

Regarding recent amendments to FCA Rules, 2017

**JOINT STATEMENT BY ORGANISATIONS, ENVIRONMENTALISTS AND EMINENT
CITIZENS FROM THE HIMALAYAN REGION**

12th August, 2022

To:

Hon'ble Shri. Bhupendra Yadav
Union Minister for Environment, Forests and Climate Change
Paryavaran Bhavan
New Delhi

Hon'ble Shri. Ashwini Kumar Choubey
Union Minister of State for Environment, Forests and Climate Change
Paryavaran Bhavan
New Delhi

Shri Sundar Ramanathan
Additional Director/Scientist 'E'
MoEF&CC

Shri Ved Prakash Mishra
Director
MoEF&CC

Shri. Maneesh Kumar
Assistant Inspector General of Forests
MoEF&CC

The Chairperson,
Standing Committee on Subordinate Legislation,
Parliament of India, Delhi.

Subject: Objections to the recently amended Forest Conservation Rules, 2022

Respected Sir,

This submission is in response to the notified new rules by the Ministry of Environment Forest and Climate Change (MoEF&CC) dated 28/6/2022 viz. the Forest (Conservation) Rules, 2022 (hereinafter Rules, 2022). In this regard we the members of civil society, community-based organisations and as an individual's working in Himalayan regions are writing to you with great concern and urgency and like to put forth following objections on the proposed amendments in the FCA Rules-

1. **Non-democratic process:** We are highly concerned about the arbitrary and exclusionary manner in which draft proposals and amendments are being introduced time and again before the citizens of India. Giving few weeks as time for comments, with only English and sometimes Hindi as medium of communication, in this highly diverse and multilingual nation is not acceptable. Yet again, we found this grave error in the language and public comment period granted in the Rules, 2022 notification.
2. **Excluding the indigenous community and their traditional knowledge from the decision-making process over forests and forestland** - The Indian Himalaya, on one hand are recognised as geologically fragile and ecologically sensitive yet also known as a biodiversity hotspot, home to about 80 million people. More than 2/3 of its' geographical area is under "the commons" (forest) and for centuries the indigenous communities of this regions have survived and flourished on these commons and have evolved diverse knowledge systems and practices on usage and conservation of the forest resources.

After experiencing the failure of state pushed 'exclusionary' policies and projects for decades which led to increasing deforestation, loss of biodiversity, soil erosion and depletion of groundwater sources, India's forest policies acknowledged that a sustainable forest governance model needs to "include" local communities in decision making on access, use and preservation of natural ecosystems. They could be termed as 'natural conservationists' whose livelihood and knowledge systems are tied together and need to be strengthened, revived and preserved. The current step of the of MoEFCC is certainly a step in the subversion of this critical global narrative. More so in the context of Himalayas, even small changes in the landscapes lead to rapid and wide-ranging impacts and leaving out communities and the 'intricate' indigenous knowledge from the decision-making process, can be disastrous for the landscape, ecology and the local communities.

3. **Undermining and in contradiction to the Legislations and constitutional provisions enacted to uphold the rights of tribals and forest dwellers-** Following are the two central legislations which confer a special status on Gram Sabhas for decision making on any matters pertaining to their resources and community.
 - a. Panchayats (Extension to the Scheduled Areas) Act [PESA] applicable to Scheduled Areas mandates prior consent of Gram Sabhas before initiating any projects, scheme or programme
 - b. Forest Rights Act, 2006, applicable to both the tribals and the "Other Traditional Forest Dwellers (OTFD)" which recognises and vests forest rights which includes ownership rights over minor forests and legally empowers *gramsabha* to conserve and manage their forest and biodiversity and stop the activities which adversely affect them.

In both the Acts the Central government has recognised tribals and forest dwelling communities as the "custodian of Forest" at par with the forest department in terms of protection of wild life, forest and biodiversity. Whereas the forest diversion process initiates with the consent and certification of the forest officials then why discrimination with forest dwelling communities, when they also have similar duties and responsibilities under section-5 of the FRA, 2006.

The provision that allows the centre to approve the handover of forest land and collect payment from the project developer before the State government obtains the approval of the right holder/s, seriously undermines, the ownership right provided under section 3(1) (c) of FRA, 2006 a central legislation and challenges the concept of ownership itself.

Here it is important to state that the implementation of the Forest Rights Act 2006 in the Himalayan regions has been the worst in the country. The table below indicates this clearly-

Table-2: Details of claims received, titles distributed (individual and community), as on 28.02.2022

No.	States	No. of claims received		No. of Titles Distributed	
		Individual	Community	Individual	Community
1	Himachal Pradesh	2746	275	129	35
2.	Uttarakhand	3574	3091	171	1

Source: Status Report of FRA Implementation, February 2022, Ministry of Tribal Affairs

The most critical factor responsible for this poor implementation is the lack of political will and the bureaucratic hurdles posed by the officials, especially, of the forest department. The repeated demand from states like Himachal for exemption from the Gram Sabha NOC clause is the reason why an amendment like this has been brought. The demand is based on the pressure from project proponents to short circuit the process of gramsabha NOCs. So, the position of the MoEF&CC that State governments will 'ensure' FRA compliance is completely erroneous as the experience of the last 15 years from Himalayan states like Himachal shows.

4. **Denying a fair trial to the Forest dwelling communities on forest diversion-** Through this new amendment to Forest Conservation Rules, changes the requirement for the Union government to take the consent of the communities concerned before approving private projects. And as per the new provision, the State government is to handle the FRA compliance responsibility. Whereas in the process of forest diversion the state government is the party who is an integral part of it and in agreement with the forest diversion process through forest department. It is the Forest Advisory Committee, an independent entity with required expertise, who advises and give its recommendation to the Central Government, on the forest diversion proposal. So,
 - a. This amendment will deny an opportunity to the FAC members to hear the views and concerns of forest dwellers which will compromise its decision-making process and recommendations
 - b. It will deny forest dwellers an access to an independent and only technical and expert committee for fair hearing of its' concerns and views on forest diversion process.

This amendment threatens the 'trust' of forest dwellers and puts their 'rights' at whims of state government – which is clearly delaying and sometime not even initiating the process of FRA implementation in entire Himalayan region for more than a decade

However, in the absence of any explicit provision and space in Rules, 2022 for important statutory legislations like FRA, 2006, the concerned authorities it seems are only looking to unduly hasten the diversion process in the name of 'simplifying the procedures. Not only

current Rules but also overall trend in procedures followed and intent is important. There are many other previous dilution efforts such as amendment proposed to Environment Protection Act, 1986, Water (Prevention and Control of Pollution Act) 1974, Air (Prevention and Control of Pollution Act) 1981, Public Liability Insurance Act 1991 and Biological Diversity (Amendment) Bill, 2021. The Himalayas are part of two global biodiversity hotspots – Himalaya and Indo- Myanmar. FCA rules are incompatible with the stated aims of National Mission in Himalayan Biodiversity and National Mission on Climate Change. India also has biodiversity commitments under CoP, to which it is a signatory. These kinds of changes only weakening the environmental governance in India.

5. **Community Conservation of socially and ecologically important areas:** Several local communities across the country are coming together to conserve and sustainably use lands and forests under their traditional and customary ownership. Community Conservation Areas (CCAs), declared and managed entirely by local communities, now numbers in many hundreds across the states of Nagaland and Arunachal Pradesh, and thousands across the country. However, these efforts are subverted by laws that do not recognise local people's rights over their traditional lands and sovereign conservation efforts. Instead of diluting existing legal frameworks to recognise local people's forest rights, as the proposed amendments seek to do, the law must ensure that local communities receive legal recognition and support to conserve their lands. Ecological and social importance also requires that Open Natural Ecosystem (ONE) such as deserts, savannas, rocky outcrops, grasslands, constituting the majority of India's terrestrial ecosystems, to be brought under the purview of 'rights' for communities. There must be proactive steps to conserve these ecosystems (similar to FCA) and support those communities, including pastoralists, that are dependent on them. Currently ONEs are regarded as wastelands and that must change if we are to fight climate change from within our borders and beyond.

Our demands are as follows:

1. We demand immediate withdrawal of FCA Rules, 2022 by MoEFCC and the Central Government.
2. We demand strict compliance with FRA and complete assurance of settlement of rights with prior consent of Gram Sabha 'before' proposing any such projects requiring diversion of forest in Himalayan Region.
3. We demand more time duration of at least 60 days for any such proposals and multilingual language of communication in Schedule languages, to ease understanding and participation from greater sections of society.
4. We demand a gradual shift towards rights-based conservation by empowering indigenous communities rich in traditional/indigenous knowledge systems without compromising their own 'worldview' and 'relationship' with various ecosystems.

It is shocking that all these years, Adivasis, forest dependent people suffered as a result of the strict regulatory provisions of the FCA and no relief was provided to them by suggesting amendments in FCA. The Rules, 2022 proposed by the Ministry seems to favour projects proponents by reducing the processing time of the forest diversion applications

without providing forest dwellers who are the real custodian of the forests a chance to raise their concerns regarding “forest and biodiversity”, to whatever limited extent, through an independent expert body and denying even a fair trial.

Thank you.

Signatories

Arunachal Pradesh

1. Dibang Resistance Group
2. Jarjum Ete, President Emeritus, All India Union of forest working people
3. Bhanu Tatak, Independent Artist
4. Ebo Mili, Arunachal Pradesh
5. Eja Pulu, Arunachal Pradesh
6. Rakhini Mipi, RTI Activist, Arunachal Pradesh

Assam

7. Chao Basant Gogoi, President, ATASU Kamrup (M) Guwahati, Assam
8. Pranab Doley, Assistant Secretary, All India Kisan Sabha, State Council, Assam

Himachal Pradesh

9. Abha Bhaiya, Jagori, Himachal Pradesh
10. Action Association, Chamba, Himachal Pradesh
11. Bhumiheen Bhumi Adhikar Manch, Himachal Pradesh
12. Birbal Chauhan, Action Aid, Himachal Pradesh
13. Ekal Nari Shakti Sangathan, Himachal Pradesh
14. Gulab Singh, Dhaniram Sharma, Sirmaur Van Adhikar Manch, Sirmaur, Himachal Pradesh
15. Himalaya Awakening Society, Himachal Pradesh
16. Himdhara Environment Research and Action Collective, Palampur, Himachal Pradesh
17. Himalaya Niti Abhiyan, Himachal Pradesh
18. Himachal Queer Foundation, Himachal Pradesh
19. Jeevan Singh, Kisan Sabha, Sirmaur, Himachal Pradesh
20. Jiya Lal Negi, Zila Van adhikar Sangharsh Samiti, Kinnaur, Himachal Pradesh
21. Kulbhushan Upmanyu, Himalay Bachao Samiti, Chamba, Himachal Pradesh
22. Manoj Kumar, Chamba Van Adhikar Manch, Himachal Pradesh
23. Naresh Negi, Member, Kishau Bandh Sangharsh Samiti, Sirmaur, Himachal Pradesh
24. NS Chankum, Himlok Jagriti Manch Kinnaur, Himachal Pradesh
25. No Means No Campaign, Kinnaur, Himachal Pradesh
26. Parvatiya Mahila Adhikar Manch, Palampur, Himachal Pradesh
27. Prem Katoch, Lahaul, Himachal Pradesh
28. Rigzin Hayerpa, Save Lahaul Spiti Society, Lahaul, Himachal Pradesh
29. Sambhavanaa Institute, Palampur, Himachal Pradesh
30. Santosh, All India Democratic Women’s Association, Sirmaur, Himachal Pradesh
31. Shyam Singh, Secretary, CPI, State Council, Himachal Pradesh
32. SUTRA, Himachal Pradesh
33. Uma Mahajan, Himachal Van Adhikar Manch

Jammu & Kashmir

34. Centre For Conservation of Culture and Heritage, J&K
35. Dr. Raja Muzaffar Bhat, Dr. Sheikh Rasool Gulam, J&K RTI Movement, J&K
36. Dr. Rouf Mohiudeen Malik, Director, KOSHISH, J&K
37. Peoples' Environmental Council, J&K

Manipur

38. Jiten Yumnam, Centre for Research and Advocacy, Manipur

Meghalaya

39. Joannes JTL Lamare, Shillong, Meghalaya

Sikkim

40. Gyatso Lepcha, General Secretary, Affected Citizens of Teesta, Sikkim

Uttarakhand

41. Anita Paul, Pan Himalayan Grassroots Development Foundation
42. Ajay Rastogi, Ranikhet, Uttarakhand
43. Ayushi Joshi, Environmental Technologist & Researcher, Uttarakhand
44. Bharat Jhunjhunwala, Economist & Environmentalist, Uttarakhand
45. Chetna Andolan, Uttarakhand
46. Dr. Satish C. Aikant, Former Professor & HOD English, HNB Garhwal University, Mussoorie, Uttarakhand
47. Emmanuel Theophilus, Village Sarmoli, Munsiri, Uttarakhand
48. Ishwari Joshi, Sarpanch Sangathan, Almora, Uttarakhand
49. Kamal Sunal, Van Panchayat Sangharsh Morcha, Ramgarh, Uttarakhand
50. Kavita Upadhyay, Independent Environmental Journalist/ Researcher, Nainital, Uttarakhand
51. Lalit Upreti, Eco Sensitive Zone Sangharsh Morcha, Ramnagar, Uttarakhand
52. Manish Kumar, Samajwadi Lok Manch, Ramnagar, Uttarakhand
53. Mallika Virdi, Chairperson, Van Panchayat Paramarshdatri Samiti, Munsiyari, Uttarakhand
54. Mohammad Shafi, Van Panchayat Sangharsh Morcha, Ramnagar, Uttarakhand
55. Navin Joshi, Writer and Journalist, Uttarakhand
56. Prof. Mukul Sharma, Ashoka University, Uttarakhand
57. Rajendra Singh Bisht, Bhalu Gaad Jal Prapat Samiti, Dhari, Nainital, Uttarakhand
58. Rajeev Nayan Bahuguna, Senior Journalist & Environmentalist, Dehradun, Uttarakhand
59. Shankar Khadayat, Mahakali Ki Awaz, Pithoragarh, Uttarakhand
60. Surendra Arya, Mahakali Lok Sangathan, Pithoragarh, Uttarakhand
61. Saraswati Joshi, Mahila Ekta Manch, Uttarakhand
62. Shekhar Pathak, Padmashree awardee, Historian & Writer, Founder PAHAR, Uttarakhand
63. Van Panchayat Sangharsh Morcha, Nagriganv, PO Bhavali, Nainital, Uttarakhand