

To,
Shri Narendra Modi
Prime Minister of India
New Delhi

3.11. 2014

Respected Prime Minister,

Subject: Ref. Ministry of Environment and Forest; F. No. 11-09/98-FC (pt.) on Diversion of forest land for non-forest purposes under the Forest (conservation) Act, 1980 – ensuring compliance of the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006

We are a group of activists, *jan sangathanas*, academics and members from organisations working on environment, human rights, *adivasi* rights, forest worker rights, and women's rights, from all across the country and outside India.

We are extremely concerned at the consistent efforts of the Ministry of Environment, Forests and Climate Change (MoEFCC) to bring out resolutions and executive orders in violation of the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006 (FRA). The latest in this regard being the above mentioned Letter issued by the Ministry of Forests and Environment on the 28th of October 2014. The letter states that “...in case of plantations which were notified as “forests” on a day less than 75 years prior to the 13th day of December 2005 and are located in villages having no record of population of scheduled tribes, as per the census -2001 and 2011....”. The letter gives reference to clause (o) of Section 2 of the FRA to say that in the above situation no forest rights will be claimed as no one will be eligible to be defined as the Other Traditional Forest Dweller (OTFD).

We would like to bring to your notice that the Clause 2(o) of FRA says:

(o) “other traditional forest dweller” means any member or community who has for at least three generations prior to the 13th day of December, 2005 primarily resided in and who depends on the forest or forests land for bona fide livelihood needs.

Explanation: For the purpose of this clause, “generation” means a period comprising of twenty five years.

This has subsequently been clarified by MoTA (vide memo dated 8 November 2013 containing guidelines for conversion of forest villages and other unsurveyed habitations into revenue village):

“There is no requirement in the Act, that for purposes of recognition and vesting of forest rights, a person or community of other traditional forest dwellers must have been specifically located in a particular and identifiable location in the forest for 75 years. As long as they are able to establish that they have been primarily residing in and dependent on forests or forest land for *bonafide* livelihood needs for 75 years prior to 13th day of December, 2005, they are to be considered eligible for recognition and vesting of forest rights under the Act. The same approach has to be adopted while taking up the conversion of forest villages and other such villages primarily inhabited by other traditional forest dwellers into revenue villages.”

With regards to '*plantations declared as forests*' as mentioned in the above referred letter, we would like to bring to your notice that this is in violation of FRA. The FRA classifies forests as:

2 (d) “forest land” means land of any description falling within any forest area and includes unclassified forests, undemarcated forests, existing or deemed forests, protected forests, reserved forests, Sanctuaries and National parks;

The above definition of forest land makes no distinction between plantations and other forests and includes non-notified unclassified as well as 'deemed' forests. It also includes all forests conforming to the 'dictionary definition of forest' as per the Supreme Court judgment of 1996 in the ongoing Godavarman case, irrespective of whether these are recorded or notified as forests or not. More importantly, the FRA has no reference to the date on which the forest land on which claims for rights are made was either notified, recorded or otherwise classified as forest land. MoEFCC's executive order of October 28, 2014 thus violates the principal Act in its interpretation of the FRA which is meant to undo the historical injustice suffered by forest dwelling tribal and non tribal communities.

We would also like to state that the Ministry of Tribal Affairs (MoTA) is the nodal agency for the implementation of the FRA and has the mandate to issue any clarifications regarding the Act. As has been reiterated in the MoTA Office Memorandum F. No. 23011/18/2014-FRA, dt. 21.10.2014, on guidelines for diversion of forest lands for non-forest purposes, “It is further clarified that no agency of the government has been vested with powers to exempt application of the act (meaning FRA) in portion or in full. It is further advised that any action or process in consistent with due process laid under the Act would not be legally tenable and is likely to be struck down by the Courts of Law.”

We hope that “*sabke saath, sabka vikas*” will not mean “development at the expense of political, economic and social rights of the forest dwelling and dependent communities”, which remain amongst the most oppressed and marginalized in Independent India. Our expectation is that keeping with the commitment towards “inclusive and sustainable development and pro-people good governance” the NDA government will uphold the spirit and letter of the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006. The FRA provides the opportunities for inclusive governance by giving the forest dwelling communities their democratic right to own, access and take decisions regarding their forest lands and resources. The enactment of the FRA itself was a result of years of suffering and struggles by these communities.

We urge you to empower and strengthen the Ministry of Tribal Affairs in being able to implement the Act effectively on the ground and withdraw all government orders, resolutions and letters (including the one referred above) which dilute, violate, provide exemptions or in other ways weaken the FRA with an immediate effect.

We look forward to a positive response from you,

Yours sincerely,



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6. Secretary, Ministry of Coal, Government of India, Shastri Bhawan, New Delhi
7. Dr. P.L. Punia, Chairperson, National Commission For Scheduled Castes, Government of India, 5th Floor, Lok Nayak Bhawan, Khan Market, New Delhi-110003. Fax: 011-24694743
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