

To

Shri Bhupendra Yadav ji  
Hon'ble Minister of Environment, Forests and Climate Change  
Indira Paryavaran Bhawan  
Jorbagh Road, New Delhi 110003

Date: 13<sup>th</sup> August 2022

**Subject: Comments on the Forest Conservation Amendment Rules 2022**

Sir,

Given below are comments, concerns, and suggestion regarding the Forest Conservation Amendment Rule 2022, notified on the 28<sup>th</sup> of June 2022 from Kalpavriksh Environment Action Group.

We would start by saying that in the 75<sup>th</sup> year of Independence, it is disheartening to see these amendment rules which in many ways contradict the stated objectives and spirit of the Forest Conservation Act (FCA) which are-to strictly regulate and control indiscriminate diversion of forests for the sake of current and future generations. 2022 Rules will have significant negative impact on the forest ecology in several ways including by equating dense plantations of any type with biologically and culturally diverse old growth forests. These rules will also severely impact the rights of the Scheduled Tribes and Other Traditional Forest Dwellers (STs and OTFDs) as recognized under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights Act) (FRA) 2006, including the right to sustainably use, manage and conserve forests within their customary boundaries and protect their natural and cultural heritage from external threats as provided under Sections 3(1)(i) Section 5 and Rules 4 (1) (e) and (f) of the FRA.

2022 FC Rules are also in contravention of the Government of India's commitments under the Convention on Biological Diversity and Climate mitigation targets, both of which strongly advocate central role of the local communities and indigenous peoples with full and effective recognition of their rights in achieving conservation goals as well as climate targets.

Pl see below in detail some of our concerns and suggestions:

**1. Dilution of provision related to recognition of forest rights and consent of Gram sabhas as provided in Rules 2014 and 2017:**

It is important to mention here that 2022 Rules are in direct violation of the legal mandate, intent, and spirit of the FRA. The FRA provides for recognition of forest rights of the STs and OTFDs and by doing so it intends to undo the historic injustice faced by these communities because of denial of their forest rights. To uphold the legal mandate and intention of the FRA, the Ministry of Environment and Forests had issued a circular on 3rd Aug 2009, which was endorsed by the Supreme Court in its judgment in *Orissa Mining Corporation vs MoEF & Others* in 2013. The circular received legislative backing through Amendments to the FC Rules in 2014 and 2017, which provided for prior informed consent of the gram sabhas and completion of recognition of rights process before initiating processes towards forest diversion, as detailed below.

Under the 2014 rules, after the Nodal Officer received the proposal from the User Agency, they would send the proposal to the DFO and DC within 10 days of having received the proposal. The DC would have to '*...complete the process of settlement of rights in accordance with the provisions of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006, obtain consent of the Gram Sabha or Gram Sabhas, wherever required, and forward his findings in the format specified in this regard to the Conservator of Forests....within a period of 30 days (for proposal involving forest land up to 40 ha), 45 days (above 40 ha up to 100 ha) and 60 days (above 100ha).*' This report had to be forwarded, along with other reports of the officials involved, to the Central Government for prior approval within 30 days of receipt of all documents.

The 2017 Rules, further strengthened this by substituting the clause to include the District Collector, requiring him to,

- Complete the process of recognition and vesting of rights under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006, for the entire forest land indicated in the proposal,
- Obtain consent of each gram sabha having jurisdiction over the whole or part of the forest land indicated in the proposal for the diversion of such forest land and any compensatory and ameliorative measures, having understood the purposes and details of diversion, wherever required.
- This was to be done in a time-bound manner and submitted to the Nodal Officer *before* the proposal was sent to the Central Government for PRIOR approval.

Thus, the 2014 Rules subsequently amended in 2017 ensured:

- That importance was given to completing the process of recognition and vesting of rights under the FRA, while the project proposal was being examined at the level of the state prior to being sent for stage I approval to the central government.
- That this process was carried out in a time-bound manner
- Prior informed consent of the gram sabhas under whose (partial or complete) jurisdiction the proposal for diversion was sought.

- Informed consent of the gram sabhas under whose jurisdiction the compensatory measures for the project were to be sought.
- Allowed two levels of vetting and screening of the processes under the FRA, first at the level of the state and subsequently by the Central Government.

**The 2022 Rules**, however state that: *“The Central Government after having received the compliance report and ensuring its completeness may accord ‘Final’ approval under section 2 of the Act and communicate such decision to the State Government or Union territory Administration and the user agency; (ii) The State Government or Union territory Administration, as the case may be, after receiving the ‘Final’ approval of the Central Government under Section 2 of the Act, and after fulfilment and compliance of the provisions of all other Acts and rules made thereunder, as applicable including ensuring settlement of rights under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (No. 2 of 2007), shall issue order for diversion, assignment of lease or dereservation, as the case may be.”* Further, immediately after in-principle approval is given to the project proposal by the state government, *“...the Divisional Forest Officer shall prepare a demand note containing the item-wise amount of Compensatory Levies, as applicable, to be paid by the user agency and communicate the same to the user agency, along with a list of documents, certificates and undertakings required to be submitted by them in compliance with the conditions stipulated in ‘In-Principle’ approval; (iii) the user agency shall, after receipt of the communication, make payment of Compensatory Levies and hand over the land identified for Compensatory Afforestation, a compliance report along with copies of documentary evidence including undertaking and certificate in respect of the payment of Compensatory Levies and handing over of Compensatory Afforestation land to the Divisional Forest Officer;”* (Rule 9(6)(b)(ii)).

In the current rules therefore,

- ‘Settlement’ of rights under FRA needs to be done *after prior approval* from the central government has already been received.
- There is no requirement at any stage to seek prior informed consent of gram sabhas, either for the forest diversion or for compensatory and ameliorative measures.
- Instead of talking about ‘recognition of rights’ in their entirety, including rights under the provision of Community Forest Resource (CFR) Rights which empower the local gram sabhas to sustainably use, manage and conserve forests within their customary boundaries, these Rules talk about ‘settlement’ of forest rights, explanation for which remain unclear.

It is also important to note that despite provisions of the 2014 and 2017 Rules, the compliance of the Rules with respect to recognition of forest rights as well as prior informed consent was already disappointing<sup>1</sup>. Yet these provisions were important for providing legal safeguard against the violations of forest rights to the STs and OTFDs. Removal of the provision for seeking

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<sup>1</sup> For how these rules have been implemented, please see a detailed note here: [Examining on ground realities in the implementation of the FRA in areas facing forest diversion](#)

consent in the 2022 Rules, will further intensify injustice and consequently conflicts during forest diversion and compensatory afforestation efforts. Also recognition of forest rights after granting stage I approval to a project is meaningless. It is logical that, project proponent User Agencies after payment of compensatory levies and approval by the central government, would pursue State Governments or Union Territories for the diversion of forests at the earliest with or without settlement of rights as a *fait accompli* situation.

## **2. *The constitution of the Project Screening Committee:***

This is may a positive step towards thorough screening of proposals at the level of State Governments and Union Territories for all requisite documents, permissions, and information as regards to project proposals. The inclusion of the State Nodal Officers and concerned Chief Conservators of Forests and Conservators of Forests, Divisional Forest Officers will ensure combined screening of proposals by all relevant administrative staff of the State Governments and Union Territories. Rule 9(4)a provides for ‘...*the meeting and minutes of the meetings shall be uploaded online.*’ These are important steps for achieving transparency in decision-making.

However, instead of creating different project categories based on area of forest land being diverted or the kind of proposal being screened, this committee must screen **all** projects sent to the State Government or Union Territory **including those below 5 ha** which are assessed by the Regional Empowered Committee before sending to the Central Government. Additionally, the operationalization of this committee requires some more clarification. From the composition of the committee as given in the amendment rules, it appears that only the Nodal Officer and Divisional Forest Officer in the office of the Nodal Officer will be permanent members of the Project Screening Committee, whereas ‘concerned’ CCF/CF, DC and DFOs will keep changing based on the location of the project being screened. Whether this then means that there will be multiple Screening committees operating for multiple projects depending on the location of the project (according to districts and forest divisions) is unclear.

## **3. *The Composition of the Forest Advisory Committee is inadequate to ensure that the rights of the STs and OTFDs are protected:***

The Rules provide for the change in composition of some members of the Forest Advisory Committee (FAC) from that stipulated in the 2014 Rules. The Additional DGF has been replaced by the Additional DGF (Wildlife) and the eminent expert members are to be from the fields of ecology, environmental engineering, and developmental economics.

Foremost impacts of dereservation or diversion of forest land are on ecological security, ecosystem services, fast declining biodiversity and equally significantly on over 300 million Scheduled Tribes and Other Traditional Forest Dwellers directly dependent on forests for their subsistence and livelihoods (including women and pastoralists)<sup>2</sup>.

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<sup>2</sup>[Forest, People and Livelihoods: The Need for Participatory Management \(fao.org\)](http://fao.org)

#### 4. *Compensatory Afforestation, land banks and Accredited Compensatory Afforestation especially in the context of protected areas*

2022 Rules provide for creation of 'land banks' and 'accreditation schemes' for compensatory afforestation and hence are **preempting** diversion of forest land on a large scale. The Forest Conservation Act and Rules are meant to be regulatory framework for diversion of forests instead of being facilitative of forest diversion. To create plantations preempting compensation for future diversion of forest land makes it seem like the government is more committed to raising plantations rather than prevent loss of valuable and fast declining old growth forest. More attempts at encouraging tree plantations based solely on 'canopy density' models have proven to be detrimental to the forest biodiversity. Such plantations also do not serve the interests of STs, OTFD, farmers, agricultural workers and women in particular as they affect farmland ecology, food security, forest based livelihoods, and agro-ecological livelihoods. Precautionary principle needs to be implemented while mitigating climate change by preventing the cutting down of existing forest ecosystems.

In this context, the following provisions in 2022 Rules are of grave concern:

- a) ***Compensatory Afforestation:*** The explanation to Rule 11 states that in case forest land to be diverted is in a hilly or mountainous State or Union Territory having forest cover of more than 2/3<sup>rd</sup> of its geographical area or is situated in a State or Union Territory having forest cover of more than 1/3<sup>rd</sup> of its geographical area, the compensatory afforestation for diversion of this land can be taken up in a state or union territory with less than 20% forest cover of its total geographical area. This means that the compensatory afforestation for diversion of forests in one state could be carried out in another state.
- b) ***'Land Banks' for Compensatory Afforestation:*** The Amendment Rules 2022 provide for the creation of '*Land Banks' for Compensatory Afforestation* by a State Government and Union Territory Administrations. The minimum size of these land banks should be 25 ha of a single land block. These land banks can be identified *in continuity of land* declared or notified as forest under the Indian Forest Act or under any other law, Protected Areas, Tiger Reserve *or within* a designated or identified tiger or wildlife corridor.

The data with the Ministry of Tribal Affairs shows that only 10% of the total potential or forests over which forest rights of the STs and OTFDs can be recognized have so far been recognized. Under these circumstances the 'land banks' to be created under 2022 Rules are likely to be lands customarily used by STs and OTFDs, including pastoralists communities and those used for shifting cultivation by Particularly Vulnerable Tribal Groups (PVTG). Creation of such land banks will deprive thousands of such communities from claim their rights as well as from practicing their traditional livelihoods, impacting the livelihood and food securing of the current and the future generations.

- c) ***Accredited Compensatory Afforestation and relocation from Protected Areas:*** 2022 Rules provide that *accredited compensatory afforestation* can also be earned out of

*vacation of non-forest lands on account of voluntary relocation of a village/habitation from a National Park, Wildlife Sanctuary or Tiger Reserve and designated or identified tiger or wildlife corridors shall qualify for compensatory afforestation provided the land is notified as Protected Forest or Reserved Forest.*

These provisions of the Amendment Rules 2022 have created a complex situation especially with regards to protected areas. They must be looked at in conjunction with Sec 6 (d) of the Compensatory Afforestation Fund Act, 2016. The section reads, ‘*all monies realised from the user agencies in accordance with the decision taken by the Standing Committee of the National Board for Wild Life constituted under section 5A of the Wild Life (Protection) Act, 1972 or the orders of the Supreme Court involving cases of diversion of forest land in protected areas shall form the corpus and the income therefrom shall be used exclusively for undertaking protection and conservation activities in protected areas of the State including facilitating voluntary relocation from such protected areas and in exceptional circumstance, a part of the corpus may also be used subject to prior approval of the National Authority.*’ This provision read in conjunction with the provisions of these Rules will ensure that CAMPA funds are first used to “facilitate” relocation and then the same land will be used for compensatory afforestation for diversion of forest land in other areas.

These rules will further strengthen relocation-based conservation by considering relocation as compensatory afforestation and hence meeting the climate targets, further restricting any possibilities towards co-existence and community-based conservation in and around PAs.

d) ***Non-forest land identified for compensatory afforestation to be designated under Indian Forest Act as forests:*** shall be demarcated by concrete pillars of suitable size and handed over, free from all encumbrances to the State Forest Department or Union Territory forest department and the same shall be notified as protected forest under Section 29 of the Indian Forest Act, 1927 or any other law for the time being in force before final approval is granted under the Act. This is a serious issue as it will replace large stretches of biologically rich old growth forests with new plantations with poor biological and cultural diversity and will still contribute towards biodiversity goals of the country as explained in point 5 below.

##### ***5. The Above provisions of 2022 Rules are in violation of the government of India’s commitment to Post 20/20 Global Biodiversity Framework***

a) As per the recently published ‘Criteria and Guidelines for Identifying Other Effective Area Based Conservation Measures (OECMs) in India<sup>3</sup>’ India has reported that 22% of its area (which is the forest area, including Reserved Forests, Protected Forests, Unclassed Forests and forests of all other description under the jurisdiction of the forest department) is protected under category 7 of the IUCN Protected Areas categories. All the existing forest lands under the jurisdiction of the forest department

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<sup>3</sup>Published by United Nations Development Programme, Ministry of Environment Forests and Climate Change and National Biodiversity Authority in 2022.

therefore are committed by the government of India towards achieving targets under the Draft Post 20/20 Global Biodiversity Framework, including land under Reserved Forests, *Protected Forests* and Village Forests under the Indian Forest Act, 1927. This is a welcome step as it provides for protection of forests for biodiversity conservation in the long run without affecting the rights of the local communities. However, diversion of these forests for non-forestry purposes and purposes other than biodiversity conservation is then a direct contravention of this commitment.

- b) Similarly, plantations under compensatory afforestation, which as per 2022 Rules will need to be recorded as protected forests under the Indian Forest Act, will also be considered IUCN category seven Protected Areas. Considering that nothing is specified in the compensatory afforestation about the biodiversity value of these plantations, our concern is that the biologically rich old growth forests will be replaced by very low biodiversity value plantations of limited species and will still be considered as PAs fulfilling the commitments under the Post 20/20 GBF.
- c) Finally but most importantly, India as a party to the Convention on Biological Diversity, whose Programme of Work on Protected Areas (PoWPA) and the Draft Post 20/20 GBFis committed to move towards inclusive conservation governance with recognition of indigenous/local community rights. As you very well understand and have been a proponent of, the above commitments provide for full and effective participation of the indigenous/local communities in identification, demarcation, management, and governance of, and in receiving benefits from the protected areas. The Wildlife Protection Amendment Act (WLPA) of 2006 and Forest Rights Act (FRA) of 2006, require that any relocation from a Critical Tiger/ Wildlife Habitat of a National Park, Sanctuary or a Tiger Reserve can only take place after recognition of rights, gram sabha consent to the relocation **and case-by-case establishing that presence of local communities in the area is causing irreversible damage and there is no possibility of co-existence**. Yet in implementation, the focus continues to be on the old approach of relocation being the key strategy for conservation with huge amounts of money being pumped into it. Evidence from the ground clearly indicates that ‘voluntary’ relocation is often not voluntary but often forced under various circumstances<sup>4</sup>.

## Suggestions

1. **Recognition of forest rights and free prior informed consent of the gram sabhas:**  
Keeping the above issues in mind in the interest of the forest ecology and the rights of the Scheduled Tribes and Other Traditional Forest Dwellers, it is important that the FC Rules 2022 are withdrawn and FC Rules 2014 and 2017 are reinstated and strengthened by:

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<sup>4</sup>See: [Losing ground: How are India's conservation efforts putting the local communities in peril? | EJAtlas](#)

- a) Reinstating provisions related to consent of the gram sabhas whose forests would be fully or partially will be impacted by the forest diversion and by amelioratory measures.
- b) Reinstating provisions related to complete recognition and vesting of rights of STs and OTFDs under the FRA, *before* the proposals are sent to the central government for stage I approval
- c) Including provisions which will ensure that these processes are completed in a time-bound manner while still adhering to the process under the FRA.
- d) Including provisions towards monitoring the compliance of these provisions more rigorously to ensure that the rights of the ST and OTFDs to protect their lands, resources and natural & cultural heritage, as provided under section 5 or the FRA, are upheld and protected.

## 2. **Strengthen the Forest Advisory Committee (FAC)**

In addition to the inclusion of the DGF (Wildlife) and an expert in ecology, it is essential to include in the FAC:

- a) Representatives of the STs and OTFDs and experts who have worked, social scientists, anthropologists and experts with experience with gender issues.
- b) As a nodal agency for implementation of the FRA, the FAC also must have a representative of the Ministry of Tribal Affairs (MoTA), not lower than the rank of the Secretary.

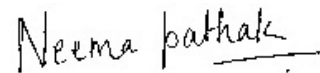
## 3. **Complete withdrawal of provisions related to Compensatory Afforestation, land banks and Accredited Compensatory Afforestation**

Issues related to compensatory afforestation, land banks and accredited compensatory afforestation need much more understanding and debate for their impacts of the ecology and ecosystem functions (positive or negative), their impacts on resource rights, food and livelihoods security of the STs and OTFDs, their subversion of possibilities of co-existence based conservation praxis, their facilitative role in relocation from protected areas, and their false contribution to biodiversity targets, before these can be incorporated in any legislation in just and fair manner and hence need to be completely withdrawn.

Yours sincerely,



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