

The Minister,  
Ministry of Tribal Affairs  
New Delhi

April 15, 2013

Dear Shri Deo

This is with reference to the Office Memorandum F. No. 23011/22/2010-FRA dated March 7, 2013 about the need to revise the letter issued by MoEF on February 5, 2013 exempting projects requiring forest diversion for linear projects from the need of obtaining gram sabha consent. In that context we would like to submit that:

- The process of rights recognition and gram sabha consent needs to be followed in all cases of forest diversion to ensure social justice. The 5 February 2013 circular needs to be withdrawn.** Apart from being a significant legal requirement, strict compliance in letter and spirit to the above mentioned circular in all cases is essential if we indeed want to ensure that the 'historic injustice' that FRA seeks to correct is not constantly repeated. It is against democratic principles to make centralized decisions about what extent of social impact that may be worth considering while diverting forests over which individuals and/or village community may have 'inalienable' forest rights vested through FRA. It is also important to bear in mind that the process of rights recognition under FRA is one of the few that acknowledges rights in their entirety including social, cultural, access and decision making rights of local communities to their community forest resources.
- For compliance with FRA, certificate from Gram Sabha stating that the process of rights recognition has been done in the area is an essential legal requirement which cannot be superseded or ignored because of a circular. This needs to be clarified in any revision.** FRA, through Section 4 recognises customary use, access, conservation, management and ownership rights of forest dwellers. It is to be noted that section 4 (5) of FRA protects the rights of STs and OTFDs till the process of recognition is complete. The guidelines issued by MoTA dated 12<sup>th</sup> July 2012 (under Section 12 of FRA), in the context of diversion of forest land, mention that section 4 (5) is of an **absolute nature** and excludes all possibilities of eviction of FDSTs or OTFDs without settlement of their forest rights. Section 5 empowers gram sabhas, right holders and other village level institutions to protect forest, wildlife and biodiversity and preserve natural and cultural heritage from destructive activities. It further empowers the right holders to 'ensure that the decisions taken in the Gram Sabha to regulate access to community forest resources and stop any activity which adversely affects the wild animals, forest and the biodiversity are complied with.' If any authority or officer contravenes the provisions of FRA, it is deemed as an offence under Section 7 of FRA.

FRA is an Act while the Feb 2013 order is a circular. The provisions of an Act cannot be superseded by a circular. It can in no way be ensured without gram sabha consent that the linear diversion for roads, canals, laying of pipelines/ optical fibres and transmission lines etc.:

- will not affect their rights recognised under FRA.

- will not lead to adverse impact on the natural and cultural heritage of the area which right holders are empowered to protect under Section 5.

The decision has to be taken by the right holders (irrespective of whether the process of recording of rights is complete or they are eligible for recognition).

It is thus clear that transparent and democratic decision making process need to be strengthened, rather than diluted. We therefore strongly urge you to support the need of obtaining gram sabha resolutions reflecting rights' recognition and gram sabha consent in all forest areas requiring diversion.

Thank you,

With regards,

Shiba Desor and Ashish Kothari, Kalpavriksh, Pune  
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