

Orissa Protected Area Network

Date: 6th June 2009

To

**Secretary
Ministry of Tribal Affairs,
Shastri Bhawan
New Delhi – 110001
India**

Sub: Procedural guideline issued on 18th May 2009 for implementation of Section 3(2) of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006

Respected Sir,

As you are well aware that in Odisha, thousands of villages/habitations are located inside forestlands where proper survey and settlement has not been carried out as required under various laws. The successive amendments in the Wildlife Protection Act and orders of the Hon'ble Supreme Court of India in different cases have further worsened the condition of the people living in and around forestland. There are ample examples in our State, especially from the Protected Areas, where thousands of people have been deprived of various government programs and schemes like NREGA, Indira Awas Yojana, PDS etc., as they are living either in un-surveyed villages or in enclaved villages. Even basic facilities like school, road, anganwadi centers, and drinking water are not available in these villages as development projects on forest land are held up or dis-allowed under the Forest Conservation Act, 1980. The government has often also expressed its inability to provide for the facilities citing budgetary constraints as reasons.

The provision for development facilities under Section 3(2) of The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 has brought a ray of hope to the thousands of the poor deprived of basic development facilities till now. The Act has further addressed the procedural bottlenecks by providing in section 4 (7) that forest rights which include development projects shall be free from all encumbrances and procedural requirements arising out of Forest Conservation Act, 1980.

In the above context, we feel that the recent procedure released by the MOTA for diversion of forest land for development facilities is likely to defeat the very purpose of the law especially of section 3 (2). For your kind attention we are putting forth some points for your consideration and immediate action:

- **Definition of User Agency:**

The definition of "User Agency" in the order dated 18th May 2009 only includes a Department of the Central or State Government or a District Panchayat (Zilla Parishad in

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case of Odisha) which can make request for diversion of forest land for developmental projects. Section 3(2)(ii) of the Act clearly requires that each development project should be 'recommended' by the Gram Sabha. Section 6(1) makes the gram sabha the authority for initiating the process for determining rights. Reading Section 3(2)(ii) with 6(1), the decision for undertaking any development activity and granting clearance should be that of the gram sabha who can send it's proposal-cum recommendation to the SDLC who should be bound to implement it. Therefore we demand that in accordance with the provisions of the Act the definition of User Agency be changed to restore the authority of Gram Sabha to determine the rights as well as development requirements of the community. The implementing agency could be a state or central government department, including any of the 3 tier PRI institutions.

- **Point No. 3 of Form – A:**

The point no. 3 of Form – A requires, **“Confirmation that User Agency will plant at least twice the number of trees to be felled, in the project or adjacent area and the amount provided annually for protection and maintenance of these plants for at least five years”**

This requirement is in blatant violation of Section 4(7) of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 which states that:

“The forest rights shall be conferred free of all encumbrances and procedural requirements, including clearances under the Forest (Conservation) Act, 1980, requirement of paying the ‘net present value’ and ‘compensatory afforestation’ for diversion of forest land, except those specified in this Act.”

Section 4(7) read with section 3(2) and section 2(e) (definition of forest rights) makes it clear that provision of development facilities shall be applicable notwithstanding anything contained in the Forest Conservation Act, 1980.

The requirement of planting twice the number of trees to be felled and the payment of protection and maintenance costs for 5 years will bring back the existing bottlenecks in the provision of development facilities through the back door, resulting in delays or lack of implementation. Most implementation agencies have no budget for such 'compensatory' plantations and even NREGA does not provide for them.

Therefore, we, the members of Odisha Protected Area Network strongly demand that “POINT NO. 3 OF FORM – A SHOULD BE REMOVED.

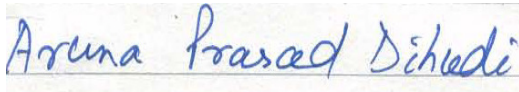
- Submission of proposal for development facility by User Agency to the RFO & DFO for their comments is not necessary as the FD is represented in both the SDLC & the DLC and both committees could delegate the task of site assessment for technical comments to their FD members.

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- The condition in 2.2(x) of the guideline that the land will be appropriated by the Forest Department if the activity is not started within one year must also be removed. Knowing the typical delays in government functioning, the villagers should not be deprived of a development facility simply because the concerned department is slow or inefficient.

The Odisha Protected Area Network members shall be grateful if the "Procedure for seeking prior approval for diversion of forest land for non-forest purposes for facilities managed by the Government under Section 3(2) of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006" dated 18th May 2009 is urgently amended keeping the above points in mind.

With warm regards,



(Shri Arun Kumar Dehuri)
Member
Orissa Protected Area Network

Copy to:

- Chief Secretary cum Chairperson of State Level Monitoring Committee on Implementation of "The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 Government of Odisha
- Principle Secretary,
SC & ST Development Department, Government of Odisha