

Dear Sri Jairam Ramesh,

We have gone through the representation of the Orissa government dated 18 August. There is no specific point in the representation that needs rebuttal. The Committee's mandate was to examine the issue in its entirety and the Attorney General's view was clear that the Supreme Court's decision did not come in the way of examination of legal and technical issues involved.

As regards the implementation of the Forest Rights Act in places other than the proposed mining lease (PML) area, we have expressed our appreciation of the efforts of the Orissa government in our report. However, in this case too, while Orissa has done well in granting individual rights, it has done little to recognize community and habitat rights. Sri Vinod Kumar, Special Secretary, Govt of Orissa admitted in the Chief Secretary's meeting on July 10 that so far only one case of habitat rights had been recognized for the Mankadia PTG, a nomadic tribe in district Mayurbhanj. In Rayagada district, not a single case of community rights had been formalized till 30 June, 2010.

However, the intention of the Orissa government to implement FRA in the PML area is highly suspect. This area has been the habitat of the PTGs and is being used for collecting various MFPs, a fact which has been recognized in various documents, including Forest Working Plans. Despite strong oral and written evidence of the fact that the PML area is the PTG's community resource and habitat, the district officials have not only discouraged the recognition of their rights, but have gone to the extent of denying the applications that the communities have on their own given to the administration requesting for recognition of community and habitat rights over the PML area.

The two Collectors have given a certificate in March 2010 stating that, '*It is certified that the complete process for diversion and settlement of rights under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 has been carried out for the entire forest area ... proposed for diversion.*' Further the certificate stated, '*It is revealed from the records that, so far there are no claims of individual or community rights under the ST. & Other Traditional Dwellers (Recognition of Forest Rights) Act 2006 over the above ...area proposed for diversion*'.

Both parts of the certificate are false. The process of recognition of rights under FRA has hardly begun, and applications are still being received in both the districts (see section 3.C.iv.2 of the report). As I write this letter to you, news is pouring in that the gram sabha of village Lakpadar (visited by the Committee) has sent its claim to the SDLC over the PML area.

The Chief Secretary, Orissa in a general direction dated 24 October, 2009, to all District Collectors, had instructed that proposals for diversion of forest land should be put before the Gram Sabhas, and their consent or rejection should be attached. This directive was ignored by the district administration of Rayagada and Kalahandi: the letters from the Gram Sabhas were not obtained or attached with the certificates given by the Collectors. On the contrary, our Committee received written resolutions as well as oral submissions from several Gram Sabhas in the area stating that they were firmly opposed to diversion of forest lands. All these facts lead to the inescapable conclusion that the state government has failed to uphold the law in this case.

The state government's act in allowing the company to occupy 26.123 ha of forest lands enclosed within the refinery compound is a serious violation of not only FCA but is a criminal act of giving away public lands under use by tribals, dalit and other rural poor to a private company. The company has surrounded these forests within its high walls. To claim that they are only protecting these lands to allow the forests to grow is a travesty of facts. Before this "protection" the tribal and other villagers had access to these forest lands from all sides and they were using these village forest lands for meeting their needs. It must be noted that the purpose of these village forest lands was only to meet the forest-based needs of the villagers.

There is no access to these lands by the villagers now, as the Committee found during its investigation. By allowing the company to enclose these lands and thereby deny villagers access to their own forests, the state government has been complicit in the illegal takeover of village forests without due process of law and for the benefit of a private company. This is a corrupt practice and all the guilty in this act need to be prosecuted under the PCA by a central agency.

I would also invite the attention of MoEF to the last lines of Annexure 2, where the state government official has admitted that, 'Besides the above, Ac.2.17 De. Vide Kh.no. 52, plot No. 7 kissam, revenue forests is bounded by Vedanta Aluminium Ltd, Lanjigadh', thus clearly establishing that the factory has encroached upon another piece of forest land without GOI's permission (see section 4.A of the report).

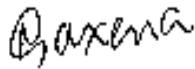
There was also an oft repeated complaint by many tribal villagers that the patches being shown as the village forest under "protection" by the company were not the actual village forests but are the lands that the company found convenient to keep under tree cover after constructing its factory. This can be easily checked by the survey numbers of the original village forest lands and the MoEF must take further action on this line.

The committee went largely by the views of the state government and its officials as well as of the Wildlife Institute of India in coming to the conclusion that the land in question was important as a wildlife habitat in general and for elephants in particular because it was the state government itself which had designated the site as an important elephant habitat and proposed it for a wildlife sanctuary before suddenly and inexplicably changing its views.

The company has, without getting environmental clearance, expanded its refinery capacity six times from 1 Mtpa to 6 Mtpa of aluminium and would thus now need to process 18 Mt of bauxite ore per year. Given this increased demand, the total reserve of 72.897 Mt ore in the PML area will only last for 4 years. If the state government illegally prioritizes the short-term interests of a private company by sacrificing a sensitive ecological and hydrological area that is rich in biodiversity, and an ecosystem that supports the livelihood and culture of the Dongaria Kondh and Kutia Kondh Primitive Tribal Groups, it will be violating the rights of forest-dwelling Scheduled Tribes under the FRA as well as the Environment Protection Act and the Forest Conservation Act.

Finally, neither the state government nor the Collectors have cooperated with the Committee in sending information available with them. Collector Kalahandi sent the desired information to the Forest Secretary, but not to the chairperson. I personally spoke to Mr Behera, Principal Secretary of Forests & Environment Department of Orissa, and also sent him a mail, but he too did not send the information that he admitted having received from the district. The state government's attitude of deliberate non-cooperation should be taken into account while deciding their application under the FCA.

regards,



NC Saxena

23 Aug 2010