

NINTH REPORT
COMMITTEE ON PETITIONS
(SIXTEENTH LOK SABHA)

MINISTRY OF ENVIRONMENT, FOREST AND CLIMATE CHANGE

&

MINISTRY OF TRIBAL AFFAIRS



LOK SABHA SECRETARIAT
NEW DELHI

December, 2015/Agrahayana 1937 (Saka)

PCB. NO. 1 Vol. VI

Price: Rs.....

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Published under Rule 382 of the Rules of Procedure and Conduct of Business in Lok Sabha (Fifteenth Edition) and printed by the Manager, Government of India press, Minto Road, New Delhi

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**COMPOSITION OF THE COMMITTEE ON PETITIONS
(2015-2016)**

Shri Bhagat Singh Koshyari - *Chairperson*

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3. Shri Om Birla
4. Shri Jitendra Chaudhury
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- | | | |
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| 4. Shri Ramesh Chand | - | Committee Officer |

(iii)

NINTH REPORT OF THE COMMITTEE ON PETITIONS

(SIXTEENTH LOK SABHA)

INTRODUCTION

I, the Chairperson, Committee on Petitions, having been authorised by the Committee to present the Report on their behalf, present this Ninth Report (Sixteenth Lok Sabha) of the Committee to the House on the representation received from Shri M. Sai Sampath, regarding implementation of the Scheduled Tribes and other Traditional Dwellers (Recognition of Forest Rights) Act, 2006 in the Country and other important issues related therewith.

2. The Committee considered and adopted the draft Ninth Report at their sitting held on 09 December, 2015.

3. The observations / recommendations of the Committee on the above matters have been included in the Report.

NEW DELHI;**BHAGAT SINGH KOSHYARI****Chairperson,
Committee on Petitions****09 December, 2015**
18 Agrahayana, 1937 (Saka)

REPORT

REPORT ON THE REPRESENTATION FROM SHRI M. SAI SAMPATH REGARDING IMPLEMENTATION OF THE SCHEDULED TRIBES AND OTHER TRADITIONAL DWELLERS (RECOGNITION OF FOREST RIGHTS) ACT, 2006 IN THE COUNTRY AND THE OTHER IMPORTANT ISSUES RELATED THEREWITH.

Shri M. Sai Sampath submitted a representation to the Committee on Petitions regarding encroachment of forest land in the country under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 and other important issues like the process of identification, verification and recognition of forest rights, etc. (see Annexure-I).

2. The Petitioner, in his representation, *inter alia* stated that the Government of India enacted the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 [FRA] to confer forest rights on tribals and other traditional forest dwellers who were deprived of their customary rights over land as also the forest produce. However, after its enactment, the FRA left an opening for illegitimate encroachers to proffer claims for land rights under the Act. The Government, on the other hand, is not equipped with information about the number of individuals/ communities who were in possession of forest land before the cut-off date of 13 December, 2005.

3. The Petitioner further stated that implementation of the FRA so far has given way to many aberrations to accommodate ineligible persons and encroachers, whose occupation and possession of forest land is afresh and even contrary to the cut-off date of 13 December, 2005. It is distressing that ill-informed Panchayats and Forest Rights Committees aggravate the situation in alienation of precious forest land; the administrative machinery has also remained manipulative, with contritely implied high correlation between deforestation and encroachments of forest land in the country. This ungovernable situation needs urgent attention as, otherwise, it may lead to forest-less States in the country.

4. Elaborating further on the issue, the Petitioner submitted before the Committee that the instances of man-animal conflicts reached peak heights, where co-existence is difficult to comprehend in not just forest fringe villages, but on many occasions, animals stray into towns and cities in search of prey/food with decimated forest territories which is a pointer to the

sordid state of affairs so far as implementation of FRA is concerned. Many researchers have corroborated such theories on declined forest territories. The ill-effects of the environmental degradation for mankind are decline in agriculture produce, threat to bio-diversity, indigenous flora and fauna, and changes in flow of rivers and streams; the phenomenon of global warming and climate change are also of serious concern in this context.

5. The Petitioner, therefore, requested the Committee to prevail upon the Government to take exigent steps to introduce a deadline cut-off date in the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 to complete the process of identification, verification and recognition of Forest Rights in the country and protect the dwindling forests, wildlife and bio-diversity in the country.

6. The Petitioner, in his subsequent representation, also drew the attention of the Committee to certain issues on the subject which are appended at Annexure-II.

7. The Committee took up the matter under Direction 95 of the Directions by the Speaker, Lok Sabha and the representation was forwarded to the Ministry of Tribal Affairs (FRA Division) for furnishing their comments on the issues raised in the representation.

8. In response, the Ministry of Tribal Affairs *vide* their communication dated 6 July, 2015 furnished the following comments:-

"The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights Act), 2006 [in short 'FRA'] is an enabling legislation with the intent to recognize, vest and record forest rights of the forest dwellers who have been residing in such forests for generations and whose rights could not be recorded, and thereby strengthen the conservation regime of the forests while ensuring livelihood and food security of the forest dwelling Scheduled Tribes and Other Traditional Forest Dwellers. The FRA, therefore, provides for a mechanism for vesting and recognition of rights where the Gram Sabha plays a central role, with multi-stakeholder Committees at the Sub-Division and District Level to review and take a final decision on the rights recognition process. The nodal agency for the implementation of the FRA is the Ministry of Tribal Affairs at the Centre, through the State Governments/ UT Administrations.

As is apparent from the Monthly Progress Reports which are placed in the public domain by this Ministry at regular intervals, different States are at different stages of implementation of the FRA. In particular, the recognition and vesting of community forest resource rights has been slow, in which regard this Ministry has issued several clarifications, guidelines and memoranda from time to time. Contrary to the assertion of Shri Sampath that the FRA requires to be brought to an end, these reports clearly demonstrate that there is still a long way to go. As such, since the quantum of work to be done for implementation of FRA has to be assessed by the Gram Sabha, it is the Gram Sabha which will be in the best position to decide its own 'cut-off' date.

It is also important to state that 'cut-off dates' are relevant in the case of Government schemes and welfare activities, and have no relevance for a substantive statute such as FRA which recognises and vests forest rights in forest dwellers. The statute already provides a reference date of 13 December, 2005 for the purpose of determining eligibility for making of claims by genuine claimants. However, this is not a 'cut-off date' since FRA is not a legislation relating to regularization of encroachments, but rather a law for recognition and vesting of pre-existing forest rights in forest dwellers, with the object purpose of correcting a historical injustice.

The three-tier mechanism for recognition, vesting and recording of forest rights provides sufficient checks and balances to ensure that any wrongful claims are weeded out. It may also be pointed out that nothing in the FRA bars the State executive from taking necessary steps under provisions of other extant laws for removal of any fresh encroachments that come to the notice of the State Forest Department.

The statement made by Shri Sampath regarding depletion of forest cover as a result of implementation of the FRA does not commensurate with the factual reports. Decline in forest cover can result from a host of factors, such as diversion of forest land for commercial and developmental activities (such as mining, construction of highways and dams), encroachments by industrial estates, illegal timber trade, natural calamities, and so on. The 2012 "India's State of Forest Report", while noting that there was a marginal decline in forest cover of 679 square kilometers in forest cover in 188 tribal Districts, also makes note of the fact that in several States where there has been an increase in forest cover, one contributory factor has been the effort of community based forest management committees. The Report does not even hint that the reason for such

decline in the forest cover is the implementation of the FRA. Indeed, the most recent "India's State of Forest Report, 2013" issued by the Government of India reveals that in 189 tribal districts in the country, there has been a net increase in forest cover of 2,396 square kilometers during the assessment period.

Finally, it is important to state that FRA is a law that vests substantive rights, and merely because Government authorities in some States are slow in implementation cannot mean that such substantive rights be nullified. Therefore, fixing a deadline for implementation of the FRA cannot be endorsed by this Ministry."

9. As regards the claims received, titles distributed, claims rejected and claims disposed of (Individual and Community), as on 30.6.2015, the Committee noted as follows:

No. of claims filed	43.24 lakh Individual - 42.13 lakh Community - 1.11 lakh
No. of titles recognised	16.64 lakh Individual - 16.25 lakh Community - 0.39 lakh
Total number of claims disposed of with respect of claims filed (%)	36.04 lakh (83.36%)
Extent of forest land for which rights have been recognised	85.55 lakh acres

10. The Committee decided to have briefing by the representatives of the Ministry of Tribal Affairs on 17 September, 2015. During the briefing held by the Committee on matters like historical perspective; enactment of the RoFR Act; objectives; eligibility of Forest Dwelling Scheduled Tribes to claim forest land; important rights and provisions under RoFR Act; process of recognition and vesting of rights; and impact of implementation of the Act, the witness explained the following broad contours on the issues before the Committee:

I. Historical perspective

- The monopoly control over forest land for commercialisation was carried out through the Indian Forest Act, 1927. Various existing traditional rights of the tribal communities such as rights over minor forest produce, grazing or cultivation was extinguished and recording of rights of the tribal people on forest land was discontinued.
- Large numbers of tribals displaced due to dams, mines and other mega projects were settled in forest land without legal process.
- Declaration of Sanctuaries and National Parks without proper settlement of rights.
- Displacement due to conservation of wild life. Due to this, again, the tribal communities suffered the most.
- As a result of all these factors, presence of millions of people on forest land was termed as 'encroachment'. This has also contributed to rise of Left Wing Extremism (LWE) activities and all the 35 LWE affected Districts lie in the Fifth Schedule Areas.

II. Enactment of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights), Act, 2006 (or 'FRA')

- Preamble of the Act states that FRA seeks to correct historical injustice done to forest dwellers during colonial period as well as in independent India by recognising their rights on ancestral lands and habitat, denied so far.
- Also includes responsibility and authority of sustainable use, conservation of bio-diversity and maintenance of ecological balance and thereby strengthening the conservation regime of the forests.
- To ensure livelihood and food security of the forest dwelling Scheduled Tribes and other traditional forest dwellers.

- To provide a framework for recording the forest rights.

III. Objectives of FRA

- FRA ensures:
 - Recognition and vesting of pre-existing rights of forest dwelling STs and Other Forest Dwelling Dwellers (OTFD) on the forest land, both individually and as a community.
 - Empowering the Gram Sabha and making it responsible for protection of wild life, forest biodiversity and community forest resources.
- FRA is different from the Private Property regime because the nature of right is heritable but not alienable or transferable.

IV. Who are eligible under FRA to claim forest land?

- Forest Dwelling Scheduled Tribes as on 13 December, 2005.
- Other Traditional Forest Dwellers (OTFD) who have been residing in the area for 3 generations (75 years and dependent on forest).
- Scheduled Tribes or tribal communities or other traditional forest dwellers who had occupied forest land before the 13th day of December, 2005 [for individual rights under Section 3(1)(a)].
- Evidence for determination of Forest Rights as per FR rules 13(1) and (2).
- Needs to be jointly registered in the name of both spouses.

V. Important Rights and Provisions under FRA

- Individual Rights

- Right to hold and live in the forest land under individual or common occupation for habitation or for self-cultivation for livelihood.
- Forest land already occupied (before 13 December, 2005) and area under actual occupation in no case to exceed an area of 4 hectares.
- Community Rights
 - Nistar rights (existed even during colonial regime but extinguished after Independence, particularly after 1980) [Nistar means the concession granted for removal from forest coupes on payment basis at stipulated rates, specified forest produce for bonafide use, but not for barter or sale]
 - Minor Forest Produce.
 - Fishing, use of water bodies, grazing.
 - Seasonal resource access of nomadic/pastoralist communities.
 - Particularly Vulnerable Tribal Groups (PVTG) habitat rights.
 - Other traditional rights.

VI. Process of recognition and vesting of rights

- Substantial progress has been made in the implementation of FRA, still there is long way to go to realise the Act in letter and spirit and cover all eligible claimants for recognition of individual and community rights.
- State Governments have drawn up road map and action plan to be completed in a time bound manner where the FRA implementation process is slow. This is being closely monitored.
- Different States are at different stages of implementation. In States like Jharkhand, Himachal Pradesh, Uttarakhand and 6 other States, the implementation process is slow. Due to High Court Order, the process of implementation in Tamil Nadu has not taken off.

- In 35 worst affected Districts of 7 LWE States also, the process of FRA is slow. In many of these areas, Gram Sabha meetings not being held. These are largely located in Fifth Schedule areas where FRA implementation is most relevant.
- A three-tier structure has been created starting with Gram Sabha upto District Level Committee headed by the Collector to ensure due process for recognition of rights in a transparent manner. Officials from Revenue and Forest Department are in the Committees at the Sub-Divisional level and District level to ensure objectivity in the process of verification and recognition of claims.
- The process of recognition of rights starts at the Gram Sabha level at the village or hamlet level. Members of Gram Sabha can easily identify genuine claimants.
- All the States have been advised to take support of geo-referenced images and technology to support other evidences for claims and also for re-examination of rejected claims.
- Identification of potential areas under FRA in each District through use of geo-referenced images and technology/ other secondary sources, etc.
- Use of satellite imageries with historical data will also enable to record the nature of use of the land prior to reference date as per the Act.

11. The Ministry of Tribal Affairs informed the Committee that as a result of the implementation of FRA, the Gram Sabha(s) are playing an important role in recognition of rights as well as management of forest and, therefore, this Act is being viewed as a major empowering process for the tribal and forest dwelling communities. This has also enabled to a large extent to reduce insecurity of tribals in the tribal areas. Recognition and vesting of rights under FRA along with support for minor produce and other developmental activities taken up in the tribal areas has helped in containing the LWE activities to a large extent in these areas. The Ministry has also stated that any intervention other than the process laid down in the Act,

such as imposing cut-off dates, etc. will hamper the process of recognition of rights and would be detrimental to the development process, especially in sensitive areas such as LWE affected Districts.

12. During evidence, the representative of the Ministry of Tribal Affairs, while elaborating the reasons for non-availability of basic amenities like schools, dispensaries, solar electricity, etc. to the people living in forest areas/ reserve forests, which is commonly known as 'Goth' and 'Khatte', submitted:

"There is explicit provision in the rules that 'Goth', 'Khatte' or 'Taungya Cultivation' has been regarded as forest-edge village in terms of Forest Rights Act. The difficulty is that they are not being provided these facilities in the States where implementation process is slow. Wherever we have noticed it, we have issued directions to the State Governments. Despite that, this problem is still in existence in States like Uttarakhand and Jharkhand. Recently, a review meeting in this regard has also been held two to three times."

13. On the issue of implementation of the FRA Act, the Committee noted in particular that under Section 4(3) read with Section 4(6) of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, the following two conditions are required to be satisfied for recognition and vesting of forest rights in the forest dwelling Scheduled Tribes and other traditional forest dwellers in respect of forest land and their habitat:

- (i) they had occupied forest land before 13.12.2005; and
- (ii) in the case of other traditional forest dwellers, the condition of at least three generations' stay (75 years) prior to 13.12.2005 is necessary.

14. The Committee specifically desired to know the reasons for not prescribing a cut-off date for completing the process of recognition and vesting of Forest Rights and instead imposing the condition relating to three generations residence (75 years) prior to 13.12.2005; in response, the representative of the Ministry submitted before the Committee:

"Sir, for this purpose, we have a reference date that is 13 December, 2005. Prior to this date, they should have possession of forest land for 75 years. We calculate 75

years backwards from this date and that comes to three generations, one generation being of 25 years."

15. Thereafter, in order to have a holistic view on the aspect of encroachment of forest land and other important issues related therewith, on 7 October, 2015, the Committee invited Shri M. Sai Sampath, the Petitioner to hear his views. During the course of his interaction with the Committee, the Petitioner made the following submissions before the Committee for their kind perusal and consideration:

"...The Forest Rights Act was promulgated to benefit the tribals who had been living in the forest land without any rights traditionally. There is a cut-off date which is called 13 December, 2005. Prior to that, the tribals were living in their lands without any rights or incorporated rights. Throughout the country, there is no cut-off date for this legislation. For example, let us take it as 15 August, 2016. If you can insert or incorporate this kind of a date in the legislation, then, no application shall be entertained thereafter. It will be very beneficial because vast numbers of tribals across India are illiterate.

They assume that it is land for landless scheme by the Government. Hence, even the forest department are helpless to contain this forest encroachment. Moreover, even the States the information which I have obtained from RTI say that they cannot contain or do anything because there is no deadline or cut-off date in the legislation provided by the Central Government..."

16. On being pointed out by the Committee that the State Governments, with the support of the Ministry of Tribal Affairs, are required to take forward the implementation of action plans of the RoFR Act, the Petitioner submitted:

"...there are many instances where State Governments have not conducted quarterly meetings which is provided in the legislation itself. Alienated forest lands which are given away to the tribals are the tribal land once. It is adjacent to the forest land now. So, there are many animals, bio-diversity, birds, bees, what they do is, they enter into the native land. Here, in the present circumstances, tribals and farmers are concentrated to gain more out of agriculture sector. They use application of chemical fertilizer, pesticides is inevitable which is affecting bio-diversity at this level..."

17. When asked about the need for a specific cut-off date for the purpose of determining eligibility for making of claims by genuine claimants instead of a reference date of 13 December, 2005, as already provided in the statute as well as its correlation with the problem of encroachment of forest land, the Petitioner submitted:

"...Forest Survey of India at Dehradun says that there is vast decline of forest land from 2011 to 2013 and encroachment is the main concern for these Forest Officers. When I made correspondence to the Telengana and Andhra Pradesh Governments, they openly said in the letters that unless there is cut-off date from the Central Government, they cannot contain forest encroachment. So, I would like to bring to the notice of the hon. Committee for the incorporation of cut-off date, a deadline cut-off date-for example, 15 August, 2016. Thereafter, no application shall be entertained under the RF Act."

18. Notwithstanding the fact that in the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights), Act, 2006, it has been provided that the Ministry of Tribal Affairs shall be the nodal agency for the implementation of the provisions of the Act, in order to gauge the extent of encroachment of forest land in quantifiable terms, the Committee decided to have briefing by the representatives of the Ministry of Environment, Forest & Climate Change. During the said evidence before the Committee, the Ministry informed that the encroachment in forest land is mainly on account of the following reasons:

- (i) Increasing population (human and cattle) resulting in heavy biotic pressure on forests.
- (ii) Shortage of forest frontline staff.
- (iii) Lack of application of modern tools and techniques in detecting and evicting encroachments.
- (iv) Under the Act, numerous claims of ownership of forest land by the communities have been considered and cleared. Section 4(5) of the Act specifically provides that no member of a forest dwelling Scheduled Tribe or Other Traditional Forest Dwellers shall be evicted or removed from the forest land under his occupation till the recognition and verification process is

complete. Therefore, in many cases, encroachment cannot be evicted till the time of completion of procedure specified under the Forest Rights Act.

19. Keeping in view the fact that the protection and of management of forests is primarily the responsibility of the State/ UT concerned and hence the action to remove encroachment is to be taken as per the provisions of various Acts such as the Indian Forest Act, 1927; the Wildlife Protection Act, 1972; and the Forest Conservation Act, 1980, the Committee wanted to know the measures taken to remove and prevent encroachment of forest land. The Ministry of Environment, Forest & Climate Change, in a written note, informed that the States/ UTs take a variety of measures to prevent encroachment such as managing check posts, creating infrastructure for frontline staff in forest areas, using modern technology for forest management that includes wireless network, remote sensing, Geographical Information System, Information Technology, Global Positioning System (GPS) and Differential GPS, improved mobility to the field staff by providing vehicles for patrolling, survey and demarcation of forest areas including digitization of recorded forest areas and construction of boundary pillars, etc. The Ministry supplements the above mentioned efforts of the State Governments by providing financial assistance to State/ UT Governments under the Intensification of Forest Management Scheme (IFMS) which is a Centrally Sponsored Scheme of the Ministry. As per the information provided by various States/ UTs, the forest area under encroachment is 16.21 lakh Ha which is approximately 0.021% of the total forest area of the country. The following details were submitted before the Committee:

S.No.	Name of States/ UTs	Area of encroachment [in Hectare]
1.	Andhra Pradesh	40561.96
2.	Bihar	356.00
3.	Chhattisgarh	118494.60
4.	Goa	Nil
5.	Gujarat	34791.00
6.	Haryana	184.63
7.	Himachal Pradesh	4600.00
8.	Jammu & Kashmir	14345.02
9.	Jharkhand	27360.21
10.	Karnataka	81776.80
11.	Kerala	41063.30
12.	Madhya Pradesh	370484.51
13.	Maharashtra	183171.80

14.	Odisha	78505.08
15.	Punjab	7404.00
16.	Rajasthan	31659.53
17.	Tamil Nadu	15142.00
18.	Telangana	183465.00
19.	Uttar Pradesh	26831.10
20.	Uttarakhand	9656.73
21.	West Bengal	12660.97
22.	Arunachal Pradesh	58626.57
23.	Assam	317215.39
24.	Manipur	1918.37
25.	Meghalaya	9378.00
26.	Mizoram	29933.12
27.	Nagaland	8721.86
28.	Sikkim	3232.87
29.	Tripura	6.77
30.	A & N Islands	4379.36
31.	Chandigarh	14.00
32.	D & N Haveli	614.40
33.	Daman & Diu	87.83
34.	Lakshadweep	Nil
35.	Delhi	629.51
36.	Puducherry	Nil
	Total	1621150.47

20. On being specifically asked by the Committee about the reasons for depletion in the forest area in the country and increase in the encroachment of forests, the representative of the Ministry of Environment, Forest & Climate Change, submitted:

"We are 2.5 per cent of the world's geographic area and we house almost one-fifth of the world's population and one-fifth of the world's cattle population is also here with us. In spite of that, our forest area is increasing. We house 8 per cent of the world's bio-diversity. So, we have a huge challenge before us. But with the efforts of all concerned, we have been able to hold on to these areas.

Second reason may be shortage of forest staff. When we have a huge pressure on forest areas, obviously, human resource that is available with us is short of our requirement. We have about 1,00,000 people in place across the country who

protect almost 70 million hectares of forest in the country. The third reason could be application of modern techniques. We definitely need modern equipment, modern techniques, modern tools for protecting and ensuring that no encroachment takes place.

What we have done so far is, the State Forest Departments have taken a variety of measures to prevent encroachment such as managing check posts, creating infrastructure for staff in forest areas, using technology as far as possible and practical for management of forests which includes wireless network, remote sensing, geographical information system, information technology tools, Global Positioning System and differential GPS, improved mobility to the field staff by providing vehicles for patrolling, survey and demarcation of forest areas, including digitisation of recorded forest areas and construction of boundary pillars.

The Ministry of Environment, Forest and Climate Change supplements the efforts of the State Governments by providing financial assistance to States and UTs under the Intensification of Forest Management Scheme which is a centrally sponsored scheme of the Ministry."

OBSERVATIONS/ RECOMMENDATIONS

21. The Committee note that the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 [FRA] aimed at recognising and vesting forest rights and occupation of forest land to the forest dwelling Scheduled Tribes and other traditional forest dwellers who have been residing in such forests for generations but whose rights could not be recorded; and to provide for a framework for recording the forest rights so vested and the nature of evidence required for such recognition and vesting in respect of forest land. The Gram Sabha was envisaged to be the authority to initiate the process for determining the nature and extent of individual or community forest rights or both that may be given to the forest dwelling Scheduled Tribes and other traditional forest dwellers within the local limits of its jurisdiction under the FRA by receiving claims, consolidating and verifying them and preparing a map delineating the area of each recommended claim. The Ministry of Tribal Affairs happens to be the nodal agency for implementation of the provisions of this Act while the Ministry of Environment, Forest & Climate Change supplements the efforts of the State Governments by providing financial assistance to the State/ UT Governments under the Intensification of Forest Management Scheme (IFMS), which is a Centrally Sponsored Scheme of the Ministry.

22. The Petitioner, in his representation under examination, has submitted that the Government of India had enacted the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 to confer tribals and other traditional forest dwellers with the forest rights who are deprived of their customary rights over land as also the forest produce. As per the submissions made before the Committee by the Petitioner, the implementation of the FRA so far has thrown up many loopholes to accommodate the ineligible persons and encroachers whose occupation and

possession of forest land is of recent origin and contrary to the cut-off date of 13 December, 2005 for recognition and vesting of forest rights. The Petitioner has stated that ill-informed Panchayats and Forest Rights Committees had aggravated the situation, resulting in alienation of precious forest land. The administrative machinery has also remained manipulative, leading to deforestation and encroachment of forest land in the country. The Petitioner had, therefore, sought the intervention of the Committee to prevail upon the Government to take exigent steps to introduce a deadline cut-off date in the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 to complete the process of identification, verification and recognition of Forest Rights and protect the dwindling forests, wildlife and bio-diversity in the country.

23. In response to the submissions made by the Petitioner, the Ministry of Tribal Affairs initially maintained that the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 is an enabling legislation made with the intent to recognize, vest and record forest rights of the forest dwellers who have been residing in such forests for generations and whose rights could not be recorded. The Act also sought to strengthen the conservation regime of the forests while ensuring livelihood and food security of the forest dwelling Scheduled Tribes and Other Traditional Forest Dwellers. On a similar note, the Ministry of Environment, Forest & Climate Change submitted that the Forest Departments of the States/ UTs have taken a variety of measures to prevent encroachments such as managing check posts, creating infrastructure for frontline staff in forest areas, use of modern technology for forest management that includes wireless network, remote sensing, Geographical Information System, Information Technology, Global Positioning System (GPS) and Differential GPS, improved mobility to the field staff by providing vehicles for patrolling, survey and

demarcation of forest areas, including digitization of recorded forest areas, construction of boundary pillars, etc.

24. The Committee's examination of the points raised by the Petitioner and the submissions made by the Ministry of Tribal Affairs as well as the Ministry of Environment, Forest & Climate Change thereon, however, revealed several disquieting aspects which are discussed in the succeeding paragraphs.

25. The Ministry of Tribal Affairs submitted that 'cut-off dates' are relevant in the case of Government schemes and welfare activities but have no relevance for a substantive Statute such as the FRA which recognises and vests forest rights with the forest dwellers. The Committee note that as per section 2(c) of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, 'forest dwelling Scheduled Tribes' means the members or community of the Scheduled Tribes who primarily reside in and who depend on the forests or forest lands for *bona fide* livelihood needs, whereas section 2(o) defines 'other traditional forest dweller' as any member or community who has for at least three generations prior to 13 December, 2005 primarily resided in and who depend on the forest or forests land for *bona fide* livelihood needs. For the purpose of this clause, 'generation' means a period comprising of twenty-five years. The Committee were informed that 13 December, 2005 is only a reference date for the purpose of determining eligibility of making claims by genuine claimants, and hence, it is not a 'cut-off date' for regularisation of encroachments. The Committee find it quite contradictory that even though the duration of 3 generations (75 years) for computing the eligibility of the forest dwelling Scheduled Tribes/ Other Traditional Forest Dwellers to claim forest land is being computed on the basis of 13 December, 2005, yet the Ministry considers and maintains it only as a 'reference date'. The Committee yet again faults the approach of the Ministry that has

chosen to proceed with their notion of 13 December, 2015 only as a reference date, without getting the matter legally and pragmatically examined even after seven years of actual implementation of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act. The Committee feel that treating 13 December, 2005 only as a 'reference date' and not as a 'cut-off date' by the Ministry appears as an aspect of interpretation only; however, the same is fraught with serious ramifications on various stake holders insofar as the implementation of the Act is concerned. The Committee, therefore, recommend that the Ministry should work out modalities to re-visit this vital issue, having sizeable social and economic implications, to consider the feasibility of recognising 13 December, 2005 as a 'cut-off date' for the Forest Dwellers to claim forest land in terms of the Act *ibid*. For this purpose, an Expert Committee may be expeditiously constituted by the Government to examine the inherent ambiguity in the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Rules and the problems faced by the States/ UTs in its implementation. The Committee would like to be informed of the concrete action taken in the matter.

26. The Committee note that a three-tier structure has been created starting with the Gram Sabha up to District level Committee to ensure the due process for the recognition of forest rights. In this process, the officials from the Revenue and Forest Departments are in the Committees at the sub-Divisional level and District level to ensure objectivity in the process of verification and, recognition of claims. The Committee find that as on 30 June, 2015, 43.24 lakh claims [Individual - 42.13 lakh and Community - 1.11 lakh] for forest rights were received by the States/ UTs out of which only, 16.64 lakh claims [Individual - 16.25 lakh and Community - 0.39 lakh] could be recognised. The Committee's examination of the claims filed by the forest dwellers along with its recognition/ distribution has revealed that the performance of the States/

UTs in ensuring implementation has not been very encouraging. For instance, during the last seven years of implementation of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Rules, 26.60 lakh claims (61.51%) are pending, and only a meager 38.49% of claims have been recognised/ distributed. The Committee are also disturbed by the fact that though there has been some progress on the recognition of Individual Rights, the recognition of Community Rights in general and Community Forest Rights (CFR) in particular has been very slow. As per the progress report, the total community rights claimed are 1.11 lakh, of which only 39,000 rights have been so far recognised. The Committee are also disturbed to notice that though the preamble to the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 seeks to correct the historical injustice done to the forest dwellers during the colonial period as well in independent India by recognising their rights, in actual practice, the progress made so far by various States/UTs has been found to be quite disappointing, thereby defeating the very purpose of enactment of the Act. The Committee, while recognising that Section 3(1)(i), along with Section 5 of the FRA, empower the Gram Sabha to protect, regenerate or manage their community forest resources, impress upon the Government to effectively liaise and prevail upon the State Governments/ UTs for making a realistic assessment of recognising and vesting of CFR at the earliest. For this purpose, geo-referencing data may be used to assess the potential CFR areas. The Committee also recommend that an independent evaluation study may be carried out, in coordination with State Governments/ UTs, to determine the reasons for the huge pendency in recognising the forest rights claims so as to make sure that the implementation process can be properly calibrated for taking urgent corrective measures for recognising and vesting individual and Community Forest Rights, without any further loss of time. The Committee hope that while undertaking the evaluation study, relevant attributes like the reasons for the rejection of claims; provision of reasonable opportunity to the affected people against

the rejection; training programmes for officials, Ward Members, Gram Sabha Members, Panchayat Secretaries, Field Officers of Forest Departments, Tribal Welfare and Land Administrative Departments, Sub-Divisional Level Committee members (SLDC), District Level Committee (DLC) members; translation of FRA, 2006 and Rules and Guidelines made thereunder in local/ tribal languages, etc. for creating widespread awareness would also be proactively addressed.

27. One of the arguments advanced by the Petitioner is the encroachment of forest land in the country under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006. The Ministry of Environment, Forest & Climate Change informed the Committee that the protection and management of forests is primarily the responsibility of the State/ UT concerned and hence the action to remove encroachment is to be taken as per the provisions of various Acts such as the Indian Forest Act, 1927; the Wildlife Protection Act, 1972; and the Forest Conservation Act, 1980. The Committee have also been informed that the State Forest Departments have taken a variety of measures to prevent encroachment such as managing check posts, creating infrastructure for staff in the forest areas, using technology as far as possible and practical for management of forests which includes wireless network, remote sensing, geographical information system, information technology tools, Global Positioning System and differential GPS, improved mobility to the field staff by providing vehicles for patrolling, survey and demarcation of forest areas, including digitisation of recorded forest areas and construction of boundary pillars. The Committee are totally dissatisfied by the efforts made by various Government agencies to contain encroachment of forest land in view of the fact that the forest area under encroachment is of mammoth dimensions, i.e., 16.21 lakh hectares. The Committee are, therefore, of the considered view that the availability of technology, machine and manpower would have a limited impact in curbing the problem of encroachment of

forest land unless a multi-level post-monitoring feedback mechanism is put in place. Simultaneously, with the rapid urbanisation in the country, the dividing line between the habitable and forest areas has almost become invisible. The Committee, therefore, strongly recommend that the Government should persuade the State Governments/ UTs to devise a professionally managed post-monitoring, incentive-driven feedback system for not only curbing the menace of encroachment of forest land but also getting released the already encroached forest land in a mission mode. The Committee also urge the Government to work out a proposal along with financial implications for the construction of boundary wall/ fence in those forest areas where the menace of encroachment has witnessed an abnormal accretion in the recent years. The Committee would like to be apprised of the action taken by the Government in the matter.

28. The Committee are disturbed to note the total apathy on the part of the Government regarding the non-availability of basic amenities like schools, dispensaries, solar power, etc. to the people living in forest areas/ reserve forests, which are commonly known as '*Goth*', '*Khatte*' or '*Taungya Cultivation*'. On this aspect, the Secretary, Ministry of Tribal Affairs, during the briefing, stated that there is explicit provision in the rules where '*Goth*', '*Khatte*' or '*Taungya Cultivation*' has been regarded as forest-edge village in terms of the Forest Rights Act; the difficulty is that they are not being provided these facilities in the States where the implementation process of the Act is very slow. According to him, despite issuing directions to the State Governments, this problem is still in existence in several States like Uttarakhand and Jharkhand. After careful examination of the aspect of extending basic facilities to the people living in the forest areas/ reserve forests, the Committee are convinced that extensive efforts are still required to be undertaken to provide basic amenities to the forest-edge villages by the States of Uttarakhand and Jharkhand. Since the Ministry of Environment, Forest and Climate Change supplements the efforts of the State Governments by providing

financial assistance to them under the Intensification of Forest Management Scheme (IFMS), the Committee recommend that some special financial package needs to be worked out for the States of Uttarakhand and Jharkhand and other such States to provide basic amenities like schools, dispensaries, solar power, etc., to the people living in the forest-edge villages. The Committee would specifically like to be apprised of the action taken by the Ministry of Environment, Forest and Climate Change in this regard.

29. During the course of their deliberations on the subject, the Committee have further noted with concern the long standing insecurity of tenurial and access rights of forest dwelling Scheduled Tribes and other traditional forest dwellers who were forced to relocate their dwellings due to State development interventions especially amongst the people living in forest areas/ reserve forests (commonly known as 'Goth', 'Khatte', etc.) for the last 30 to 50 years or even more. To address their concerns and insecurity for all times to come, it is the considered opinion of the Committee that the Ministry should seriously consider vesting them with tenurial and other incidental rights as well even if it requires any further amendment to the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 and Rules made thereunder, which the Committee feel shall be purely in consonance with spirit of the said Act. The Committee would like to be apprised of the specific steps taken to address this major issue that relates to a larger section of people spread across the States like Uttarakhand, Jharkhand, etc., in the country.

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NEW DELHI ;

BHAGAT SINGH KOSHYARI
Chairperson,
Committee on Petitions

09 December, 2015

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