SUMMARY REPORT ON IMPLEMENTATION OF THE FOREST RIGHTS ACT

This document is the final version of the "Summary Report on Implementation of the Forest Rights Act" prepared by the Council for Social Development, New Delhi. Initiated as the proceedings of a meeting held in Delhi in April 2010, and expanded with information gathered through ongoing discussions with various struggle groups regarding the situation in their respective States, it presents a summary snapshot of the general ground picture as of August 2010. The Council hopes that this report will be followed by a detailed set of State-wise reports.

The main findings of the report are summarised on the first page. The report also contains a set of summary recommendations from pages 20 – 32 regarding initial actions required to ensure better recognition of rights and respect for democratic principles in forest governance.

The Campaign for Survival and Dignity is circulating this report as it contains a relatively comprehensive summary of current issues arising in the forest rights struggle. A separate file containing only the recommendations is also being circulated.

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COUNCIL FOR SOCIAL DEVELOPMENT

Summary Report on Implementation of the Forest Rights Act

Main Findings

Most of the participants in the review reported that all of the key features of this legislation have been undermined by a combination of apathy and sabotage during the process of implementation. In the current situation the rights of the majority of tribals and other traditional forest dwellers are being denied and the purpose of the legislation is being defeated. Unless immediate remedial measures are taken, instead of undoing the historical injustice to tribal and other traditional forest dwellers, the Act will have the opposite outcome of making them even more vulnerable to eviction and denial of their customary access to forests. The testimonies made it clear that this is not merely a result of bureaucratic failure; both the Central and the State governments have actively pursued policies that are in direct violation of the spirit and letter of the Act.

The key violations revealed by the discussions are as follows:

- In several major States, implementation of the Act has hardly taken place.

- All States have largely failed to respect the Act's historic provisions regarding the role of the gram sabhas:
  - Gram Sabhas have been constituted at the wrong level and thereby rendered dysfunctional and ineffective.
  - Gram Sabhas have often been bypassed and officials, Forest Department and JFM committees have been empowered in violation of the law. Such violations include

constitution of Forest Rights Committees and deliberate efforts to use Joint Forest Management to divide villages and substitute Forest Department-controlled JFM committees for community bodies.

- There has been large-scale interference by the Forest Department in the rights recognition process. This takes the following forms:
  - Demands are made that claimants produce fine receipts or primary offence reports (PORs) from prior to 1980 (or from prior to the Act's cutoff date of 2005).
  - Demands are made that claimants should be on Forest Department "encroacher lists".
  - Undue appropriation of authority and control over decisions on claims, overriding and bypassing the roles of the gram sabha, the Sub Divisional and District Level Committees.
  - Forest officials have occupied key implementation posts in state and central Tribal Welfare Departments and are imposing the Forest Department's perspective and interests on the process.
  - Imposition of conditions not required by law on both claims and on exercise of final rights.
  - Continued evictions of adivasis and forest dwellers in total violation of the law.
  - Continued application of contrary forestry legislations and efforts to subvert the law by passing new legislations that violate rights (such as in Madhya Pradesh).

- All non-land rights in the Act – most of which are community rights – have largely been ignored in implementation. The Central and State governments have treated the Act as if it is a land title distribution scheme.

- Sub-divisional level committees have arbitrarily rejected claims on the basis of illegal criteria, failed to inform claimants of the rejection and the reasons thereof, and failed to respect the democratic process mandated under the Act.

- District level committees have been the site of a number of serious violations:
  - Rejections without any intimation or communication to the claimants.
  - Abdication of responsibility by other departments in favour of the Forest Department, which has been given effective veto powers in most areas.
  - Unilateral reductions in the size of land titles granted to the claimants without any reason being given and without any intimation to them. It is understood that this too is based on the Forest Department's interference.
  - Abuse of GPS technology to manipulate maps and areas of land for which titles are being given.

- The process in most States that have implemented the Act has been marked by haste and a total failure to provide information or engage in awareness-raising or trainings, including with respect to areas where the Rules specifically require authorities under the Act to perform these duties.

- Eligible claimants have been denied rights, particularly in the case of other traditional forest dwellers, whose claims have been overwhelmingly rejected in all States. All States seem to be assuming that all OTFDs are ineligible unless they can produce documentary evidence of 75

years of continuous residence, when such evidence is not required under the Rules (besides, in many cases even the State governments themselves do not have records of that period).

- Protected areas have largely been excluded from the implementation of the Act.

- The Central government, and in particular the Environment Ministry, has continued policies that are in direct violation of the spirit and letter of the Forest Rights Act. These include afforestation and plantation programmes that result in violations of rights; Joint Forest Management; and relocation from tiger reserves and diversion of forest land in favour of large projects, both without any respect for the rights of forest dwellers under the Forest Rights Act or for the procedures and safeguards provided in law.

- The Ministry of Tribal Affairs has shown no seriousness or commitment to addressing any of these issues and has largely failed to even monitor the Act properly. Instead it has only gathered statistics on numbers of claims processed and made this the basis of a number of "awards" and proclamations that have no relation to the ground reality.

1.0 Introduction

In 2006, the UPA government passed the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (the Forest Rights Act, or FRA, for short). The Act provides for recognizing thirteen different rights that are central to the lives and livelihoods of tribals and other traditional forest dwellers across the country. These rights include rights to land under occupation as well as customary land, ownership of minor forest produce, rights to water bodies, grazing areas, habitat of Primitive Tribal Groups (PTGs), conversion of all types of forest villages/settlements to revenue villages, the right and power to protect, conserve and manage community forest resources, etc. All of these rights had been illegally and unjustly denied during the classification of lands as government forests (both before and after independence). The FRA sought to address the shortcomings of previous rights recognition efforts, particularly the guidelines issued by the Ministry of Environment and Forests (MoEF) in September 1990 and afterwards. None of these efforts succeeded[1], as they relied on the Forest Department for verification, covered only land rights, and lacked statutory force (making them subject to requirements of forest clearance, compensatory afforestation, etc.).

The new Act made the Ministry of Tribal Affairs the nodal agency for recognizing forest rights, in recognition of the fact that forest departments were an 'interested party' which would have little incentive for ceding territory and control over forests to ancestral right holders. It also provided a transparent and democratic procedure readily accessible to tribals and other traditional forest dwellers by making the gram sabha the fact finding and verification authority (instead of an unaccountable government official). Two higher level Committees comprising officials of three departments and panchayat representatives have been given responsibilities for collation and final approval of the

[1] Claims are often made that the Environment Ministry regularised 3.66 lakh hectares of tribals' lands under it's Sep 1990 guideline for regularising 'encroachments'. This is not entirely correct. Such regularisation only took place on a large scale in Madhya Pradesh, and took place at a much smaller level only in seven States; none of the other major forest States, such as Jharkhand, Orissa, Maharashtra, or Andhra Pradesh, implemented any significant regularisation under these orders. Further, of these 3.66 lakh hectares, regularisation of 1.68 lakh hectares in Madhya Pradesh was stayed by the Supreme Court on 23.2.2004 (in IA 1126 in *T.N. Godavarman Thirumalpad and Ors. vs. Union of India and Ors.*, WP 202/95).

claimed rights. The Act also provides safeguards against arbitrary eviction or relocation of tribals and other forest dwellers living in / dependent on protected areas. Finally, in its most significant and radical step, the law statutorily empowered gram sabhas to protect and manage their surrounding forests for sustainable use and for preserving their cultural and natural heritage.

The Act came into force on January 1, 2008. In April 2010 the Council for Social Development organized a seminar to review the experience with implementation and the extent to which the Act is succeeding in its mandate of undoing the 'historical injustice' done to tribal and other traditional forest dwelling communities. Organisations from over fifteen States, as well as State and central government officials and non government experts, shared their experiences at this seminar. This is a summary report of the picture that emerged from the discussions and from subsequent reviews and communications.

2.0 Non-implementation of the Act

The first key problem that is notable is the fact that a number of the states and Union Territories are yet to commence serious implementation of FRA. Several major States – including Goa, Tamil Nadu, Jharkhand, Himachal Pradesh, Uttarakhand, Karnataka etc. - have begun the process on paper but are proceeding very slowly. In Himachal Pradesh and Gujarat, implementation has begun only in Scheduled and tribal areas, leaving out all other areas. Among Union Territories, there has been little miimplementation in Daman & Diu and Dadra & Nagar Haveli.

Most of the Northeastern States, other than Assam and Tripura, are not implementing the Act as well. However, the situation in the rest of the Northeast is complex, as most of the forests in these areas are under community control and individual and community rights are exercised within a tribe or region-specific framework. The local realities and legal instruments in Arunachal Pradesh, Manipur, Meghalaya, Sikkim, Mizoram[2], and Nagaland[3] vary from State to State, and within these States there is a considerable diversity of practices between communities and ethnic groups. In many States, it has been claimed that existing arrangements offer more extensive protection than the Act, though this has also been threatened by unilateral actions of the Central government. Detailed study is required before commenting upon the situation of forest rights in these areas.

3.0 Failures in the Rights Recognition Process

Where States have been implementing the Act, at every stage of the process, gross, deliberate and officially initiated violations are apparent.

4.1 Constitution of Gram Sabhas at the Wrong Level

The Forest Rights Act for the first time legally empowers the gram sabha to play the pivotal role as the transparent and democratic authority for initiating the process of receiving and verifying rights claims. As the gram sabha is the assembly of all adult residents of a village, the definition of village becomes critical. Section 2(p) of the Act defines four types of villages whose gram sabhas are to be the initiating authorities for the process under the Act. These are:

1. Hamlets (i.e. actually existing or customary settlements), as defined in the Panchayats (Extension to Scheduled Areas) Act. This type of gram sabha is required in Scheduled Areas.

2 The Act was extended to the State by the Legislative Assembly, as per the requirements of Article 371 (G) of the Constitution, on 29.10.2009. The law came into effect from 31.12.2009 and was notified on 3.3.2010.

3 A committee has been constituted to look into the desirability of extending the Act to the State.

2. Revenue villages (i.e. villages as notified by the government; a typical gram panchayat may have from one to several revenue villages).
3. Forest villages,old habitations and settlements and unsurveyed villages, whether notified or not (implying that they should always have their own gram sabhas, regardless of whether they fall within a panchayat / revenue village or not).
4. In States with no gram panchayats, such as some of the Northeastern States, traditional village institutions replace the gram sabha.

This elaborate provision has been completely vitiated in practice. The Ministry of Panchayati Raj wrote to all state governments in mid February 2008, asking that all panchayats in the entire country call gram sabha meetings on 28 February 2008 (ten days after the letter) for the purposes of the Act. Practically all state governments assumed that the gram sabha had to be that of the gram panchayat. The Ministry of Tribal Affairs (MoTA) did not clarify this important matter. Besides being in violation of the Act, the panchayat-level gram sabhas in many States include multiple revenue villages, which in turn include several hamlets and, as such, are much too large to function as the transparent and democratic village forum envisaged in the Act. Such large gram sabhas further pose an additional problem as the Rules require a 2/3rd quorum for Gram Sabha resolutions. In Dadra and Nagar Haveli, implementation has made no progress as achieving a 2/3rd quorum for the large panchayat gram sabhas has proved difficult. In Panchayats with hetrogenous populations where tribal and other forest dwelling claimants constitute a marginalized minority, the more powerful, non-forest dependent majority has often actively obstructed the recognition of their rights.

Out of the major forest States, only the State of Orissa issued instructions that the gram sabha shall be that of the revenue village (called palli sabha in Orissa). Protests forced changes in Rajasthan, Gujarat, Maharashtra, and parts of Madhya Pradesh. Excepting these States, all major States have continued calling gram sabhas at the panchayat level. Andhra Pradesh and Chhattisgarh have continued to call panchayat level gram sabhas even in their large schedule V areas, in blatant violation of the Act and of PESA. In Rajasthan and MP, although revenue village gram sabhas were permitted in Schedule V areas after protests, panchayat gram sabhas continue to be called in their non-scheduled areas. UP is also calling panchayat gram sabhas, while West Bengal has used the much larger area of the Gram Sansad to replace the revenue village gram sabha.

Only two States have attempted to implement the requirement of hamlet level gram sabhas in tribal areas. Kerala has permitted tribal ward sabhas and ‘Oorukoottams’, meetings of a neighbourhood of fifty or more tribals, to function as gram sabhas for the purposes of the Act. Gujarat has directed that hamlet level gram sabhas should be considered in scheduled areas where demanded by the community concerned, though it is unclear how many such gram sabhas have in fact taken place.

The use of panchayat level gram sabhas has deprived claimants of minority tribal hamlets to claim their rights due to opposition by the more powerful non-tribal majority. This has been a major problem in the non-scheduled areas of Rajasthan and in states like UP with strong caste and class based cleavages. In AP, due to the use of panchayat level gram sabhas and the fact that some panchayats (even in scheduled areas as well) are spread over several square kms, many remote tribal hamlets have been unable to file their claims. Consequently the 2/3rd quorum stipulated for gram sabha meetings has been simply ignored.

In the absence of any clarification from MoTA with regard to procedures to be adopted when there is

no 2/3rd quorum, the mandatory resolutions of Gram Sabhas – the fundamental verification and decision making authorities of the Act – has been given a go by almost every where in the country. The net effect of the incorrect and illegal identification of the 'village' has been that the role of the gram sabha – which is the primary authority under the Act – has been totally undermined, marginalized or nullified, leaving the process almost entirely under the control of the bureaucracy. This constitutes the most fundamental and widespread violation of the implementation process mandated by the Act.

4.2 Bypassing of Gram Sabhas and Effective Empowerment of Officials, Forest Department and JFM Committees

In addition, regardless of the level at which the Gram Sabhas have been constituted, they have frequently been completely by passed except for obtaining signatures of the Panchayat President and/or a few Forest Rights Committee members. This has been a major violation of the letter and spirit of the law, as the process of recognition was meant to be an empowering, participatory democratic process. It was not meant to be controlled by forest and revenue officials.

Indeed, some State governments empowered government officials and other bodies to effectively replace the gram sabha. Thus, the government of West Bengal sought to bypass the gram sabha's power to elect the Forest Rights Committee by ordering that the Committee would instead be appointed by the Gram Unnayan Samiti (a body of the panchayat). The government of Chhattisgarh issued orders effectively transferring the powers of the Gram Sabha to lower level forest and revenue officials and asking the claimants to submit their claims to the Panchayat Secretary instead of the Forest Rights Committee. Not only have such orders not been objected to by the Ministry of Tribal Affairs, but instead it has rated Chhattisgarh as the 'best performing state' simply on grounds of having 'completed' the task of disposing of all received claims prior to the Ministry's own arbitrary December 31, 2009 deadline.

Despite the clear rules that adequate information has to be provided to the Gram Sabha by the SDLC and DLC, in the majority of states no such information has been furnished. The SDLC invariably did not supply relevant records, maps and other documents pertaining to the village to the Gram Sabhas. Orissa's Tribal Welfare Department appears to have been the only exception; it at least issued orders to this effect.

4.2.1 Constitution and Functioning of Forest Rights Committees

Under the Rules, the gram sabha is required to elect a Forest Rights Committee to assist it in the task of receiving and verifying claims. FRCs were to be elected at the very first meeting of the gram sabhas (see the issue of the constitution of gram sabhas above) from among their members. As per the Rules, the Committees were to have 10 to 15 members, with at least a third being women and a third Scheduled Tribes (STs), if the village has ST population.

In practice, the majority of the villagers have been given little information about the Act and Rules or the function of the Forest Rights Committees. The same was the case with the majority of government functionaries assigned the responsibility for getting FRCs elected. Where elections took place at all, inappropriate members were often elected without ensuring the required representation of STs and women. In the majority of cases, FRC members were appointed by government functionaries such as the concerned Village Administrative Officer, the Panchayat President, the forest officials, the local forest guard, forester or ranger, officials of the tribal department, or even – in some reported cases – by teachers instead of being elected. In many cases the numbers were lower than the stipulated 10 and did not have the requisite one third women or STs.

In parts of Tamil Nadu and West Bengal, despite the rules requiring that all members must be villagers, government officials were appointed members of FRCs. The Government of West Bengal issued an illegal circular stating that the Forest Rights Committee would be appointed by a sub-committee of the panchayat and would include the forest guard and a revenue official. Till today, excepting for areas where grassroots movements are active, FRC members do not know what their responsibilities are and, in many cases, they do not even know that they have been made FRC members. In Jharkhand, FRCs are yet to be elected in many villages.

The FRCs have not been provided any registers, stamps and other material required for their work nor have they been provided much information about the Act and Rules. In many cases, the FRCs were denied their role in undertaking field verification of claims. Where they did conduct enquiries, the Forest Department frequently failed to attend despite being intimated, and then sought to use this fact to block claims later (though the Rules only require that Forest Rights Committees intimate the Forest Department prior to verification). In Rajasthan, the record of claimants and their claims is being prepared by the forest department instead of the FRC and the gram sabha. In MP, Chhattisgarh and other states, neither the claimants nor the FRCs know where to submit the verified claims, as there is no separate office for the SDLC. They have deposited their claims with the Panchayat Secretary or some other official but do not know what has happened to their claims. Many claims have been lost, damaged or destroyed while the claimants anxiously await hearing whether they have been accepted.

Similarly, in Chhattisgarh, no information was given to Forest Rights Committee members about their duties, and "official forms" were only distributed to potential claimants on the basis of the number of people on the Forest Department pre-existing lists for each village (e.g. if a village had two people on the list, only two forms would be given); non-official forms were not accepted. No claim forms were distributed for community forest rights. Where people submitted claims for community rights on their own, these were not accepted. In some areas FRCs were made to sign statements that nobody in the village wanted to claim any community rights. Rajasthan also refused to accept non-official forms until protests forced a change in policy.

4.2.2 Creating division within villages with the help of JFM committees.

In states like Rajasthan, Andhra Pradesh, Chhattisgarh, Jharkhand and Orissa, in many villages the forest department has converted its JFM committees into FRCs under the Act in order to manipulate the rights recognition process. In Matewa panchayat in Chhattisgarh, where the VSS (Van Suraksha Samiti – the JFM Committee) had also been made the FRC, the gram sabha was made to reject all the claims of the villagers. In other cases, VSSs are being used to divide the villagers by discouraging them from filing claims.

JFM has also been used to undermine the Act's provisions on the right and power of forest dwelling communities to protect and manage their forests for sustainable use. With huge funds available to the forest department primarily under Japanese International Cooperation Agency (JICA) funded forest projects, the Orissa forest department has been telling the villagers that if they claim rights over community forest resources (CFRs), they will lose the Rs 15 to 20 lakh available per village for JFM, as no funding is available for protection and management of CFRs. This money is also being used to buy village leaders and induce formation of JFM Committees, thus creating tension and divisions in thevillages. New JFMCs are being formed despite the Forest Rights Act providing for the Gram Sabha to elect its own committees for undertaking the functions of forest, wildlife and biodiversity protection under section 5 of the Act.

Indeed, the joint director of tribal development in Gujarat insists that CFRs must be managed under JFM, which is in total violation of the law. The Andhra Pradesh government took the illegal decision that no individual rights would be recognised in forest areas allocated to VSSs (Van Samrakshan Samitis constituted for Joint Forest Management); it has further granted community forest rights to the VSSs themselves in fully tribal villages, although the VSS is a forest department constituted body that has no right to claim rights under the Act. The titles for these rights further impose the illegal condition of compliance with the State government's JFM / CFM resolutions, thereby blantatly abusing the Act to give legal sanctity to administrative orders governing JFM which lack statutory status on their own. Further, as evident from the note sent by Andhra Pradesh's tribal welfare department to the seminar, the state government has ensured the forest department's continued control over tribal community forest resources by providing the department a budget of Rs.167.36 crores 'for development of Vana Samrakshana Samithi (VSS) of tribals'. The majority of claims filed by the tribals themselves for their CFRs have been rejected.

4.3 Illegal Forest Department Interference in Rights Recognition

The most consistent and serious problem in implementation is continuing interference by the Forest Department in recognition of rights. This interference takes the following many forms, all of which are violative of the provisions of the Act :

4.3.1 Demands that claimants produce fine receipts or primary offence reports (PORs) from prior to 1980 (or from prior to the Act's cutoff date of 2005): Most claimants do not possess "fine receipts" or primary offence reports (for encroachment), which are being frequently demanded as proof of occupation in all the major forest States. These were requirements under the Ministry for Environment and Forests' September 1990 administrative guidelines and have no relevance under the Act. Rule 13 of the Forest Rights Rules provides a comprehensive list of different types of evidence which may be submitted, of which any two, including oral evidence of a village elder, are sufficient. The illegal demand for primary offence reports and fine receipts has resulted in mass rejections in almost all forest states. All approved claims in Rajasthan and Gujarat to date are based on such pre-1980 receipts at the forest department's insistence. As of March 31, 2010, out of a total of 3,85,294 individual claims filed in Madhya Pradesh (64% from STs and 34% from OTFDs), only 1,11,501 had been approved, the remaining 71% being rejected (93% of the claims of OTFDs and 47% of STs). At the state level, about 90% of the approved claims have been approved on the basis of offense reports or PORs, ignoring all other forms of evidence. The vast majority of rejections have taken place at the DLC level without assigning any reason. For instance, in Satna District of MP, the claims of several villages were rejected en bloc in 2009 because they were not accompanied by PORs. The SDM, the chairman of the SDLC, expressed his helplessness in the matter saying that the forest department was refusing to approve any claims which did not have fine receipts or PORs attached.

*4.3.2 Demands that claimants should be on Forest Department "encroacher lists"**:*** Similarly, many State Forest Departments have lists of "eligible encroachers" that were prepared at earlier times, often based on earlier cutoff dates (such as 1980 or 1994). These lists were highly contentious due to their arbitrariness and having left out large numbers of forest land occupants. Claims were rejected in Chhattisgarh and Madhya Pradesh on the basis of such lists; in 2008, steps were taken in Gujarat, Chhattisgarh and Rajasthan to only recognise rights of those on pre-1980 lists, with others being told their claims would be considered later. In Rajasthan, these circulars were withdrawn only after vehement protests. In Maharashtra, only claims already recognised under an earlier 2002 order are being cleared 'for the time being'.

4.3.3 Undue appropriation of authority and control over rights recognition by the Forest Department: In recognition of the Forest Department being an "interested party" in the non-recognition of forest rights, the Act made MoTA and state Tribal Welfare Departments the Nodal agencies for its implementation. However, the Forest Departments have taken advantage of the weakness and under-staffing of Tribal Departments in order to interfere with implementation in insidious ways.

4.3.4 Forest officials occupying key implementation posts in state Tribal Welfare Departments: In some of the major forest states, many of the key positions in the Tribal Welfare Department are held by forest officials. This is the case in Maharashtra, where key positions, including that of the Tribal Research and Training Institute, Pune with primary responsibility for implementation of the Act; the Joint Secretary in charge of implementation of the Act and many Project Officers in the ITDP Projects are being occupied by forest officials . The Joint Director, Tribal Development, responsible for implementation of the Act in Gujarat is similarly a forest official. He insists that empowered Gram Sabhas under the Act are incapable of managing their community forest resources and that the forest department controlled Joint Forest Management (JFM) will be continued. In Orissa, where the Tribal Welfare Department was playing a proactive role in proper implementation, during the last few months, two forest officials have been posted as Special Secretary and Director in the Department and have started objecting to many of the Principal Sectretary's initiatives for implementation in compliance of the Act and Rules. In Tamil Nadu, the Director of Tribal Welfare, who is the Member-Secretary of the State Level Monitoring Committee is a forest officer. Even in the central Ministry of Tribal Affairs, the officer responsible for implementation of the Act and providing clarifications to queries from the states is a forest official at the Director level. The interpretations of the provisions of the Act and the Rules by these forest officials are more attuned to protecting the Forest Department's interest and control than to empowering tribal and other forest dwellers through recognition of their forest rights.

4.3.5 Sabotaging the Act with irregular interference and illegal conditions: In Maharashtra, the Forest department created a 'Forest Cell' consisting only of Forest officers to purportedly assist in the implementation of the Act. However, the line between assistance and interference is a very fine one. The Forest department has passed many orders that are inconsistent with the provisions of the Act. One of the most glaring of them is the order issued by the PCCF Nagpur Division on 18.7.2008[4] which instructed DFOs to take action against the Sub Divisional Level Committee if it passes any order that is at variance with the opinion given by the Forest Department regarding the approval of claims. Although this order has since been withdrawn, the SDLCs and DLCs are not being able to work with the authority that has been vested in them due to objections of the Forest Department members, who exercise a "veto" on Committee decisions . Instead of treating and recording their opinion as a dissenting opinion but taking decisions in accordance with the provisions of the law, the opinion of the Forest department, an interested party, is being accepted as the basis for rejecting the resolutions of the Gram Sabha, which is the Authority under the Act for determination of rights.

The Maharashtra Forest Department's pressure on both the Revenue and the Tribal Welfare Departments has resulted in very slow progress in implementation of the Act. The Forest Department has been continuously raising objections regarding the area of the land over which rights are to be recognized and have reluctantly agreed to approve rights only for cases that have already been declared "eligible for regularisation" in earlier inquiries conducted in 1978, 1995 and 2002, where the cut-off date was 1978, or where documentary evidence in the form of fine receipts exist. They have constantly opposed the granting of rights keeping in mind the new cut-off date of 13.12.2005, and where no

[4] Kaksh-12/jamin/3/Tri. Act/P.K4(08-09) 345/08-09.

documentary evidence exists. In such cases they have refused to sign on case papers and refused to provide and attach relevant documents, thereby forcing the Revenue Department to abide by their decision. Instead of the DLC collectively over-ruling the Forest Department's objections if other evidence acceptable under the Act has been provided and approved by the gram sabha and SDLC, the Revenue Department has succumbed to accepting that rights will be recognized only in cases where the Forest Department's assent has been given. Thus in many areas, only rights that have already been recognized are being **re-recognised.** Very few new rights are being recognized and recorded in Maharashtra. Even the two community forest resource rights that have been recognised, in the case of the villages Mendha – Lekha – relate to only areas that were already recorded as nistari forests of the villages. In these villages as well, the forest department has refused to grant transit permits to the gram sabha to transport the bamboo it wants to harvest for sale. In another community forest right, a condition has been imposed that no obstruction shall be placed in implementation of the forest department's management plans for the area. This defeats the very objective of the Act.

The situation is fairly similar in Gujarat, Madhya Pradesh and Chhattisgarh. The Gujarat government has not only accepted giving undue importance to the controversial fine receipts of the Forest Department, but the SDLCs have been sending all claim files received by them to the Forest department for clearance, in total violation of the law. The same situation prevails with the DLCs rejecting claims at the Forest Department's behest even if they comply with all requirements and production of evidence admissible under the Rules. The very purpose of SDLCs having members of three departments and 3 PRI representatives to collectively examine the claims is defeated if only the Forest Department's illegal objections are taken as final. In fact, the letters of rejection sent to claimants in Gujarat state that the negative opinion of the Forest Department or lack of evidence acceptable to the Forest Department as the reason for rejection (Eg.in Chandravan village, Valia and Badla village, Chhotaudepur taluka). The Forest Department is behaving as if the Forest Conservation Act, 1980, over rides the FRA when the law says the opposite. The latest intervention is that of approving only those claims verified with the help of satellite imagery, setting aside all other types of evidence permissible under the Act and overlooking the limitations of such imagery for verifying small plots of land and the fact, that due to the widespread practice of cultivating tree covered lands in the area, such cultivated lands will not appear as non-forested patches in satellite imagery. As per the status of the FRA in Gujarat shown in MoTA's update on implementation till May 31, 2010, of the 1,20,800 claims disposed of in the state, as many as 1,03,385 have been rejected, mostly at the SDLC and DLC levels, with neither the claimants nor the concerned gram sabhas being informed about the same.

4.3.6 Continuing evictions in violation of the law: Despite section 4(5) of the Act clearly barring any evictions from forest land till the process of enquiring into rights has been completed, evictions have continued in Rajasthan, MP, Chhattisgarh, Orissa and elsewhere. This often takes the form of forcible undertaking of plantations on cultivated or otherwise occupied land, frequently with the help of JFM committees. More brutal evictions involving demolition of homes and other property continue being reported from the tribal areas of Madhya Pradesh.

*4.3.7 Continued application of contrary forestry legislation and efforts to subvert the law with new legislation:*The FRA provides for recognition of forest rights 'not withstanding any other law for the time being in force'. Section 13 of the Act reiterates that 'save as otherwise provided in this Act and PESA, the provisions of this Act shall be in addition to and not in derogation of any other law for the time being in force'. Despite this, the Uttar Pradesh Forest Department has been booking villagers for offenses under the Indian Forest Act and even denying them bail. The Madhya Pradesh Forest Department has gone a step further by making an amendment to the Madhya Pradesh Forest Act which

makes activities such as grazing and collection of any forest produce from any reserved forest an offense punishable with a fine of Rs 15,000, or one year's imprisonment or both, thereby effectively nullifying the recognition of minor forest produce and other forest rights under the FRA. Ironically, the President of India gave assent to the amendment in April while simultaneously awarding the MP government for its laudatory implementation of the law.

4.4 Sub-Divisional Level Committees Arbitrarily Rejecting Claims and Interfering in Process

Despite the Act and the Rules requiring only one representative each of the Revenue, Tribal Welfare and Forest Departments being members of Sub-divisional Level Committees (SDLC), in some states, the SDLCs have two to three forest officials as members, thereby dominating the proceedings. This has occurred, for instance, in Tamil Nadu. Sometimes, the three mandatory representatives of PRI institutions have also been left out of the committees.

Although a key responsibility of the SDLC is to assist gram sabhas and FRCs with information and supportive documents, in the majority of states this was never done. A second major task assigned to the SDLC is to examine the claimsand to collate the same. However, rather than remand claims back to the gram sabha when the claims are not in order (for instance, evidence is missing or a map is not provided), SDLCs almost always either pass them on to the DLC (which then maps the claim on its own – see below) or rejects them outright. Rejections are rarely communicated to the claimants, who are then unable to exercise their right to appeal.

4.5 Illegal Actions by District Level Committee in Deciding Rights

As in the case of the SDLC's, in some states the DLCs also have more than one forest official as members, thereby dominating the proceedings.

Under the Act, the District Level Committees have the power to "consider and finally approve" recognition of rights. In practice this has become the centre of much of the illegality that is occurring, including the Forest Department interference mentioned earlier. Some of the serious abuses are noted below.

4.5.1 No communication of decisions or reasons thereof to claimants

The decisions on rights are rarely communicated to claimants , and if they are communicated, this is done long after the DLC has reached its decision – which then cannot be challenged in appeal. The reasons for rejection are practically never communicated. This has led to agitation in several major States, including Madhya Pradesh and Uttar Pradesh; the UP government announced it would be reviewing rejections and the MP government has given an oral commitment to people's organisations that it will do so. The Rajasthan government has also initiated a review process. The central Tribal Ministry has however greatly exacerbated this problem by a "clarification" given to the Madhya Pradesh government on March 4th, 2010. The clarification states that "Claims rejected by the DLCs [District Level Committees] cannot be reviewed but if the State feels that the rejections <u>at earlier levels</u> have been unduly large, then it can investigate the reasons and if it is due to an inadequate reading of the provisions of the Act and Rules it can apply correctives. But, to repeat, cases finalized by DLCs cannot be reopened." (emphasis in original)

Thus, the Ministry has effectively endorsed decisions that have mostly been reached in gross violation of the law. This position, which is contrary to the provisions of law, will pose a major obstacle unless the Ministry revises its position.

4.5.2 Unilaterally reducing the size of the title granted for individual lands

In all States where titles have been distributed so far – Andhra Pradesh, Chhattisgarh, Madhya

Pradesh, Rajasthan, UP, Orissa, Gujarat and elsewhere – claimants have found that the final title is granted for much less area than they are actually in occupation of. For instance, where 2 acres is under occupation, title has often been granted for 0.2 acres or even less. Further, although the Act provides for recognizing rights to land under occupation, in most states, field officials have insisted on surveying only land under *cultivation*. This has resulted in the exclusion of land left fallow or used for supplementary activities such as storing firewood and fodder or housing livestock. It appears that this is being done at the level of the District Level Committee, where the Forest Department insists that only the maps and 'verification' prepared by it should be accepted. Moreover, in several States – such as Tamil Nadu, Kerala, West Bengal and Tripura – the survey of the land and the demarcation of its boundaries is being done at the time of decision making by the District Level Committee, not by the gram sabha / Forest Rights Committees (which are the statutory authorities mandated to do so). This practice, which has no basis in law, lends itself to massive manipulation and denial of rights.

4.5.3 Abuse of GPS technology

Hand held GPS instruments were procured by many states to convert the rough maps attached by claimants into accurate ones. The GPS readings are almost invariably being taken by Forest Department staff, often on their own. With villagers not understanding how the technology works, the forest staff have either substantially reduced the area claimed by the manner of taking the readings or have taken readings only of the area currently under cultivation instead of the area under occupation for diverse needs, including lands left fallow. In Maharashtra, local movements objected to this and demanded that villagers be given the instruments and be trained to use them. Despite this, the forest department has been abusing the technology to reduce the area claimed. The same complaint has been received from MP, UP and Rajasthan. The use of this technology in this manner is inappropriate for this purpose.

4.5.4 Reliance on Satellite Imagery

The Gujarat government has decided to verify claims with the help of satellite imagery, whose accuracy for establishing or denying a claim is highly questionable. Such imagery can only be used with thorough ground truthing with respect to each plot, which is absent. Moreover, such imagery cannot in fact verify the existence of any right under the Act, as even individual land rights may include land under occupation but planted with trees, land lying fallow, or lands where crops are being grown under tree cover. Claims on such lands would be and are being denied on the basis of satellite imagery.

4.6 Haste, Failure to Distribute Forms, Lack of Information and Failure to Comply with the Process

The three step procedure provided for in the Act is being grossly violated in most major States: In some areas, such as southern West Bengal, Chhattisgarh and parts of Madhya Pradesh, claims have reportedly been "verified" without gram sabhas being called at all. Instead, the process was "implemented" on the basis of Forest Department lists.

4.7 Eligibility of claimants

The provisions of the Act were intended to cover all forest dwelling Scheduled Tribes and all other traditional forest dwellers. In practice the law is being implemented in such a manner as to exclude a significant number of Scheduled Tribes and practically all other traditional forest dwellers.

4.7.1 Exclusion of STs

Regarding Scheduled Tribes, key obstacles that have arisen are as follows:

- Availability of ST certificates. Some states have reported that where STs do not have / cannot

obtain ST certificates, other methods of verifications have been adopted such as any family member or relative having ST certificates, certification by the elders/Gram Sabha, etc. In other states, however, such methods have not been recognised and many STs continue to struggle to get certificates.

- Imposition of extraneous eligibility criteria. This includes excluding those who are holding revenue land or whose families include people in government jobs (such exclusions have been reported in Gujarat and Rajasthan). This is sought to be justified on the basis of an incorrect reading of the requirement in the Act that a forest dwelling Scheduled Tribe must be "dependent for bona fide livelihood needs" on forest land. Read in the context of the Act's objectives and together with the Rules, however, it is clear that this is a mis-reading of the Act. The phrase "bona fide livelihood needs" refers not to the individual claiming the rights but to the kind of rights being exercised on forest land (i.e. these should not be exclusively aimed at generating profits or commercial gains). The Act nowhere states that claimants have to be solely or primarily dependent on forest land alone for their survival.
- Non-classification as Scheduled Tribes. It must be noted that there is a substantial section of Adivasis who are not notified as STs in the concerned state, but who may be notified as such elsewhere, are also claimants under the Act. Such communities are also being denied their rights due to being treated as Other Traditional Forest Dwellers and subjected to the restrictions and harassment described below.

4.7.2 Exclusion of Other Traditional Forest Dwellers

Other traditional forest dwellers have been almost entirely excluded from the implementation of the Act. This is being done through a number of mechanisms:

- Non-implementation of the Act outside of Scheduled Areas and tribal areas. Thus, in Himachal Pradesh, the Act was initially implemented only in the two "tribal districts", while in UP the same attempt was made (though in UP implementation was later extended to the entire State). In Tamil Nadu, claims are only being accepted from STs living in tribal forest settlements.
- Widespread publicity and propaganda to the effect that this is an Act for STs and tribals.
- Imposition of the absurd requirement that OTFDs must provide individual documentary evidence of 75 years of residence and/or cultivation of forest land. This is the criteria that has been applied in all States but it is incorrect on multiple grounds:

1. The criterion of 75 years' residence as specified in section 2(o) of the Act does not require that the individual claimant must have been cultivating the same plot of land for 75 years. It only requires that the "member or community" must have been residing in forest lands or forest areas for at least 75 years.
2. The section further only requires present day "dependence for bona fide livelihood needs."
3. The section does not require that every individual must prove this – only that the "community" must do so. In the case of taungya villages, for instance, or other settlements which are clearly composed of forest dwellers, there is no requirement for every individual claimant to prove this.
4. Rule 13, which specifies the forms of evidence that can be cited in support of a claim, nowhere differentiates between OTFDs and STs. Clearly therefore all types of evidence specified therein must also be considered admissible when proving OTFD status – including oral evidence and affidavits.

4.8 Exclusion of Protected Areas, Areas Slated for Diversion and Municipal Areas

Rights are being denied in certain types of forest areas. These include:

4.8.1 Exclusion of Protected Areas

Barring one or two States, across the country, all rights in protected areas (national parks and wildlife sanctuaries) are being systematically denied. This is particularly so in areas hastily notified as Critical Tiger Habitats (CTHs), which has been done in all cases without following the process laid down under Sec.38V(4) of the 2006 amendment to the Wildlife Protection Act 1972 (which itself requires the completion of recognition of rights under the Forest Rights Act). Furthermore, all such notifications were issued in a period of ten days after a letter from the National Tiger Conservation Authority in November 2007, just prior to the bringing into force of the Forest Rights Act. This was clearly aimed at pre-empting the implementation of the law in these areas, and indeed was reported at the time as having this aim.

Indeed, in most tiger reserves, villagers living within such wrongly notified CTHs are being pressurized to relocate with offers of Rs 10 lakh per family, as sanctioned by MoEF, without any recognition of rights. The relocation is also being done in violation of the statutory requirements of obtaining informed consent from the affected communities, and of ensuring improved and secure livelihoods at the relocation site. This is therefore in direct violation of both the FRA and the amended WLPA. Such relocations have either already taken place or are being attempted from tiger reserves in Maharashtra, Tamil Nadu, Orissa, Chhattisgarh, Rajasthan, Arunachal Pradesh, Andhra Pradesh, and West Bengal, to name a few.

The denial of rights in and near protected areas has also had a particularly deleterious effect on the "denotified tribes" living in and near them (not all DNTs are STs, but most would be eligible either as STs or as OTFDs). Branded as "hunting tribes", they face the brutality of forest officers and wildlife officials (often encouraged by conservationist groups) on the basis of casteist stereotypes of them as hunters and poachers. Their rights under the FRA have reportedly not been recognised in most areas, and they continue to be persecuted both by forest officials and by the police.

4.8.2 Exclusion of areas slated for diversion for development projects

In many states, claims are not being accepted for forest areas slated for diversion for projects like dams, industries and mining. This is a major violation of the Act, whose preamble specifically states that displacement for development projects has been a central cause of the "historic injustice" done to forest dwellers. In Andhra Pradesh, the names of 10,168 claimants were deleted from the list of 'beneficiaries' in areas planned to be leased for mining. Similarly, the rights of many tribal villages slated to be submerged for the Polavaram dam are not being recognised, and the Environment Ministry has now granted final forest clearance for the said dam in total disregard for the Act. The same is being reported from other states as well.

4.8.3 Exclusion of municipal areas

Some forest areas fall within the boundaries of municipalities, townships and municipal corporations. It is unclear how the Act should be implemented in such areas given the lack of gram sabhas and panchayat bodies. It is, however, clear that a conjoint reading of sections 2(d) and 4(1) indicates that forest rights are vested in such areas and must be recorded there as well. Procedural clarifications are therefore the responsibility of the Ministry of Tribal Affairs, which has been conferred a sweeping power to issue binding orders under section 12 of the Act for this reason.

However, instead of adopting this approach, on March 4th, 2010, the Ministry responded to a clarification request from the government of Maharashtra by stating that, "in view of this [namely the absence of a gram sabha and panchayat bodies], the Act cannot be implemented in the concerned

Municipal Areas of the State." This position, which is not in the spirit of the Act, will cause harm if it is generalised to all municipal areas in the country.

4.10 Ignoring Other Crucial Rights, Particularly Community Rights

Forest dwellers' livelihoods are integrated with the forest. Some of the other key rights recognised by the Forest Rights Act in this connection are:

- Ownership and the right to collect, use, and dispose of minor forest produce, which is estimated to contribute more than 50% of tribals' cash income in many areas. Collectors of such produce are subjected to Forest Department harassment, price manipulation by traders during disposal of produce, and levying of government royalties. The system of monopoly procurement that exists in several of the major States has also turned into an arrangement that extracts money from and depresses prices for collectors. Collectors have also been forced to sell the produce on the black market, often at lower prices, as the monopoly purchase agencies have not always had the capacity to purchase all produce. Recognition of MFP rights was part of the first UPA government's Common Minimum Programme and is also contained in the Panchayats (Extension to Scheduled Areas) Act, 1996, but has been ignored. Removal of royalties, as implicitly required under the Act, can benefit forest dwellers substantially.
- Access to and use of grazing areas and water bodies, critical for livestock and for fishing. Given that large areas of customary pasture lands of transhumant pastoral communities have been notified as forests, and where seasonal grazing by such communities is now labeled a threat to 'forests' by Forest Department, this right is of particular significance for such communities. Some of them move across large landscapes cutting across state, district and sub-division boundaries due to which the single gram sabha based process is unsuitable for entertaining and disposing of their claims. Various drafting exercises during the framing of the Rules had suggested procedures for addressing this situation. Yet, due to the Ministry not having laid down an appropriate procedure for recognizing their rights, none of these communities have had their rights recognised to date.
- Right to protect, conserve and manage their community forests for sustainable use. Forest dwellers often find that forests they depend on are denuded of resources by illegal encroachment, organised land grabbing (both of forests and of lands being cultivated by forest dwellers) by land mafias, Forest Department felling or diversion for industrial projects. Until this law was passed, forest dwellers had no power to protect their own forests.

However, not a single one of these other rights is being recognised on a significant scale anywhere, and most are not being recognised at all. Minor forest produce rights have been recognised in only a handful of villages across the country, but the titles for these rights do not include the right to ownership; some further restrict the right to collection to "self consumption only", in violation of the law. In Tamil Nadu, minor forest produce rights were illegally restricted to "self-use" and sale was barred. In the vast majority of cases, claims for MFP rights have been rejected or ignored (such as in many villages in Dungarpur, Banswara and other districts of Rajasthan). Community forest resource rights are known to have only been recognised in three villages (two in Gadchiroli District) in Maharashtra in the entire country. While in two of the three villages, the nistari forest rights (which were already recorded prior to the Act) have been re-recognised, in the third village the CFR right has effectively been nullified by the condition that forest department management plans for the area shall not be violated. As mentioned earlier, Andhra Pradesh claims to have issued 1978 'Community Certificates of Title', which are claimed to be CFR rights, but which actually transfer the gram sabhas' CFR rights to VSSs constituted by the Forest Department with the condition that they will have to function in accordance with the state's JFM/CFM resolutions. This represents a perversion of the

provisions of the Act and needs to be annulled.

Although several thousand villages have filed claims for CFRs, these are not being processed while many of the rights stated to be 'community rights' in MoTA's update are actually applications for diversion of forest land for community facilities. Neither MoTA nor the state governments have bothered to distinguish between claims for community forest rights and claims for diversion of forest land for community facilities, for which MoTA itself has issued a different procedure. The key reasons for this are the lack of clear procedure laid down for recognising these rights in the Rules, and the lack of interest in the administration (leading to a lack of public awareness as well) in implementing them.

Indeed, where these rights have not been recognised, the Forest Department has even stopped adivasis from exrcising rights that they had been allowed to enjoy till then. In October 2009, the Andhra Pradesh High Court issued orders directing recognition of community rights[5] after the Forest Department harassed Chenchu tribals (a Primitive Tribal Group), saying that as their community rights under the Act had not been recognised, they could no longer even enter the forest. Thus the Act is ironically being used to actually deny rights.

A Case Study in Violations: Chhattisgarh

The State of Chhattisgarh, lauded for 'efficient' implementation and '100% completion of recognition of rights under the Act', is a prime example of gross violations of FRA – which continue to the present day. The State's initial guidelines for implementing the Act effectively transferred the powers of the Gram Sabhas to the Panchayat Secretary and lower level revenue and forest field officials. The Panchayat secretary was made the secretary of every FRC despite the rules providing that a villager is to be elected secretary. Claimants were asked to deposit their claims in the Panchayat office instead of to the FRC. Verification of claims was to start straight after their receipt by the panchayat secretary (instead of by the FRC) after intimating revenue and forest field officials. After such illegal verification of claims, survey teams for forest land were constituted by the DFO and for revenue land by the Collector, effectively making it a process controlled and managed by officials instead of the gram sabha, as provided for in the law. Gram sabha resolutions based on FRC recommendations were to be passed after giving an opportunity to officers/staff of concerned departments to be heard before forwarding them to the SDLCs. Field reports suggest that lower level field officials accepted or rejected claims as per their whims and the rejected claimants were never provided the reasons for their rejection, thereby depriving them of their legal right to appeal. Chhattisgarh government used MoTA's deadline for completing the process by 31st December 2009 to stop receiving any claims much before that date and now claims that implementation of the Act has been 'completed' despite lakhs of potential claimants not getting an opportunity to file their claims and thousands not knowing what happened to their claims. State government officials have admitted that they did not recognize any community forest rights. A large number of legitimate claims were wrongly rejected by lower level field officials, and grassroots movements have listed scores of villages from which no claims have been filed at all. Out of the 4,86,101 claims received in the state, only 2,14,633 (44%) claims were accepted and given titles, whereas the rest 2,71,468 (56%) were rejected. This is in a State 41% of whose area is recorded as forest land and which has a high ST population. Therefore, the number of forest dependent families must be several times higher than the 4,86,000 claims received, and the 2,14,633 claims approved are a fraction of even the pre-1980 'encroachers' list maintained by the forest department. Similarly, the rejection rate for Madhya Pradesh (92% ostensible "completion") is 62% (93% for OTFDs and 40% for STs). Actual rights have thus been recognized for

5 Judgment dated 14.10.2009 in *Dasari China Kondaiah vs. Union of India and Ors.* (WP 21919/2009).

only a small percentage of the eligible population.

5.0 Continuation of Policies That Violate FRA – particularly by Environment Ministry

In addition to the direct violation of the Act itself, this Act has implications for a number of other Central government policies and actions. These have been ignored by the concerned departments, particularly the Environment Ministry. Examples include:

- *Afforestation and plantation policies continuing despite being in violation of the Act*: One of the standard methods by which the Forest Departments have taken over common and individual tribal lands has been by planting trees on them in the name of afforestation. In October 2008, the Parliamentary Standing Committee on Environment and Forests had sharply criticised the Environment Ministry for this and had rejected the Compensatory Afforestation Fund Bill for this reason (along with the fact that the Bill vested practically all control over the funds in the Central government, ignoring the role and rights of the State governments). Yet till date no changes have been made in any afforestation program to require recognition of rights or consultation with local tribals. Meanwhile, the Compensatory Afforestation Management and Planning Authority is proceeding, with a partial release of funds from the Supreme Court in July 2009, but the guidelines of the MoEF do not refer to forest rights at all. Externally aided forestry projects are also continuing, through Joint Forest Management Committees, while ignoring the rights and provisions of the Act. The result has been conflict over plantation activities in Gujarat, Orissa, Andhra Pradesh and other States. In the meantime, the Environment Ministry is strongly supporting the "Reduced Emissions from Degradation and Deforestation" international agreement, but its official documents fail to even note the Forest Rights Act and the implications of this agreement for these rights and the impact that such commoditisation of the forest will have on the principle of democratic control over forests. The latest is MoEF's draft of the Green India Mission, which aims to afforest 10 million hectares over the next 10 years with a budget of Rs 44,000 crores. Although this document does mention the FRA, it aims to retain control over functioning of gram sabhas by portraying JFM committees as community bodies. Such enormous land and financial targets will only lead to further land grabbing and conflict, effectively compromising the access of forest dwellers to forest resources.

- *Illegal relocation from tiger reserves:* Forest dwellers in protected areas, particularly tiger reserves, live with draconian restrictions and are among the poorest and most harassed. The threat of relocation is used to deny them rights and facilities. Hence, the amended Wild Life (Protection) Act (section 38V(5)) and the Forest Rights Act (section 4(2)) contain safeguards requiring scientific proof, public consultation and village consent before relocation. None of these provisions has been complied with. Instead, in a clear attempt to pre-empt the implementation of the Forest Rights Act in these areas, critical tiger habitats were hastily notified in the space of a few weeks in December 2007 (just prior to the notification of the Forest Rights Act into force). No proof was supplied or consultation held; instead, all existing reserves were simply converted into critical tiger habitats, and in some cases additional areas were also included. Now, funds are being released (and pressure put) for relocation from all tiger reserves on the basis of these "critical tiger habitats." The result is that relocation in violation of the legal safeguards mentioned above has occurred in all major tiger reserves,

including Panna, Ranthambore, Sariska, Achanakmar (Chhattisgarh), Tadoba-Andheri (Maharashtra), Simlipal (Orissa) etc.

- *Mining and other policies continue to assume that forest land is government land, free for diversion:* Despite the issuing of a circular by the Ministry of Environment and Forests in July 2009 – one and a half years after the passage of the Act – that specifically requires recognition of rights contained in the FRA and respect for them during the diversion of forest land, there has been no clear signal from the Central government that this requirement will be complied with. "In principle" clearances given for projects that are clearly in violation of the Act are not being withdrawn, and State government statements that "no claims have been filed" or that there are no forest dwellers in these areas are being accepted at face value without demanding supportive gram sabha resolutions. This is having a "chilling effect" on the implementation of the Act, as an impression is being created that lip service to implementation in these areas is sufficient.

6.0 Continuing Lack of Action from the Ministry of Tribal Affairs

There has been a complete lack of action by the Central government in responding to these issues, particularly by the nodal agency, the Ministry of Tribal Affairs.

6.1 Dysfunctional State Level Monitoring Committees

Most of the states that have commenced implementation of FRA have constituted State Level Monitoring Committees (SLMC) as per the Rules. In some states, such as Gujarat (in the early stages), Madhya Pradesh and Orissa, the SLMCs or the Tribal Departments had adopted a proactive role in terms of clarifying various provisions and issuing orders to the district level authorities, holding regular reviews of the process including video conferencing, interaction with movements, NGOs and others interested etc. In most other states, the SLMC has largely remained ineffective in terms of monitoring and facilitating the process of implementation. Often they are reduced to collecting statistics for the Ministry of Tribal Affairs or simply forwarding letters from the Ministry. Their role in ensuring that the various authorities are properly constituted and are functioning as per procedures has largely been absent. They have also not initiated steps to look into complaints of forest dwellers and proceed against officials who have violated the Act (a responsibility of the Committees under section 8 of the Act). Not a single proceeding under either section 7 (which makes violation of the Act a criminal offence) or section 8 (under which the SLMC is given time to proceed against officials guilty of violations) has been reported till date.

6.2 Ministry Focusing on Statistics Gathering; No Action on Substantial Issues

The monthly statistical updates on implementation of the Ministry of Tribal Affairs do not reflect the actual ground situation of implementation. The Ministry's monthly updates on progress only track the number of claims filed, the numbers of claims recommended by the gram sabha to the SDLC, the number of claims approved by the SDLC and sent to the DLC, the number of claims approved or rejected by the DLC and the number of titles issued.

Initially even this information was only about claims for titles to individual land. Only after protests against the non-recognition of community forest rights under the Act, now some states are providing breakdown of the individual and community claims. Even in this, as mentioned earlier, no effort has been made to distinguish between claims for community forest rights under section 3.1 and applications for diversion of forest land for government run community facilities such as schools etc.

under section 3.2 of the Act. In some states, rights to minor forest produce are being approved under community rights.

The entire focus has been on 'completing' the recognition of rights in a time bound manner without monitoring

(a) whether all the eligible claimants have had an opportunity to file their claims,
(b) whether all the thirteen rights listed in the Act are being claimed and to what extent,
(c) whether the procedure prescribed for determining and recognition of these rights are followed in letter and spirit, and
(d) whether the concerned authorities - the Gram Sabhas, Forest Rights Committees, Sub-Divisional Committee, District Level Committees and the State Level Monitoring Committees - are carrying out their prescribed role.

In short, the FRA is seen as mainly a land distribution scheme which provides individual rights to occupation and is being monitored from that perspective.

The pressure exerted by MoTA on the states to complete the disposal of received claims by December 31, 2009 led to many states refusing to accept fresh claims on the grounds that the deadline for the same was over. This has been the case in Chhattisgarh, Madhya Pradesh, Gujarat and Andhra Pradesh. This target driven monitoring of progress has resulted in many distortions on the ground – while field officials in some places have even collectedbribes from distraught claimants for accepting their claims after the arbitrarily imposed completion deadline, lakhs of potential claimants in the above states have been deprived of their right to submit their claims as they could not do so within the stipulated deadline. This has been occurring despite the fact that the Act does not specify any deadline for completion; the Rules give the gram sabha the power to call for claims and to extend the deadline for receiving them. The State governments in fact have no power to fix time limits.

There is little monitoring of the extent to which potential claimants are aware of the law and the diverse rights which can be claimed under it, what kind of claims are being filed (for which rights) and how the area for which rights are recognised compares with the area actually claimed. The virtual absence of recognition of crucial non-land community rights – such as over minor forest produce – and the very high incidence of titles being given over reduced areas than those claimed are therefore not reflected in the Ministry's monitoring.

Most fundamentally, the Ministry's reports on "problems" do not reflect widespread complaints, despite repeated agitations, press discussions and even official reports on these matters. In short, the Ministry has not shown the required initiative or urgency to proactively contribute to the implementation of the FRA consistent with its objectives.

Recommendations Relating to the Forest Rights Act

These recommendations propose a set of actions that can be taken at the Central level to remedy the failures that have taken place in implementation.

It should first be noted in this context that:

- The Ministry enjoys sweeping powers under section 12 of the Act to issue binding directions to any authority. These directions should therefore be issued under section 12.
- All directions should be issued to the Chief Secretary of the State concerned for action. The Chief Secretary should ensure that the State Level Monitoring Committee (SLMC) reports, every six months, on the implementation of the law, including the directions given by the Ministry (such as those suggested here). The SLMCs have largely been inactive and it is necessary to ensure that they play their role as the bridge between the Central nodal agency and the State implementing authorities. The SLMCs should therefore also be directed to meet once a month to review the implementation of these directives and of the Act. The Chief Secretary in his capacity as chair of the SLMC should be directed to take responsibility for these meetings and for the reports to the Ministry.
- The Ministry should cease simply monitoring the number of titles issued and instead start monitoring the rights claiming process in a step-wise fashion, and in particular reporting the following steps, which in turn the State Level Monitoring Committees should be asked to report on:
    - Awareness generation about the content of the Act and Rules among the public, PRI & other elected representatives and field staff & officials
    - Number of gram sabhas at the appropriate village level with the required quorum held and Forest Rights Committees elected
    - Training of FRC members about their functions and procedures to be followed
    - Number of claims received under various sections of the Act and status of these claims
    - In the case of land rights, area of land claimed and area actually recognised
    - Number of claims approved, rejected or remanded back by Sub Divisional and District Level Committees, with a breakdown of categories of reasons and whether rejected

claimants were informed about the same

- Number of rights recognised by each type of right

National Level Structures

There is a need for a dedicated national structure to assist the central nodal agency in the effective implementation of the Act. Therefore, it is proposed that a National Forest Rights Monitoring Council can be created, by appropriate insertions in the Rules, with the following mandates:

1. To identify policies, laws and actions of Central government agencies and departments that are not in consonance with the spirit and letter of the Forest Rights Act, and to recommend changes therein so as to harmonise them with the law. This would in particular apply to land, forest and other policies that affect and overlap with community rights and powers under the Act, as these rights and powers have been ignored so far.
2. To review reports and information available with the Ministry, and other sources, with a view to ensuring that the processes laid out in the Act for determination of rights, relocation of settlements and community forest management are being complied with. It should recommend, where necessary, the issuing of directions by the Ministry under section 12 to correct violations of the process.
3. To assist the Ministry in exercising its powers of monitoring and issuing of directions under the Act.

Such a Council should be comprised of members who have been active in organising and supporting struggles for forest rights, as well as representatives of the concerned Ministries. Non-official members should be appointed on the basis of their experience and track record in assisting communities to have their forest rights recognised, and should be drawn from across the major States.

Information, Training and Awareness Raising

There has been a woeful lack of information and awareness of the key provisions of the Act. The following steps should be taken to meet this deficiency:

- The Ministry should constitute an expert committee, including outside experts and organisations working in the field, to centrally prepare (in English and in Hindi) publicity materials, particularly posters, pamphlets and training booklets. These should outline all the various rights and their nature, the process for recognising rights and the fact that violations of the Act are a punishable criminal offence. These should be made available in the public domain, including on the Ministry's website. The state authorities should also be directed to translate these materials into local languages of the concerned areas and to ensure their distribution to all hamlets, villages and panchayats. The Tribal Welfare Departments in each State should be entrusted with these tasks.

- The State Level Monitoring Committees should be directed to ensure that all members of District and Sub Divisional Level Committees receive training in the key provisions of the Act within two months. These Committees, in turn, should be directed (through the SLMC) to 1) hold systematic and intense training programmes on the law and its rules in terms of rights, procedures to be followed by the authorities, procedure for dealing with violations of the provisions of the law, powers and rights of the gram sabha, etc., for concerned field staff & officials, members of Forest Rights Committees and for panchayat representatives; and 2) organise village meetings explaining the provisions of the law, within the next six months. The State-wide calendar for these training proframmes (on the basis of the plans of the District Level Committees) should be made public. The Committee in turn should report on the progress in terms of coverage and completion of such training programmes to the Ministry. The Secretary of Tribal Welfare should be held responsible at the State level (and the District Collectors in each District) for this task.

- Funds for training should be earmarked by the Ministry of Tribal Affairs and provided to States at their request.

- Holding of such training programmes should be mandatory in every district and sub-division that has any forest land or forest areas (as per the dictionary definition or as per revenue records, in addition to areas notified or recorded as forest land).

- Chief Secretaries of State governments should ask District Collectors to provide the State Level

Monitoring Committees, on the basis of the Census and other available data, a list of settlements within forests, on the fringes of forests, those with forest as a land use within them, those where implementation has begun and where the population or a significant part of it is forest dwelling. The Collectors should be specifically asked to include lists of all unrecorded or unsurveyed settlements and hamlets on forest land. The directive should make it clear that this task should not be delegated to the Forest Department, but diverse sources of information should be tapped. The list may then be made public in each district with the directive that residents of additional settlements not included in it, if any, should intimate their details. Publicity meetings as well as the process of implementation should then be initiated in all these villages/settlements. A separate list should also be prepared of nomadic and pastoralist communities who need to be contacted and included in the rights claiming process.

- All District and Sub Divisional Level Committees should be directed by the Ministry of Tribal Affairs to ensure that all relevant records and documents as mandated by the law and its rules are handed over to the concerned Gram Sabha when the training is conducted and their contents and use explained.

Identifying Problems, Correcting Mistakes Already Made and Enforcing Accountability of Officials

The second problem of major urgency relates to the failures that have already occurred in the process of implementation. These require immediate correction. The following steps can be taken in this regard:

- The Ministry should first issue a direction mandating that all deadlines fixed by State governments for implementation of the FRA are not in conformity with law and stand cancelled. The Ministry should also state that new claims can be accepted and decisions related to earlier claims can be reopened and appealed against by the aggrieved parties and groups.
- The Ministry's March 4th letter to the MP government stating that DLC decisions cannot be reopened should be withdrawn. It should clarify that such reopening is permissible and this message should be conveyed to all State governments.
- The SLMC should be asked to direct each District Collector to make village-wise lists in respect of his / her district of the present names of claimants, how much area / type of right

claimed, and whether these were rejected or accepted. If accepted, the list should state how much area the title was given for and the area claimed; if rejected, the reasons for doing so should be given. This information should be put up in each village in public locations. Public announcements should be made stating that these lists are being put up, so that all affected persons and the concerned gram sabhas can verify whether there has been a violation of law in the disposal of claims. Gram sabhas may be asked to pass resolutions conveying their opinion on the lists. Additionally, if an affected person feels tha his / her claim has been wrongly rejected or modified, or they wish to submit a claim for other rights to be recognised, they can submit their claim before the secretary of the Forest Rights Committee. The FRC should then give its opinion on each complaint / claim and place these before a properly called gram sabha with the required quorum for a decision. Where decisions taken are in violation of the law, the gram sabha can pass a resolution saying that the decision should be reconsidered after observing due process. These decisions of the gram sabhas should in turn be conveyed to the higher level committees, which should process them by ensuring that the due process is followed.

- In future, the Sub Divisional Level Committees should be directed to hold public hearings at the taluka headquarters and in weekly market locations with advance public information about the dates, timing and venue.
- Any member of the public or claimants may make observations or complaints regarding the implementation of the Act to the members of the Sub Divisional or District Level Committees, who should ensure that appropriate action is taken on them. Oral complaints may be recorded and passed on to the appellate body for disposal.
- All proceedings and submissions received at the public hearings, along with a summary of the main complaints and action taken should be sent to the District Level Committee.
- The DLC should in turn forward the same to the State Level Monitoring Committee with a summary of actions taken, and the SLMC shall be required to include these reports in its reports to the Ministry of Tribal Affairs.
- Where legal and process violations are encountered, the SLMC should proceed against the concerned officials.

Where rights have already been recognised to the satisfaction of claimants, these may be left

undisturbed, but other cases may be reopened.

Correcting Illegalities and Interference in the Process

In order to remedy legal and process violations, the Ministry of Tribal Affairs should immediately issue clarificatory directions along the following lines. Where the process has been vitiated from the start, this would require that rights already recognised to the claimants' satisfaction be left undisturbed, but remaining cases should be reopened and decided after observing the required process.

- Gram sabhas for forest villages and unrecorded/unsurveyed settlements should be held separately. In all other areas, the Sub Divisional Officer should ask officers of the panchayat raj or tribal departments to identify and organise the hamlet level gram sabhas in each area. In addition, the Sub-Divisional Officer should intimate, through a public notice, that all residents of such hamlets who wish to constitute the hamlet as a gram sabha can arrange for the hamlet to pass a resolution stating that they would function as gram sabhas under the Act. A reasonable time period of at least three months should be provided for this purpose. This should be particularly undertaken in areas where the village size would make the mandatory 2/3 quorum unviable. In view of the conflict of interest, forest officials should not be involved in information dissemination or organising of gram sabhas.

- Holding of hamlet level gram sabhas should be mandatory in Scheduled Areas as required under PESA.

- The Forest Department-related documents –particularly fine receipts, encroacher lists, survey reports, primary offence reports etc. -cannot be the only basis for deciding claims. In particular, such documents or their non-availability cannot be the basis of rejection of any claim. Copies of such documents should, however, be made public to enable claimants to use these forest department records as supportive evidence where appropriate. .

- Claims accompanied by two un-rebutted evidences of the types specified in Rule 13, including oral evidence, and approved by the gram sabha shall not be rejected on any other extraneous grounds such as previous lists, surveys, fine receipts etc.

- Records of Rights prepared by the Sub Divisional Level Committees should be made public and available for perusal in every panchayat office, other public/community buildings in hamlets/revenue villages, and should be intimated to the claimants immediately to enable the latter to file an appeal in case he/she is aggrieved by it. The sixty day period for appeals should be counted with effect from the date such communication is received by the claimant.

- Once a claim has been passed by the gram sabha, the Sub Divisional Level Committee and District Level Committee should not interfere in this decision or modify it except on an appeal, in which case the claimant must be heard. Where the SDLC / DLC is dissatisfied with the evidence,produced by the gram sabha in favour its decision it should remand the claim to the gram sabha for reconsideration. After such reconsideration, if a state agency is still unhappy with the decision of the gram sabha, it can appeal against the same to the SDLC / DLC, which shall hear them and the claimant (with the member representing that agency in the concerned committee being excluded from the decision). No rejections or modifications of claims that were passed by the gram sabha should occur without an appeal having been filed against them. The current practice of Forest Department officials imposing their views through their representatives on the Committees and influencing their decision – is non-transparent and is in violation of the law. It prevents claimants from being heard and must be discontinued.

- Surveys and mapping should be done by the Forest Rights Committee and not by any other body. FRC members should be trained in the operation of GPS instruments where these are to be used.

- Revenue and forest officials should be present at the time of verification by the Forest Rights Committees. They may record their observations for consideration but cannot modify or reject a claim during verification, or modify it later if they were not present at the time of verification.

Recognising Unrecognised Rights and Ensuring The Eligible Claimants are Heard

Finally, steps should be taken to ensure that all rights are recognised in all areas and that all potential claimants are given an opportunity to file claims and are heard. For this purpose, the following steps

may be taken:

(e) Directions should be issued stating that oral evidence is admissible for proving 75 years residence for 'other traditional forest dwellers' and that the onus is on the authorities to show that a claimant is ineligible, if the said claimant has been approved by the Forest Rights Committee / gram sabha. It should also be clarified that evidence is required only to prove three generations of residence in the area and not of occupation of the claimed land. In the case of those forcibly displaced during this period, the 3 generations of residence should be taken into account from the period of the original place of dwelling, if necessary.

(f) Directions should also be issued stating that claims may be received from any village or area, and that all persons who are dependent on forests or forest lands for their livelihood should have their rights recognised.

(g) District Collectors should be asked to ensure that all hamlets and settlements on forest land – whose existence can be ascertained from Census records or any other record available – are reached and claims from them are received.

(h) The Ministry of Tribal Affairs' letter excluding municipal areas from the implementation of the Act should be withdrawn.

(i) Clarifications are required in the Rules relating to claiming rights over community forest resources, minor forest produce, conversion of forest villages and habitations into revenue villages, habitat rights of PTGs, seasonal rights of nomadic and pastoral communities, rights of those illegally displaced by state development interventions and other community rights.

(j) The gram sabha has statutory powers, under section 5 of the Act, of management of all forests within its customary boundaries, including community forest resources, which cannot be interfered with without its consent. This power should be respected by the Forest Department. With a view to operationalsing this power, State Government should be directed to ensure that gram sabhas elect representative committees of right holders for forest, wildlife and biodiversity protection in all such forest areas. These Committees should spell out how management

operations in respect of such forest should be carred out. The Forest Department should be directed to rework its operations after taking into account the views spelt out and/or plans drawn-up by gramsabhas. The Van Panchayat Rules of 1931 in Uttarakhand (not the current Rules, which have been diluted) should be considered as a model in this regard.

(k) Illegal grant of CFR rights to JFM Committees and binding them to comply with the state JFM/CFM resolutions, such as was done in Andhra Pradesh, should be immediately annulled and replaced with genuine recognition of the rights of the concerned village as per the statutory procedure.

(l) Directions should clearly state that land under occupation, not merely land under cultivation, is eligible for title under the Act. Further, it should be clarified that the upper limit of 4 hectares only applies to rights claimed under section 3(1)(a) and not to any other land rights, such as pre-existing pattas or customary rights, including communal land rights, claimed under the Act.

(m) In areas where recorded nistari forests exist which were handed over to Forest Departments as protected or reserve forests, copies of their records should to given to the FRCs by SDLCs/DLCs and – even where no claim for CFR has been filed by the concerned village – their status as CFRs should automatically be accepted without requiring additional evidence. Similarly, in states likeJharkhand, copies of Khatian part II recording community rights should be made available to the concerned villages and their community forest rights accepted based on those as evidence, in the absence of other claims / evidence. Recognised rights to timber, as in the case of Himachal Pradesh, of Van Panchayats in Uttarakhand and other state laws, which have been unilaterally revoked should be re-instituted.

(n) Directions should be issued stating that minor forest produce may be collected, processed and sold without restrictions in accordance with gram sabha decisions for ensuring sustainable extraction. Further, the directions should state that MFP may be transported with transit permits issued by the gram sabhas. In states where transit permits issued by the forest department continue being required, the forest departments should be bound to issue transit permits for the transport of MFPs where such transport is authorized by the gram sabha. Government royalties are now not permitted by law and should be stopped, and each state government should be

required to undertake a comprehensive review of existing rules, regulations and state laws to remove provisions that contravene the Forest Rights Act. Monopoly purchase by MFP corporations and similar institutions must be stopped. Rather, these organizations should be reoriented to offer minimum support prices to MFP collectors, while also facilitating collectors' access to markets at remunerative prices and technology for processing and value addition. While their function of purchasing MFP would continue, these agencies would no longer have a monopoly over such purchase and collectors would be free to sell elsewhere.

(o) In the case of disputed claims to land arising out of faulty or incomplete forest settlements and claims for customary/traditional rights, individuals and communities should have the right to claim such areas even if the land is no longer under their occupation as they were pushed off their lands illegally. This applies equally to those claiming rights due to being illegally displaced as a result of state development interventions. Further, physical occupation of land at a fixed point of time cannot be a required condition in the recognition of habitat rights of PTGs over the entire area of their shifting operation or rights of seasonal use and access over larger landscapes in the case of nomadic and pastoral communities.

(p) All hamlets in or near forest areas ordinarily have community forest resources. Directions should be issued stating that the Sub Divisional Level Committee would be responsible for ensuring claims in respect of such CFRs are filed and processed.

(q) A clear procedure by which nomadic and pastoral communities can claim seasonal rights over larger landscapes needs to be specified as the individual gram sabha based procedure is inappropriate for them. They may be permitted to file their claims collectively directly to the concerned SDLCs or DLCs, which in turn would be responsible for them being passed by the concerned gram sabhas falling in their claim areas.

(r) The claim form for community rights must be changed to include section 3(1)(i), which is missing at present. It should also include the right to conversion of a forest village/habitation into a revenue village (as this claim can only be made by the village as a whole).

(s) Rights to habitat for shifting cultivation communities and primitive tribal groups must be

recognised. Where no claims for such rights are received, the District Level Committee – through the District Collector – should be made responsible for ensuring that such communities are made aware of the law and their claims filed before the respective gram sabhas, with the consent of the community's traditional institutions. In the case of shifting cultivators, the entire area of the cultivation cycle should be recognised as the community's habitat. Clear directives should be issued that where such communities have customary community tenures over land, these must be recognised as community rights and not converted into individual rights over small patches of land.

(t) A clear instruction must be sent to the State Governments regarding conversion of forest villages, taungya settlements, fixed demand holdings, and all other types of unrecorded settlements to revenue villages, specifying that such conversion must happen before the grant of individual land rights to villagers (irrespective of whether their residents are STs or OTFD). A procedure for such conversion must also be laid down specifying that such conversion will include the actual land-use of the village in its entirety, including lands required for current or future community uses like schools, health facilities, public spaces and roads etc. The Ministry's recent letter to the UP Government re Taungya Villages should be withdrawn. No taungya villager can be expected to show documentary evidence for 75 years of continued occupation for his/her present homestead/cultivable land because the sites of taungya villages were shifted by the Forest Department itself every few years. The very existence of the village should be taken as sufficient proof of the fact that its inhabitants are other traditional forest dwellers.

Ending Illegalities and Problematic Policies by Other Ministries / Departments

The Central Government and the Ministry of Environment and Forests in particular should change all such policies and measures that are in direct or implicit violation of the Forest Rights Act. The steps required include:

1. An immediate end to illegal diversion of forest land without the consent of gram sabhas and completion of rights recognition.
2. A halt to Joint Forest Management and its replacement with genuine respect for community rights and powers (see above).

3. Channeling NREGS funds for forestry through Forest Development Agencies and JFMCs should be disallowed. Such funds should be channeled through the normal NREGA mechanism and subject to the control of the community over forest management.
4. Withdrawal of support to REDD, carbon forestry, carbon trading on forest lands and other schemes that commoditise forests and forest resources. Even where such schemes do not affect areas recognised as community forests or people's lands, they are environmentally unsound, encourage land grabbing and drive a process of commodification of forests.
5. State governments should be barred from making it mandatory for those whose land rights have been recognised to only plant tree species like rubber, jatropha or tea and coffee; rights holders must be permitted to use their land in accordance with their needs.
6. All notifications of critical tiger habitats that were issued under section 38V(4) of the Wild Life (Protection) Act should be withdrawn. The notification should be reissued after observing the process specified in that law. No relocation of settlements should be attempted except in accordance with the requirements of the Forest Rights Act and the Wild Life (Protection) Act. Directives should be issued stating that no funds allocated for relocation of settlements should be spent until the legal requirements are complete.