



# **COMMUNITY FOREST RIGHTS AT A GLANCE : 2017-20**



**Produced and compiled by Kalpavriksh  
as part of the Community Forest Rights-Learning and Advocacy Process**

This report is an outcome of the Community Forest Rights-Learning and Advocacy Process (CFR-LA) which was initiated in 2011 to facilitate exchange of information and experiences to reinforce national level efforts for evidence-based advocacy on Community Forest Resource Rights (CFRs) under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (Forest Rights Act or FRA). The process involves organizations and individuals working at local, national and international level on facilitating and understanding CFRs. As part of the process, a website <http://fra.org.in> and email group <https://groups.google.com/forum/#!forum/cfr-la.com> have been initiated. As part of the ten-year anniversary of the enactment of the Forest Rights Act, a series of status reports of the implementation of the Act in different states has been undertaken. The reports can be found at <http://cfrla.org.in/> and <https://www.fra.org.in/>

For more information on this report,

Contact: Kankana Trivedi, Kalpavriksh at [kankana.india01@gmail.com](mailto:kankana.india01@gmail.com) or Meenal Tatpati, Kalpavriksh at [meenaltatpati01@gmail.com](mailto:meenaltatpati01@gmail.com)

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The report has been compiled by Kankana Trivedi with contributions from Meenal Tatpati (Court cases and Judgements, Forest Diversion and Forest Rights related updates and overall editing), Shruti Ajit and Akshay Chettri (Ministry of Tribal Affairs status report updates)

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Designed by: Shruti Ajit

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# Abbreviations

CA- Compensatory Afforestation  
CAF- Compensatory Afforestation Fund  
CAMPA-Compensatory Afforestation Fund Management and Planning Authority  
CFM- National Community Forest Management  
CFR-Community Forest Resource  
COVID- Corona Virus Disease  
CR- Community Rights  
CTR-Critical Tiger Habitat  
CWH- Critical Wildlife Habitat  
DFO- Divisional Forest Officer  
DLC- District Level Committee  
FCA- Forest Conservation Act, 1980  
FDCM- Forest Development Corporation of Maharashtra  
FIR-First Information Report  
FRA- Forest Rights Act  
GIM-Green India Mission  
HC-High Court  
IFR- Individual Forest Rights  
JFMC-Joint Forest Management Committee  
MNREGS-Mahatma Gandhi National Rural Employment Guarantee Scheme  
MoEFCC-Ministry of Environment, Forest and Climate Change  
MoTA- Ministry of Tribal Affairs  
NBF- Mission and National Board of Forestry  
NBWL-National Board of Wildlife  
NCST- National Commission on Scheduled Tribes  
NFP- National Forest Policy  
NGT- National Green Tribunal  
NP-National Park  
NTCA- National Tiger Conservation Authority  
OTFD- Other Traditional Forest Dweller  
PA-Protected Area  
PESA-Panchayats (Extension to Scheduled Areas) Act  
PVTG- Particularly Vulnerable Tribal Group  
SBWL-State Board of Wildlife  
SC-Supreme Court  
SDLC- Sub-Divisional Level Committee  
ToR- Terms of reference  
TR-Tiger Reserve  
TRIFED-Tribal Cooperative Marketing Development Federation of India  
VDVK-Van Dhan Vikas Kendra  
WLS-Wildlife Sanctuary

## Glossary of terms used

Adhikarpatra/patta	Land Title
Nistar rights	Communal rights of use for common lands in the village
Gram sabha	Village assembly
Zamindari	System of land-holding and tax collection by zamindars or landlords
Jan Sangathan	people's organisation
Wajib-ul-arz	Customary and easement rights of individuals or groups in the village
Podu	Shifting cultivation
Siali	<i>Bauhinia vahlii</i>
Adivasi	Collective term for tribes in India

# 1. INTRODUCTION

## 1.1 Introduction to the Act

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights Act), 2006 (hereafter Forest Rights Act or FRA), came into force in 2008. It aspires to undo the “historic injustice” meted out to forest dependent communities due to curtailment of their customary rights over forests which resulted in their marginalization and

displacement. The Act recognizes and vests the right to use, manage and conserve forest resources, and to legally hold forest land that these communities have used for cultivation and residence in forest dwelling communities. It also recognizes the integral role that forest dwellers play in the survival and sustainability of forests and in conservation of biodiversity.

The FRA recognises a number of pre-existing rights of forest dependent communities which have been



**Image 1: Board in the CFR detailing community rights vested in Awalgaon village, Yavatmal, Maharashtra (Photo: Meenal Tatpati)**

unrecorded in the past. These rights include:

- a) community rights such as *nistar*, by whatever name called, including those used in erstwhile Princely States, *zamindari* or such intermediary regimes;
- b) right of ownership, access to collect, use, and dispose of minor forest produce which has been traditionally collected within or outside village boundaries;
- c) other community rights of uses or entitlements such as fish and other products of water bodies, grazing (both settled or transhumant) and traditional seasonal resource access of nomadic or pastoralist communities;
- d) rights including community tenures of habitat and habitation for primitive tribal groups and pre-agricultural communities;
- e) rights of settlement and conversion of all forest villages, old habitation, unsurveyed villages and other villages in forests, whether recorded, notified or not into revenue villages;
- f) right to protect, regenerate or conserve or manage any community forest resource (CFR) which they have been traditionally protecting and conserving for sustainable use;
- g) rights which are recognised under any State law or laws of any Autonomous District Council or Autonomous Regional Council or which are accepted as rights of tribals under any traditional or customary law of the concerned tribes of any State;

- h) right of access to biodiversity and community right to intellectual property and traditional knowledge related to biodiversity and cultural diversity; and
- i) any other traditional right customarily enjoyed by the forest dwelling Scheduled Tribes or other traditional forest dwellers, excluding the traditional right of hunting or trapping.

The provisions under Sec 3(1) of the Act are particularly empowering as they recognize community forest rights of the *gram sabhas*<sup>1</sup> of forest dwelling communities. The right to protect, regenerate, conserve or manage any community forest resource (CFR<sup>2</sup>) which they have been traditionally protecting and conserving for sustainable use, under Sec 3(1)(i) along with the rights mentioned above has the potential to change the top-down centralized style of governance of forests to enable greater site-specific management by communities, and provide collective livelihood security to communities.

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<sup>1</sup>Under Sec 2(g) of the FRA, the Gram Sabha is defined as 'a village assembly which shall consist of all adult members of a village and in case of states having no Panchayats, padas, tolas, or any other traditional village institutions and elected village committees, having the full and unrestricted participation of women.'

<sup>2</sup>CFR is defined as "the customary common forest land within the traditional or customary boundaries of the village or seasonal use of landscape in the case of pastoral communities, to which the community had traditional access". The rights over CFRs as well as other CRs can be recognized over any forest land including reserved forests, protected forests and protected areas such as Sanctuaries and National Parks.

## 1.2 Significance of Community Forest Rights

*For forest conservation, management, and governance*

Sec 5 of the Act empowers communities to "protect forests, wildlife and biodiversity, and to ensure protection of catchments, water sources and other ecologically sensitive areas". When read with Section 3(1)(i) of the Act and Rule 4(1)(e) and (f) of the Amendment rules of 2012, (which elaborate on the constitution of a committee which can perform these functions as well as prepare conservation and management plans for its CFR), Sec 5 creates a space for forest dwelling communities to practice forest management and governance by using their own knowledge systems and institutions and integrating them with modern scientific knowledge.

*For Ensuring livelihood security- recognizing community rights over forest resources,*

Sec 3 (1)(c) of FRA, vests community rights (CRs) over collection and sale of Non-Timber Forest Produce (NTFP) i.e. Minor Forest Produce (MFP) as the Act refers to it, in the hands of communities. Vesting rights over commercially important NTFP, which has been under the monopoly of state and contractors thus far, in the communities, has great significance. The Act clearly defines MFP in Section 2(i) and provides elaborate guidelines under the Amendment Rules, 2012, for their sale, for a change in the transit permit regime, etc. Rule 16 of the Amendment Rules, 2012, provides for government schemes related to land improvement, land productivity, basic amenities and livelihood measures of various government departments to be provided to communities whose rights over CFR have been recognised, paving a way for convergence of governmental schemes towards village development, according to their own needs.



**Image 2: Raika pastoralists discuss forest rights in a meeting (Photo: Akshay Chettri)**

*For decision-making on developmental projects*

While acknowledging the forced displacement of forest dwelling communities due to State developmental interventions, Section 4(5) of the Act attempts to prevent further relocation and displacement of forest dwellers by providing that “no member of a forest dwelling scheduled tribe or other traditional forest dweller shall be evicted or removed from the land under his occupation till the recognition and verification process is complete”. Thus, according to this Act, in areas where the process of recording of rights under FRA

has not started, forest dwellers cannot be evicted. Additionally, Sec 5 empowers the village gram sabhasto ensure that the habitat of forest communities is preserved from any form of destructive practices affecting their cultural and natural heritage, and to take decisions to regulate access to community forest resources and stop any activity that adversely affects wild animals, forest and biodiversity and to ensure that these decisions are complied with. These provisions have the potential to significantly democratize the decision-making process for various developmental projects in the country.

## 2. About the Citizen's Report

Since 2012, an attempt has been made to evaluate the progress of CFR implementation and to discuss, consolidate and analyze the policy changes directly affecting the implementation of the Act for helping on ground research, advocacy and effective implementation of the Act, in the form of a Citizens' Report<sup>3</sup>. This report is the fifth in the series, attempting to build on the previous reports by consolidating information on the processes and policies aiding and abetting the implementation of the CFR process in different states of India that took place between April 2017 and June 2020.

### 2.1 Methodology

The report has been consolidated using varied research methods and sources:

- Reviewing information available on various platforms such as CFR-LA list serve, websites of ministries, online magazines, articles, newsletters, open-editorials etc.

- Collating and reviewing information received from many researchers, groups and civil society organization working on FRA from CFR-LA list serve.
- Collection of regional information by individuals through email exchange or telephonic conversations.

### 2.2 Limitations

While there was a careful attempt to represent accurate and reliable information, there may be gaps and weaknesses in the report, since there is a diverse range of situations pertaining to CFR rights across India. Various accounts of implementation of FRA in all the states could not be collected. Most of the details are from secondary literature by one individual, limiting the scope of details on CFR updates and consultations and understanding on various policies and letters circulated by the ministries. We shall be happy to receive suggestions and criticism from readers and will try our best to keep the same in mind for future reports.

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<sup>3</sup> See previous reports at:

<http://fra.org.in/document/A%20National%20Report%20on%20Community%20Forest%20Rights%20under%20FRA%20-%20Status%20&%20Issues%20-%202012.pdf> ;  
<http://fra.org.in/document/Community%20Forest%20Rights%20under%20FRA%20Citizens%20Report%202013.pdf> ;  
<http://fra.org.in/document/CITIZENS%20REPORT%202015%20COMMUNITY%20FOREST%20RIGHTS%20UNDER%20THE%20FOREST%20RIGHTS%20ACT.pdf> ;  
and [https://www.fra.org.in/document/Citizen%20Report-English\\_2015-17.pdf](https://www.fra.org.in/document/Citizen%20Report-English_2015-17.pdf)

## 3. NATIONAL OVERVIEW

This section consists of an overview of various policy and implementation related updates pertaining to CFR provisions that took place from April 2017 to June 2020.

### 3.1 Policy updates

#### 3.1.1 Letters, Circulars, Guidelines, Orders and Memorandums having an impact on FRA

##### 1.1. Issued by Ministry of Tribal Affairs (MoTA)<sup>4</sup>

Year 2020			
Letter no and Date	Subject	Content	Comments
F.No. 23011 109 120 I 6-FRA  Dated February 21, 2020	An order constituting a committee to examine and recommend Guidelines for Conservation, Management and sustainable use of Community Forest Resources, in keeping with the letter and spirit of FRA <sup>5</sup> .	The committee is expected to: <ul style="list-style-type: none"> <li>• Draft a suggestive CFR Guideline which will provide a clear understanding of the concept of CFRs and detail the procedural aspectsof CFRs to encourage implementation of the community forest management andconservation regime.</li> <li>• Keep in mind that the Gram Sabhasare the lowest / grass root level democraticinstitution and will decide the overall framework and objectives of management plans.</li> </ul>	Between 2016-17, a joint process to draft CFR Management Plan Guidelines was initiated by Ministry of Environment, Forests and Climate Change (MoEFCC) and MoTA, with draft guidelines being formulated by both ministries <sup>6</sup> . However, due to disagreements on the drafts, the process was discontinued. This attempt is latest at reworking a draft, although MoTA has already issued guidelines for management of CFRs in 2015 under Sec 12 of the FRA <sup>7</sup> .  The committee met for the first time on March 16, 2020

<sup>4</sup>MoTA is the implementing agency for FRA.

<sup>5</sup>Order has not been uploaded on MoTA's website. It is available with the authors.

<sup>6</sup>[https://www.fra.org.in/document/CFR%20Management%20Guidline Draft 25.1.2016.pdf](https://www.fra.org.in/document/CFR%20Management%20Guidline%20Draft%2025.1.2016.pdf);

[https://www.fra.org.in/ASP\\_OrderCirculars\\_UploadFile/%7Bc4925e31-0bde-46db-9c6d-815d923b129e%7D\\_CFR%20Management%20Guidelines\\_05.12.2016.pdf](https://www.fra.org.in/ASP_OrderCirculars_UploadFile/%7Bc4925e31-0bde-46db-9c6d-815d923b129e%7D_CFR%20Management%20Guidelines_05.12.2016.pdf)

<sup>7</sup><https://tribal.nic.in/FRA/declarationsClarifications/GuidelinesregardingvestingofCFR23042015.pdf>

			and decided to visit four states including the Union Territory of Jammu and Kashmir <sup>8</sup> .
F. No. 2301 1/16/02 15-FRA  February 21, 2020	An order constituting an Expert Committee on improvement of the recognition and vesting process of community rights under the Forest Rights Act, 2006 with special focus on (i) Habitat Rights of PVTGs and (ii) Seasonal Resource access to Nomadic and Pastoralist communities. <sup>9</sup>	The Committee is expected to: <ul style="list-style-type: none"> <li>• Take into account the CR provisions of FRA rules and guidelines dt 12.7.2012 and form suggestive guidelines to speed up the process of recognition of community rights.</li> <li>• Ensure that the suggestive guidelines do not deviate from the letter and spirit of the FRA.</li> <li>• Make use of the success stories in the area of community rights in some of the States and provide a road map for all the States to carry out the good practices and processes involved.</li> </ul>	The committee has been constituted since MoTA has observed that despite issuing amendment Rules and detailed Guidelines in 2012 on recognition of CFRs and detailed clarifications on recognition and vesting of rights of Particularly Vulnerable Tribal Groups, State Governments have not reported any progress in this regards. Thus, it is felt that State Governments need comprehensive and specific guidelines on the issue to overcome difficulties faced by them in the process of recognition of habitat rights, and to facilitate recognition and vesting of such rights.  The committee was to submit its report within 3 months.

## Year 2019

Letter no and Date	Subject	Content	Comments
F. No. 23011/23/2012-FRA  April 5, 2019	Circular <sup>10</sup> in response to MoEFCC's circular (No. 11-43/2013-FC) dated 26.2.2019, addressed to Deputy Inspector General of Forests, MoEFCC.	MoTA has asked the MoEFCC to clarify its circular points made in its circular and modify it to say that FRA compliance should be ensured before granting Stage I in-principle approval for forest land	Please see point 1.3 below for details.

<sup>8</sup><https://www.downtoearth.org.in/news/governance/panel-looking-into-pastoral-communities-forest-rights-to-visit-j-k-69800>

<sup>9</sup>Order has not been uploaded on MoTA's website. It is available with the authors.

<sup>10</sup><https://www.scribd.com/document/406003205/2019April-MoTatoMOEF&CC-FRAConsent>

		diversion projects under Forest (Conservation) Act (FCA).	
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<b>Year 2018</b>			
<b>Letter no and Date</b>	<b>Subject</b>	<b>Content</b>	<b>Comments</b>
No. 23011/3/2016-FRA June 27, 2018	Letter sent to chief secretaries of all states & UTs to review FRA implementation (with special focus on processing pending claims).	<p>The letter asks the states to:</p> <ul style="list-style-type: none"> <li>Review and take action on pending and rejected claims. cite the reasons for the rejection of claims and communicate the same to claimants as a speaking order ( as stated in its letter no 23011/24/2009-FRA dated 15.7.2010)</li> <li>Data on pending claims at each level (Gram Sabha, Sub Divisional Level Committee (SDLC) and District Level Committee (DLC) should be put in public domain. The status of pending claims at various levels with segregated data on Forest Dependent Scheduled Tribes and Other Traditional Forest Dwellers (OTFD) must be provided to MoTA for monitoring purpose.</li> <li>Stop eviction of FRA claimants during pendency of review or appeal/review.</li> <li>The letter has asked the states to train their forest staff on the importance of FRA and the symbiotic relationship between forest dwellers and forest and its ecosystems. <sup>11</sup></li> <li>Submit the data on number of gram sabhas as per FRA and constitution of Forest Rights</li> </ul>	Letter is based on a review-cum-consultation that MoTA carried out with all states and union territories in 2017.

<sup>11</sup><https://tribal.nic.in/fra/data/ReviewofProgressPendancyandRejectiondated29062018.pdf>

		Committee through Monthly Progress Report.	
January, 12 2018	Meeting with MoEFCC to discuss FRA clearance at stage I FCA clearance, Compensatory Afforestation Fund, relocation of settlements from Reserved Forests and Protected Areas under FRA 2006, rights of Scheduled Tribes and OTFDs in Critical Tiger Habitats and, identification of land banks for CA.	<p>Key discussion points of the meeting:</p> <ul style="list-style-type: none"> <li>• MOTA reiterated the requirement to initiate the FRA clearance process before going in for Stage II of FCA clearance.</li> <li>• MoTA to be kept in the loop while deciding issues in CWH which has any bearing on FRA and ST.<sup>12</sup></li> <li>• Both the ministries agreed to support voluntary relocation of STs and OTFDs from inside the forests to either the periphery or outside the forests even if it's not a protected area or CWH.</li> </ul>	MoEFCC officials assured that the provision of approval of gram sabha will be made in the Compensatory Afforestation Fund Rules, which is under preparation, to incorporate the above concern.

## Year 2017

Letter no and Date	Subject	Content	Comments
No. 23011/18/2015-FRA(Vol.III)(Pt.) September 21, 2017	Use of space technology to determine the rights of tribal communities under Forest Rights Act, 2006 <sup>13</sup>  MoTA to Principal Secretary of States' Tribal Welfare Department	<p>The state governments need to take the following steps to cover those whose rights have not been recognized under FRA yet:</p> <ul style="list-style-type: none"> <li>• Use of technology for creation of geo-referenced database on vesting of rights/correction of record of rights</li> <li>• Awareness among tribal community and Other Traditional Forest Dwellers for generating fresh claims of those individuals and Gram Sabhas who have not even applied for their rights (individuals, community</li> </ul>	

<sup>12</sup><https://tribal.nic.in/fra/data/RecordofDiscussionMTG12118.pdf>

<sup>13</sup>[https://www.fra.org.in/ASP\\_OrderCiculars\\_UploadFile/%7Bd9dcb541-68d0-4681-a58d-6445538f32e4%7D\\_Use%20of%20space%20technology%20for%20FRA\\_21.09.2017.pdf](https://www.fra.org.in/ASP_OrderCiculars_UploadFile/%7Bd9dcb541-68d0-4681-a58d-6445538f32e4%7D_Use%20of%20space%20technology%20for%20FRA_21.09.2017.pdf)

and community forest resource rights). Fresh Gram Sabha meetings need to be convened in this regard.

- Suo-moto review of rejected claims and early disposal of all pending claims

## 1.2. Circular by MoEFCC on creation of land banks for Compensatory Afforestation

On 8<sup>th</sup> November 2017, the MoEFCC passed an order (11-423/2011-FC)<sup>14</sup> asking state governments to set up land banks for housing compensatory afforestation (CA) projects so that forest clearances could be issued speedily. Paragraph 3.2 of the guidelines issued in 2003 by MoEFCC to implement the Forest (Conservation) Act, 1980 provided for identification of land for CA. The ministry also suggested GIS based decision support system to identify land with varying vegetation density. The ministry will constitute committees under chairmanship of head of each regional office of the ministry, including representatives of the National Tiger Conservation Authority (NTCA) and the Forest Survey of India (FSI) to monitor the progress of creation of land bank, excluding gram sabha from it.

In response, the MoTA wrote to MoEFCC on 3<sup>rd</sup> January 2018<sup>15</sup>, that the order was

<sup>14</sup>[http://forestsclearance.nic.in/writereaddata/public\\_display/schemes/553905943\\$11%20423%202011.pdf](http://forestsclearance.nic.in/writereaddata/public_display/schemes/553905943$11%20423%202011.pdf)

<sup>15</sup>[https://drive.google.com/file/d/1-1XU6\\_umoZdvM35Pe1jYxdrEEfbFHCL/view](https://drive.google.com/file/d/1-1XU6_umoZdvM35Pe1jYxdrEEfbFHCL/view)

issued without its consultation and it contravened various provisions of the FRA, in particular, the role of the gram sabha. The MoTA asked for the order to be modified to say that land banks should be created only with the informed consent of gram sabhas. It also called for a joint meeting of senior officers of the two ministries “to ensure that the rights of tribals are not affected”.

## 1.3. Circular issued by MoEFCC on Forest Diversion and FRA

On December 3<sup>rd</sup> 2018 (and its reiteration on February 26, 2019 to all the state governments) (Letter no.11-43/2013-FC), MoEFCC issued compliance circular while replying to the Principal Secretary (Forests) of Maharashtra’s query with the subject heading, ‘Compliance of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006’. The letter mentions that consent provisions of gram sabha for diversion of forest land (FRA compliance certificates) would not be required for Stage 1 of the forest diversion process.<sup>16</sup>

The letter states that “...for the purpose of the Ministry of Environment Forests and Climate Change (MOEFCC), as per the

<sup>16</sup>[http://forestsclearance.nic.in/writereaddata/public\\_display/schemes/1671185761\\$1.pdf](http://forestsclearance.nic.in/writereaddata/public_display/schemes/1671185761$1.pdf)

provision under the Forest (Conservation) Amendment Rules 2016, the compliance under FRA is not required for consideration of in-principle approval. This has to be furnished by the state Govt. for consideration of the proposal by the ministry for final approval.”

In response to this, MoTA on April 5, 2019 wrote to the MoEFCC (Letter F.No.23011/23/2012-FRA), opposing this move and also pointed out that the letter was issued without consultation with the MoTA, which is the nodal ministry for implementation of the FRA. MoTA opined that neglecting compliance with the Forest Rights Act before granting Stage I forest clearance will make forest clearances “a fait accompli” for project proponents, thereby giving them a time for sufficient progress with the project, without obtaining consent of gram sabhas affected. The letter asks MoEFCC to modify their circular and further mentions:

- That the move could greatly disadvantage forest dwellers, since it has already been observed that FRA clearance is only taken just before the project is assessed for final clearance. This result in the project getting delayed for want of FRA clearance and to avoid this, the project proponent should produce proof of having initiated FRA processes at the point of going for Stage I FCA clearance itself.
- The proof of having initiated FRA clearance process should be

produced at the point of going in for stage 1 FCA clearance.

- In context of the stage of compliance of FRA, the circular by MoEFCC has not been endorsed by MoTA (competent Ministry relating to FRA) but has been circulated to Principal Secretaries/Secretaries (Forest) of all states/UTs. Moreover, violation of FRA is a punishable offence under sec 7 of FRA and authority deemed to be guilty of an offence under FRA are liable to be proceeded against if found irresponsible for not exercising the rules.<sup>17</sup>

#### **1.4. Circulars on Protected Areas and FRA by other ministries**

On 28<sup>th</sup> March, 2017, the National Tiger Conservation Authority passed a circular which stated that FRA cannot be implemented in Tiger Reserves till such a time that Critical Wildlife Habitats are declared<sup>18</sup>. It is clear that this order was passed in a hurry after a fishing community relocated on the outskirts of Pench Tiger Reserve in Maharashtra applied for fishing rights over a reservoir inside the reservewhich was their only source of livelihood. Their village had been relocated from the reserve before FRA was enacted. The Sub Divisional

<sup>17</sup><https://tribal.nic.in/fra/data/ComplianceoftheSTnOOTFDRecognitionForestRightsAct2006regarding05042019.pdf>

<sup>18</sup> Through order number F.No. 1-7/93-PT

(Vol.I.)<https://www.livemint.com/Politics/ZdGE6Jq1NtGwwcoWki5LuK/Don't-confer-forest-rights-to-tribals-in-critical-tiger-habi.html>; <https://thewire.in/environment/forest-rights-dwelling-communities>

Level Committee (SDLC), Ramtek, found the claim legitimate and forwarded it to the District Level Committee (DLC), Nagpur. The DLC subsequently rejected the claim, after the NTCAs order.

This order was heavily criticized by grassroots movements and civil society groups and led to a series of meetings including some called by the National Commission on Scheduled Tribes (NCST). The NCST finally intervened and asked the NTCA to withdraw the order<sup>19</sup> and the NTCA subsequently withdrew it on 12th March 2018; a whole year after the order was issued<sup>20</sup>.

### **1.5. Forest clearance process and FRA (Handbook on FCA-March 2019)**

The FRA mandates that no forest dwelling community or member of the community can be evicted from the forest land in their possession till the process of recognition and vesting of forest rights under the FRA over the land is complete (Sec 4(5)). Subsequently, the MoEFCC issued a circular (dated 3/8/2009) which linked this provision of the FRA with the processes under the Forest Conservation Act, 1980 (FCA). The circular seeks full and prior informed, written consent of gram sabhas affected by diversion of forest land for non-forest uses thereby protecting the rights of forest dwellers.

In 2016, the Forest Conservation Amendment Rules were notified. These

rules hold the District Collectors responsible for obtaining consent of affected Gram Sabhas and to provide a report of the settlement of rights under FRA in a time-bound manner in forest areas to be diverted (Rule 6(3) (e-f)).

The central Forest Advisory Committee and the Regional Empowered Committees (bodies of the MOEFCC constituted under the FCA to deliberate on and recommend forest diversion proposals for forest clearance) now have to consider FRA 'compliance' in forest diversion in the form of documents submitted by the States which include

- resolutions of all affected gram sabhas on the proposal,
- a letter from the District Collector implying that processes of recognition and vesting of rights under the FRA are complete in the area to be diverted and that no pre-agricultural communities or primitive tribal groups are being affected in the process.

However, this process has been summarily violated and diluted by various circulars and policies of the MoEFCC<sup>21</sup>. In March 2019, the MoEFCC released a handbook on the FCA, updating various circulars issued under the Act<sup>22</sup>. The handbook lists three different categories of certificates according to the

<sup>19</sup>D. O. No. PC/1/2017/MENVI/SEOTH/RU.IV.

<sup>20</sup>F. No. F.No. 1-7/93-PT (Vol.I)

<sup>21</sup>[https://www.fra.org.in/document/CFR-LA-Newsletter\\_April-May-15-Final%20\(1\).pdf](https://www.fra.org.in/document/CFR-LA-Newsletter_April-May-15-Final%20(1).pdf)

<sup>22</sup>[https://parivesh.nic.in/writereaddata/FC/HANDBOOK\\_GUIDELINES/HANDBOOK\\_GUIDELINES18\\_03\\_2019.pdf](https://parivesh.nic.in/writereaddata/FC/HANDBOOK_GUIDELINES/HANDBOOK_GUIDELINES18_03_2019.pdf)

category of projects for which forest clearance is to be obtained.

- The first certificate, termed 'Form I' is for plantations on non-forest land and notified as 'protected forest' on or after 13th December 1930 and located in villages having no recorded ST population as per 2001 and 2011 census: Here the DC is supposed to certify that there are no residing ST or OTFDs having rights recognized under FRA. This is with reference to a circular issued by the MoEFCC in 2014, which had been criticized by many *jansangathans* and activists<sup>23</sup>, and subsequently MoTA had also issued an Office Memorandum against the MoEFCC circular. This strange category of forests seems to have been revived again to further dilute the FRA's consent provisions.
- FORM-II is for linear projects other than plantations where the DC will certify that gram sabha consent has been obtained (without having to furnish gram sabha resolutions); and also certify that the proposed area does not involve recognized rights of PTGs and Pre-Agricultural communities. This categorization has also been opposed by the MoTA.
- FORM-III is for projects other than linear projects and plantations

where the DC is supposed to provide documentary proof of all meetings of the FRCs, Gram Sabhas, SDLCs, DLCs that support that the process for rights recognition has been carried on as per the FRA and copies of gram sabha resolutions.

- Apart from this the handbook also lists several project categories that have been awarded 'general approval' or general forest clearance under the FCA, thereby exempting them from obtaining consent of gram sabhas.

As per several circulars and memorandums of MoTA, the prior and written consent of the gram sabhas is essential in all cases of diversion of forests. The FRA provides for recognition and vesting of rights which may have not been previously recorded and therefore this process of recognition and vesting needs to be completed whenever new projects come up in any forest land.

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<sup>23</sup><https://kalpavriksh.org/wp-content/uploads/2020/07/ToPMOagst28Oct2014MoEFletter.pdf>

## 3.2 Developments impacting the implementation of the Act

### 3.2.1 Draft of amendments to Indian Forest Act, 1927

The MoEFCC in March 2019 produced the first draft of comprehensive amendments to the Indian Forest Act (IFA) 1927. Some of the salient features of the draft were as follows:

- Section 2(5) defined 'forest' as 'any government or private or institutional land recorded or notified as forest land in any government record, and the lands managed by the government/community as forest and mangroves, and also any land which the Central or State government may by notification declare to be forest for the purpose of the Act.' It includes '...meadows, grassland, watercourses, ponds, lakes, roads etc'.
- The draft introduced a new category of forests, called 'production forest'. As per sec 2(10), these forests have a specific purpose of production of timber, pulp, firewood, pulpwood, NTFP, medicinal plants or any forest species to increase production in the country, for specified period.
- In the case of a claim to rights of pasture or to forest produce, the Forest Settlement-officer shall pass an order admitting or rejecting the same in whole or in part, after considering

the viewpoint of the presenting officer, or the Divisional Forest Officer, as mentioned in Sec 12. The Forest Settlement Officer makes the final call after considering the evidence provided under Sec 7 and confirming the carrying capacity of the forest.

Some of the provisions in the proposed amendment could directly impact the Forest Rights Act:

- In case of the rights whether individually or collectively are 'inconsistent' with the conservation of the proposed RF, section 22(a)(2) states that the state government "*may commute such rights by paying such persons a sum of money in lieu thereof, or grant of land, or in such other manner as it thinks fit, to maintain the social organisation of the forest dwelling communities or alternatively set out some other forest tract of sufficient extent, and in a locality reasonably convenient, for the purpose of such forest dwellers*" intending to delegitimize, limit or exterminate the rights of the communities recognized under the FRA and PESA.<sup>24</sup>
- The rights exercised by the community to pasture or forest

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<sup>24</sup><https://www.oxfamindia.org/blog/background-note-state-convention-proposed-amendments-indian-forest-act-1927>

produce shall be suspended, arresting the implementation of FRA, in case of fire in a reserve forest, or theft of forest produce or grazing by cattle on a scale that imperils the regeneration of forest, as written in detail in sec 26(3).

- Section 26 (4) gives the rights to a ranger, a sub inspector and a *tahsildar* to evict people if a person contravenes the provisions of clause (a), clause (g) or clause (h) of sub-section (1).
- Section 52 (D) 2 restricts the appeal against a forest officer to the sessions court, if rejected this appeal cannot be taken any further.
- The amendment proposed also provides indemnity to the forest officer to use fire arms to stop forest offences, giving him a license to do so on mere suspicion under Section 66.

Civil society organizations were of the view that the amendments give more discretionary powers to the forest authorities, violating Forest Rights Act and undermining the democratic governance of forests in India. The amendments:

- Delegitimize, limit or exterminate rights already recognized and vested under FRA and PESA.
- Hand over large parts of forests for commercial production as “production forests” and do away with the consent of gram sabhas during the declaration of Reserved Forests and Protected Forests,

which can then be easily diverted for industrial purposes.

- Section 12 of the IFA leaves the rights of grazing at the mercy of the forest officials. The Divisional Forest Officer (DFO) makes the final call on what the ‘carrying capacity’ of the forest is going to be. The method of calculating this ‘carrying capacity’ is not elaborated.
- In Section 34(D), the draft lays down the procedure for the central government to restrict and prohibit the practice of shifting cultivation in all forest land. This will have an adverse bearing on several Particularly Vulnerable Tribal communities across India who practice shifting cultivation and are not linked to the organised sector.
- The draft has given powers to Joint Forest Management Committee (JFMC) while nullifying the role of gram sabha, where JFMC shall exercise the community forest rights in village forests. The state government may notify the member(s) of a JFMC as Honorary Forest Warden who shall have powers of a Forest Officer according to the rules made by the State Government.

Ahead of the Jharkhand elections, the draft was withdrawn in November the same year post the controversy it raised over its approach towards forest dwellers and provisions for additional indemnity to forest officers.

### 3.2. 2 Guidelines for the declaration of Critical Wildlife Habitats (CWH)

The MOEFCC in early 2018 released a set of guidelines for the declaration of CWH<sup>25</sup>. Sec 2 (b) of the FRA defines a Critical Wildlife Habitat and Sec 4 (2) (a-f) define the process to declare it.

The salient features of the guidelines are as follows:

- The objective of the guidelines as laid out in Sec 2.1 is for the *creation of inviolate spaces (CWH) within national parks and sanctuaries to ensure conservation of and prevention of damage to wildlife and its habitat in these areas.*
- Sec 5.1 provides for the constitution of the 'expert committees' for identifying CWH in National Parks or Sanctuaries. This committee is to be set up for a specific protected area and should include- An officer of the State forest department not below the rank of Chief Conservator of Forests having jurisdiction over the National/Park or Sanctuary as the chairman; a representative of the Ministry of Tribal Affairs, a social scientist, two experts in life sciences; panchayat president or sarpanch of local panchayats covering the area of the pa or a member nominated by the sarpanch as members; and an officer not below the rank of Assistant

Conservator of Forests of the area of the pa as member secretary. *This committee can conduct necessary field visits to the protected area in order to identify areas to be kept inviolate for the purposes of wildlife conservation, based on scientific and objective criteria.*

- The expert committee is to *adopt an open process of consultations with forest rights holders to solicit their views on the proposed notification of CWH.* Sec 7 provides for the process of consultations to be held by the expert committees. The chairman of the committee, after having preliminarily identified the area to be notified where resettlement or modification of rights is proposed; shall issue a public notice on intention to declare the area as CWH; declaring the date, time and venue for open consultation, among other details as laid out in Sec 7.3. This notice is to be issued 15 days prior to holding the consultation.
- During the consultation, the proposal shall be explained in local language in detail before seeking views of the participants. The views and opinions expressed by beneficiary communities, specifically any objections raised, are to be recorded by the committee.
- The expert committee based on the scientific determination of the area and consultations held regarding the same, shall submit a proposal to the Chief Wildlife Warden for Critical

<sup>25</sup><https://tribal.nic.in/FRA/declarationsClarifications/CWHGuidelines04012018.pdf>

Wildlife Habitat with map of the said areas. The Chief Wildlife Warden shall place the proposal before the State Board of Wildlife, for its recommendations. The recommendations of the SBWL shall be forwarded by the governments of State/Union Territories to the MOEFCC. This shall then be placed for deliberation to the Standing Committee of the National Board of Wildlife in the presence of a nominee from the Ministry of Tribal Affairs. After due consideration the notification of the CWH shall be published in the official gazette.

Civil society organizations are of the view that the provisions of the guidelines are in contravention of FRA because the guidelines consistently undermine and bypass the authority of the gram sabhas in the democratic management of their community forest resources (CFR) under Sec 5, FRA, and fail to comply with the mandatory conditions for the declaration of CWH contained in Sec 4(2)(a) to (f) of FRA.

- The guidelines fail to define the term 'inviolate'. In doing so the guidelines seem to assume that it is necessary to relocate local communities or modify their rights in all possible CWH areas.
- The criteria for identification of CWH in addition to ecological parameters (objective and scientific criteria), do not mention cultural parameters. The decision about identification of CWH as also the strategies towards its governance and management must

take into account human communities which are socio-culturally and demographically vulnerable such as Particularly Vulnerable Tribal Communities (PVTGs). In the last few years there have been many incidents of forced relocation of such communities, including PVTGs from protected areas even when CWH guidelines didn't exist. CWH guidelines should not become the justification of relocation or atrocities on such tribes and communities.

- As regards to the composition of the committee, since MoTA is the overall implementing agency for the FRA, MoTA representative should be one of the office bearers namely either the Chairperson or Member Secretary of the Expert Committee.
- The guidelines do not propose or specify any role for Gram Sabha in the procedure for identifying CWH. Whereas, prior to the process of identifying and notifying CWH, Gram Sabha must resolve formally that it is satisfied that the process of recognition and vesting of rights is complete and no claims lie pending or have been rejected without adequate explanation in writing and all appeals have been adequately handled. CWHs cannot be identified or notified without first ensuring that the due legal process of rights recognition and vesting is complete, which in turn requires Gram Sabha's resolution to the effect with the full and unrestricted participation of women.

- Also, the guidelines do not mention how the free informed consent of Gram Sabha would be obtained as to resettlement/ modification of rights that creation of any CWH might entail. Whereas the procedure should have provided for due participation of Gram Sabha in the CWH identification process and took cognizance of Gram Sabha's decisive role in it according to law, the guidelines exclude Gram Sabha altogether. It has not been stated whether the expert committee will engage with Gram Sabha and whether such engagement will be mandatory as part of their terms of reference (ToR).

The issuing of these guidelines has also been a completely arbitrary and non-democratic. While the guidelines are dated as 4<sup>th</sup> January 2017; they were made public only in early 2018. Further, through a record of the minutes of a meeting held on the 12<sup>th</sup> of January 2018 between the Ministry of Tribal Affairs

(MoTA) officials and the MOEFCC which have been uploaded on MoTA's website, it is clear that the guidelines were not sent to MoTA for its comments on the same day as they were made available to the states. Subsequently on the 6<sup>th</sup> of March 2018, MoTA asked states to appoint Principle Secretaries of the state tribal departments as representatives of MoTA on the expert committees for CWH demarcation and notification, thereby assenting to the CWH guidelines. Thus, at no point of time were the guidelines opened to scrutiny by the general public, before being officially issued.

### 3.3 New policies bearing influence on CFRs

#### 3.3.1 Draft National Forest Policy 2018

The draft of National Forest Policy (NFP) was released in March 2018 by the MoEFCC. The new draft policy's overall goal is to "safeguard the ecological and livelihood security of people, of the

present and future generations, based on sustainable management of the forests for the flow of ecosystem services."<sup>26</sup> The Policy is an overarching policy for forest management, with the aim of bringing a

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<sup>26</sup><http://www.moef.nic.in/sites/default/files/Draft%20National%20Forest%20Policy%2C%202018.pdf>

minimum of one-third of India's total geographical area under forest or tree cover. It also suggests setting up of two national-level bodies—National Community Forest Management (CFM) Mission and National Board of Forestry (NBF)—for better management of the country's forests. Some provisions of the policy are:

- The policy proposes to restrict schemes and projects which interfere with forests that cover steep slopes, catchments of rivers, lakes, and reservoirs, geologically unstable terrain and such other ecologically sensitive areas.
- As far as community forest resources management under Forest Rights Act is concerned, the new policy addresses the same under participatory forest management and the same is addressed through the proposed community forest management mission. It also suggests for the strengthening of the participatory forest management approach for which a National Community Forest Management (CFM) Mission will be launched.
- For existing forests, the draft policy suggests increasing productivity through increased protection. For forest plantations, the draft proposes increasing productivity *“through scientific and technological interventions so as to encourage usage of more timber so that the dependency*

*on other carbon footprint wood substitutes is reduced.”* Additionally, there would be intensification of *“afforestation with suitable species.”* Addressing on mechanisms to increase the productivity, it is stated that Public-private participation models will be developed for undertaking afforestation and reforestation activities in degraded forest areas and forest areas available with forest development corporations and outside forests.

The MoTA secretary on June 19, 2018 wrote a letter to MoEFCC secretary stating that the ministry does not have “exclusive jurisdiction” to frame policies related to forests and that the draft National Forest Policy “gives a thrust to increased privatization, industrialization and diversion of forest resources for commercialization”. Further, the draft policy did not take into account the “paradigm shift” in forest governance brought about by PESA and FRA.

This draft policy raises critical questions in regards to the forest rights of the communities.

- Within the ambit of the proposed National CFM mission (4.1.1 h), there is no acknowledgement of Forest Rights Act and the importance of the gram sabhas in forest management.
  - The policy focuses on strengthening forest governance through a centralized market based approach, without any

mention of role of communities and their structure of governance.

- It is unclear what is meant by 'sustainable use of ecosystem services' for 'improvement in livelihood for people'.
- The understanding of 'denuded and degraded' forest land is not clear. Areas classified by the government as 'wasteland' and 'degraded' and seen to be good land to 'increase tree cover', could be originally grasslands, marshes, waterlogged areas, mountains under permanent snow, pasturelands, deserts, sand dunes, rocky outcrops, inselbergs, plateaus which are all unique ecosystems in themselves<sup>27</sup>.
- It is unclear as to 'who' does this policy expects Non Timber Forest Produce (NTFP) to be managed by and for whom?
- The definition of 'forest productivity' constitutes as 'timber production' and there has been no mention of the recognition of Community Conserved Areas (CCAs), CFRs and other community institutions and private forests; therefore bringing in destruction in the name of 'productivity' and loss of biodiversity.

The draft National Forest Policy (NFP) 2018 has been cleared by various

ministries at a meeting held on November 21, 2019.<sup>28</sup>

### 3.3.2 Compensatory Afforestation Fund (CAF) Rules 2018<sup>29</sup>-

The CAF rules have been notified on the 10<sup>th</sup> of August, 2018. These rules have come nearly one and a half years after the CAF Act was passed in Parliament in July 2016. This fund was accumulated over the past four decades since the notification of the FCA 1980 for forest diversion for developmental projects.<sup>30</sup>

- The draft rules define gram sabha "as the same meaning as assigned to it in article 243(B) of the constitution" which states "gram sabha means a body consisting of persons registered in the electoral rolls..." totally overlooking the broadened definition of gram sabha after FRA 2006 came into force. Therefore, the Rules 2018 fail to remedy the non-compliance of the CAF Act with the Forest Rights Act, PESA and V Schedule of the Constitution. There is no mention of gram sabha as a rightful authority to manage and administer CA funds, as against the section 3(1)(i) and Section 5 of FRA where Gram Sabha has the right and authority to

<sup>27</sup><http://www.dolr.nic.in/WastelandsAtlas2011/WastelandsAtlas2011.pdf>

<sup>28</sup><https://www.downtoearth.org.in/news/forests/draft-national-forest-policy-cleared-cabinet-to-take-decision-67945>

<sup>29</sup>[http://forestsclearance.nic.in/writereaddata/Rules/Gazette Notification Draft CAF Rules.pdf](http://forestsclearance.nic.in/writereaddata/Rules/Gazette%20Notification%20Draft%20CAF%20Rules.pdf)

<sup>30</sup><https://india.mongabay.com/2018/08/indias-new-compensatory-afforestation-rules-dilute-rights-of-forest-dwellers/>

- conserve, protect, manage and regenerate their community forests.
- While the CAF rules have been formulated and notified without consultation with, MoTA; in a letter to the MOEFCC in March 2018, the MoTA had argued that the draft CAF rules dilute the provisions of the FRA Act and recommended that the final CAF Rules ensure compliance with authority of Gram Sabhas for democratic management and use of CA funds.
  - CAF rules provides that the activities over forest land shall be taken up in consultation with Gram Sabha or Village Forest Management Committee and shall be in cognizance with the provisions of the FRA *wherever applicable*, thereby limiting compliance to only those areas where the vested forest rights have been formally recognized, violating the Section 4 of FRA.
  - Further, CAF rules provide for only 'consultation' with Gram Sabha or Village Forest Management Committee and not getting consent, marking it as a violation of the constitutional and statutory rights of forest dwelling communities under the Fifth Schedule of the Constitution, PESA and FRA.
  - One of the major objection to these new rules is Community Afforestation (CA) plantation have largely affected community lands including cultivation land, CFR claimed under FRA, pasture land, but there is no provision to safe

guard individual and community rights of the tribals and other forest dwelling communities mentioned in the CAF rules.<sup>31</sup>

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<sup>31</sup> Objection to the Compensatory Afforestation Fund Act, 2016 and Rules, 2018, prepared by CFR-LA

# 4. Important judgments/cases

## 4.1 Supreme Court Cases

### 4.1.1. Supreme Court Orders on FRA

Several important orders have been passed by the Supreme Court of India in the matter of Wildlife Trust of India & Others Vs Union of India & Others.

In an order dated March 7, 2018 regarding land claims under the provisions of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 hurting forest and wildlife interests. The Supreme Court bench headed by Justice Madan Lokur directed all the State Governments to file an affidavit indicating:

- The number of claims for the grant of land under the provisions of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006;
- The claims should be divided into claims made by the Scheduled Tribes and separately by other traditional forest dwellers;
- The number of claims rejected by the State Government in respect of each category. The information shall be furnished within a period of four weeks

- The extent of land over which such claims were made and rejected in respect of each of the two categories
- Action taken against those claimants whose claims have been rejected;
- The status of eviction of those claimants whose claims have been rejected and the total extent of area from which they have been evicted;
- The extent of the area in respect of which eviction has not yet taken place in respect of rejected claims.

A three-judge bench of the Supreme Court of India on February 13, 2019 passed an order in Writ Petition 109 of 2008 (filed by various Wildlife organizations) to the state governments to evict forest dwellers whose claims have been rejected by the authorities under FRA 2006.

In a subsequent hearing on the 28<sup>th</sup> of February 2019, the SC stayed its own earlier order. The court also ordered the States' Chief Secretaries to file affidavits by July 12 explaining the details of the processes followed to reject tribals' and forest-dwellers' claims and respond to allegations of high rate of rejections, non-communication of rejection orders, lack of reasons in orders and frivolous objections. Meanwhile, SC also ordered the Forest Survey of India (FSI) to make a

satellite survey and place on record the “encroachment positions.”<sup>32</sup>

The matter was again brought up on 6<sup>th</sup> August 2019 and it was noted that 9 states had not followed due process in rejecting claims and that additional 7 states were yet to file their affidavits. The court directed the states to file replies regarding procedures taken during rejection of claims within 15 days and also directed all states to file information regarding rejected claims to the FSI by 31<sup>st</sup> August<sup>33</sup>.

Although the eviction order has been temporarily stayed, the rights of tribals and OTFDs remain highly uncertain.

**i. Supreme Court Stay Order on the Nainital High Court Judgment in Writ Petition (PIL) No. 54 of 2016 in the matter of Protection of Forest, Environment, Ecology and wildlife etc. from forest fires.**

Subsequent to the pronouncement of an order by the Nainital High Court, in which it mandated that Van Gujjars who have encroached on forest land be evicted from the land within a year’s time; the forest department of Uttarakhand issued eviction notices to Van Gujjar families in Rajaji Tiger Reserve and Corbett National Park.

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<sup>32</sup><https://www.thehindu.com/sci-tech/energy-and-environment/what-is-forest-rights-act/article26419298.ece#:~:text=The%20Scheduled%20Tribes%20and%20Other.right%20to%20life%20and%20livelihood>

<sup>33</sup><https://www.scobserver.in/court-case/eviction-of-forest-dwellers/arguments-6-august-2019>

A group of Van Gujjar and activists filed a Special Leave Petition in the Supreme Court of India, against this High Court Order in May 2017<sup>34</sup>. The matter came up for hearing in September 2018, in which the apex court accepted the Special Leave Petition and placed a stay order<sup>35</sup> on the HC judgment.

**ii. Supreme Court of India order on on relocation/rehabilitation of the villages from the core/critical Tiger reserves and core of the PA (National Park and WL Sanctuaries) to the periphery of Reserved forests/Sanctuaries/National Parks.**

On the 28<sup>th</sup> January 2019, the SC passed an order accepting the recommendation of the Central Empowered Committee (CEC) report dated September 28, 2018 with certain conditions.<sup>36</sup>The CEC extension recommendation was based on the SC order to MoEFCC dt. 21.11.2008 of relocation of three villages, namely, Kosla, Botezari and Palasgaon in Andhari Wildlife Sanctuary (Maharashtra) to the periphery of the PA. The SC has also allowed the MOEFCC to change the legal

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<sup>34</sup>PETITION FOR SPECIAL LEAVE TO APPEAL(C) NO. CC 9600 of 2017 WITH

INTERLOCUTORY APPLICATION NOS.124 of 2017

<sup>35</sup>SPECIAL LEAVE PETITION (CIVIL) Diary No(s).

31981/2018 (Arising out of impugned final judgment

and order dated 02-08-2018 in WPPIL No. 6/2012 09-

08-2018 in WPPIL No. 6/2012 10-08-2018 in WPPIL

No. 6/2012 16-08-2018 in WPPIL No. 6/2012 passed by

the High Court Of Uttarakhand At Nainital)

<sup>36</sup>[http://forestsclearance.nic.in/writereaddata/public\\_display/schemes/31475422\\$8%2034%202017.pdf](http://forestsclearance.nic.in/writereaddata/public_display/schemes/31475422$8%2034%202017.pdf)

status of the forest land to revenue land in 122 villages in 18 states (as mentioned in letter vide 12-12/2015-NTCA dated 20.12.2018 of NTCA to Member Secretary, CEC).

The SC ordered that all the relocations/rehabilitations cases in future involving forest land shall be considered for change in legal status on cases to cases basis as per the provision under FCA, 1980 (subjected to conditions).

## 4.2 High Court Judgments on FRA

### 4.2.1. Judgments related to forest clearance process and implementation of FRA

- i. **Judgment of the High Court of Andhra Pradesh in WP(PIL)No:231 of 2013 dated 6<sup>th</sup> March 2019 (Writ petition filed under Article 226; Samatha and E. A. Sarma Versus Union of India and Ors.)**

The petitioners challenged Circular No. F. No. 11-9/98- FC (pt) dated 15<sup>th</sup> February 2013 of the MOEFCC which notified that gram sabha resolutions of the villages where forest land is proposed to be diverted for linear projects like roads, canals, laying of pipelines/optical fibers and transmission lines, would not be required, for the grant of principle approval for forest clearance process. They appealed that the circular was illegal and unconstitutional in scheduled areas.

The court rules that, the aforementioned circular was

inconsistent with clauses (a) to (o) of the Panchayat Extension to Scheduled Areas Act and therefore stood quashed.

- ii. **Judgment of the Calcutta High Court in WP 20576 (W) of 2018 with CAN 3341 of 2019 dated 2<sup>nd</sup> July 2019 (Ravi Besra and Ors. Versus The State of West Bengal and Ors.)**

The case was filed by the petitioners contending that 'in-principle' forest clearance was granted by the central government for diversion of forest land for a hydel project, by violating the FRA, since the District Magistrate had manufactured the gram sabha resolutions required to be submitted under the FRA, for deliberation of grant of forest clearance.

In the judgment the court observed that:

- Out of the two Gram Sabha resolutions provided as evidence, there were no signatures of gram sabha members on one of the resolutions whereas, while signatures of the attendees were

present on the other resolution, the exact number of adult members of the Gram Sabha were not enumerated for the quorum conditions to be ascertained. The notice for conveying of the Gram Sabha meetings was also not submitted to the court.

- In light of this it was clear that the provisions of the FRA were not complied with, in either seeking permission for the project or trying to implement the same. It was astonishing that central government has passed the project without being satisfied as to whether requisite formalities under the FRA were being satisfied or not.

The court quashed the 'in-principle' approval granted by the Central Government and the 'so called' resolutions of the Gram Sabhas and permissions granted by the State Government in implementing the project.

#### 4.2.2 Judgments related to Protected Areas

- i. **Orders of the High Court of Bombay on Critical Wildlife Habitat declaration in Maharashtra in PIL No. 131 of 2014 (Vanashakti Public Trust and Another Versus State of Maharashtra and Another)**

The PIL was filed in 2014, seeking clarity from the State Government and the State Forest Department about the steps taken by them to declare areas of National Parks (NPs) and Wildlife Sanctuaries (WLSs) in Maharashtra as CWHs, given the severe pressure on PAs from 'anthropogenic activities'.

The matter remained pending in the High Court till 16<sup>th</sup> April 2016. Subsequent to this, the state government constituted expert committees for all 54 NPs and WLSs within the state. On 17<sup>th</sup> June 2019, the High Court ordered the state government to disclose what scientific and objective criteria had been formulated by expert committees to identify critical wildlife habitats. On 9<sup>th</sup> September 2019, the court reiterated its order that committees disclose the scientific and objective criteria formulated by them to identify CWH and that the decision taken along with the scientific and objective criteria notified with proof of the open process of consultation with forest rights holders be placed before the court for the next hearing. In December 2019, the Court ordered that all pending forest rights claims within protected areas in Maharashtra should be completed within three months, and recognized according to the FRA. The court also asked the state government to deal with appeals against partially or fully rejected claims within three months. During the next hearing

in March 2020, the forest department submitted before the court a list of 25 PAs that did not have human habitation inside its boundaries. The court asked the respondents to give details about this in the next hearing.

**ii. Orders of the High Court of Bombay on Forest Development Corporation of Maharashtra (FDCM) in PIL No. 67 of 2016 (Hiraman Garate Vs. State of Maharashtra & Ors.)**

A PIL no 67 of 2016 was filed on 16<sup>th</sup> April 2016 in the Nagpur Bench of Bombay High Court by the Deputy Sarpanch of the village Dongargaon, Gadchiroli district, Maharashtra after Forest Development

Corporation of Maharashtra Ltd (FDCM) cut down thousands of trees in Brahmapuri Forest Division in early 2016, despite protests by the residents of 22 villages in that region. The division is governed under the PESA.

At least 12 villages have filed CFR rights claims over this area. However, the forest department allotted the land to FDCM without completing the process to evaluate their claims. It was also noted that it was in violation of conditions that were issued by MoEFCC for approval of Management Plan for Brahmpuri Forest Project Division of FDCM for the period of 2015-16.

In 2016 the Court passed an interim order



**Image 3: Tree Felling facilitated by FDCM in the CFRs of Sawalkheda Village of Kurkheda Block. (Photo: Shruti Ajit)**

to maintain status quo and directed that *no felling of trees* shall be permitted *until further orders*. Further, in June 2016, this case was transferred by the court to the National Green Tribunal (NGT) while reiterating the maintenance of status quo.

On January 28, 2018, a sub-rejoinder was filed by the FDCM, in which it denied that trees were being felled from areas where CFR rights exist.

Following this, a two-judge bench of the NGT at Delhi, vide its order dated 24<sup>th</sup> July, 2018 held that the tree felling (in the area of Desaiganj, Kurkheda etc. Wadsa Forest Division, Bramhapuri Division, Gadchiroli District) is taking place in accordance with the Management Plan approved by the MoEFCC as far back as 2015 and hence there is no justification for interference by the Tribunal in this matter.

## 5. COVID 19 imposed lockdown and its effects on Scheduled Tribes and Other Forest Dwellers

The COVID 19 pandemic, is a global health emergency since December 2019 and was ongoing when this report went to press. National 'lockdowns'(complete restriction on freedom of movement of citizens from their immediate vicinities)have been imposed in many countries, including in India since March 24, 2020. The lockdown has had a drastic impact on Adivasi and Other Traditional Forest Dwellers, impacting their livelihood, health, food sovereignty, movement and several other basic rights, details of which could be read in news bulletins prepared by the CFR-LA (<http://cfirla.org.in/resource.aspx>).

A report in restrictions in accessing grazing areas, procuring fodder and sale

### 5.1 Circulars, notifications, letters issues by MoEFCC during COVID 19 lockdown

On April 6, 2020, in the letter number F. No. 8-32/2020 WL, the MoEFCC issued the advisory title 'Advisory regarding the containing and management of COVID-19 in National Parks/Sanctuaries/ Tiger Reserves'. The letter states that Chief Wildlife Wardens of all states and union

of animal products for pastoralists communities has been published (<https://www.im4change.org/upload/files/COVID%20Lockdown%20Impact%20on%20Pastoralists.pdf>).

Several forced evictions of adivasis during the lockdown have also been reported. Between 16 March 2020 and 16 June 2020, Housing and Land Rights Network has documented at least 22 incidents of forced eviction and home demolitions, across India, by both central and state government authorities, out of which a few were the forest dwelling communities ([https://www.hlrn.org.in/documents/Press\\_Release\\_Evictions\\_COVID19\\_June\\_2020.pdf](https://www.hlrn.org.in/documents/Press_Release_Evictions_COVID19_June_2020.pdf)).

territories are to ensure reduction in human wildlife interface through restriction of movement of people to National Parks/Sanctuaries/ Tiger Reserves.

In a petition filed by several activists, researchers and organizations against this advisory, it raised the concerns that this would affect the livelihood and survival of tribal and OFTD households as they are unable to collect and sell forest produce in this summer season. And expressed the fear that "there is great

danger of this advisory being misunderstood and misused to further alienate and restrict access of these communities to the natural resources that they are dependent on for their lives and livelihoods; since there were already reports circulating about the high handedness of the forest department while implementing the lockdown.”<sup>3738</sup>

## 5.2 Circulars, notifications, letters issues by MoTA during COVID 19 lockdown

Amidst the Covid lockdown, the Ministry of Tribal Affairs has written to states and union territories seeking recommendations on new minor forest produce (MFP) items which should be



**Image 4: Most of the claimants in Dongiamba village in the buffer area of Purna Wildlife Sanctuary in Dangs have received the titles for lesser area than mentioned in the forms. (Photo: Kankana Trivedi)**

included in the scheme of minimum support prices.<sup>39</sup> Although this proposal for providing support was through *Van Dhan Vikas Kendra* (VDVKs), it does not seem to be very helpful as so far there are only about 1000 VDKs. Most of these VDKs are not fully functional and also that their primary procurement agencies (PPAs) proposed earlier by

Tribal Co-operative Marketing Development Federation (TRIFED) for facilitating the implementation of MSP schemes have not been constituted in the states or are not functional.<sup>40</sup>

<sup>37</sup><https://kalpavriksh.org/wp-content/uploads/2020/07/PETITION-ON-THE-ADVISORY-REGARDING-CONTAINING-COVID-19-IN-PROTECTED-AREAS.pdf>

<sup>38</sup>[https://kalpavriksh.org/wp-content/uploads/2020/07/Protected-Areas-Covid-19-and-people%E2%80%99s-rights\\_-\\_Countercurrents.pdf](https://kalpavriksh.org/wp-content/uploads/2020/07/Protected-Areas-Covid-19-and-people%E2%80%99s-rights_-_Countercurrents.pdf)

<sup>39</sup><https://www.newindianexpress.com/nation/2020/apr/26/ministry-of-tribal-affairs-writes-to-states-on-minor-forest-produce-amid-lockdown-2135493.html>

<sup>40</sup><https://india.mongabay.com/2020/05/covid-19-lockdown-dents-the-economy-of-indias-forest-dwellers/>

# 6. Implementation Update on recognition of CR and CFR rights

## 6.1 MoTA status update on CRs and CFRs

The following data has been produced from the Ministry of Tribal Affairs website, which provides state-wise monthly progress reports of the claims filed, titles distributed and the total extent of forest area recognized under titles<sup>41</sup>. While the data is divided into Individual and community rights claims and titles, no distinction has been made between community rights pertaining to Sec 3(1)(i) or other community rights. Data on forest diversion for developmental claims under Sec 3(2) is also not provided separately.

The total number of community claims that have been received till 31<sup>st</sup> January 2020 are 1,48,913 of which 76,377 titles have been distributed (which amounts to 51% of the total claims) over 88,05,304 acres of forest land. A 2017 report by CFR-LA showed that only three per cent of minimum potential of Community Forest Rights had been achieved in India 10 years since enactment of the law.<sup>42</sup>

The methodology for the analysis is to observe the community claims, titles

given and the extent of the forest land for which the titles were distributed for the month of January from 2017 to 2020. The last monthly progress report<sup>43</sup> which has been uploaded on the MoTA website is up until 31<sup>st</sup> January 2020. The table for the same has been provided below:

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<sup>41</sup> To access individual Monthly progress reports, see here

<https://tribal.nic.in/MPRnAddit.aspx>

<sup>42</sup> [https://rightsandresources.org/wp-content/uploads/2017/11/India-Promise-and-Performance-National-Report\\_CFRLA\\_2016.pdf](https://rightsandresources.org/wp-content/uploads/2017/11/India-Promise-and-Performance-National-Report_CFRLA_2016.pdf)

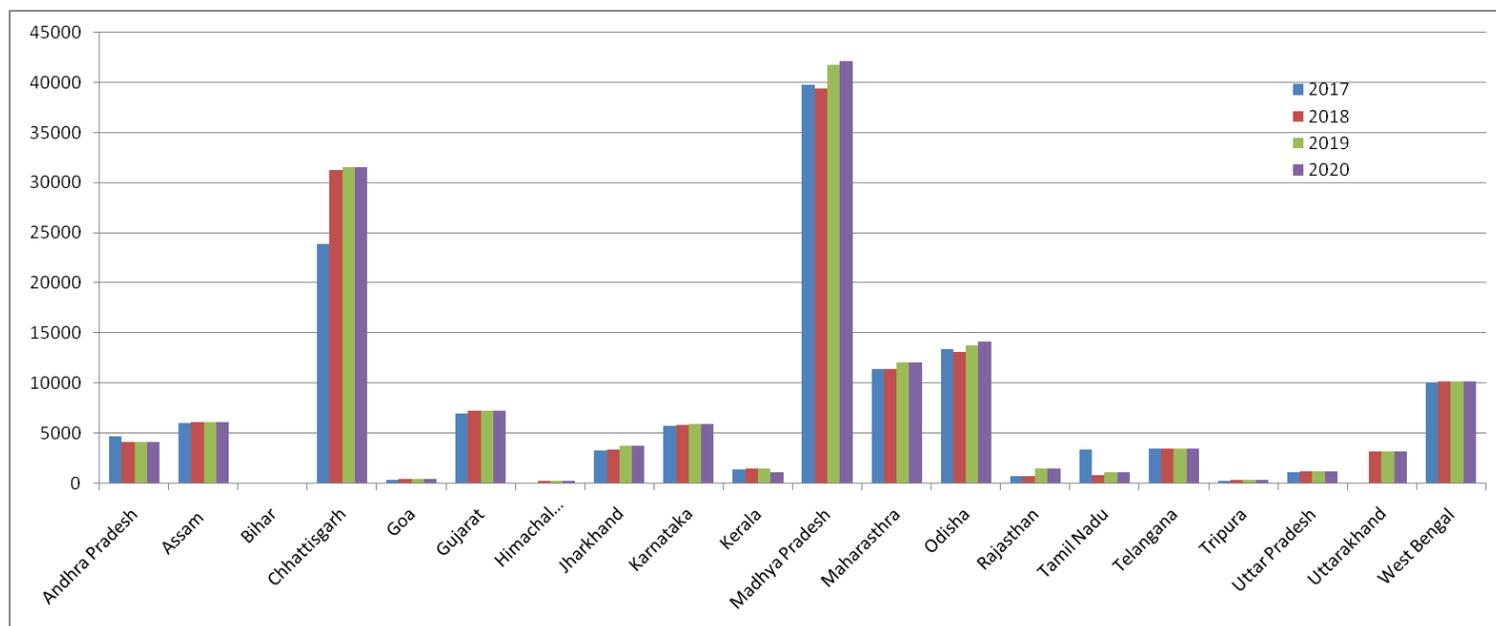
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<sup>43</sup> As on 1<sup>st</sup> June 2020

Table 1: MoTA Status Report from 2017-2020

State	Claims Received				Titles distributed				Extent of forest land in acres			
	2017	2018	2019	2020	2017	2018	2019	2020	2017	2018	2019	2020
Andhra Pradesh	4711	4043	4062	4062	1415	1372	1374	1374	441063	450380	453384	453384
Assam	6046	6046	6046	6046	1477	1477	1477	1477	0	0	0	0
Bihar	0	0	0	0	0	0	0	0	0	0	0	0
Chhattisgarh	23949	31310	31558	31558	12337	17943	21967	21967	1286669	1776270	2038146	2038146
Goa	361	372	378	378	3	8	8	8	4.35	5.66	10.25	10.25
Gujarat	6998	7187	7187	7187	3484	3516	3516	3516	1142192	1161351	1161351	1161351
Himachal Pradesh	68	170	170	234	7	7	7	35	4670.28	4670.56	4670.56	4781.8
Jharkhand	3286	3286	3667	3724	1723	1723	2090	2104	45503.71	45503.71	99781.96	103759
Karnataka	5741	5741	5903	5903	628	628	1406	1406	26465.31	26465.31	28155.75	28155.75
Kerala	1395	1395	1395	1012	0	0	0	174	0	0	0	0
Madhya Pradesh	39816	39420	41795	42182	27422	27276	27948	27970	1302166	1320990	1332853	1465058
Maharashtra	11408	11408	12007	12037	5748	5748	6909	7084	4435945	4435945	2702527	2736661
Odisha	13433	13062	13736	14106	5891	6336	6564	6577	284109.7	328728.8	235205.9	235483.4
Rajasthan	755	704	1441	1441	0	92	103	103	660.79	499.96	2993.64	2993.64
Tamil Nadu	3361	803	1005	1005	0	225	276	276	0	0	0	0
Telangana	3427	3427	3427	3427	721	721	721	721	454055	454055	454055	454055
Tripura	277	277	277	277	16	55	55	55	27.07	91.16	91.16	91.16
Uttar Pradesh	1124	1124	1124	1124	843	843	843	843	120802.1	120802.1	120802.1	120802.1
Uttarakhand	0	3091	3091	3091	0	0	1	1	0	0	0	0
West Bengal	10119	10119	10119	10119	805	686	686	686	1052.84	572.03	572.03	572.03
<b>Grand Total</b>	<b>136275</b>	<b>142985</b>	<b>148388</b>	<b>148913</b>	<b>62520</b>	<b>68656</b>	<b>75951</b>	<b>76377</b>	<b>9545386</b>	<b>10126330</b>	<b>8634600</b>	<b>8805304</b>

\*Red column reflects the drop in numbers

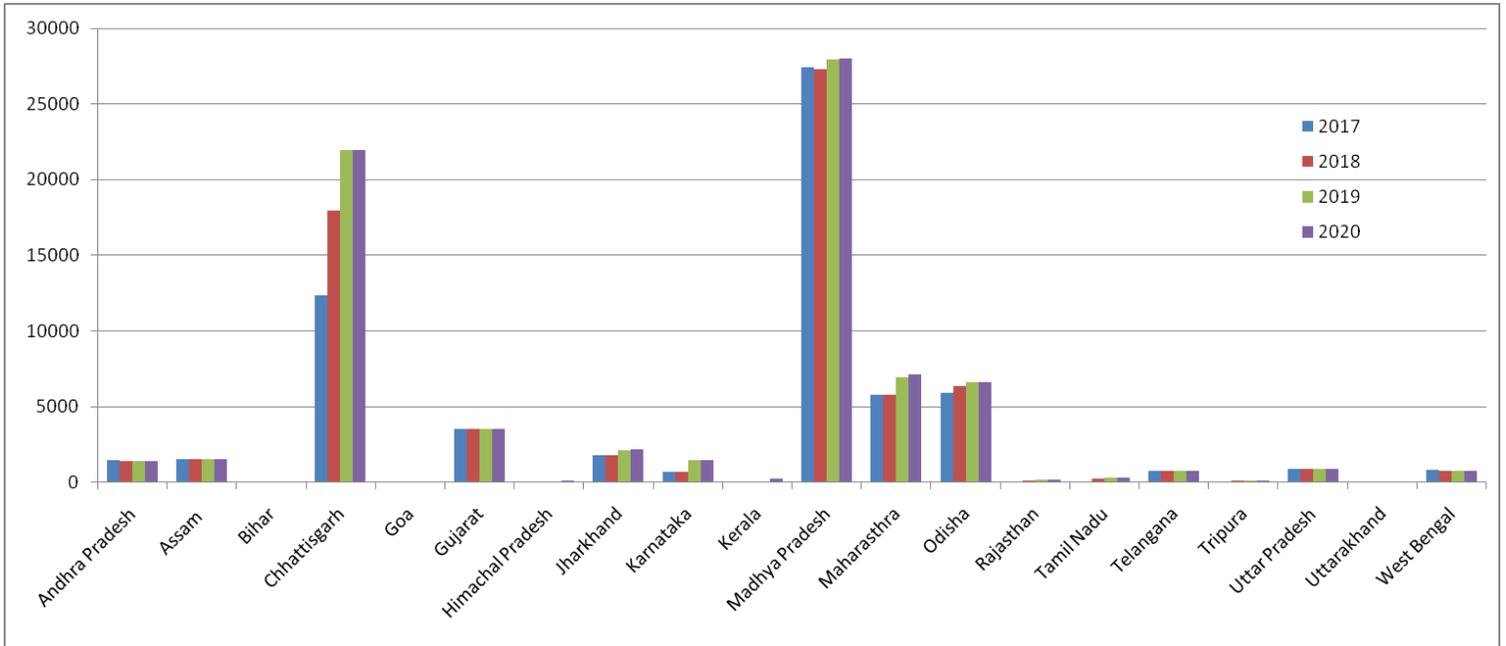


Graph 1: State-wise Claims Received from 2017-2020

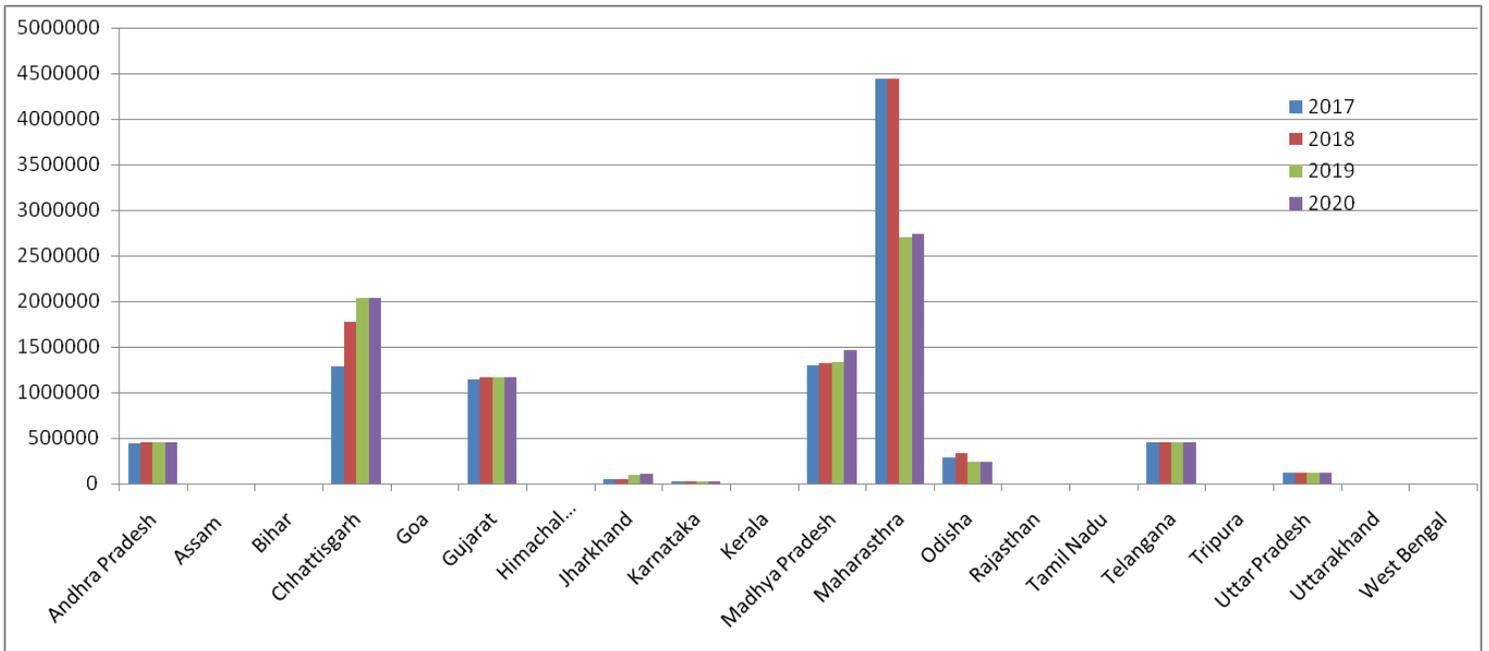
States like Madhya Pradesh, Maharashtra, Chhattisgarh and Odisha report a consistent rise in the number of claims being received, with the exception of year 2018 where Odisha (which is one of the leading states in CFR recognition) saw a drop in the number from the previous year. In 2018, states like Andhra Pradesh, Madhya Pradesh, Tamil Nadu and Rajasthan saw a significant decrease in the number of claims received. In 2020, Kerala was also reported with reduction in the number of claims received (See Graph 1).

While there is a consistent increase in titles distributed and the extent of the same in states like Chhattisgarh, Jharkhand,

Karnataka, Madhya Pradesh, and Rajasthan, in 2018, there are drops in the numbers of titles distributed for Andhra Pradesh and West Bengal. It was also the year when Tamil Nadu started reporting the number of titles distributed which has been increasing by the year. One title has been reported to be distributed in Uttarakhand and states like Telangana and Uttar Pradesh see no change in overall reporting. In states like Odisha and Maharashtra which have a number of CFRs recognizes, while the titles distributed has increased, the overall forest land for which the titles were distributed have significantly decreased between 2018-19. No explanation for the decrease has been reported in the status reports (See Graph 2 and 3).



Graph 2: State-wise titles distributed from 2017-2020



Graph 3: State-wise extend of forest land for which titles were distributed from 2017-2020 (in acres)

## 6.2 Updates on implementation from different states

### 6.2.1 Role of the Forest Department in Chhattisgarh

On 31<sup>st</sup> May, the government had released an order with a clause where forest department was notified as the 'nodal agency' for the implementation of the FRA. The Chhattisgarh government on June 1<sup>st</sup>, 2020 amended this order to reinstate the role of forest department to coordinate CFR claims that will be filed by communities.<sup>44</sup>

### 6.2.2 Rights of PVTGs and Denial of Rights

In December 2019, MoTA wrote a letter to the states of Madhya Pradesh, Chhattisgarh and Odisha to get their response on the proposed process guidelines for determination and recognition of habitat rights of PVTGs.<sup>45</sup>

- Subsequently, the committee (constituted by the MoTA to facilitate legal recognition of PVTGs) on February 21, 2020 met for the first time on March 16, 2020 and decided to visit four states including Jammu and Kashmir. The committee members also plan to visit Simlipal Tiger

Reserve in Odisha where habitat rights of the Mankidia community were in limbo since 2016.<sup>46</sup> Mankidia community, a nomadic community whose livelihood is mainly the collection of *Sialifibres*, claimed for habitat rights around the Simlipal area under rule 12(b)(1) of FRA. Their rights were approved by the District Level Committee on August 8, 2016. Further, NTCA order (dt March 28, 2017) prevented granting of rights in the absence of guideline for notification of critical wildlife habitats across India. Since then, the land titles have not been granted after forest department denied citing 'safety' of the community from human wildlife conflict and NTCA circular.

- The CM of Chhattisgarh Bhupesh Baghel on May 30<sup>th</sup>, 2019 made a formal statement to implement FRA in Bastar region and subsequently grant habitat rights to the PVTG community in and around the forest.
- The recognition of habitat rights has been poor and very few of PVTG groups have initiated the process of claiming for these

<sup>44</sup><https://www.downtoearth.org.in/blog/forests/chhattisgarh-revokes-forest-dept-no-longer-nodal-agency-for-community-rights-71515>

<sup>45</sup><https://www.newindianexpress.com/nation/2020/jan/09/state-comments-on-process-guidelines-for-habitat-rights-of-pvtgs-still-awaited-2087218.html>

<sup>46</sup><https://www.downtoearth.org.in/news/governance/panel-looking-into-pastoral-communities-forest-rights-to-visit-j-k-69800>

rights. <sup>47</sup>Madia Gond from Gadchiroli, Maharashtra became the first forest dwelling community to file the claim in January 2016. The applications of the claimants were finalized and a resolution was passed by all 60 Gramsabhas. The legal titles are yet to be issued, although the claims were approved in May 2017 at the District Level Committee (DLC).

### 6.2.3 Rights of Other Traditional Forest Dwellers (OTFDs)

With different eligibility criteria for OTFD communities to claim title for land, the recognition of rights of OTFD has been poor in comparison to the STs. It is to be noted that as per the FRA SLMC, Govt. of Odisha report by 30<sup>th</sup> April 2017, 6,14,654 IFR (Individual Forest Rights) claims (5,82,142 of STs and 32,223 of OTFDs) have been filed and 4,05,897 IFR titles (4,05,268 to STs and 628 to OTFDs) have been issued over 60,79,777 acres of forest land (6,06,777 to STs and 1200 acres to OTFDs) in the State. The same report reflects that 1,49,150 IFR claims (1,23,834 of STs and 25,316 of OTFDs) have been rejected at different levels.

There is a lack of collated information on OTFD at national level. Secondly, it is also on low priority for state machinery. Odisha CM, Naveen Patnaik in June 2018 wrote a letter to the tribal affairs minister Jai Oram seeking an amendment for the

FRA to include OTFDs by relaxing the 3 generations criteria for them.

In March 2020, 28 community rights claims were recognized for Kanet Community from Multhan Tehsil in Kangra district of Himachal Pradesh. Kanet community falls under OTFD category (Other Backward Class). On 6<sup>th</sup> March 2020, DLC approved these claims which were in accordance with the *wajib-ul-Arj*. This process was facilitated by Himachal Van Adhikaar Manch<sup>48</sup>.

### 6.2.4 Recognition of rights of women

FRA recognizes women as equal rights-holders to resources, by recognizing them as joint title-holders to individual plots of land, and as equal members of the core decision-making body of the Gram Sabhas (village assemblies). Their status is recognized within the FRC, but in practice they are still rendered a minority.

There is lack statistics on rights of women under FRA, as the data systems of FRA monitoring process do not record gender disaggregated data. In a study conducted, it is also noticed that over many years, the contribution and role of women in FRCs and Gram Sabha from processing claims has been restricted for the lack of awareness.<sup>49</sup>

- Sokalo Gond and Nivada Rana from ST community in Sonbhadra and Lakhimpur district in Uttar Pradesh

<sup>47</sup>[https://www.fra.org.in/document/Habitat%20Rights%20Brochure\\_Dec.pdf](https://www.fra.org.in/document/Habitat%20Rights%20Brochure_Dec.pdf)

<sup>48</sup> The following information was provided by Akshay Jasrotia via telephonic interview on July 27<sup>th</sup> 2020

<sup>49</sup>[https://www.fra.org.in/Report\\_on\\_FRA.pdf](https://www.fra.org.in/Report_on_FRA.pdf)

respectively filed an application for intervention (IA) (Writ Petition (Civil) No. 109 of 2008)<sup>50</sup> in the forest land rights case in the SC on July 22, 2019 demanding 'equal and independent' ownership over their land under FRA. The application stated that the law is in statutory line with Schedules V, VI and IX of the Constitution. The two applicants were made party to the Wildlife First Vs the Union of India and other case in the apex court along with other 18 IAs.<sup>51</sup> On September 2019, SC admitted the IAs defending FRA and stopping evictions. Before this, in June 2018, during a movement in Sonbhadra by adivasis and villagers, Sokalo Gond and another leader Kismatiya Gond were detained and Habeas Corpus petition was filed by AIUFWP and CJP in the Allahabad HC. She was later released in November 2018. Sokalo including 15 other gram sabhas had filed claims for community forest rights in March 2018, in which women were primary claimants.<sup>52</sup>

- Denial of rights: There are several issues across India where the single women who have been dependent on forests or land in the forested area are being left out in the process of recognition of rights. In Ahwa in Dangs district,

cases of two widowers for individual claims have been rejected by SDLs on the basis of lack of evidence and in many cases the woman's name is not mentioned in the *adhikarpatra*<sup>53</sup>. Draupadi Parshuram Waghmare (late 50s) from the Katkari community (PVTG) in Raigad district in Maharashtra has a marginal farming plot of land passed over several generations, which she has been cultivating after her husband's demise. Her IFR claim has been rejected.<sup>54</sup> In Chattisgarh, Uma Bai, a Gond tribal woman with 5 acre of land for over 30 years got Individual Forest Resource Rights (IFR) recognized jointly with her husband on 2.5 acre of the plot and the rest was soon taken by the forest department for teak plantation. While there has been no CFRs recognized in Uma Bai's village and the neighboring villages, the forest department has gone ahead and carried out plantations over 63 hectares of Community Forest Resources.<sup>55</sup>

- Violence against women: Incidents of coercion by the officials have become so common that the Forest Department or the state does not even consider this

<sup>50</sup><https://cjp.org.in/breaking-all-intervention-applications-defending-fra-2006-admitted-by-sc/>

<sup>51</sup><https://www.downtoearth.org.in/news/forests/sonbhadra-women-others-look-to-participate-in-supreme-court-fra-hearing-65843>

<sup>52</sup><https://indianexpress.com/article/india/women-adivasis-to-sc-repression-continues-against-those-seeking-rights-under-fra-5855417/>

<sup>53</sup> Information provided by Avinash Kulkarni via telephonic conversation on July 18 2020

<sup>54</sup> Press Meet, November 20, 2019, MAKAM

<sup>55</sup><https://globaljusticeecology.org/india-plantations-uproot-women-from-customary-forests/>



**Image 5: Women in a Delhi press meet to voice for the recognition of women's rights pertaining to FRA (Photo: Kankana Trivedi)**

as an act of violence. Laichhe bai from Mandla district, Madhya Pradesh during a Mahila Kisan Adhikaar Manch (MAKAAM) press meet on November 20, 2019 shared that when women took the cattle into the forest; the guard confiscated their axes and other tools until they paid some money to them. And there is no written receipt given at the moment.

Forest Department of Bankati block on 6<sup>th</sup> June 2020 brought in machines to dig in trenches around Kajaria village of Lakhimpur district, Uttar Pradesh to stop the access of the Tharuadivasi community into

their community forest. Women came out resisting against this action, where the officials threatened of violence. Following this incident, on 1<sup>st</sup> July 2020, a Tharu woman filed a First Information Report (FIR) against forest ranger, deputy ranger, forest guard, sub inspector of police. This FIR came after a series of incidents of confrontation by the FD towards the community during the lockdown. Chief Forest Protection Officer of Dudhwa National Park commented that the FD is following a due procedure against the encroachment of land. This set an example of violation of rule 12(1)(g) of FRA, given 25 villages

have already submitted their claims for CFR rights in 2013.<sup>56</sup>

- On the 24<sup>th</sup> November 2018, police had filed an FIR against 15 women from OTFD community in Saniya Basti of Khatima, Uttarakhand after they protested against the forest officials who brought in pillars and wires to fence off land which was being cultivated by the community members. Also, the claims for IFR have been pending since 2014. In the fact finding report, it was also shared that there has been cases of sexual harassment by the officials with the women and children of the community.<sup>57</sup>

### 6.2.5 Rights in Protected Areas

Since the NTCA notification in 2017 to not apply FRA in Critical Tiger Habitat, there has not been much development in distribution of titles in protected areas in India. There is no concrete data available regarding the number of claims filed and/or pending with different committees.

- Evictions continue. In April 2017, more than 148 houses were demolished and 156 families were

evicted from Thatkola and Sargodu Forest Reserve in Karnataka, as per the SC orders. Similar eviction drive occurred in the Orange National Park in Assam with more than 1000 individuals from Bodo, Rabha and Mishing communities evicted.<sup>58</sup> According to a research<sup>59</sup> conducted by Housing and Land Rights Network in 2018, 'In a majority of reported eviction cases, state authorities did not follow due process established by national and international standards.'

- A relocation plan for 750 villages in the 28 tiger reserves was drawn by NTCA in 2008. Based on the order, twenty nine villages mostly belonging to the pastoral nomadic communities are to be relocated from Sariska Tiger Reserve (STR), Rajasthan. All the 29 villages are located within the core of the STR. According to the news reports, forest department has arbitrarily declared 72% (around 881 sq. km) of the total area of 1213.33 sq. km, under the Sariska Project Tiger Area as Critical Tiger Reserve (CTR), without holding consultations or obtaining consent from either the village councils or the villagers.<sup>60</sup> In May 2018, large number of villagers

<sup>56</sup><https://www.firstpost.com/india/uttar-pradesh-tharu-advansi-women-resist-systemic-usurpation-of-their-forest-land-rights-by-local-authorities-8570701.html>

<sup>57</sup>[https://kalpavriksh.org/wp-content/uploads/2019/05/Khatima-Field-Visit-report-FINAL\\_April.pdf](https://kalpavriksh.org/wp-content/uploads/2019/05/Khatima-Field-Visit-report-FINAL_April.pdf)

<sup>58</sup><https://www.downtoearth.org.in/blog/world/tribal-communities-suffer-when-evicted-in-the-name-of-conservation-64376>

<sup>59</sup>[https://www.hlrn.org.in/documents/Forced\\_Evictions\\_2017.pdf](https://www.hlrn.org.in/documents/Forced_Evictions_2017.pdf)

<sup>60</sup><https://www.villagesquare.in/2019/04/17/sariskas-herders-fear-livelihood-loss-with-eviction/>

protested against the non-implementation of FRA and various restrictions they have been facing, including the bypassing of the 'prior informed consent' of the Gram Sabhas mandated in section 4.1(e) of the FRA that represents a precondition for every relocation.

- Madras HC on August 4, 2017 passed an order for eviction from specific plots (17 acres of land falling under Survey No 395) of land that the tribal community was inhabiting around elephant corridors in Mudumalai Tiger Reserve. A similar order was passed in April 2011 as well. On August 10, 60 huts of Irular community (PVTG) were demolished in the Vazhaithottam village. The claims were filed but not settled since 2016. The orders, as per the district collector, are from the HC to evict the encroachers but the private school and resorts adjoining the houses of the community were not cleared for the elephant corridor.<sup>61</sup>

### **6.2.6 Afforestation or plantation programmes under Compensatory Afforestation Fund Management and Planning Authority (CAMPA)**

The existing CA project funds are channeled through climate change

<sup>61</sup><https://ejatlas.org/print/mudumalai-tiger-reserve-and-disputes-over-land-tamil-nadu-india>

mitigation schemes at the national level, such as the Green India Mission, or the state level, such as Ama Jungle Yojana (Odisha) and Haritha Haram (Andhra Pradesh), to forcibly set up plantations on common lands. However, the implementation of these schemes has been witness to dispossession of forest-dwelling communities. Under the flagship 'Harith Haraam' initiative inaugurated in Telangana, many tribals practicing *podu* were given eviction orders and the land was brought under plantation. It is important to note that the afforestation programmes like Haritha Haraam, are being funded through the Green India Mission (GIM) which in turn receives funds through the Mahatma Gandhi National Rural Employment Guarantee Scheme (MGNREGS) and the Compensatory Afforestation Management and Planning Authority (CAMPA).<sup>62</sup>

- In Telangana, according to reports furnished before the Rajya Sabha between 2014 and 2019, the State has diverted over 15,070 hectare forest land for non-forest purposes. By virtue of its forest diversion, the State has received large funds under compensatory afforestation schemes. The MoEFCC a report says that the State was transferred Rs 5,933 crore from the National Compensatory Afforestation Fund.<sup>63</sup> Until 2017, *pattas*

<sup>62</sup>[http://www.moef.gov.in/sites/default/files/GIM\\_Mission%20Document-1.pdf](http://www.moef.gov.in/sites/default/files/GIM_Mission%20Document-1.pdf)

<sup>63</sup><https://www.newindianexpress.com/states/odisha/2020/jun/11/odisha-diverts-whopping-4514-hectare-of-forest-land-for-non-forestry-use-in-2019-moef-report-2154972.html>

were issued for only 1.78 lakh acres as against individual claims made for a total of four lakh acres under FRA in the undivided Khammam district. Meanwhile several cases have been booked by the forest department against individuals from the community for destroying the forest.<sup>64</sup> Reports are also coming in on constant strife between the forest department functionaries and tribals being prevented from practicing podu.<sup>65</sup>

- In Burlubaru village of Kandhamal district of Odisha, teak and chakunda (*Cassia occidentalis*) plantations have replaced the food crops and sal trees reported in June 2020, without any notice being given to the villagers. Out of 35 IFRs and Community Right claims filed, the claimants only received community rights while habitat right were denied on the land on which they have been practicing podu<sup>66</sup>.
- There is evidence to suggest that in several villages, FRA claims are kept pending or are outrightly rejected in anticipation of CA plantations. In Ganjadh and Arjuni (Baloda Bazaar, Chhattisgarh), the plantations were set up on CFR and IFR lands soon after they were claimed.
- The plantations restrict grazing rights. In Kaima village, Jharkhand, the Forest

Department burnt pastures and herbs to set up the plantations.

- CAMPA funds have also been used to forcibly 'relocate' communities from Protected Areas, as in the case of 4 villagers in Polavaram (Andhra Pradesh).
- For those already displaced by development projects, as in Odisha for the Rengali River project, the FD has set up plantations forcibly on the provisional pattas they were granted over the land for rehabilitation.<sup>67</sup>

Finance Minister Nirmala Sitharaman on May 14, 2020 announced about a plan worth Rs.6,000 crore to be shortly approved under CAMPA to help 'generate employment for tribals in the areas of afforestation and regeneration activities in urban, semi-urban and rural areas". This amount was counted as part of the special COVID19 package called as 'Atmanirbhar Bharat Package'.<sup>68</sup>

### 6.2.7 Revoking FRA in Mizoram

The Act has been applicable in the state of Mizoram since December 21, 2009. On November 19<sup>th</sup>, 2019 Mizoram State Assembly passed a resolution revoking the implementation of FRA due to the lack of allocation of funds from the Centre to implement the Act, since 2014-15. Under Article 371 (G) of the Constitution, Mizoram has a special provision where

<sup>64</sup><https://timesofindia.indiatimes.com/city/visakhapatnam/tribals-continue-to-battle-for-podu-lands-as-govt-looks-the-other-way/articleshow/70385731.cms>

<sup>65</sup><https://timesofindia.indiatimes.com/city/hyderabad/tribals-stop-forest-staff-from-taking-up-plantation/articleshow/76667946.cms>

<sup>66</sup>[https://www.fra.org.in/document/Forest%20Dwellin%20Communities%20and%20FRA%202006\\_Evidenc%20From%2024%20sites.pdf](https://www.fra.org.in/document/Forest%20Dwellin%20Communities%20and%20FRA%202006_Evidenc%20From%2024%20sites.pdf)

<sup>67</sup><https://www.fra.org.in/document/National%20Brief%20on%20CAMPA.pdf>

<sup>68</sup><https://www.moneycontrol.com/news/business/economy/atma-nirbhar-bharat-campa-funds-of-rs-6000-crore-for-tribal-employment-in-forestry-jobs-says-fm-5266891.html>

legislations of Parliament pertaining to land ownership should first be passed by the state's assembly through resolution before implementation in the state. The MoTA's Project Appraisal Committee in a meeting held on April 8, 2015, declined the state's proposal seeking for Rs. 10 lakh for the implementation of the Act. Revoking FRA would also impact the communities that have the ownership on land and forest.<sup>69</sup>

### **6.2.8 FRA extension to Jammu & Kashmir and Ladakh**

On August 5<sup>th</sup>, 2019, the Union Government passed the Jammu & Kashmir Reorganisation Act, abrogating Article 370 of the Indian Constitution which gave the state of J&K special powers, and authorization to have its own constitution. Before this, the laws like the FRA could be implemented, only through a resolution of the state's assembly. The FRA now stands extended to the Union Territory of Jammu and Kashmir. Until this date, there has been no progress made on the implementation of the Act.

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<sup>69</sup><https://www.downtoearth.org.in/news/forests/mizoram-revoked-fra-due-to-stoppage-of-funding-from-centre-since-2014-67847>



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