

To
Shri Narendra Modi
Hon'ble Prime Minister
Government of India
26th September 2015

Subject: With reference to the Guidelines for Participation of Private Sector in Afforestation of Degraded Forests issued by the Ministry of Environment, Forests and Climate Change (F. No. 7-8/2014-FP).

Dear Prime Minister,

We are writing to you to express our serious concern regarding the latest guideline (mentioned above) that the Ministry of Environment, Forest and Climate Change (MoEFCC) has issued, in which it plans to open up forests for private industries. These guidelines violate the constitutional rights of 300 million (as per MoEFCC's estimate) citizens of this country living in and dependent upon forest areas. These are also in violation of two very important laws enacted by the Indian Parliament after much deliberation; The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (herein Forest Rights Act or FRA) as well as the Panchayats (Extension to Scheduled Areas Act), 1996 (PESA).

As has been well established by our esteemed parliamentarians within the provisions of the Forest Rights Act (an Act of Independent India and reflecting the spirit of a free Nation), the local tribal and non tribal communities living in and dependent upon forests have the right to use, manage and govern the forests in India. The process of recording such rights on paper is being carried out in some states, albeit in a slow and arbitrary manner as you have noticed and pointed out during the PRAGATI meeting in April 2015¹.

The issuance of such guidelines therefore seems like the MoEFCC and Forest Department continue to harbour the great delusion that they are owners of the forests of India, thus carrying forward the legacy of the colonial government to perpetrate 'historic injustice' on forest dwelling communities through forest laws and policies; while also contradicting the resolve of your government to recognize the rights of the forest dependent people and vest community control on forest resources.

A recent study² indicates that very conservatively speaking, a minimum of 40 million ha of forest already has clear evidence of being under community use and ownership and can be immediately recognized as Community Forest Resource (CFR) under the Forest Rights Act. Indeed titles to over 500,000 ha of forest land have been granted to forest dependent communities in last 7 years,

¹ See: <http://pib.nic.in/newsite/PrintRelease.aspx?relid=118525>

² *Potential for Recognition of Community Forest Resource Rights Under India's Forest Rights Act: A Preliminary Assessment*. (2015, July). Retrieved from Rights and Resources Initiative at: http://www.rightsandresources.org/wp-content/uploads/CommunityForest_July-20.pdf.

who have developed and implemented strategies for use, management and conservation of these forests³. Under such circumstances the position of the MoEFCC, that it is within its right to take a decision to “open up forests for private industries” is illegal and non constitutional, in addition to being in violation of country’s international obligations as part of Convention on Biological Diversity (CBD) and United Nations Declaration on Rights of Indigenous Peoples (UNDRIP).

We would also like to humbly submit that the rights of local communities over forests should not be viewed in the light of law alone. The government must bear in mind that forest dwelling communities have led the struggle to secure their rights over forest resources for last 250 years. Post independence too, movements involving tribals and forest dwelling communities, have continued over the issue of rights over forests.

We therefore urge that these guidelines be withdrawn with immediate effect as they are in violation of basic rights of forest dwelling communities, and since their implementation could face resistance from millions of forest dependent communities from across the country. Please find attached, our detailed concerns related to the above mentioned guidelines in the Annexure.

Thanking you,



Neema pathak

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CC to:

1. Shri Jual Oram, Ministry of Tribal Affairs, Government of India, Shastri Bhawan, New Delhi
2. Shri Prakash Javadekar, Ministry of Environment, Forest and Climate Change, Government of India, Shastri Bhawan, New Delhi

3 Tatpati, M. (Ed). (2015). *Citizens' Report 2015: Community Forest Rights under the Forest Rights Act*. Pune, Bhubaneshwar and New Delhi: Kalpavriksh and Vasundhara in collaboration with Oxfam India on behalf of Community Forest Rights Learning and Advocacy Process. Available at: <http://fra.org.in/document/CITIZENS'%20REPORT%202015%20COMMUNITY%20FOREST%20RIGHTS%20UNDER%20THE%20FOREST%20RIGHTS%20ACT.pdf>

ANNEXURE

1. Legal rights of forest communities to protect, use and manage forests *is not* unsustainable exploitation.

The guidelines state that the need to invite private corporations to invest in afforesting degraded forest land is primarily due to an urgent need for improving the quality of ‘degraded forests’, while suggesting that the fuel wood and grazing requirements, among other things, of the nearly 300 million forest dependent people (including scheduled tribes and other traditional forest dwellers) are responsible for the ‘unsustainable exploitation’ of natural forests leading to their degradation.

We are seriously concerned that this reasoning has failed to take into account the rampant diversion of forest land being carried out in the recent years, ignoring important ecological and social concerns, while placing the responsibility of degradation of forest land on some of the poorest communities in the country. An examination of forest diversion proposals recommended by the Forest Advisory Committee in recent times has shown that an average of 135 hectares of forest land is being diverted in a single day for various developmental projects⁴.

The preamble of the FRA clearly states that ‘...*the forest dwelling scheduled tribes and other traditional forest dwellers...are integral to the very survival and sustainability of the forest ecosystem*’, and lists activities under Sec 3(1) of the Act as Community Forest Rights (CFRs). These rights include ‘*the right to protect, regenerate or conserve or manage any community forest resource which they have been traditionally protecting and conserving for sustainable use*’ under Sec 3(1)(i) of the Act. This is to secure their access to forests, and to strengthen the existing conservation regime.

Therefore, the enactment of the FRA has clearly departed from the line of thinking that forest dwelling communities merely exert ‘biotic pressure’ on forests, and has moved towards recognizing the important role these communities have been playing in the conservation of forest ecosystems through a complex associations they have historically forged with forests. Thus at the outset, the basis of passing the guideline itself is in complete violation of the FRA.

2. Leasing forest land to non-tribals is illegal

The guidelines envisage ‘competitive bidding and signing of agreements/contracts’ between states, private corporations and the Forest Department while handing over these forests to private corporations, while the private corporations will then pay a fixed lease rent to the State Forest Department. It also proposed amending the Forest (Conservation) Act, 1980 to include the rules to implement these guidelines.

The Supreme Court in *Samata Vs State of Andhra Pradesh* (Appeal (civil) 4601-02 of 1997) held that the *transfer* of lands by the state in favor of a person other than the member of Schedule

⁴ ercindia.org

Tribes stands prohibited. The word transfer also includes 'lease' or 'any other dealing with immovable property'. Thus the guidelines facilitating hand over the forest land to the companies owned by non tribals for any dealing is in violation of a Supreme Court Judgment.

Further, Sec 4(7) of the FRA provides that '*...the forest rights shall be conferred free of all encumbrances and procedural requirements...*' However, there are many villages yet to file CFR claims due to the slow and arbitrary implementation of the FRA, which has also been highlighted recently by the Prime Minister himself, and by the Ministry of Tribal Affairs (MoTA). Since clearly no leases or agreements over forests where CFR rights have been recognized will hold, proposing guidelines which could potentially parcel away forests to private corporations without CFRs rights under the FRA being recognized over a vast area of forests in the country, indicates a Forest Department-Corporate-Political nexus to undermine CFRs and privatize forests for the benefit of the industry.

3. Restricting use of forests by local communities and preventing them from achieving self-sustained livelihoods

The guidelines also state that 85-90% of the area leased to the private corporations will be used by the industry while 10-15% will be developed for the use of local communities. Further, while the communities will have full access to grass and fodder on 100% of the area, their entitlement to other Non Timber Forest Produce (NTFP, also Minor Forest Produce or MFP) shall be confined to the 10-15% area earmarked for them.

The plantations to be carried out on these lands, according to the guidelines, will create new economic opportunities and employment, and improve the livelihoods of local communities.

Under Sec 6 (1) of the Act, the FRA mandates the *gram sabha* as the authority to '*...initiate the process to determine the nature and extent of individual or community forest rights...within local limits of its jurisdiction*'. Therefore, only the gram sabha under whose customary forest management a forest area has been historically under can determine the nature of access rights. Thus, access being restricted to 85-90% of the land to forest dwelling communities over forest areas, through an agreement between a private agency, the state forest department and the MoEFCC amounts to curtailing and violating forest rights. Further, this is in violation of both the PESA and FRA which confer '*ownership of NTFP*' to gram sabhas of forest dwelling communities. While PESA is related to Schedule Five areas, the FRA envisaged this right over all land classified as forest land and also expands it to '*right of...access to collect, use and dispose of MFP which has been traditionally collected within or outside village boundaries*' under Sec 3(1)(c).

The FRA in its preamble also clearly states that rights recognized under the Act '*...will ensure livelihood and food security of forest dwelling communities*' since along with rights, the FRA under Sec 5 also empowers the *gram sabha* of forest dwellers to protect forests, wildlife and biodiversity from destructive forest management practices. Along with this, Rule 16 of the FRA

Amendment Rules, 2012 has put the onus on the state governments to direct tribal and social welfare, environment and forest, revenue, rural development, panchayati raj and other departments to provide funds from '*...all government schemes including those related to land improvement, land productivity, basic amenities, and other livelihood measures...*' to such claimants and communities whose rights have been recognized and vested according to the Act. Therefore, the FRA has the immense potential to secure the livelihood of forest dwelling communities, without the need for external investment, especially from corporate groups.

4. Taking away the right to manage and conserve community forests

The guidelines further state that the agreement reached on the rules of access and benefit sharing between the private agency and the state forest department will be included in the working plans of the forest areas.

Under Rule 4(1)(e) of the FRA Amendment Rules, 2012, the gram sabha has to '*...constitute from among its members, a committee to ensure the protection of wildlife, forest and biodiversity...*' and this committee '*...shall prepare a conservation and management plan for its CFR in order to sustainably and equitably manage the CFR....and integrate such management and conservation plan with the micro plans or working plans or management plans of the forest department...*'. In a guideline No. 23011/16/2015-FRA, dated 23rd April 2013, MoTA has further clarified that this committee and the gram sabha shall be the authority to modify these micro plans, working plans or management plans of the forest department to integrate these to conform to the conservation and management plan of the gram sabha or the committee. Thus, the guidelines are restricting the right of the gram sabha to protect and manage its CFR while handing the power back to the forest department, in complete violation of the FRA.