

Displacement and Forest Land: Using the Forest Rights Act to Defend People's Rights

Many large projects in India today use forest land. For instance, most of the land being sought for the POSCO steel plant is forest land; much of the land for the Polavaram dam project in Andhra Pradesh is forest land; and most mining projects take place on forest land.

For these purposes, the term "forest land" does not only mean land that has forest on it. It means any land that comes under the Forest (Conservation) Act, or that is recorded as forest (this is discussed more below), and includes sanctuaries, national parks and tiger reserves.

Historically, the government has acted as if this kind of land is "government land" and no one has any rights to it. Therefore, when the land was handed over to a project (whether government or private), the people living in or depending on this land were often thrown off it without any compensation. Sometimes they have been given a small amount of compensation. But the government has always tried to act as if this land is only forest land.

However, after the Forest Rights Act was notified into force on January 1, 2008, the legal situation has changed. In fact there are more ways to fight projects on forest land than there are on other types of land now. *Most importantly, forest land cannot be taken for any project without the consent of the forest dwellers' gram sabhas.* Therefore, this law can be a very useful weapon in struggles against large projects.

Read more to find out how the forest laws are used against people, how the Forest Rights Act can be used against projects, and what steps an organisation should take to use this law.

What is Forest Land?

People often assume that "forest land" means only reserved forest or protected forest land. But, after a 1996 order of the Supreme Court¹, the definition of forest land has been made much wider. It now includes:

1. any land that is notified as a reserved or protected forest (including also most national parks and sanctuaries);
2. any land that is recorded as forest on any government record, including revenue records;
3. any land that fits the "dictionary definition" of a forest (i.e. it has many trees on it).

What Procedure Does the Government Follow for Handing Over Forest Land for Projects?

If the land comes under these categories, then the *Forest (Conservation) Act* of 1980 applies to it. Under section 2 of this Act, the permission of the Central government - i.e. the Ministry of Environment and Forests - is required if any forest land has to be used for "non-forest use." "Non-forest use" means any activity except forest management and plantations. This permission is called permission to "divert" the forest land.

In order to get permission for diversion, the procedure followed is:

1. The State government makes a proposal to the Central government, asking for diversion of the land. It is always the State government that makes the application, even if the project is being

¹ Order dated 12.12.1996 in *T.N. Godavarman Thirumalpad and Ors. vs. Union of India and Ors.* (WP 202/95)

done by a private company.

2. After an official visits the proposed area and files a "site inspection report", the report and the proposal is placed before a committee in the Ministry of Environment and Forests named the Forest Advisory Committee (FAC). Based on the proposal, this Committee decides whether the permission should be given or not. Then it gives a recommendation to the Ministry.
3. If the FAC recommends in favour of the proposal, the Ministry usually gives a "stage I" clearance - also called an "in principle" clearance - to the State government. This clearance will have some conditions. Generally there are two main conditions. The first is that the State government should deposit some money for planting an equivalent area of land with trees (or twice the area, if the plantation is being done on forest land) as well as some additional money called the "net present value" of the forest being destroyed (this is required by a Supreme Court order). The second condition is that the State government should identify the land where the plantation will take place. These plantations are called "compensatory afforestation."
4. After meeting these conditions, the State government files a "compliance report."
5. Based on the compliance report and its own information, the Ministry grants the final forest clearance (also called "stage II" clearance). It usually also imposes some more conditions at this time.

This is the procedure on paper. In practice almost every application for clearance to divert forest land for projects is granted. The reason is obvious: nowhere in this entire procedure are the people of the area given any role. Often they do not even know that the land has been handed over or is proposed to be handed over.

Because the government treats this land as government land, most State governments just wait until they receive the forest clearance and then evict anyone who is using the land. The forest is destroyed for the project. The people who depended on the forest or who cultivated in it receive no compensation because they are all treated as "illegal encroachers." This has happened to lakhs of people; it is estimated that around 15 lakh people were displaced from forest land between 1980 and 2005 alone.

The Central and State governments are still doing this. But now in fact the law has changed.

Using the Forest Rights Act and the July 30 2009 Order of the Environment Ministry

The 2006 Forest Rights Act says a number of things that are important in this context. This note does not go into the Act itself in much detail. For more information on the Act, see www.forestrightsact.com or contact us for information.

- Section 4(5) of the Act forbids the removal of any forest dwelling tribal, or other traditional forest dweller, from the land under their occupation until the process of recognition of rights under the Act is complete. This means that the full process under section 6 of the Act - the filing of claims before the gram sabha, the verification by the Forest Rights Committee, the gram sabha passing a resolution on the claims, and the Sub-Divisional and District Level Committees deciding on the claims approved by the gram sabha. This also includes the time for people to appeal decisions of the gram sabha and the Sub Divisional Level Committees. As per the law, no one's rights can be violated and no one can be evicted until all people occupying the land have been given a chance to claim, have filed their claims, and a final decision has been taken on these claims (after appeals if any). Further, the process can only be declared complete by a gram sabha resolution (see below under the July 30 2009 order of the Ministry).
- Section 4(1) of the Act "vests" (i.e. recognises) rights in other traditional forest dwellers and forest dwelling Scheduled Tribes from the date the Act came into force (January 1, 2008). The

process of receiving claims etc. is only a way for the government to record these rights. The people have these rights from January 2008 onwards. Therefore, even if the government has not implemented the process in the area and people have not got titles for their rights, the forest still cannot be taken away for the project.

- Section 5 of the Act says that, in any area where there are people with forest rights, the gram sabha has the power to protect forests, biodiversity, water catchment areas and the cultural and natural heritage of forest dwellers. This power does not depend on the government to have recognised the claim or not. It is a general power of any gram sabha.

The State and Central governments have consistently acted like all three of these provisions don't exist. However, after the issue was raised by forest dwellers' movements and struggles, the Ministry of Environment and Forests finally accepted that it is bound by the law and issued an order on July 30, 2009.

The July 30, 2009 MoEF Order

On July 30, 2009, the Ministry sent a letter to all State governments (F.No. 11-9/1998-FC(pt) dated 30.7.2009; a copy of the order can be taken from www.forestrightsact.com, the Internet address is given at the end of this note)². The letter stated that all applications for "unconditional clearance" - that is, for final clearance - should be accompanied by certain documents. These documents include:

1. A resolution of the affected gram sabhas stating that the implementation of the Forest Rights Act is complete in the area;
2. A resolution of the affected gram sabhas stating that they have been informed of the details of the project, the proposed diversion of the forest land and the rehabilitation plan (if any) and that they consent to it;
3. A letter certifying that all community rights have been recognised in the area.

Each of the gram sabha resolutions has to be passed with a 50% quorum.

Using the Forest Rights Act and the 2009 Order to Defend People's Rights

In case a large project is coming to an area with forest land, then, the following steps can be taken:

Filing of Claims

If claims for rights under the Forest Rights Act have not been filed yet, they should be filed as soon as possible. A record should be kept of all claims being filed as well as copies of the claims. If the time limit for filing of claims has expired in the area, the gram sabhas should pass resolutions extending the time for filing of claims (as per Rule 11 of the Forest Rights Rules - see the Forest Rights Rules for more information).

Gram Sabha Resolutions

At the same time, as many gram sabhas as possible should pass resolutions saying:

- That the gram sabha is opposed to the diversion of land for the project and that it does not give its consent. The resolution can specifically say that the Environment Ministry gave an order requiring the consent of the gram sabha and this gram sabha refuses to give this consent.

² This is sometimes referred to as the August 3, 2009 order of MoEF, since it was actually sent on that day.

- That the gram sabha is passing this resolution in order to protect the forests and the cultural and natural heritage of the people under section 5 of the Forest Rights Act.
- That the process of recognition of rights is not complete in the area (unless this is one of the very rare areas where the process has actually been completed). If claims are pending, the number of claims should be mentioned.
- The resolution should also mention which communities are living in the area, what kind of livelihood rights they engage in, and the different ways they depend on forests and forest lands for a livelihood.
- Finally, the resolution should say that any diversion of forest land or violation of this resolution will be a criminal offence under section 7 of the Forest Rights Act.

In case the affected people are not Scheduled Tribes, one more step must be taken. If the affected people have been residing in forest areas for more than 75 years (i.e. before 1930), they are other traditional forest dwellers. Then the resolution should clearly state this fact and evidence for it if any. Even if not everyone in the village is an other traditional forest dweller or a Scheduled Tribe, even if some eligible people are present, that is enough.

When passing the gram sabha resolutions, keep in mind that the legal requirements have to be met. In particular:

- Each resolution should be passed with at least 66% of the members of the gram sabha signing on to the resolution. Though the Ministry order of July 2009 said 50%, for our work it is always better to have a resolution with 66% quorum, since the Forest Rights Rules specify that this is the minimum quorum for a valid resolution.
- The gram sabha meeting should be held at the same level as the one that was held by the government to elect Forest Rights Committees. For instance, in Orissa Forest Rights Committees were elected at the level of the "palli" or revenue village. The same kind of meeting should be held for these resolutions. If this is not possible, or in addition to this, in areas under the Fifth Schedule (Scheduled Areas), one can hold a meeting of just the hamlet (i.e. the falia, pada, etc.) and pass a resolution. In this case the resolution should say that since this is a Fifth Schedule Area, under the PESA Act, the hamlet level gram sabha has the power to protect natural resources.
- The notice for the gram sabha meeting should have been issued in advance. It is best that this should be done as per the State panchayat laws and applicable rules under the PESA Act (in Scheduled Areas). Keep a copy of this notice as well.
- If possible, take a video recording of the gram sabha meeting.
- The resolution and signatures should be recorded in the register normally used to record the gram sabha resolutions and meetings. Sometimes this is not possible because the panchayat secretary may have the register and refuse to attend the meeting or record the resolution. In that case, the resolution itself should state that it is being recorded separately because the panchayat secretary is not performing his or her legal duty.

If the gram sabha resolutions are delayed due to the requirements of calling the meeting etc., a letter should be sent to the Ministry of Environment and Forests (as below) immediately stating that the meetings are being called and listing the information that shows that the Forest Rights Act is being violated.

If it is not possible to pass gram sabha resolutions, or if some have been passed but not properly, steps can still be taken, see below.

Send Documents to Environment Ministry

A letter should be sent to the Director General of Forests at the below address:

Director General of Forests
Member-Secretary, Forest Advisory Committee
Ministry of Environment and Forests
Paryavaran Bhavan, CGO Complex
New Delhi 110 003

The letter should include the following:

- It should say that no clearance should be given to the project in question, or, if any such clearance has been given, it should be withdrawn.
- The letter should specifically say that it is being written under sections 4(1), 4(5), 5 and 7 of the Forest Rights Act as well as the July 30, 2009 order of the Environment Ministry (give the order number).
- The letter should include all of the points that were listed above for the gram sabha resolutions.
- The following documents should be attached:
 - Photocopies of the gram sabha resolutions passed, if any, along with all of the signatures.
 - Copies of any supporting documents, like the notice for the gram sabha meeting.
 - Copies of some of the claims that have been filed if available.

Even if the gram sabha resolutions cannot be passed with all legal requirements being met, if any have been passed, they should be attached.

Even if no resolutions were passed, the letter should still be sent, stating the facts and including the points noted above for the gram sabha resolutions. In this case the letter should be signed by as many people as possible. However this is much weaker than gram sabha resolutions.

A copy of the letter should be sent to the Ministry of Tribal Affairs (Secretary, Ministry of Tribal Affairs, Shastri Bhavan, New Delhi 110 001), the State Chief Secretary, the State Department of Tribal Welfare and, if necessary, to the Collector.

In addition to sending this letter, a right to information application should also be filed with the Director General of Forests in Delhi, and with the Chief Secretary of the State government. With Ministry, the application should ask if any steps have been taken to comply with the July 30, 2009 order in respect of this project. With the Chief Secretary, the application should ask (in connection with this project):

- what steps the State government intends to do to ensure compliance with this order;
- whether the State government has any basis for giving the certification letters required under this order, and if any such letters have been, copies should be supplied;
- The dates or periods of time when the State government proposes to call gram sabha meetings for the purposes of this order, and if they have been already called, copies of their resolutions; etc.

Both of these applications - especially the one with the Ministry - should be filed repeatedly.

Other Steps

Please note that *on its own sending this letter or these documents will not achieve much*. The Ministry has been breaking the law and its own orders since 2009 and it will continue to do so. The benefit from doing this is to give a space for struggle and a tool that can be used. While one is attempting the above procedure, pressure through people's struggle, political parties, and other usual strategies should go on. In all these, however, the point should be raised that taking over the forest land for the project is not only bad for people, but it is also illegal and a criminal offence.

Further Reading

You can find copies of the following at these links:

1. The Forest Rights Act: <http://www.forestrightsact.com/the-act/item/download/1>
2. The Forest Rights Rules: <http://www.forestrightsact.com/the-act/item/download/10>
3. The July 30, 2009 Order of the Ministry of Environment and Forests: <http://www.forestrightsact.com/corporate-projects/item/download/61>

The most detailed official discussion to date of the legal requirements of forest diversion can be found in chapter 3 of the majority report of the POSCO Project Enquiry Committee. This document is available at: <http://www.forestrightsact.com/corporate-projects/item/download/53>