

The Minister  
Ministry of Environment and Forests,  
New Delhi.

April 15, 2013

Dear Smt. Natarajan

This is regarding the circular number 11/9 98 F C dated February 5, 2013 issued by your ministry. As per the circular, 'Proposals seeking prior approval of central government under the Forest (Conservation) Act, 1980 for projects like construction of roads, canals, laying of pipelines/ optical fibres and transmission lines etc. where linear diversion in use of forest land for several villages are involved, unless recognized rights of PTGs/ PACs are being affected, are exempted from the requirement of obtaining consent of the concerned Gram Sabha(s) as stipulated in clause (c) read with clause (b), (e) and (f) in second para of this Ministry's letter dated 03.08.2009'

**We submit that this exemption is in violation of the provisions of FRA and should be withdrawn because:**

**a. Applicability of FRA holds valid for all projects including linear diversion:**

Rights recognised under FRA cannot be ignored, neglected or superseded by a circular. 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 The provisions of an Act cannot be superseded by a circular.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 resolutions 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 not).

**b. Applicability of FRA holds valid for all forest dependent eligible for rights recognition, and not just PTGs/PACs**

Furthermore, the circular is arbitrary in retaining the requirement of gram sabha consent only for the PTGs and PACs when FRA makes no such distinction in the decision making powers of gram sabha of all STs and Other Traditional Forest Dwellers. This issue becomes exacerbated since in any case the whole process of declaring communities as PTGs and PACs has in itself been inconsistent in its approach in different districts and states of India.

We believe that apart from being a significant legal requirement, strict compliance in letter and spirit to the above mentioned circular in all cases is essential 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.

Furthermore, the circular also goes against what your own Ministry had stated in a letter to PMO dated 9th October 2012:

*'It is important to note that environment and forest clearance requires careful and nuanced decision making to balance the interest of different stakeholders- conservation, local people's livelihoods and economic growth. We have found that when decisions discount these interests, it leads to disputes and interventions by the courts and appellate authorities. It is in the interest of building investor confidence that the risk of environmental dispute, post clearance, is minimized and obviated. This can only be done by strengthening and not weakening, the current regulatory and decision making procedures and processes.'*

It is thus clear that transparent and democratic decision-making process need to be strengthened by supporting the statutory requirement under FRA of gram sabha resolutions reflecting rights' recognition and gram sabha consent in all forest areas requiring diversion. Keeping the above concerns in mind, **we demand that the February 5, 2013 circular should be withdrawn.**

Thank you,

With regards,

Shiba Desor and Ashish Kothari (Kalpavriksh, Pune)  
Tushar Dash (Vasundhara, Odisha)

----- [www.kalpavriksh.org](http://www.kalpavriksh.org)

PUNE: Apt. 5, Shree Dutta Krupa, 908, Deccan Gymkhana, Pune-411004, Tel: 020-25654239/25675450, Email: [kalpavriksh@vsnl.net](mailto:kalpavriksh@vsnl.net).