

No. 19020/02/2019-FRA
Government of India
Ministry of Tribal Affairs

August Kranti Bhawan, New Delhi

Dated: 20th March, 2019

26th

To

The Principal Secretaries/Secretaries
All State Governments.

(Except J&K)

Subject: - W.P. (C) No. 109/2008 & 50/2008 in Supreme Court of India.

Sir,

Your reference is invited to the order dated 13th February, 2019 issued by the Hon'ble Supreme Court which was subsequently stayed by it on 28th February, 2019 after hearing the Solicitor General and Counsels of other parties to the petition regarding eviction of claimants under the Forest Right Act, 2006 whose claims were finally rejected. Earlier, the Ministry of Tribal Affairs had filed an application on 26th February, 2019 for modification of the order dated 13th February, 2019. In this application, six letters were annexed which indicated the various directions issued by the Ministry from time to time regarding the implementation of the said Act. The list of letters is given below:

- (i) Letter No.23011/14/2008-FRA (Vol.II) dated 12th September, 2014 regarding Review of high rate of rejections of FRA claims in Left Wing Extremism (LWE) affected areas.
- (ii) D.O No.23011/12/2015-FRA dated 10th April, 2015 regarding implementation of the Act.
- (iii) Letter No.23011/18/2015-FRA 27th July, 2015 regarding Guidelines on use of Geo referencing for assessment of potential areas and re-examination of rejected claims under Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (FRA).
- (iv) D.O. No.23011/18/2015-FRA dated 12th August, 2015 regarding implementation of the Act.
- (v) D.O. No.23011/05/2008-SG-II/FRA dated 5th February, 2015 regarding information pertaining to rejection of claims to be submitted by State Governments in their affidavits to be filed before the Hon'ble Supreme Court.
- (vi) Letter No.23011/3/2016-FRA dated 29th June, 2018 regarding FRA implementation-progress review-resolving pendency and rejection etc.

2. The contents of the letters and directions of the Ministry of Tribal Affairs through these letters is reproduced below for facilitating necessary action by the State/UT Governments as per the order dated 28.02.2019 given by Hon'ble Supreme Court:

(i) The letter dated 12th September, 2014 was addressed to all LWE States. However, the directions contained therein have relevance for all the States/UTs concerned. Accordingly, the contents are as under:

“A brief study was commissioned under the Ministry of Tribal Affairs (MoTA) - UNDP Project to study the reasons of high rate of rejections in the LWE areas. The Ministry is now in receipt of the study report. Apart from the study this Ministry had also undertaken consultations on FRA implementation in the LWE affected States and the major causes identified on the issue from time to time are summarized as follows: -

- The rejection rate of Other Traditional Forest Dwellers are higher than the Forest dwelling STs. This is due to wrong interpretation of provisions that the OTFDs had to prove 75 years of possession over the claimed land where as the OTFD have to prove 75 years of residence in that area.
- Appropriate procedure for filling were not followed due to lack of awareness at the Gram Sabha level. Documentary evidences were not available with the claimants. The officials/frontline functionaries were unable to undertake wide awareness campaign and capacity buildings programmes on FRA due to security threat.
- Joint verification process has often not been appropriate due to lack of coordination between the Revenue and Forest department.
- Some other reasons such as non-possession of the land claimed, possession after 13th December 2005, claims on land recorded as revenue land and lack of evidence in the support of the claim etc. hinder processing of claims. Also, duplicate claims lead to the inflated number of claims received and the number of rejections.
- The reasons for rejection has not been communicated to the claimants and thus the claimants have not been able to appeal.
- The community rights and specially CFR claims in these areas have also been rejected and in many instances have been awarded to VSS/JFM committees which are not in accordance with the FRA procedures. In a number of instance it has been found that Forest department has objected to CFR claims and resultantly it has been rejected.

In view of the above it is requested that appropriate steps be taken to review the wrongly rejected claims. Special measure may also please be taken for proper implementation of FRA in LWE affected areas. The major actionable steps towards this end may be on the following lines: -

- The states and the District collectors are to take proactive steps to mobilise maximum number of claims from the LWE affected States and issue directives and guidelines for the frontline staff to address the local issues and challenges for better implementation of FRA on the ground.

- A kit of standardized stationery like copies of Act and Rules in local language, important circulars, forms, maps, sample verification report, land categories checklist should be made available at the Gram Sabha level. Similarly, a kit for implementing officials should also be provided.
- The capacity of ground level functionaries of the government needs to be augmented on important provisions and procedures of FRA.
- A time bound programme of capacity building of FRC and PRI members on FRA and its implementation process should be taken up.
- Regular monitoring through video conference by SLMC/Chief Secretary with district collectors and sub-division level implementation officials would yield results, as in case of Odisha and Chhattisgarh.
- States need to send data to MoTA clearly mentioning LWE district-wise status on rejection along with reasons for monitoring and review. This would help in reviewing the wrongly rejected claims.
- For Dali plots and Eksali leases in Maharashtra, the rights need to be recognised as it is part of pre-existing rights of the communities.
- Claims to JFM areas under CFR (Form C) by VSS and grant of titles to VSS are not permissible under FRA.

The process should not just end with recognition of rights. The record of rights (ROR) have to be created in the revenue code of law as well. The reasons for rejections of claim must be communicated to the claimant in writing and claimant should be given a chance of appeal. This Ministry may kindly be apprised of action taken in the matter.”

(ii) The content of letter dated 10th April, 2015 written by Ministry of Tribal Affairs are reproduced below:

“ The Scheduled Tribes and Other Traditional Forests Dwellers (Recognition of Forest Rights) Act, 2006 (in short FRA) has completed more than seven years of its operation. This Act aims at addressing the issue of historic injustice and to recognize and vest the pre-existing rights of the forest dwelling communities in India. This Ministry, which has been designated the nodal Ministry for administration of the above said Act, has been issuing directions and guideline from time to time on various aspects of implementation of FRA to ensure its proper implementation in the country. It also closely monitors the implementation of the Act. Certain issues have come to the notice of this Ministry which need of urgent attention. These are as under:

- a. Even though a substantial progress has been achieved by most of the States in recognizing and vesting of Individual Forest Rights, a lot of work is yet to be done in

- case of recognition of community Forest Resources Rights. Regular training and workshops are needed to be organized for the personnel involved in the process of implementation of the Act.
- b. A high rate of rejection of claims is another area of concern. Cause of every rejection needs to be communicated to the claimants. All the cases of rejection must be categorized on the basis of causes of rejection. There is a need to have a relook into the cases of doubtful rejection so that any rightful claim does not get denied.
 - c. State level Monitoring Committee (SLMC) meetings are not taking place regularly in many States and the Quarterly Progress Reports which are statutory requirement in the Act, are also not being furnished regularly. In the interest of proper implementation of the FRA, the SLMC meetings are required to be held regularly.
 - d. The SLMC also needs to specifically ensure that Section 4(5) of FRA is implemented in letter and spirit and no forest dweller is evicted or removed till the process of FRA implementation is complete.
 - e. It has also come to the notice of this Ministry that FRA is not being implemented in Sanctuaries and National Park and relocation is taking place without completion of FRA process. SLMC needs to ensure that Rights recognition process is completed in Sanctuaries and National Parks specifically in Tiger Reserves as FRA is applicable in all forest areas. Also, Gram Sabha decision has to be taken into consideration prior to any relocation.
 - f. It has also been observed that Ownership Rights to MFP are not recognized in these areas and MSP to MFP are not extended in protected areas. The State monopoly in MFP trade needs to be ended with the enactment of FRA.
 - g. Further, the Ministry also reiterates that the FRA process will only be completed when RoR (Records of Rights) has been created. The purpose of rights recognition is realized only when permanent record of rights are entered into record.

I shall be grateful if you take appropriate action on the above issues at the earliest to remove any impediments in implementation of FRA.”

(iii) The content of letter dated 27th July, 2015 written by Ministry of Tribal Affairs are reproduced below:

“ The Ministry of Tribal Affairs has taken up implementation of FRA on a campaign mode. As part of PRAGATI, Hon’ble Prime Minister had reviewed the implementation of FRA. Hon’ble Prime Minister has desired that Ministry of Tribal Affairs must take a lead in technological support to the States. It was also stated that States need to proactively pursue progress in vesting of rights in time bound manner. Geo referenced database of vesting of rights may be created. Further to this, Ministry of Tribal Affairs had issued a letter on 28th April, 2015 (D.O. No. 23011/18/2015-FRA) to all the States requesting them create geo-referenced data base.

Meanwhile, Ministry of Tribal Affairs have consulted technical resource agencies such as National Remote Sensing Centre, Bhaskaracharya Institute for Space Applications and Geo-Informatics (BISAG), Dept. of Science and Technology, Govt. of Gujarat,

State Governments and Tribal Research Institutes, for inputs on geo referencing of FRA.

This Ministry has received reports which suggest that large number of claims have been rejected due to lack of evidence or incomplete evidence. It may be noted that as per Rule 6(b) of Forest Right Rules, district administration in general and the SDLC in particular are expected to assist the Gram Sabhas and the FRCs by providing forest and revenue maps. In this context geo-referenced maps may be generated and be provided to Gram Sabhas and FRCs. Accordingly claims rejected on the grounds of insufficient evidences or which prima-facie requires additional examination may be re-examined.

It is being reiterated that use of any technology, such as, satellite imagery, should be used to supplement evidences tendered by a claimant for consideration of the claim and not to replace other evidences submitted by him in support of his claim as the only form of evidence. If rights have already been recognised in favour of claimant, the same may not be reopened.

Through **Geographical Information System (GIS)**, maps can be prepared for implementing agencies, regarding the eligible areas for the implementation of FRA where maps can be drawn at different administrative levels like nation, state, district, block and village. With the use of GIS, final maps can also be prepared for the village as mentioned under Rule 12 A (9) of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Rules, 2008 (as amended up to date) ('FR Rules') with spatial information of physiographic features of that village, area of the forest land in numerical value recognized under the FRA.

Based on the inputs, broad parameters for use of geo referencing data for identification of potential areas for both individual and Community Forest Resource Rights (CFR) are listed. The following guidelines may be applied for use of technology and geo referencing to expedite the process of FRA implementation:

- a. Geo referenced Satellite image of highest resolution (preferably with 1M or higher resolution) of any satellite may be used for period around December, 2005. Google earth images, especially, the historical images of around the year 2005, or any other reliable open-source images can also be used for this purpose. Images can also be procured from National Remote Sensing Agency, Hyderabad if required.
- b. The geo-referenced imageries on the Latitude/Longitude grid of the GIS program and digitized and geo-referenced village and forest boundaries can be overlaid on the same if available;
- c. Identification of cultivated areas through the Satellite imagery needs to be verified through ground-truthing using GPS/Android Phone etc.
- d. GPS surveys of all plots of lands of the wrongly rejected (including partially rejected)/pending claims, may be done with active participation of the village FRCs and Gram Sabhas.
- e. Since the GPS survey is a simple tool and can be handled after simple training and demonstration, the States should involve FRCs (or teams of local youth) in the

- survey work after providing necessary training and also providing GPS/android devices;
- f. After processing of the GPS data overlay plots of claimed lands (with unique plot numbers) on the imageries and prepare maps (with imagery) and lists with area of each plot and provide them to the FRCs and Gram Sabhas;
 - g. The FRCs and Gram Sabhas can then consider the evidence from these maps and lists, together with other evidences, while deciding these claims, including determining the area to be approved.
 - h. For identification of CFR areas, State Government of Odisha has piloted a process in the Mayurbhanj District by using GIS based technology with the help of the following information;
 - Villages having Forest Land within its revenue boundary
 - Villages having no Forest Land within its revenue boundary
 - Villages located in fringe of Reserved Forests land coming under control of State Forest Department
 - Un-surveyed habitations may also be included
 - i. Similar method may be adopted by other states based on various Government Records such as Census, 2011 Data, the State level Economic and Statistical Surveys, Forest Survey of India, etc.
 - j. The State Governments can seek support from BISAG, Dept. of Science and Technology, Government of Gujarat and National Resource Centre, Tribal Research Institute, Bhubaneswar for training of officials, FRCs and community volunteers with respect to use of technology. States can also seek support from the State Remote Sensing Centres for this process.
 - k. Since maps or geo referenced images can be procured easily and freely/or at nominal cost, the State Governments need to proactively take up this activity and complete the process of assessment and review of rejected claims in light of the use of technology within a period of two months.”

(iv) The content of letter dated 12th August, 2015 written by Ministry of Tribal Affairs are reproduced below:

“It has come to the notice of Ministry of Tribal Affairs that some State Governments have prescribed unrealistic timelines for completion of recognition and vesting of rights as per Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006.

Ministry of Tribal Affairs would like to reiterate that while it is important to be proactive and implement Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, the due process as laid down in the Act and the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Rules, 2008 (as amended up to date) need to be complied with, in letter and spirit.

With regard to the timelines as provided to the low performing States, as well as through the Video conference, these are only indicative in nature and are meant to draw attention on expeditious implementation of the Forest Rights Act in a manner to undo historic injustice and also to undertake the various steps based on monitorable parameters.

The indicative timeline should not be misinterpreted as a suggestion to bypass the due process as laid down in the Forest Rights Act and the Rules and deny any rightful claimant of the forest rights under the Act.

The completion of the process of recognition and vesting of forest rights under the Forest Rights Act requires a number of steps be completed as laid down in the Forest Rights Rules, including, but not limited to, communication of reasons for rejection to the claimant, exhaustion of appeals, creation of record of rights with clear demarcation of boundaries of the forest land in the map, and so on. Rule 12B (4) of the Forest Rights Rules also requires that the Secretary of the District Level Committee shall record the reasons where no community forest rights are recognised in a village.

It is also important to draw attention to the fact that the vesting and recognition of forest rights under the said Act requires careful and critical consideration by the Gram Sabhas.

Implementation of the Forest Rights Act in a haste may lead to perpetuation of the historical injustice against forest dwelling Scheduled Tribes and other traditional forest dwellers which the Act seeks to correct. Therefore, the State Governments are requested to undertake realistic estimates of the pending work, including estimation of potential claimants/villages and potential areas for recognition and vesting of forest rights. On this basis a detailed plan should be drawn up including all the steps required for implementation of the Forest Rights Act and implement it in a time bound manner.”

(v) The content of letter dated 5th February, 2015 written by Ministry of Tribal Affairs are reproduced below:

“I would like to draw your attention to the Order dated 29/01/2016 passed by the Hon'ble Supreme Court of India in Writ Petition (Civil) No. 50 of 2008 [Wildlife Trust of India & Others versus Union of India and Others]. The petitioners in the said case have challenged the Constitutional validity of the Forest Rights Act, 2006 and hearing of arguments is under way. (copy enclosed).

As may be seen in the said order, the Hon'ble Supreme Court has directed the State Governments, who are respondents in the case, to submit before the Court by way of Affidavits, "giving the data regarding the number of claims rejected within the territory of that State and the extent of land over which such claims were made and rejected and the consequent action taken up by the State after the rejection of the claim, with all appropriate data in support of the above mentioned information within a period of two weeks from today".

In order to place complete information before the Hon'ble Court, it may be necessary to provide details of the process that is followed in case of rejection of claims, including

communication of reasons, opportunity of appeal and cases where claims are being re-examined due to wrongful rejections. Therefore, the States may put forth the stage at which the claims are. Category wise reasons of rejection, such as duplication of claims, claims on land other than forest land, lack of evidence, etc. may also be usefully placed, as have been intimated to this Ministry from time to time. Please refer to the various communication from this Ministry vide D.O No. 23011/18/2015-FRA dated 12.08.2015 & 27.07.2015, D.O. No. 23011/12/2015-FRA dated 10.04.2015 and letter No. 23011/14/2008-FRA (Vol.II) dated 12.09.2014 wherein this Ministry has suggested guidelines regarding processing of rejected claims. A copy each of the above said letters is enclosed for perusal.

Hence, it is requested that the above information related to the rejection of claims may be submitted before the Hon'ble Supreme Court in the form of an affidavit, under intimation to this Ministry before the next date of hearing i.e. 15.02 2015.”

(vi) The content of letter dated 29th June, 2018 written by Ministry of Tribal Affairs are reproduced below:

“The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (in short FRA) has been enacted to recognize and vest Forest Rights to the Forest Dwelling Scheduled Tribes and Other Traditional Forest Dwellers whose rights could not be recognized and recorded. Ministry of Tribal Affairs being nodal Ministry for the Act closely monitors its implementation.

Ministry of Tribal Affairs has continuously been exhorting State Governments to take all necessary steps towards effective implementation of FRA, 2006. It has held Regional Review-cum-Consultation meetings with State and UT Government Officers, in which various issues concerning FRA implementation were clarified, analysis of data was shared, thrust areas identified and also further reporting requirements were listed. Following issues were highlighted for early resolution.

- i. High pendency of claims at various levels.
- ii. High rate of rejection of claims including claims for Community Rights and CFR Rights.
- iii. Non-communication of rejection of claims; and when communicated, it is without reasons as speaking order.
- iv. Early review of rejected claims including *suo motto* reviews.
- v. List of all Gram Sabhas (as per FRA definition) in which FRA is implemented (district and Sub Division wise) and constitution of FRCs in each such GS to be supplied to Mo TA and made public.
- vi. Maintaining segregated data for FDST and OTFD for all claims received, disposed, claims admitted and land granted as also the rejected claims.
- vii. Sensitization of forest department staff regarding FRA implementation and also on not raising frivolous objections.
- viii. Holding SLMC meetings regularly and making its proceedings available to MoTA.

MoTA vide its letter dated 7th June 2018 reiterated the need to have data on pending claims at each level (Gram Sabha, SDLC and DLC) and place it in public domain. Since pendency causes claims being neither approved nor forwarded to next level nor being rejected, the process of vesting of rights under FRA stagnates. Hence, it would be highly appreciated if the claims filed under FRA are processed and disposed of at a faster pace. Status of pending claims at each level with segregated data on FDST and OTFD must be provided to MoTA for monitoring purposes.

Further, non-communication of rejection and when conveying rejection not assigning reasons for rejection at each level results in preventing the claimants from exercising their right to appeal/review. In this regard, MoTA vide its letter No. 23011/24/2009-FRA dated 15.7.2010 has requested the States to provide the reasons for rejection of claims to claimants and also directed States to cite the same in Quarterly Progress Report sent by the State Governments to MoTA. Hence, while rejecting the claims, reasons must be cited by concerned authorities and communicated to the claimants as a speaking order.

It has recently come to notice of MoTA that state forest authorities move immediately to evict people whose claims under FRA are rejected without waiting for decision on review or appeal or allowing time for filing appeal/review ostensibly under the garb of the Order of March 2018 from Hon'ble Apex Court in CWP No. 50/2008 with other bunched CWPs. Such an action while depriving aggrieved persons the opportunity to prefer appeal before SDLC or DLC, as the case may be, violates the spirit of FRA 2006 besides creating grounds for unrest and agitation and also fuels extremism. In such cases, aggrieved person must be given due opportunity and time to file appeal before authority. Moreover, as discussed during Review cum Consultation meeting, States are to undertake *suo motto* review of rejected claims. Hence, it may be ensured that no eviction of FRA claimants takes place during pendency of review or appeal/review.

It has also revealed in the consultation meetings that forest staff keep raising frivolous objections causing rejection and prolong pendency. For instance, in Kerala a new ground for raising objection has been 'invented', terming the forestland claimed by FDST/OTFD as Ecologically Fragile Land (EFL), which is not tenable in terms of FRA, Rules there under and the Guidelines. Claims cannot be withheld or rejected on such invalid grounds. You may be aware that NTCA order of March 2017 has also been withdrawn and the FRA process in Tiger Reserves has been restored. CWH identification process for all NPs and WLSs has been initiated, which needs to be expedited under your close supervision.

There is a need for awareness and sensitization of forest authorities/field staff about the FRA, Rules thereunder and Guidelines and symbiotic relationship of FDST and OTFD with forests and forest ecosystems besides vulnerabilities of their lives and livelihoods. The training curriculum (new recruitment, induction, MCT and regular refresher courses) of FLS and Forest Range Officers may be revised to Include this important aspect of their working.

It is also reiterated that under FRA, 2006 the Gram Sabha as defined under Section 2(g) read with Section 2 (p) shall be the authority to initiate the process for determining the FRA Rights. Further, Rule No.3 of FRA Rules provides that Gram Sabha in its first meeting shall constitute the Forest Rights Committee (FRC) to assist the Gram Sabha in recognition and verification of claims under FRA 2006. Hence, the very first step to ensure the implementation of FRA, 2006 is the convening the meeting of Gram Sabha as defined under FRA, 2006 and the constitution of FRC. Hence, you are requested to inform Ministry of Tribal Affairs about number of such Gram Sabhas as per FRA and constitution of FRC through Monthly Progress Report. A proforma is being attached in this regard. Similarly, conversion of Forest Villages, unsurveyed villages etc. to Revenue Villages deserves to be brought in focus.

As Chairperson of the SLMC, I am sure you are regularly reviewing the progress of FRA implementation and resolving all issues. I request you to send the proceedings of such meetings on due dates to MoTA besides making positive outcomes public.

I requested you to review and send a report in ten day on the above listed issues.”

It is requested that the directions of Ministry of Tribal Affairs through the above letters may be put to use while ensuring strict compliance of the order dated 28.2.2019 given by the Hon'ble Supreme Court.

This issues with the approval of Secretary, MoTA.

Yours faithfully,

Encl: As above

Uttam Kumar

(Uttam Kumar Kar)

Under Secretary to the Government of India.

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