

**-REPORT OF THE FACT FINDING ON ISSUES PERTAINING TO THE
IMPLEMENTATION OF THE SCHEDULED TRIBES AND OTHER
TRADITIONAL FOREST DWELLERS (RECOGNITION OF FOREST
RIGHTS), ACT 2006 IN AND AROUND PROTECTED AREAS OF
UTTARAKHAND**

February 2019

**Community Rights Learning and Advocacy Process and Van Panchayat Sangharsh
Morcha**

Supported by Rights and Resources Institute

The fact-finding was carried out in two phases by representatives of the Community Forest Rights Learning and Advocacy Process (CFR-LA)¹, Van Panchayat Sangharsh Morcha and the Van Gujjar Sanghatana.

In the first phase (5th-10th December 2018) a team (Neema Pathak Broome and Meenal Tatpati (CFR-LA), Tarun Joshi and Gopal Lodhiyal (Van Panchayat Sangharsh Morcha), Mohammed Shafi (Van Gujjar Sangathna), Munish Kumar, Samajwadi Lok Manch, visited Bailpur Khatta in Jhirna Range of the Corbett Tiger Reserve, Kalega Khatta in Nandhaur Wildlife Sanctuary, Haspur village on the edges of Nandhaur Wildlife Sanctuary and Saniya Basti village in Uddham Singh Nagar and also spoke to the Assistant Social Welfare Officer, Ramnagar; Police Inspector, Khatima, Assistant Development Officer, Khatima and the Assistant Social Welfare Officer, Khatima.

In the second phase (11th - 13th December 2018), Tushar Dash, Radhika Chitkara of CFR-LA, Tarun Joshi and Gopal Lodhiyal of Van Panchayat Sangharsh Morcha visited villages in Rajaji National Park. The report for the visit is currently under preparation.

¹ The Community Forest Rights-Learning and Advocacy (CFR-LA) process was started in 2011 to facilitate exchange of information and experiences and to reinforce national level efforts for evidence-based advocacy on Community Forest Rights (CFRs). This process involves organizations and individuals working at local, national and international level on facilitating and/or understanding CFRs. For more information see: www.cfrla.org.in. For information about this report, write to Neema Pathak Broome (neema.pb@gmail.com) or Meenal Tatpati (meenaltatpati01@gmail.com).

I. INTRODUCTION

Out of more than 90 lakh acres of forest land in Uttarakhand that falls within village boundaries, Forest Rights can be recognised over a minimum of more than 35 lakh acres². However, the implementation of Forest Rights Act in general and the provision of Community Forest Rights (CFRs) in particular, have been very slow in the state of Uttarakhand. Despite assurances from the Ex- Chief Minister³ as well as the Centre asking for the implementation of the Act to be taken up in 'campaign mode' in the state⁴, **not a single Individual Forest Right or Community Right title** has been issued in Uttarakhand, whereas more than 3000 Community Rights claims and more than 3500 Individual Forest Rights claims have been filed in the state, according to the government's own figures⁵.

In a state-wide consultation on the status of implementation of Forest Rights in the state held in October 2015, the following emerged as major reasons for the lack of implementation of the Act⁶:

1. The Nodal Agency for the Act is the Social Welfare Department. The department is understaffed and not aware or worse, misinformed about the provisions of the Act. In several cases Forest Rights Committees (FRCs) have been constituted at the level of the panchayats rather than the gram sabhas, and without the knowledge of the villagers.
2. The Sub Divisional Level Committees (SDLCs) are not functioning as they should be with regular meetings not taking place. Several claims are lying pending at the SDLC level.
3. Within Protected Areas (including Tiger Reserves, National Parks, Sanctuaries) as well as Eco Sensitive Zones, claims are being rejected by the forest department officials.
4. The claims of the Other Traditional Forest Dwellers (OTFDs) are not being accepted based on the the provision requiring them to prove that they have been residing in and dependent on forests for 75 years prior to 2005, even though the Act only requires proof of three generations.
5. Groups like the pastoralist Van Gujjars, dalit families as well as people in forest villages are not been given rights under the Act.

² <https://www.fra.org.in/document/Promise%20and%20Performance%20Report.pdf>

³ Press release via email from Roma Malik, Deputy General Secretary of the All India Union of Forest Working People. Copy available with authors.

⁴ <https://www.tribal.nic.in/FRA/declarationsClarifications/4RoadmapofFRAimplementationinstates10Jun2015.pdf>

⁵ <https://tribal.nic.in/FRA/data/MPRNov2018.pdf>

⁶ Pathak-Broome, N; Tatpati, M; Ajit, S (2015). Uttarakhand State Level Consultation and Workshop on the Forest Rights Act: Draft Report. Kalpavriksh, Van Panchayat Sangharsh Morcha and Community Forest Rights-Learning and Advocacy Process. Dehradun.

II. OBJECTIVES OF THE FACT-FINDING:

Van Panchayat Sangharsh Morcha has been actively helping local communities in the districts of Nainital, Uddham Singh Nagar, Haridwar and Almora to file individual and community claims under the FRA. Some of these claims are of communities living in and around protected areas such as Corbett National Park, Nandhaur Wildlife Sanctuary and Rajaji National Park and surrounding Eco-sensitive Zones. The Morcha has also been actively working with the Van Gujjar community, the Forest Villages and other landless dalit communities which have been residing any legal documents in these forests for over three decades. Their effort has been to help them file their claims under the FRA as also help them in litigation against their forced evictions.

The situation of forest dwelling communities around protected areas of Uttarakhand remains precarious. There was a need to document and understand the problems of implementation of the Forest Rights Act around these areas. Hence a fact-finding was organised to:

- Understand and document the efforts by communities and Van Panchayat Sangharsh Morcha towards filing claims under FRA
- Reviewing the response of the administration towards the claims filed
- Documenting the issues faced by these communities in filing their claims and in these claims being finally recognised.

III. CASE STUDIES FROM THE PROTECTED AREAS

a) **Protected Areas and Pastoral Communities: The situation of the Van Gujjars inside and around the Corbett Tiger Reserve**

There are 57 Van Gujjar families that currently reside inside the Dehla and Jhirna ranges which constitute the buffer zone of the Corbett Tiger Reserve. It is important to note that the Van Gujjars, being transhumant pastoralists earlier, would travel up to alpine meadows of Uttarakhand in the summer months and would migrate to the Terai area in winter, including in and around the now Corbett Tiger Reserve. Colonial laws criminalized grazing and placed severe restrictions on the movement of the Van Gujjars, which continued after Independence. Since the 1960s due to several reasons, the Van Gujjars lost access to summer and winter grazing areas and settled down around their winter abodes, including in and around Corbett Tiger Reserve⁷.

Till 2005, the Van Gujjars would be given grazing receipts by the forest department which helped them access grazing in the forests. After this system was stopped they have been left without any legal documents to secure bona-fide needs of grazing, lopping, collection and minor forest produce and access to forests. Additionally, no legal documents were allotted to many homestead and agricultural land. The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 has specifically been enacted 'to recognise and vest' these forest rights to forest dwellers 'who have

⁷ Desor, S., & Das, S. *Scope of semi nomadic pastoralism in India today: A case study of Van Gujjars in Garhwal Himalayas*. IRMA-FES.

Gooch, P. (2009). Victims of Conservation or Rights as Forest Dwellers: Van Gujjar Pastoralists between Contesting Codes of Law. *Conservation and Society*, 7 (4), 239-248.

been residing on forest land for generations but whose rights could not yet be recorded' and to 'address the long standing insecurity of tenurial rights and access rights'. Sec 3(1)(d) of the FRA recognises and vests, '...grazing (both settled or transhumant) and traditional seasonal resource access of nomadic or pastoralist communities.'

However, currently the situation of these Van Gujjar families is precarious. Being inside the Tiger Reserve and a wildlife sanctuary, has severely restricted access to basic facilities like hospitals, schools and also restricted access to fodder and other forest resources. The current situation and issues being faced by Van Gujjars was described by a few villagers who had gathered at the Bailpur Khatta in Jhirna Range of the Terai West Division, Nainital District⁸. According to them:

- Due to expansion of the Tiger Reserve, more and more area in the buffer is being brought under the CTH. While this is happening, several khattas are facing severe restrictions on accessing and using forest resources.
- Without any information to the villagers the areas which were earlier outside the TR are now in the buffer.
- Being inside the Protected Area, there is no connectivity to other villages. Schools and hospitals (even PHCs) are not easily accessible. Fodder has to be purchased from outside the tiger reserve due to restrictions on grazing. Bribes are paid to lower level functionaries of the forest department for lopping and collection of fodder, and wildlife attacks are a constant threat.
- Herbivores like deer and wild boar are constantly raiding crops and destroying the fields. Compensation for kills or injuries to livestock from carnivores is difficult to obtain since one has to go through a lengthy bureaucratic process with no surety of receiving compensation. The compensation amount is very less as compared to the cost of the livestock.
- Due to the High Court orders, the forest department has issued eviction notices. This is being done even as the claims of several khattas are waiting to be processed.
- Several Van Gujjars claim that they have also been implicated in false cases of animal poaching, for which they are jailed.
- Their claims have not been processed as they are asked to produce documentary evidence of them being forest dweller since 75 years prior to 2005.
- They do not think their claims will ever be processed. In the meanwhile they are losing out on opportunity costs, life is difficult for children and women in particular in the absence of any connectivity.
- Considering all the above they have requested the government to relocate them to another site outside the TR.
- They are not sure what package they will get but they are so frustrated that anything may be better than this.
- They have seen that some of the people who had agreed to relocate did not get a good deal. many of the promises that were made to them prior to relocation were not fulfilled. Particular example was given of the proposal to relocate 157 Van Gujjar families from the Sona Nadi

⁸ A meeting was held in the Khatta with members of the fact-finding team and Van Gujjars from several villages inside the Corbett Tiger Reserve on the 5th of December 2018.

Wildlife Sanctuary area in the CTH of the reserve. The relocation took place in 2014 (without the recognition and vesting of rights under the FRA) and many of the facilities which were promised in the relocation package were not provided to the families including land, grazing areas etc.

- They are also concerned that the manner in which the buffer zone keeps expanding there is no guarantee that once they are relocated that area will again come under the TR.

We attempted to find out when the Corbett TR expansions have taken place and how but we were unable to find notification of the same. We were also not able to access any maps which indicate exactly where the current boundaries of Corbett Buffer and Core Zones are. **If these expansions have already taken place and local people have not been involved in the process, as the people claim, then all these expansions are illegal**

a.1. The status of claims under the Forest Rights Act in and around Corbett Tiger Reserve:

Official figures claim that 57 families live within the TR. All these khattas fall in forest land classified as buffer zone. Most of these khattas filed IFRs and CFRs in 2018. All these claims were sent by the SDM to the DFO, and the DFO has rejected the claims.

	Number of IFR claims filed in the Buffer Zone	Number of IFR claims filed in the CTH	Number of CFR claims filed in buffer zone	Number of CFR claims filed in CTH
	205	-	3	-
Status of the claims	The claims have been sent to the SDLC	-	The claims have been sent to the SDLC	-
Reason for rejection (if any)	In a letter dated 12th September 2018 by the Director of the Corbett Tiger Reserve, 61 claims have been rejected by the SDLC on 6th August 2018. (See letter as Annexure I). The reasons are not given.			

a.2. Threat of evictions of the Van Gujjars in the Core and Buffer of Corbett Tiger Reserve:

In 2018, the Uttarakhand High Court while hearing a Public Interest Litigation (PIL) filed by the Himalayan Gramin Vikas Sansthan⁹ on restricting number of vehicles plying inside the Tiger Reserve and ill-treatment of elephants by resort owners in and around the TR allowed another intervention application filed by Anil Balooni to be heard with the previous PIL. The latter linked the poaching of tigers and other wildlife to the Van Gujjars in and around Corbett. In a series of pronouncements, the Uttarakhand High Court ordered the immediate eviction of the Van Gujjars from the reserve. This was the second pronouncement by the Uttarakhand High Court on the eviction of Van Gujjars from Corbett. In December 2017, while hearing a PIL¹⁰ on forest fires in Uttarakhand, the court had ordered the eviction of Van Gujjars from Corbett to be carried out within a period of a year. Following both these orders, a series of eviction notices were issued by the Range Forest Officers of Dehla and Jhirna ranges to the Van Gujjar families. During both these times, the Van Gujjars sought intervention by the Supreme Court and in September 2018 the SC has asked that status quo to be maintained on the issue of eviction of the Van Gujjars from Corbett Tiger Reserve¹¹.

a.3. Relocation and Rehabilitation of the families from the Core and Buffer of Corbett Tiger Reserve:

There have been several attempts to relocate the 57 families¹². In 2002, several of them had made a demand to be relocated due to severe restrictions that they have been facing to access forest resources due to various incidences of human-wildlife conflict. In August 2018, the Chief Minister also constituted a committee to look into their relocation from Corbett Tiger Reserve¹³. Apart from the state government, some non government actors are also looking to get involved in the relocation of the Van Gujjars. In November 2018, some letters were signed by individual Van Gujjars in which they are demanding relocation, and authorising an NGO called the 'Think Rise' to become a party to assist them in relocation. In January 2019, a rough draft of a declaration for each family appears to have been circulated by the forest department. The declaration asks the head of the family to declare the land under cultivation and occupation, that the family does not own land anywhere else and that he/she is ready to being relocated from Corbett Tiger Reserve¹⁴. Considering that neither the FRA nor the 2006 Amendment of the Wildlife Protection Act asks for a letter of this kind under clauses specified for relocation, it is unclear with what motive the forest department is asking the local people to sign these letters?

In the matter of PIL by the Himalayan Gramin Vikas Sansthan, the state government proposed the relocation and rehabilitation of the 57 families, and allocated Rs. 10 lakh as the rehabilitation package for each family. The High Court however observed that the state government had included each adult member as an affected person whereas only 10-13 families were residing inside the reserve. It also said that the Van Gujjars were a 'constant threat to wildlife' and that since they were 'encroachers' they did

⁹ Writ Petition (PIL) No.6 of 2012

¹⁰ Writ Petition (PIL) No. 54 of 2016

¹¹ 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.

¹² Uttarakhand Cabinet clears proposal to set up panel on relocation of Gujjars from Corbett;

<https://timesofindia.indiatimes.com/city/dehradun/After-Gujars-from-RNP-ones-in-Sona-Nadi-to-be-relocated/articleshow/47372177.cms>;

¹³ <https://www.tribuneindia.com/news/uttarakhand/2-716-schools-face-closure-in-uttarakhand/643658.html>

¹⁴ Shared by Tarun Joshi of Van Panchayat Sangharh Morcha. Copy attached as Annexure-

not have the right to be rehabilitated¹⁵. The High Court has obviously been misled and have themselves not made an attempt to verify legal provisions. The enactment of the FRA has ensured that the due process of enquiry into rightful claims can be initiated within forest areas. Apart from this, the provisions of the relocation and rehabilitation laid down by the National Tiger Conservation Authority mandate that each adult male member of a family is entitled for a separate rehabilitation package. However, relocation itself can only take place after all forest rights have been settled.

As of now, the Van Gujjars in the Core and Buffer areas of Corbett Tiger Reserve are in a precarious position with their rights not being settled under the Act, the various High Court pronouncements against them demanding their eviction and no sight of complete and proper relocation process.

b) Nandhaur Wildlife Sanctuary

b.1. The Situation of the Van Gujjars

Nandhaur WLS forms part of the Terai Arc landscape and stretches up to Nepal in the north and forms part of the corridor with Corbett Tiger Reserve to the west. The WLS came into the spotlight in August 2018, when NTCA gave in-principle approval for it to be notified as a Tiger Reserve. This was however met with severe opposition from local villagers, including the Van Gujjars who have been coming to these forests and have been given grazing licenses for many generations. In the last few decades as their migration became more and more challenging, they have now settled in these forests. Kalega Khatta, the village visited by the fact-finding team relocated to the current location from the Nandhaur River area about 30-40 years ago. The Nandhaur river that runs through the sanctuary has seasonal floods.

b.2. The status of forest rights claims of the Tharu Tribe

The fact-finding team also visited the Tharu settlement of Haspur (Nadi Par) village. The Tharu tribe has been the original inhabitant of these tarai forests and were part of Taungya settlements around the Nandhaur Wildlife Sanctuary. The FRC of the village was formed in 2012-2013 as part of the special drive of the Social Welfare Department. At that time, 240 IFRs were filed from 17 villages. However, 7 villagers were informed by the SDLC that they had not attached their Tribe certificate which proves their status as a member of the Scheduled Tribes. Van Panchayat Sangharsh Morcha then helped 7 the villagers re-submit their claims after helping them obtain tribe certificates. However, recently they have heard that their claims have been sent back to the DFO for verification, although the DLC has passed these claims!

b.3. Rights denied but forests commercially exploited

¹⁵<https://indianexpress.com/article/india/van-gujjars-are-constant-threat-to-wildlife-their-rehabilitation-is-against-public-policy-uttarakhand-hc-5310659/>

Interesting even as the state government drags its feet with the implementation of the FRA and recognising the rights of the Tharus and the Van Gujjars, licenses for boulder and sand mining continues in the river. At the same time large areas continue to be clear felled by the Uttarakhand State Forest Development Corporation (FDC). During the field visit to the site, local people pointed out FDC clearing out dense and diverse forests replacing it with mono-culture plantations. According to the local people the increased incidents of human-wildlife conflicts in Uttarakhand can be attributed to this clear degradation of forests for commercial plantations leaving little for the wild animals to survive in¹⁶. “Such forests are neither good for livestock nor for the wild animals. What is good for the livestock is also good for wild animals. That is why wildlife and Van Gujjars have co-existed for centuries” said ??

While discussing about the state of the forests and biodiversity, the older Van Gujjars pointed out that the forest department no longer cares for its plantations. They reported that herbs, medicinal plants and fodder that was available in plenty earlier is not available anymore due to the unscientific method of logging and plantation carried out by the forest department. They also pointed out that the entire plantation focus was on teak and eucalyptus plantations since 1975, whereas indigenous trees like Sal, Khair etc and the vast grasslands surrounding the Nadhaur River have been declining. They attribute the increasing encroachment of wildlife, especially herbivores into their fields, to this since they believe that the animals do not have food sources within the WLS. They also reported the loss of honey bees and vultures in the area.

b.2. Expansion of the protected area and state of the forests:

The Van Gujjars in Kalega Khatta practice seasonal migration of grazing areas and used to graze their buffaloes inside the WLS for 6 months of the year. They however reported that the Forest Department stopped issuing regular grazing receipts in 2013 and since then, they have been prevented to go inside the adjoining forests. They fear that their village which was on the border of the Sanctuary has now been included within the Sanctuary. They didn’t seem to have a clear idea about whether or not it was inside the Sanctuary. They had also heard that their forest would be declared a Tiger Reserve, however they said after a lot of opposition the plan has been shelved. It is apparent that the licenses were stopped as soon as the Sanctuary was declared in 2012. **Considering that this PAs was declared after the enactment of FRA, according to which the rights of the people are already vested and only need to be recorded, this sudden stopping of grazing licenses is in violation of the Act. Neither have people rights been recognised under FRA nor any settlement of rights with alternatives have been proposed under the WLPA.**

b.3. Status of FRA

	Number of IFR claims filed in Sanctuary	Number of CFR claims filed in the Sanctuary
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¹⁶ The team observed logging camps surrounding the sanctuary. Forest timber depots like Chorgaliyan and kathgodam are close to the WLS.

	240 IFRs from 17 villages	17
Status of the claims	With the SDLC. & claims sent back to the DFO for verification.	With the SDLC
Reason for rejection (if any)	-	-

Within Kalega Khatta, the villagers filed claims in 2017 and were handed over to the Social Welfare Officer in Haldwani. The social welfare officer has sent the claims to the there is no intimation of the status of their claim.

IV. THE PROCESS BEING FOLLOWED FOR VERIFY OF FRA CLAIMS AT SDLC AND DLC IN UTTARAKHAND

The fact finding team had the opportunity to speak to two functionaries of the SDLC (the officer of the Assistant Officer of Social Welfare, Ramnagar and the Assistant Officer of the Social Welfare Department of Khatima). In Ramnagar, the officer was unaware of whether any SDLC meetings were held since her tenure. She was also unaware if a register being maintained to track the claims that were received and their status. She said she had newly taken over the charge and had not been explained much about FRA during the handing over process. FRA was not one of the priority issues for the Department.

From documents received, it was apparent that the entire SDLC does not meet regularly. Claims are received by the SDO or ADO and are sent to the forest officials like the DFO separately for their consideration. Infact, the DLCAfter accepting claims has been sending them to the forest department to be ascertained by the DFO again!

On the other hand the officer at Khatima seemed to be aware of the Act, although there was some confusion in processing claims belonging to Other Traditional Forest Dwellers. In conversation with the ADO it became very clear that there was little clarity and awareness about the Forest Rights Act within the department. Among the major issues for the claims in this area not moving ahead, like elsewhere in Uttarakhand, was the insistence on the part of the state government on documentary evidence for being resident and dependent on forests for 75 years (a universal misrepresentation of the Act which asks for evidence of 3 generations). Although the 2012 Rules clarify that there should be no such insistence on documentary evidence if any of the 2 mentioned evidences have been attached. In these claims, like elsewhere in the state, oral testimonies of community elders above 75 years of age have been attached to show dependence on forests for three generations. Consequently, the Samaj Kalyan Vibhag, insists that documentary evidence apart from oral testimonies is necessary to prove existence on forest land for over 75 years prior to 13th December 2005.

ANNEXURE II: CLARIFICATION ON THE OTHER TRADITIONAL FOREST DWELLERS ISSUE

According to Sec 2 (o) of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 or Forest Rights Act (FRA), 'other traditional Forest Dweller' is defined as, '...any member or community who has for **at least three generations prior to the 13th day of December, 2005** primarily resided in and who depend on forests for their bona fide livelihood needs.'

According to clarification No.17014/02/2007-PC&V(Vol.VII) issued by the Ministry of Tribal Affairs, (MoTA) dated 9.06.2008, the phrase "**primarily resided in**" means that "such Scheduled tribes and other traditional forest dwellers who are not necessarily residing *inside* the forest but are *depending on the forest for their bona fide livelihood needs* would be covered under the definition of 'forest dwelling Scheduled Tribes' and 'other traditional forest dweller' as given in Sections 2(c) and 2(o) of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006."

A per the Frequently Asked Questions issued by the MoTA and UNDP " the FRA does not require *occupation* of forest land for three generations (seventy five years) prior to December 2013, for qualifying as OTFD under the Act. The phrase primarily resided in forest or forest land' does not mean occupation. **Proof of residence in forests for 75 years where claim has been filed, and current dependence on the forests under the claim, will suffice to be considered as OTFD.** Thus it is not necessary that exercise of forest rights for 75 years without interruption be proved. This would be an extremely onerous burden of proof on a claimant, and is not the intention of the law."

"It is important to state that the date of notification, if any, of the forest is not a relevant criterion for determining eligibility of OTFDs under FRA. On the contrary the FRA extends not only to notified and classified forests, but also to all manner of forests within the dictionary meaning, as defined by the Supreme Court. Admittedly, forests have been in existence in the country for centuries, and well before any legal regime for the protection of forests came into being."

"For the purpose of establishing their eligibility, OTFDs can rely upon and produce two or more of any of the evidences listed in Rule 13 (including oral testimony and physical evidence), and are not restricted only to Census of India data. Insistence of any particular form of documentary evidence for consideration of a claim has been held to be illegal by the Gujarat High Court in Arch Vahini vs. State of Gujarat & Ors."

References:

- The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006
- Frequently asked questions on the Forest Rights Act, Ministry of Tribal Affairs and United Nations Development Program. Available at: <https://tribal.nic.in/FRA/data/FAQ.pdf>
- Clarification No.17014/02/2007-PC&V(Vol.VII) issued by the Ministry of Tribal Affairs, dated 9.06.2008. Available at: <https://tribal.nic.in/FRA/declarationsClarifications/Clarification.pdf>

