

24<sup>th</sup> May, 2012

Dear Hon'ble Chief Minister,

I am writing this to bring to your attention the problems arising in implementation of the Scheduled Tribes and Other Forest Dwellers (Recognition of Forest Rights) Act, 2006.

2. In 2006, Parliament unanimously passed the historic 'The Scheduled Tribes and Other Forest Dwellers (Recognition of Forest Rights) Act'. This watershed legislation has been enacted with the laudable objective to remedy the historical injustice done to the Tribals/Adivasis' and other forest dwelling citizens of our country. However, its implementation continues to suffer from many problems, as a result of which the majority of forest dwellers are not receiving their rights. This landmark legislation lamentably hasn't as such benefitted majority of forest dwellers and tribals even after lapse of more than five years of enactment of the Forest Rights Act. This goes against our professed adherence to rule of law.

3. In particular, rejection rates for claims for rights are still very high, and rejected claimants are not informed about the reasons for rejection or given an opportunity to appeal against the rejection. Where land rights are recognized, the area for which title is issued is often a fraction of the area that people are actually entitled to. Recognition of community rights, such as rights to minor forest produce, grazing areas, water bodies, habitats of Primitive Tribal Groups/pre-agricultural communities, pastoralists' routes etc. are very low. There have also been very few cases where the crucial right of forest dwelling communities to protect and manage their forests has been recognized or respected (and in some cases illegal conditions have been imposed on this right). As a result, large numbers of forest dwellers are facing eviction or harassment by forest authorities. Large numbers of them have also been illegally displaced from forest land without respect for their rights or due process of law.

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4. The Ministry of Tribal Affairs is the nodal agency for the implementation of this law. From the experience of more than three years of implementation, we have identified certain procedural lacunae that have led to these problems. I wish to draw your attention to some steps that can be taken to address these lacunae. These are in the annexed note on "Steps for Better Implementation." The Ministry is also seeking to incorporate these points into Rules or directions under the Act.

5. I hope that these points will be taken into account by the State Government when implementing this law. If a clear signal is given to implementing authorities that all rights of forest dwellers must be adhered to and that the democratic process under this law must be respected, the forest dwellers of this country may finally find succor and could actually lay claim to their rights.

With regards,

Yours sincerely,  
Sd/-

(V. KISHORE CHANDRA DEO)

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## ANNEXURE

### Areas of Concern and Suggested Actions

- ▲ There continues to be a lack of public awareness about this Act. Many people – particularly those who are non-ST “other traditional forest dwellers” - are being prevented from filing claims for rights. Therefore, fresh awareness raising campaigns could be initiated at all levels, including in villages; all forest areas and forest dependent communities should be covered; and extraneous evidence requirements should not be imposed on claimants who can produce admissible evidence of their eligibility or that of their community.
- ▲ The Act lays stress on a democratic process rooted in the gram sabhas. For this purpose the Act provides flexibility for the gram sabha to be called at the level of the actual settlement / hamlet (as is required in Fifth Schedule areas in any case). However, the gram sabhas for this Act have mostly been called at the larger level of the panchayat. Such gram sabhas may include multiple villages and be too large; they cannot claim for or exercise village community rights and it is very difficult for the quorum requirement to be met. Therefore, the State government may consider asking each panchayat to provide a list of actual villages within its boundaries, as well as permitting such villages to constitute themselves as gram sabhas through passage of a resolution. These should then be the units of implementation, which can be re-initiated on this basis, particularly for the recognition of community forest rights. Rights already recorded need not be disturbed.
- ▲ Claims have been rejected for incorrect reasons, often on the basis of official records (such as “encroacher lists” of the Forest Department) alone, when the purpose of this Act was to remedy the shortcomings of these records. All forms of evidence listed in the Rules to the Act are admissible. No claim accompanied by admissible evidence should be rejected on the basis of official records alone.
- ▲ The higher committees under the Act (the Sub-Divisional and District Level Committees) are often modifying and rejecting claims without hearing or even informing the claimants. To avoid this situation, when there is an objection to a claim which has been approved the gram sabha and has admissible evidence, the objecting agency can be required to appeal. The appellant and the claimant must then both be heard before deciding the claim. Incomplete claims can be remanded for reconsideration rather than being rejected outright.
- ▲ Gram sabha meetings for the Forest Rights Act, and especially for critical decisions such as diversion of forest land, should be videotaped and the videos made publicly accessible. This will ensure transparency and reduce manipulation and disputes.
- ▲ In many areas tribals and forest dwellers still face harassment and threats of eviction, forced relocation or displacement in violation of the Forest Rights Act. Action should be taken against all officials who try to harass or illegally evict forest dwellers prior to the recording of their rights, or in violation of those rights. The provisions of this law and relevant orders (in particular the Environment Ministry's July 30th, 2009 order on diversion of forest land) should be strictly followed. Relocation from tiger reserves and protected areas must follow section 4(2) of the Act; currently some tiger and wildlife habitats are being demarcated in violation of law and people are being asked to move without full compliance with all requirements.
- ▲ Rights to own, collect, use and dispose of minor forest produce have not been recognised or

have faced incorrect restrictions in many areas. It should be clarified that forest dwellers have rights over any form of minor forest produce (as defined in the Act), in all forest and protected areas, and that this includes the right to ownership and sale.

- △ The Act took a key step forward in empowering communities to legally protect and manage forests. However this has largely either not been implemented or been mis-implemented; conditions have been imposed or rights have been vested in other bodies (such as Joint Forest Management committees). Officials should be instructed to respect the decisions of communities on forest protection (as provided in section 5 of the Act) and to ensure proactive recognition of community forest resource management rights within customary boundaries. Forest officials should be mandated to comply with these provisions.
- △ Conversion of forest villages to revenue villages is required by the Act, but is hardly being carried out. This should be carried out prior to recognition of individual rights in these villages and should include common areas and areas for basic facilities.
- △ Other community rights, such as use of and access to grazing areas by settled and nomadic communities, access to water bodies, habitats of primitive tribal groups, etc. have also not been widely recognised. These should now be proactively recognised and steps taken to remove procedural obstacles imposed on their recognition.