavriksh, Pune

Annexure 1 Some of these legal contradictions if VFR 2014 are implemented

1. FRA in Section 3 provides for the rights including Rights to Minor Forest Produce, fish, Community forest resources, grazing, to scheduled tribes and forest dependent communities. Similarly, Section 4 of PESA states that "notwithstanding anything contained under Part IX of the Constitutions, the legislature of the State shall not make any law under the Part which is inconsistent with any of the following features, namely,....

(i) while endowing Panchyats in Scheduled Areas with such powers and authority as may be necessary to enable them to function as institutions of self-government, a State legislature shall ensure that the Panchayats at the appropriate level and the Gram Sabha are endowed specifically with-.....

(ii) the ownership of minor forest produce;"

Rule 41 of the Maharashtra Village Panchayats (PESA) Rules states that, the Resource Planning & Monitoring Committee (RPMC) is the committee which monitors the access to MFP, in consultation with the Gram Sabha.

Despite these existing legal provisions, under Rule 10(b) of VFR 2014, the Van Vyavasthapan samiti (VSS) constituted under VFR 2014 has been given the power to harvest and dispose of minor forest produce, bamboo, *tendu*, and *apta*. This is clearly in conflict with the provision of FRA and PESA and will lead to adverse consequences, especially for STs and OTFDs. As mentioned above, in PESA and FRA the right to Non Timber Forest Produce (NTFP) has been vested on the Gram Sabha. However in the VFR 2014, such rights can be withdrawn by the Chief Conservator of Forests. This in effect is recognizing that ownership of NTFP does not lie with the Gram Sabha but with an agency of the Government. This is a situation clearly untenable with the provisions of PESA and FRA. There is no provision in any of these Acts to withdraw the rights once they have been established. Therefore even if Gram Sabhas, under any compulsion, adopt these rules *suo muto* , then actions taken under these rules will contradict various provisions of FRA and PESA.

2. Under VFR 2014, the resolution of all disputes is vested in the end with the Range Forest Committees (Rule 15). This is contrary to PESA Rules which seek resolution of conflicts through the mechanism of joint Gram Sabhas. This also gives, in essence, the concept of ownership and access to rights by the people or Gram Sabha.

3. VFR 2014, rule 4(5) speaks about the suspension of rights over bamboo, and reversion of areas to forest Departments for restoration of normalcy (to be certified by the Assistant Conservator of Forests). Such a power is clearly against the intent and spirit of PESA and FRA which do not give such powers to any external/official authorities. Rule 5 has the provision for cancellation of assignment. This creates a situation of withdrawal of rights of the Gram Sabha guaranteed under PESA and FRA.

VFR 2014, in many other ways will create numerous conflicts between the Village Forest Management Committees (formed under Rule 4), and the committees made under Rule 4(1) (e) of FRA Rules, or the RPMC (PESA Rules). Further conflicts will be recreated by the

requirement under VFR 2014 to prepare micro plans, to levy grazing fees, to regulate the collection and disposal of minor forest produce (Rule 7(j), (m)), and to prohibit fishing (Rule 10(m)).

From the above mentioned contradictions It is clear that VFR 2014 and the rights given to STs , OTFDs and Gram Sabha in FRA and PESA are irreconcilable. In fact, it is evident that most of the Clauses will lead to undermining of rights gained in FRA and PESA.

Annexure 2 Gram Sabha resolution (format)

Sub: To implement the notification of Village Forest Rules under the Revenue and Forest department's notification dated 13th May 2014. Also about the Gram Sabha resolution.

Today Date: -----Venue:----- a gram sabha has been organized to read "Maharashtra Village Forest Rules, 2014", notified by the government of Maharashtra on 13th May 2014. According to that, as per the convenient of the village, appropriate action should be taken was decided by consensus.

Gram Sabha is giving consent that from now on the existing Joint Forest Management Committee (JFMC) will be considered the "forest management committee" or "village forest management committee".

JFMC has carried out or continuing to carrying out the Forest development works and other works of FD. Funds for such works are deposited in the Bank account of the JFMC. GS is giving consent to continue to carry out such activities, for which these funds have been deposited, with the approval and permission of FD. The value of different kinds of work is Rs. 20,000. GS is giving consent to pay this amount for the works. JFMC bank account has unspent money and interest on it. GS is giving consent to spend this unspent money on other village development work with the prior permission from Deputy Conservator of Forest (DCF). And it is mandatory to take permission from DCF for this.

As directed by Range Forest Officer (RFO), the forester, forest guard shall be the Technical Member and the member secretary of Village Management Committee (VMC). GS is giving permission/ consent for this. GS is giving consent to use joint bank account funds for all kinds of activities, with his signature. Signature of technical member is mandatory to withdrawal or transfer money from the bank account.

GS is giving consent for all expenses to be made for activities to be taken up by the JFMC. GS is giving consent to transfer the funds for the equipment and works which have been carried out by contractors or service providers. GS is giving consent/ permission to funds funds above Rs.20,000.

GS is giving consent to work according to and under the guidance, advice, directions and orders of the DCF.

GS is giving consent to take necessary actions on any kind of hurdle, problems, conflicts as per the orders of the DCF. DCF's decisions shall be final.

GS is giving consent to help FD to carry out forest conservation and management as per the provisions under the working plan, Indian Forest Act, 1927 and Maharashtra Village Forest Rules, 2014.

The activities of collection, buying and selling of NTFP from local harvesters are being carried out by JFMC. GS is giving consent to continue to carry out these activities and to transfer money

to the respective people. In this context GS is giving consent to carry out such works under the orders, directions, control and inspection of the DCF.

GS is giving consent to carry out the FD's innovative value addition and skill development programmes which aim towards providing livelihoods to the local people. In this the GS is ready to help FD in Future.

GS is giving consent to carry out the works, as per the guidance of FD, on the authorized forest area notified under Village Forest (like reserved forest, protected forest and other types of Forest).

After notification of Village Forest, Gram Sabha is giving consent to make and implement the micro plan for 10 years and yearly micro plan, as per the availability of funds, under the guidance of the FD.

Our village is eligible to notify under the Rules 3 of Village Forest Rules, 2014. GS is giving consent to send proposal for notification of Village Forest.

Annexure 3 Letter by Devaji Tofa

Shri Devaji Navlu Tofa

Adivasi Sevak

Member: Maharashtra State Wildlife Board

Member: Vidharbha Scientific Development Board, Nagpur,

Coorganiser : Vrikshamitra, Gadchiroli-Chandrapur

Member: Gramsabha, Mendha (Lekha), Gramdan Village

Post Heti, Taluka Dhanora, District Gadchiroli (Maharashtra)

Mobile: 9421734018, email: cdtofa@gmail.com

Letter No: 11/A. U. Y./Gadchiroli Dated: 29th July 2014

To,

Hon'ble Chairman and all members

Review committee for the changes in the implementation of the Tribal Sub Plan,

Government of Maharashtra.

Hon'ble members,

I would humbly like to submit that:

To undo the historic injustice meted out to adivasis and Other Traditional Forest Dwellers, the government of India through the Scheduled Tribes and Other Forest Dwellers (Recognition of Forest Rights) Act, 2006 has recognized the community forest rights of their gram sabhas. Gadchiroli district has been leading the nation in the implementation of community forest rights. However, it is disappointing to note that these gram sabhas have not been provided any funds under the Tribal Sub Plan (TSP).

It should be ensured that mechanisms for direct transfer of TSP funds to all gram sabhas whose community forest rights have been recognized are provided, for capacity-building of the gram sabhas and so that they can themselves plan their development works and implement the work.

Some groups have been trying to deprive people of these rights by asking gram sabhas to pass illegal resolutions by manipulating the lack of awareness of the gram sabhas. (See attached, the format of the resolution that the FD in Gadchiroli had issued which asks gram sabhas being held on 15th august to constitute village forest committies). The TSP re-evaluation committee must

take immediate cognizance of this and to safeguard the rights of adivasis and OTFDs in scheduled areas must immediately inquire into the matter.

In forest areas recognized as CFRs any FD activity/schemes/plans carried out in the past become null and void and the “community forest protection and management schemes” implemented through the gram sabha become operational. (See Rule 4 (1) (f) of amendment rules, 2012). Even if it is so, the FD has illegally cut trees from the CFR of Erandi village in Kurkheda taluka of Gadchiroli and has seized the timber. The committee must immediately inquire into the matter. The seized timber must be evaluated and the amount must be given to the gram sabha. The committee must also inquire into illegal tree felling in other villages where it is being carried out. The committee must ensure that penal action is taken on people responsible for keeping the adivasis from exercising their forest rights and ensure that such incidences do not repeat.

The government of India has through Sec 3.1 and 4.1 of the Forest Rights Act, recognized and vested the CFRs of all villages. (Notwithstanding). The immediate use of TSP funds has become necessary to protect them from actions such as these, which prevent them from exercising their rights and to strengthen them to enjoy their rights.

It is important to take care to ensure that that gram sabha which has been empowered with CFRs is the PESA gram sabha as well as the BMC under Sec 4(1) of the BDA. By doing so, it will be ensured that there are no conflicts within these committees and that the capacity of the gram sabhas to manage their resources will be increased. The committee must ensure notices in this matter.

To ensure the forest dependent sustainable development of Gadchiroli district, it is important to judiciously use the TSP funds to create an integrated TSP empowering the gram sabha and the district to ensure its proper implementation.