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Hon'ble Member of Parliament
Parliament of India

Sub: Requesting your urgent intervention in opposing Forest (Conservation) Rules 2022 since they violate the Forest Rights Act as well as the legal rights of Gram Sabhas and will facilitate the illegal eviction of forest communities

Respected Sir/Madam

As you may be aware, new Rules for the Forest Conservation Act (1980) have been notified in the Official Gazette on 28.06.2022 and are currently in force pending approval by Parliament. We wish to bring to your urgent attention that these Rules of 2022 omit certain safeguards for forest communities that were there in the earlier Rules of 2003. They seriously undermine the Forest Rights Act. If these Rules of 2022 are passed by Parliament, they will facilitate large scale eviction of forest communities when forest land is diverted / de-reserved for non- forest use.

The National Commission for Scheduled Tribes has also raised very strong objections to these Rules as being violative of Forest Rights (please see attached) but these objections have been dismissed without being seriously considered.

We wish to bring to your urgent attention and seek your urgent intervention regarding the following:

- These Rules undermine the Forest Rights Act 2006 [Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006] by bypassing it completely . They allow forest land to be diverted without any recognition of Forest Rights under this Act, removing the safeguards in the earlier Rules . This will make lakhs of forest dwellers vulnerable to summary eviction in the diversion process.
- These Rules also bypass all legal provisions for the rights of Gram Sabhas to manage forests and other natural resources and to approve/ disapprove diversion, acquisition or alienation of forest land , as enshrined in:
 - Section 5 and 6 of the Forest Rights Act.
 - The Panchayat (Extension to Scheduled Areas) Act 1996 [PESA Act] which is a Constitutional Law, especially sections 4 (d), 4 (i), 4 (k), 4 (l), 4(m) (ii) and (iii) as well as State laws that have been amended in consonance with PESA.
 - Several sections of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, which provide a role for Gram Sabhas in social

impact assessment, and require their free and informed consent in rehabilitation as well as the mandatory consent of Gram Sabhas in acquisition or alienation of any land in Scheduled Areas [section 41(3)]

- The Forest Conservation Rules of 2003 (amended in 2014 and 2017) provided in Rule 6 (3) (e) that before ‘in-principle’ approval was granted to a proposal for diversion of forest land :
“*the District Collector shall –*
(i) *Complete the process of recognition and vesting of forest rights in accordance with the provisions of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (2of 2007) for the entire forest land indicated in the proposal;*
(ii) *Obtain consent of each Gram Sabha having jurisdiction over the whole or part of the forest land indicated in the proposal for the diversion of such forest land and the compensatory and ameliorative measures, if any , having understood the purposes and details of diversion, wherever required ; and*
(iii) *forward his findings in this regard to the Conservator of Forests”*

While in Rule 6 (3) (f) it was provided that

“the entire process referred to in clause (e) shall be completed by the District Collector within the time period stipulated in these rules for the grant of in –principle approval under the Act to the proposal”

Moreover in Rule 8 (g) the Conservator of Forests was required to forward the compliance report of the user agency for final approval by higher authorities only after the compliance report was found to be complete in all respects including *the report of District Collector on completion of recognition of forest rights and consent of each affected Gram Sabha.*

- **However in new Rules of 2022 all these crucial provisions are completely omitted.** Instead, both ‘In Principle approval’ and even ‘Final Approval’ for diversion of forest land to any user agency may be given without recognition of forest rights and without consent of the concerned Gram Sabhas. It is provided in Rule 9(6) that once documentation is completed, the Compensatory Levies [Net Present Value] have been paid and land for Compensatory Afforestation has been handed over to the forest department, the Central Government will give ‘Final Approval’. Only after such ‘Final Approval’ is the State /UT government required to ensure compliance with provisions of all other Acts and rules, including compliance with the Forest Rights Act of 2006 :

Rule 9 (6) (b) (ii): *“The State Government or Union Territory Administration , as the case may be, after receiving the ‘Final’ approval of the Central Government under Section 2 of the [Forest Conservation] Act, and after fulfilment and compliance of the provisions of all other Acts and rules made thereunder, as applicable, including ensuring settlement of rights under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest*

Rights) Act, 2006 (No.2 of 2007), shall issue order for diversion , assignment of lease or dereservation , as the case may be” .

- **It can easily be understood that after “compensatory levies” have been paid and land for “compensatory afforestation” has been acquired and, in fact, ‘Final Approval’ has been sanctioned by the Central Government, there will be no effective way to ensure that forest rights are recognised or that the project proceeds only if the free and informed consent of the Gram Sabha(s) is given .**

- **As is well known, Forest Rights are far from settled, even 16 years after the commencement of The Forest Rights Act.** In fact, almost everywhere in the country , there is stiff administrative resistance to settling claims in accordance with the law, claimants continue to be illegally evicted by force , and there are widespread illegalities as a result of which forest communities are continuing to face the colonial “historic injustice” that the Forest Rights Act was supposed to end . Community Forest Rights have mostly not been recognised. **In this situation, if diversion of forest land is allowed without the settlement of rights, it is only to be expected that there will be large scale eviction of forest communities without rights being recognised, and therefore without even any compensation, rehabilitation or resettlement. Claimants will simply be evicted as “encroachers”. In cases of land acquisition, they will not be recognised as ‘affected families’.**

- **The following legal provisions requiring the free and informed consent of Gram Sabhas before approval of any project are also being violated in these Rules of 2022:**
 - Section 5 of the Forest Rights Act empowers Gram Sabhas to protect wildlife , forests and biodiversity, protect water sources and catchments , protect the habitat of forest communities, ensure compliance with its decisions to regulate access to community forest resources and to stop any destructive activity adversely affecting wildlife, forest and biodiversity . Section 6 of this Act also makes Gram Sabhas the main agency for verification of forest rights claims.
 - According to section 41 (3) of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, consent of Gram Sabhas is mandatory before acquisition or alienation of any land in Scheduled Areas while several other sections provide for free and informed consent of Gram Sabhas in both acquisition as well as the formulation of the rehabilitation and resettlement scheme .
 - The PESA Act [Panchayat (Extension to Scheduled Areas) Act 1996] is a part of our Constitution through the 73rd Amendment. It envisages Gram Sabhas as the fulcrum for management of all resources and development activities in rural areas. The FCA Rules of 2022 violate not only the spirit of the PESA Act but also the following specific provisions : the right of Gram Sabhas to manage all community resources [4 (d)]; manage exploitation

of minor minerals [4 (k), 4 (l)]; mandatory consultation with Gram sabhas in land acquisition [4 (i)] ; ownership of minor forest produce (which will naturally be affected by diversion of forest land) [4 (m) (ii)]; prevention of alienation of land [4 m (iii)].

Several States have also modified their Panchayati Raj law in consonance with PESA, which will also be violated by the Rules. (For instance, section 129 –C of the Madhya Pradesh Act clearly recognises the right of Gram Sabhas to “manage all natural resources, including land, water and forests”.)

Quite obviously, in accordance with these provisions, the free and informed consent of Gram Sabhas are a crucial condition *since any diversion, lease or dereservation of forest land will definitely affect the natural resources that are being managed and protected by Gram Sabhas .*

However, the Rules of 2022 bypass all these legal provisions for the rights of Gram Sabhas by providing that the Gram Sabhas are only to be consulted after the diversion process is almost complete, after Final Approval has been given and transfer compensatory funds and land have already been effected. In such a situation, it can easily be understood that it will be practically impossible for any Gram Sabha(s) to refuse consent or seek any modification in terms or extent of the Clearance given for diversion, lease or de reservation .

- The Rules of 2022 also allow the **inclusion of forest land in ‘Land Banks’**. This will only add to the insecurity and threat of eviction faced by forest communities, besides further exposing forests to destructive activity .
- **Accredited Compensatory Afforestation**, presumably developed by user agencies/ private agencies , is allowed on land contiguous with or within any Protected Area or wildlife corridor or Tiger Reserve [11 (3) (e)]. Even more seriously, such Accredited Compensatory Afforestation will be allowed on non-forest land from which communities have been “relocated” due to National Parks, Wildlife Sanctuaries or Tiger Reserves [11 (3) (e)]. This makes a complete mockery of the so-called concern for forest conservation which has led to the eviction of these communities since it allows the transfer of control of this land from the genuine and sustainable life needs of forest communities to the control of commercial and industrial entities. Moreover, as the National Commission for Scheduled Tribes has pointed out, these provisions will “encourage relocation from PAs instead of exploring possibilities of co-existence based conservation using the relevant sections of the FRA”.

Please also note that Shri Harsh Chouhan, the Chairperson of National Commission for Scheduled Tribes (NCST) had also raised similar objections to these Rules, in a letter, dated 26.09.2022, to Shri Bhupender Yadav the Hon’ble Minister for Environment , Forests and Climate Change. The NCST Chairperson has objected that the 2022 Rules are violative of the Forest Rights Act and that “it is a matter of great concern that the NCST has not

been consulted on such an important amendment which would have significant implication in the lives and forest rights of the STs and OTFDs”

Strongly objecting to the removal of the clause for free and informed consent of gram sabhas as well as completion of FRA processes prior to Stage 1 (in principle) clearance, the NCST has pointed out that forest dwellers continue to face rights violations and displacement due to forest diversion of an estimated 25,000-30,000 hectares a year, that Community Forest Rights processes have not been completed anywhere, that according to MoTA “less than 10% of the total potential of the FRA have been completed, of which less than 3% constitutes the Community Forest Resource Rights (CFRR)” . Meanwhile studies have shown Collectors’ certification of completion of FRA processes “given in violation of ground realities”. In such a situation, “the requirement for consent and recognition of rights, prior to stage I clearance in 2014 and 2017 Rules at least provided a legal space for ensuring completion of the processes for recognition and vesting of rights under the FRA in areas where forests are being diverted.”

The NCST has stated that it has now been clearly established that “with the passing of the FRA the diversion of forests processes under the Forest Conservation Act (FCA) stand amended”. The NCST has strongly stated that “implementation of the FRA and processes under the FCA cannot be seen as separate parallel processes” and that “*2022 FC Rules, by seeing FCA and FRA as separate parallel processes will not only lead to large scale perpetuation of historic injustice and undermining of the very purpose of the FRA but also be in violation of statutory requirements.*”

NCST has recommended keeping the 2022 Rules in abeyance and to “reinstate, strengthen and strictly monitor for compliance of the existing provisions of the FCA Rules 2014, further strengthened in 2017” for (a) completion of the process of recognition of rights on forest land as well land indicated for compensatory or ameliorative afforestation, and (b) obtain free and informed consent of each affected gram sabha regarding diversion and any ameliorative measures as well as their participation in the implementation of these measures.

The NCST has also recommended for inclusion in the Forest Advisory Committee of a representative of MoTA as well as experts “to ensure socio-cultural, livelihoods and other concerns of the forest dwelling STS and OTFDs are squarely taken into account while considering diversion of forests”. It has recommended that The Commission be consulted before any amendment to FCA Rules.

However, in his reply, the Hon’ble Minister for Environment, Forest and Climate Change has flatly refused to consider any of the objections or recommendations and has dismissed them without properly addressing them. It is deeply shocking that the detailed and considered opinion and recommendations of a national, statutory body charged with protection of adivasi rights have been dismissed in this manner.

Quite clearly, the Rules have been formulated with the single objective of snatching the forests from local communities and opening them up to destructive projects. We, the undersigned, request you to stand with us in opposing this attack on forest communities and the environment.

We therefore urge you to defend the rights of forest communities, their forest rights and the rights of their Gram Sabhas and to protect them from arbitrary evictions by raising this issue in the House, strongly opposing the Forest (Conservation) Rules 2022 and voting to completely strike them down .

We urge you to ensure that Rule 6 (3) (e) and (f) of the earlier Rules are retained in toto and that they are, in fact, strengthened to ensure protection of forest rights, protection of the rights of gram sabhas to manage and protect forest resources and their habitat, and the protection of forest communities from eviction by projects in forest areas .

We moreover urge you to move to strike down all provisions allowing Accredited Compensatory Afforestation on forest land and allowing forest land to be included in Land Banks.

Regards

1. Adivasi Adhikar Rastriya Manch, Chairman, Midiam Babu Rao (Ph. 9490098070)
2. All India Kishan Mazdoor Sabha – President, V.Venkatramaiah(Ph.8639873720), Secretary, Bhalachandra (Ph. 9437166391)
3. NAPM – Convenor Medha Patkar (Ph.9174181216), Arundhati Dhruv (Ph.9415022772)
4. Jagriti Adivasi Dalit Sangathan (MP), Madhuri Behen (Ph.9179753640)
5. Lok Sangharsh Morcha – Convenor, Pratibha Shinde (Ph 9767457062)
6. AIUFWP, Gen Secretary, Roma Bahan (Ph. 9415233583)
Satya Shodhak Shetkari Sabha (Maharashtra) Kishore Dhamale (Ph. 9422015854)
7. Telangana Girijan Sangham, Secretary, Sriram Nayak (Ph.9440532410)
8. Telangana Girijana Samakya, Anjaiah Nayak, (Ph.9848592234)
9. Palla Trinath Rao, Tribal Rights Activist (Ph.9618296682)
10. AIKMS, Vidyanagar (Hyd) Chittipati Venkateswarlu (Ph.8096824270)
11. AIKMKS, co-Convenor, Jhansi (Ph.9440319977)
12. AIKMS, T.S. Marx Bhavan, Kechchela Ranga Reddy, (Ph.9490700088)

13. Malkanagari Zilla Adibashi Sangha (Odisha), Bijaya Upadhaya (Ph.96668222762)
14. Loka Mukti Sangathan (Odisha) Ananta – Convenor (Ph. 9437946869)
15. Zindabad Sangathan, Balangir (Odisha) Trilochan Punji, Advisor (Ph.9348880611)
16. Adivasi Chetana Sangathan, Parjang (Odisha) Amulya Nayak, Advisor (Ph.9861409290)
17. Malyagiri Adivasi Sangharsh Manch, Pallahada (Odisha) Sripati Sinku, Secretary, (Ph.9337939183)
18. Similipal Adivasi Sangharsh Manch, Mayurbhanj (Odisha) Lalmohan Murmu, (Ph.7815090624)
19. Jana Adhikar Vikash Manch, Daspallha (Odisha) Prafulla Mishra, (Ph.8895548791)
20. Adivasi Bharat Mahasabha, Tuna Malik, (Ph. 9777235594)
21. Chhatisgarh Bachao Andolan, Alok Shukla. (Ph. 997763 4040)
22. Kaimur Van Adhikar Surakshya Morcha, Shasaram (Bihar) Co-Convenor, Yogendra Oram (Ph.9600630412)
23. Adivasi Mulbasi Astitwa Rakshya Manch (Jharkhand), Dayamani Barla (Ph. 9431104386)
24. CSD, Pradip Sahu, (Ph.9439459148)
25. CAFC/INSAF, Odisha, Narendra Mohanty, State Convener (Ph.9437426647)
26. Chasi Mulia Suraksha Samiti, Kandhamal, Balabhadra Mallick (Ph.8895699147)
28. Kewdia Bachao Sangathan (Gujarat), Sailesh Tadv (Ph. 97264 11141)
29. Tudum Debba, National Convenor, Ramanala Laxmaiah (Ph.8008504665)
Telangana State president, Vattam Upendar (Ph.9441897867)
30. Adivasi Samkshema Paristhithi, President, Datla Nageswararao, (Ph. 9441775712)
31. Lalsu Soma Nogoti, tribal rights activist and member, Jilla Maha gramasabha Sammanwya Parishad, Gadchaoruli (Maharashtra) (Ph.94051 30530)
32. Udvas Das, Tribal Rights Activist Birbhum (WB). (Ph: 9051634625)
33. Bargi Bandh Visthapit Evam Parbhabit Sangh, Jabalpur (MP) Raj Kumar Sinha (Ph. 94243 85139)

34. Jan Vikash Sangathan, Chhatrapur (MP) Amit Bhatnagar (Ph. 98936 85916)
35. Lal Singh Gambit. Activist, Napi District (Ph. 98254 37829)
36. Niyamgiri Surakshya Samiti, Odisha, Lingaraj Azad (Ph. 7978623815)
37. Loka Shakti Abhijan, Odisha, Convenor, Prafulla Samantara (Ph. 8249023220)