

29.7.2022

To,

The Hon'ble President,
Smt. Droupadi Murmuji
The President of India,
Rashtrapati Bhavan
New Delhi

Sub: Withhold the implementation of the newly formed Forest Conservation Rules 2022-Request -Regarding

Ref: Forest Conservation Rules 2022, notified on 28th June, 2022 by the Ministry of Forest, Environment and Climate Change

Hon'ble President,

We, the undersigned, are representing NGOs, national alliances and community groups working with Adivasi Women and women from other forest dwelling communities. We are deeply concerned with the Forest Conservation Rules notified by the MoEFCC (the Ministry of Environment, Forest and Climate Change) on 29 June 2022¹ that replaces the 2003 Forest Conservation Rules and the amendments in 2004, 2014, and 2017.

The FC Rules 2022 are a major assault on the rights of Adivasis and other traditional forest dwellers and on the forests. Especially these rules bring a direct negative impact on the livelihoods, security and sustainable development of Women who are dependent on the forests and have historically evolved traditional knowledge of forest conservation and protection. They are the primary actors in nurturing forest resources but have not been consulted before drafting these rules and have no information regarding the same. That the rules have been passed in such a hasty and non-consultative manner is a serious injustice to forest dwelling women and a constitutional violation of their rights under the PESA, FRA, SC/ST (Prevention of Atrocities) Act and India's commitments under the CEDAW, UNDRIP and the UN SDG 5 on ensuring gender equality.

The FC Rules 2022 comes in a background of a series of major legal changes either proposed or implemented by the central government and the MoEF&CC for easing business- amendments proposed in the FCA in 2021, IFA in 2019, the National Forest Policy in 2018, and a host of executive orders/guidelines issued by the ministry²- that undermine and dilute the FRA and threaten the rights of Adivasis and forest dwellers. The diversion of forest land has nearly doubled from 6,000 hectares to 10,000 hectares a year since 2014 averaging 25,000 - 30,000 ha

¹<https://parivesh.nic.in/writereaddata/FCRule2022Notificationdated28062022.pdf>

²<https://forestrightsact.com/forest-conservation/an-unbroken-history-of-broken-promises-govts-violate-forest-rights-from-2002-to-the-present/>

during the period 2009-19³ while the Adivasis and forest dwellers continue to face forest rights violations and displacement.

Following are the major objections to the FC Rules 2022.

1. It violates the legal requirement of ensuring compliance with the Forest Rights Act (FRA) when forest is diverted for non-forestry purposes to user agencies and for afforestation to compensate the forest destruction due to this diversion. FRA compliance in forest diversion under FCA is provided for in the MoEFCC order of 3 Aug 2009⁴ and existing 2003 FC Rules. These were reaffirmed by the Supreme Court in its judgment in the case of Orissa Mining Corporation vs. the MoEF & others, 2013. The Ministry of Tribal Affairs had written to the MoEF&CC clarifying that ensuring FRA compliance prior to the approval of the forest diversions⁵ is mandatory. FRA compliance requires that the FRA implementation be completed in the area that is proposed to be diverted with the recognition of all forest rights and issue of titles, sharing of the details of the proposal for forest diversion with the Gram Sabha, and informed Gram Sabha consent for this diversion. These were to be completed prior to the proposal being submitted and certified as having been completed by the District Collector and the State government. The 2022 FC Rules instead does away with FRA compliance completely before the grant of the forest clearance by the MoEF&CC.

Non-compliance with FRA will hit Adivasi Women the hardest as majority of women still have not utilised the entitlements they are eligible for due to poor FRA implementation. With the dilution of the statutory provision for seeking consent of Gram Sabhas, the institutional mechanisms for women to represent their needs and rights becomes severely affected. Already the mass rejection of claims and forcible eviction of communities from forests without due processes of law and without recognition of their forest rights is putting women's tenure security and safety at risk when they are brutally manhandled while protesting evictions and while protecting their lands. The new rules will lead to serious human rights violations especially on women who are confronted by CRPF and forest battalions with increasing eviction drives already witnessed in all the states.

2. It turns a blind eye to the existing reality that large scale forest diversion takes place commonly with fraudulent certification of completion of FRA implementation and Gram Sabha consent or simply of District Collector's certificate based on these fraudulent documents or even without any of these.
3. It now requires instead the State governments or Union Territories to ensure compliance of FRA and other laws before actually handing over the land that have received final forest clearance from the MoEF&CC (Rule 9 (6) (b)). In effect the State government now have to ask the Gram Sabha consent for diversion of forest land after it is already diverted.

³<https://www.indiaspend.com/how-land-diversion-laws-threaten-forests-and-forest-dwellers/>

⁴ [http://forestsclearance.nic.in/writereaddata/public_display/schemes/981969732\\$3rdAugust2009.pdf](http://forestsclearance.nic.in/writereaddata/public_display/schemes/981969732$3rdAugust2009.pdf)

⁵https://tribal.nic.in/downloads/FRA/Development%20and%20FRA/DoFL-2%20Position%20of%20law%20against%20MoEF_CC%20circular%20dated%203rd%20Aug%202009%20dated%2007.03.2014.pdf

Therefore, implementation of the rules by the State government could lead to conflict between the Adivasis/forest dwelling communities and the State.

4. It would encourage the State governments *not* to seek certificates of FRA implementation and consent from the Gram Sabha after clearance for diversion to the user agency has already been granted by the MoEF&CC. In effect, the Environment Ministry will encourage the State governments to commit FRA violations.
5. It is totally silent about the process to be adopted for recognition of rights on forest land diverted for non-forestry purposes and for compensatory afforestation. In effect, rights even if recognised under FRA are simply snuffed out which is a violation of not just FRA, but also the SC and ST (prevention of Atrocities) Act 1989.
6. It proposes setting up of land banks by identifying community common lands and degraded forests land for allocation of these lands for compensatory afforestation for speedy clearance of the proposal for forest diversion for non-forestry purposes. So even before the forest diversion proposals are made, land for compensatory afforestation is secured and all the rights of people are simply extinguished without complying with FRA on forest lands and other relevant laws on non-forest lands, if any. The Odisha government has claimed to have created a land bank of around 26,000 acres of revenue forest land in many districts for the purpose of CA⁶. In Jharkhand Gair Manzoora lands occupied by STs and eligible for FRA and revenue titles are being deliberately blocked from entitlements for diverting the same to land banks and compensatory afforestation plantations, ignoring long standing protests of local communities. In Chamoli district of Uttarakhand, OTFD women dependent on grass from common lands were forcibly thrown out, as alleged by them, for unscientific private plantations, thereby directly destroying women's livelihood and rich common lands.⁷ In Telangana, the Haritha Haaram programme is being implemented with brute force and human rights violations in the name of regenerating degraded forest lands. Adivasi and PVTG women in Telangana are facing physical assault and criminal cases. Forest lands diverted so far are found to be affecting the catchments of rivers that not only affect the tribals but also the downstream communities. In Gujarat, 'degraded' forest lands where local communities are awaiting recognition of rights under FRA are taken as land banks for solar and other renewable and CA projects. State governments are competing for CA funds leading to such severe violations where women are the worst affected. So far plantations taken up by user agencies have not served the purpose of local community needs or biodiversity regeneration, as reported by women.

⁶https://www.business-standard.com/article/current-affairs/odisha-creates-2-600-acres-land-bank-for-compensatory-afforestation-122021000246_1.html#:~:text=Around%2026%2C500%20acres%20of%20degraded,the%20state%2C%20official%20sources%20said.

⁷ <https://khabrenpalpalki.com/in-an-emergency-meeting-held-at-the-high-court-advocate-khin-a-high-court-bar-with-a-controversy-over-the-impoerishment-of-the-arrogant-women-in-helang-chamoli-the-advocates-called-upon-the-govern/>

7. Restriction on size for land banks is removed when land is in continuity of a forest declared or notified as Protected Area, Tiger Reserve or within a designated or identified tiger or wildlife corridor (Rule 11 (2)). In many places where CAs have been implemented next to PAs, it is seen that biodiversity rich forests where co-existence with wildlife and local communities continues, has been destroyed by clear felling and raising of plantations that have no biodiversity. Taking village commons inside or outside the RF and PAs directly affects women's access to firewood, water sources and grazing, making it impossible for women to survive for their daily needs as well as to the NTFP and other food and medicinal plants they depend on. In PAs women are already under huge stress for their daily needs from the forest with most of the access cut off. The rules literally wipe out any form of sustainable eco-system dependence of women while not having any access to modern/public facilities. Field research shows that women rarely have access to public health or have the resources for private facilities. They mainly depend on forest and common lands for herbs and medicinal plants as remedies for their illnesses. They collect a wide range of wild food, firewood and household items even when not in a position to purchase from the market. The Ujjwala scheme which is exemplified as alternate energy for women, has not provided relief to majority of Adivasi Women as they cannot afford the LPG refills and face several challenges in accessing cooking gas. However degraded it may appear to lay persons, forest lands and commons are used widely by women in local communities. Diverting forests for CAs and other user agencies and land banks will completely destroy their only sources of basic health and food security while destroying all forms of income and pre-existing livelihoods.
8. The Rules introduce Accredited Compensatory Afforestation (Rule 11 (3)) with 0.4 or more canopy density, a new scheme where private lands with tree plantation would be treated as readymade afforested areas that can be offered in the proposal itself for the lands that are sought to be diverted for non-forestry activities by the user agency. This will incentivise afforestation which could lead to crop lands being converted to tree lots and also spurring land grab of forest dwellers.

The MoEFCC has been pushing for private sector engagement in afforestation and plantation activities in recent years through guidelines issued on 11 August 2015⁸, the National Forest Policy proposed in 2018⁹ (which was even opposed by the MoTA¹⁰), the amendments proposed in the Indian Forest Act in 2019 and the Green Credit Scheme recommended by the Forest Advisory Committee¹¹.

⁸<https://www.hindustantimes.com/india/govt-to-allow-pvt-sector-to-manage-40-of-forests/story-yOiG4TO4kA2kvykxXNTEBK.html>

⁹<https://www.downtoearth.org.in/news/forests/if-passed-new-forest-policy-will-benefit-private-sector-and-hurt-local-ecology-experts-60090>, <https://thewire.in/environment/national-forest-policy-draft-2018-takes-one-step-forward-two-steps-back>

¹⁰<https://scroll.in/article/886708/thrust-on-privatisation-tribal-affairs-ministry-opposes-centres-draft-national-forest-policy>

¹¹<https://www.downtoearth.org.in/news/forests/forest-panel-bats-for-pvt-plantations-as-compensation-68719>

Private sector engagement excludes women or includes them in very tokenistic ways that brings them no sustainable livelihood, food security or basic amenities. On the other hand, we find in state after state, the power dynamics of corporate and forest authorities intimidates women from any form of dialogue, or even making complaints to concerned authorities when their forest rights are violated. They are being simply thrown out of their agricultural and forest lands. There is no constitutional safeguard or grievance redress access to these poor women and therefore we condemn these rules as being framed in a gender blind manner.

9. It proposes that non-forest lands from where villages have been relocated from a National Park, Wildlife Sanctuary or Tiger Reserve and non-forest lands in designated or identified tiger or wildlife corridors shall qualify for compensatory afforestation and the Accredited Compensatory Afforestation can be earned out of the use of such lands (Rule 11 (3)(f)). This is a blatant violation of the FRA and the Wildlife Protection Act 2006. Ground research shows that lands belonging to STs and SCs are mostly taken for these CAs without the compliance of FRA and the consent of the Gram Sabhas. Throwing out poor SC and ST farmers without due processes of law is a violation of the SC/ST (Prevention of Atrocities) Act and Sexual Harassment Against Women at the Workplace (Prevention) Act as forest is the workplace for forest dwelling women. Many OTFD women eek out their livelihood from craft and artisanal occupations from forest resources.

Most of the displaced communities from national parks and PAs have relocated to lands adjoining the PAs. In some places they were given forest lands by the forest dept itself, but without proper certificates, titles and they often face harassment of eviction (example Panna Tiger Reserve). They are facing threat of evictions for CAMPA plantations without any access to justice systems. Those who have voluntarily relocated on village common lands, banjar lands, etc have no means of proof of ownership. Most of the communities are PVTGs and poor STs, facing complex challenges of landlessness, silicosis, TB and malnutrition. Many are widow headed households who are too vulnerable to deal with the power of private user agencies and forest officials. These Rules only augment the existing harassment and struggle for existence that women are burdened with.

10. It facilitates easy and faster forest clearances for non-forestry purposes. This would encourage the already high rejection rate of claims without justification often illegal rejections in anticipation of proposal for forest diversion¹². Most of the rejections are reported from mining districts of the country including in Schedule Five areas.
11. It proposes a different mechanism for granting a phase-wise 'Final' approval for proposals involving forest land of more than thousand hectares where in-principle approval has been obtained which would mean giving approval for a part of the area/forest land for which compliance is submitted, and the user agency would not be required to submit compliance for the entire forest area at one go. This makes it clear that the intention is to clear mega projects where the user agencies can now go ahead with the projects even

¹²<https://scroll.in/article/1023166/how-to-cheat-forest-dwellers-of-their-rights-and-enable-mining>

without waiting for the clearance of the entire forest land (Rule 9 (d)). This will allow the user agencies and authorities to violate rights of the affected communities.

12. It is in direct contradiction of the object and purpose of the Forest Conservation Act, 1980 which is to ensure 'conservation of forests and matters connected therewith'. The Statement of Object and Reasons of the FC Act states that the statute has been enacted with the purpose of "checking further deforestation", and it is towards this end that "the prior approval of the Central government (is) necessary for dereservation of reserved forests and for use of forest land for non-forest purposes". The Forest Advisory Committee is constituted under the Act precisely to advise the Central government with regard to grant of such approval, towards the larger aim of "conservation of forests". Section 4 of the Act empowers the Central government to "make Rules for carrying out the provisions of this Act". Therefore, all actions by the Central government to be taken under the Forest Conservation Act, 1980, including the act of repealing existing Rules and replacing these with new Rules such as the FC Rules of 2022, must be in furtherance of the objective of the FC Act, which is prevention of de-forestation and conservation of forests. Thus the FC Rules 2022 runs counter to the stated objective of the FC Act, and for this reason alone these Rules are ultra vires.
13. The Rules assume that (i) forest conservation can be sacrificed for the sake of diverting forest lands for non-forestry industrial purposes like mining, highways, infrastructure and all other projects; (ii) that forest conservation can only happen with private corporate actors and forest departments doing artificial monoculture fortress style of plantations, ignoring the rich traditional diverse forest conservation practices of local forest dwelling communities, especially women's knowledge practices; (iii) that a programmatic approach through climate mitigation programmes to divert local women from dependence on forests (as in the World Bank financed Ecosystems Services Project) is achieved through scattered and ill-implemented livelihood and energy incentives of private sector and bilateral/multilateral investors.
14. It indicates a complete abdication of responsibility vested in the central government to ensure that every proposal for diversion of forest land for non-forest purpose is scrutinised through the lens of conservation of the forests and prevention of deforestation. The Rules make no requirement, nor indeed provide any space for scrutiny regarding whether the project proponent has undertaken basic mitigation measures, taken necessary steps to prevent harm to wildlife, flora and fauna, made necessary revisions in its plans to diminish harm to the forests, and so on.
15. Further, the Rules completely exclude local communities from any act of forest conservation under the assumption that they are not capable/are culprits of forest degradation, whereas ST and OTFD women have diverse traditional knowledge of forest conservation. Women's oral testimonies reveal that forests have been degraded not by local communities but by illegal industries and commercial activities including by forest departments who clear felled the forests for social forestry, CAMPA and other plantations, prohibiting local communities to nurture their biodiversity. This has led to a distress situation for forests as well as for forest dwelling women. The Rules of June 2022, instead of leading to forest conservation, will pose a serious threat to biodiversity and health of the forests in India. It is ironical that Green Credits are provided to such

industries in the name of forest conservation whereas the women of the forests who protect their biodiversity are denied practising these knowledge systems.

For all the reasons listed above, the 2022 FC Rules should be rescinded forthwith. They run contrary to the constitutional guarantees for Adivasis and Schedule areas and especially use the backdoor of the FC Act to nullify the legal safeguards under the PESA and the FRA. They defeat India's global commitments in addressing climate crisis. Therefore,

Our Demands:

- The Central Government and the MoEFCC immediately withdraw the FC Rules 2022.
- Uphold the very spirit and legal sanctity of the PESA and the FRA which supercede all other laws affecting Scheduled Tribes and Schedule Five Areas
- Widely consult with Adivasi and OTFD women and women's groups working on forests and biodiversity protection and draft the rules that will strengthen women's entitlements under the PESA and FRA.
- No matter how severe the crisis, women are using their ecological knowledge to protect, regenerate and manage forest and common lands-these practices should be formally and institutionally acknowledged and promoted by the state and the collective community managed conservation should be strengthened as constitutionally recognised institutions through the FRA and PESA. The FC rules should, if amended, further strengthen.

Sincerely,



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