

48/8

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Dear Jayantiji,

I wish to share my concern at the continued practice by the Ministry of Environment and Forests' advisory and official bodies, of ignoring the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act when diverting forest land for large projects. We are in agreement that this is a very disturbing scenario as it is a violation of the legal and constitutional rights of our country's poorest and most marginalized citizens. It is also resulting in growing conflict, protests, and litigation, and hence in delays in decision making.

2. The Forest Rights Act empowers the gram sabhas of villages to act as the central authorities in the process of recognition of rights and also gives them the statutory authority to protect and manage forests, biodiversity, etc., while preventing the destruction of their cultural and natural heritage. It, therefore, follows that the prior informed consent of the gram sabhas in these areas must be obtained before any destruction/diversion of forest land, and that they must certify that recognition of rights under the Forest Rights Act is complete. Otherwise, diversion of this land would be a direct violation of law and amount to destroying people's right under the Act. The Ministry of Environment and Forests' own order of July 31, 2009, recognized these requirements among others and States were informed that they had to submit resolutions from gram sabhas to this effect.

3. I am, however, anguished to find that even five years after enactment of the historic Forest Rights Act which came into force in January 2008, the statutory Forest Advisory Committee continues blatantly to ignore the existence of both this law and the 2009 order. As a matter of fact in April of this year the Committee itself recorded in a formal decision that submission of gram sabha resolutions is mandatory with a proposal for forest diversion - i.e. that such resolutions should be present when it considers any proposal. Piquantly it is now flouting its own decision as well as the orders of the Ministry and the law of the land.

4. In its most recent meeting (September 17th and 18th) there was no reference to the law at all. In its August meeting, the Committee recommended a thermal power project in Chhattisgarh despite the fact that it had itself pointed out in May that this project had not obtained the requisite gram sabha certificates (File No. 8-21/2012, LARA Thermal Power Project in Raigarh District, Chhattisgarh). On the basis of the Committee's recommendation, this project was subsequently granted in principle clearance, in accordance with the normal procedure. The Committee has the remit to consider all relevant aspects prior to the diversion of forest land; how is it then continuing to ignore people's rights? Why is it misleading both project proponents and the public into believing that these projects are in compliance with the law when they often are not?

5. I am also constrained to note here that it has been drawn to my attention that, perhaps in response to protests on these issues, the Committee has begun including a "condition" in some of its recommendations stating that the Forest Rights Act must be complied with before the final clearance is given. This is only adding to the confusion for both project proponents and the people of the area. Compliance with the FRA is a critical part of deciding whether a project can be considered at all. Naturally it should be considered at the threshold stage. Otherwise project proponents will be placed in the odd position of having received "in principle" clearance as well as environmental and other statutory clearances, only to be denied at the very last stage as a result of FRA violations. This would result either in delay in final clearance, or in State governments and project proponents seeking to evade the law entirely.

6. Thus the FAC's abdication of responsibility will produce conflict, harassment, injustice, delays and litigation. We have already seen several such instances, resulting in either violation of people's rights or in delays/cancellation of projects.

7. In light of the above, I wish to place three suggestions before you for your consideration and action:

- a) *Steps may be taken to ensure that the Forest Rights Act and the 2009 order are complied with in all cases of diversion of forest land, including by the Forest Advisory Committee. In accordance with the law no in principle clearance, or environmental clearance, should be given without certificates from gram sabhas certifying that their rights have been recognized and that they consent to the diversion. This will reduce confusion and provide clarity to both project proponents and state agencies.*

- b) *The Ministry of Tribal Affairs being the nodal agency for forest rights, keeping in view of the diversion of forest land affects the rights of forest dwellers, it would be appropriate if this Ministry were to be represented on the Forest Advisory Committee. This may contribute to ensuring that forest rights receive adequate consideration in the decision making process and reduce the possibility of later disputes, as has happened in several well known projects.*
- c) *As I have already directed all State governments to ensure that gram sabha meetings are videographed, it would be effective – and also further reduce the possibility of disputes – if the Ministry of Environment and Forests were to require the same in all cases of gram sabhas held for purposes of forest diversion. This would increase transparency and reduce conflict.*

with best wishes & regards, Yours sincerely,


19.11.12

(V. Kishore Chandra Deo)

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