

18th January 2016

To,
Shri Jual Oram
Honourable Minister
Ministry of Tribal Affairs
Shashtri Bhavan, New Delhi

Subject: Notification of Village Forest Rules in Maharashtra, Madhya Pradesh and other states

Respected Sir,

We the undersigned (*Jan Andolans*, civil society groups, and individuals) are writing to express our concern about the Ministry of Tribal Affairs agreeing to the implementation of the Village Forest Rules (VFR) in Maharashtra. We have come to know from reports in the media that the MoTA has issued an office memorandum on 8th December 2015 endorsing amendments in the VFR by the government of Maharashtra. We understand that this would now allow for implementation of VFR in situations where *a resolution is passed by the Gram Sabhas that no rights are either claimed or are pending and no future rights are likely to be claimed by the forest dwelling STs and OTFDs*. By this endorsement the MoTA has diluted its earlier stand on VFRs (ref. F.No. 23011/17/2014-FRA, dated 16.04.2015), which MoTA further re-emphasised on 27.11.2015 (ref. No. 23011/17/2014/FRA). In the above two documents MoTA has clearly conveyed that,

1. The VFR encroach upon and are irreconcilable with the provisions of the Scheduled Tribes and Other Traditional Forests Dwellers (Recognition of Forest Rights) Act, 2006 (FRA) and the Panchayat (Extension to Scheduled Areas) Act, 1996 (PESA).
2. The VFR encroach upon a field of law already occupied by the FRA, which is a central legislation.
3. The said rules, have not obtained the consent of the President (considering that they occupy the same field of law as a central legislation), hence are contrary to the mandate of Article 254 of the Constitution of India.

As per the media reports this change in MoTA's position has come because of an intervention from the Cabinet Secretariat after a meeting held on 17th November 2015, supported by the Prime Minister's Office. This endorsement by MoTA has now paved way for implementation of the VFR under the Indian Forest Act not just in Maharashtra but in many other states.

Under section 4.1 of FRA and (in Schedule V areas under PESA) community rights are inherently already recognised. The FRA rules require the District Level Committees (DLC) to ensure that CFR rights are recognised in all villages where forest dwellers reside. However, the 8th December OM seems to endorse that a gram sabha can just pass a resolution stating that no rights are likely to be claimed. MoTA is well aware of the continuing lack of awareness about the CFR provisions among the majority of gram sabhas. The MoTA is also well aware about how unprepared and uninformed gram sabhas can be manipulated. In its response to the legal opinion on VFRs by the Maharashtra government (ref. F.No. 23011/17/2014-FRA, dated 16.04.2015), the MoTA has already closely examined the gram sabha resolution formats which were distributed in Gadchiroli district of Maharashtra before the bi-annual gram sabhas on the 15th of August 2014.

Apart from the issues related to various provisions of the VFRs in Maharashtra and Madhya Pradesh (which the MoTA has addressed in its various communications mentioned above), is a more serious and larger question as to why the VFRs are being formulated nearly 90 years after the colonial government enacted the

Indian Forest Act! This question is important in the light of the fact that the VFRs are being notified for management of forests now when two important laws have already been passed by the parliament of Independent India (namely, PESA and FRA). Both FRA and PESA were enacted as a democratic response to the long struggle of the tribal and other forest dependent communities against the injustice caused to them by the colonial forest policies, including the Indian Forest Act!

It is immensely surprising for us that, in total contradiction of FRA and of MoTA's own directions under section 12 of the FRA, (clarifying that the gram sabha is the authority for CFR management competent to develop its own plan and formulate its own rules), MoTA has now asked MoEFCC to formulate rules for CFR management - giving away the gram sabha's most crucial power provided under the FRA.

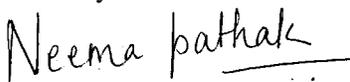
Implementation of VFRs and formulation of management rules by the MoEFCC are most certainly likely to take away the forest governance and management authority of the Gram Sabhas (provided under FRA and PESA) and revert it back to the forest department. It is clearly also the intention of the forest department to re-assert their authority over the forests, which they fear might get diluted as more and more communities claim rights under the FRA and PESA. This is evident also from the manner in which the VFRs have been formulated and the manner in which all the discussions related to VFRs have taken place. All the processes related to VFRs have so far been shrouded with secrecy with nearly no consultation on this issue with the stake holders on the ground or at the state level.

Thus by endorsing the Maharashtra VFRs and asking the MoEFCC to formulate rules for management of community forest the MoTA is not only going back on its own earlier position but is also adding to the processes undermining the FRA and PESA and their provisions meant to empower tribal and other forest dependent communities.

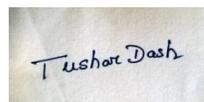
The ministry's move has come at a time when the village forest rules notification and implementation is widely opposed by Gram Sabhas, tribal and civil society organizations in Maharashtra. The issue was raised recently in a national consultation on Community Forest Resource Rights (CFR) organized as part of the Community Forest Rights Learning and Advocacy process (CFR-LA) in Delhi on the 11th and 12th of December 2015. Over 80 participants from the states of Andhra Pradesh, Himachal Pradesh, Kerala, Chhattisgarh, Uttarakhand, Rajasthan, Gujarat, Goa, Odisha, Maharashtra, Karnataka, and Madhya Pradesh expressed serious concern about the efforts to undermine the Forest Rights Act by bringing in contradictory laws and policies mainly by the forest department. The participants expressed deep concern that despite an office memorandum dated December 5, 2014 from your Ministry asking the Maharashtra Government to withdraw the VFRs, and the sheer unconstitutionality of the VFR, the VFR have not been withdrawn.

As the nodal agency responsible for the FRA we request you to kindly reiterate your position about the VFRs being inherently contradictory to the letter and spirit of FRA and issue a Directive in this regard to all states so that there are no further efforts in any states towards drafting VFRs.

Yours sincerely



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Madhuresh Kumar and Suhas Kolekar, National Alliance for People's Movement (NAPM)
Souparna Lahiri, All India Forum of Forest Movements
Madhu Sarin, Independent Researcher, Chandigarh
Krishna Srinivasan, Independent Researcher, Forest and Environment Laws, Pune
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Sharad Lele, Bangalore.
Ravi Chellam, Greenpeace India
Trupti and Ambrish, Arch Vahini, Gujarat
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Alok Shukla, Chhattisgarh Bachao Andolan
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c.c.

1. The Prime Minister's Office
2. The Cabinet Secretary
3. Secretary, Ministry of Tribal Affairs
4. Secretary, Ministry of Environment, Forests and Climate Change
5. Secretary, Ministry of Panchayati Raj
6. Secretary, Hon Governor of Maharashtra